



Committee on State Affairs

**Wednesday, March 26, 2008
8:00 AM – 10:00 AM
Morris Hall**

**Marco Rubio
Speaker**

**Andy Gardiner
Chairman**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on State Affairs

Start Date and Time: Wednesday, March 26, 2008 08:00 am
End Date and Time: Wednesday, March 26, 2008 10:00 am
Location: Morris Hall (17 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 95 Legislature by Llorente
HB 677 Retirement by Gardiner
HB 715 Local Government Revenue Sources by Flores
HB 1061 Ad Valorem Tax Data by Seiler

Workshop on the following:

HB 1451 Operation of the Florida Lottery by Traviesa

Discussion of the Department of the Lottery's marketing strategy


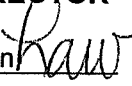
NOTICE FINALIZED on 03/24/2008 16:22 by TUCK.SHIRLEY

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 95
SPONSOR(S): Llorente and others
TIED BILLS:

Legislature

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs		Camara 	Williamson 
2) Government Efficiency & Accountability Council			
3) Rules & Calendar Council			
4)			
5)			

SUMMARY ANALYSIS

The Florida Constitution requires the House and Senate to determine its rules of procedure. The House and Senate Rules authorize the chair or any member of a council, committee, or subcommittee to administer oaths and affirmations to witnesses.

There are two distinct sections of statute that currently provide criminal sanctions for providing false testimony to legislative committees. The first section is perjury in an official proceeding, which is a felony of the third degree. The second section provides a more severe punishment for the act of willfully affirming or swearing falsely about any material matter or thing before any legislative committee, which is a second degree felony.

This bill codifies an oath or affirmation that must be taken by any person as a precondition to their addressing a legislative committee. The bill excludes from its provisions citizens who are not registered lobbyists and who are not paid to testify before the committee on the issue they are providing testimony. It also excludes a minor when the chair of the committee determines that the minor understands the duty to tell the truth. As an alternative to taking the oath, the bill provides that the House and Senate may allow a person appearing before a committee to complete and sign an appearance form that would constitute a written affirmation.

This bill removes the current second degree felony offense for anyone who willfully provides false testimony to a committee and creates in its place two levels of felony offenses. The bill creates a third degree felony for any person who intentionally makes a false statement about any material matter. This offense is elevated to a second degree felony if the person providing the false statement was compelled to appear by subpoena.

Although amending the criminal aspects of statute applicable to the conduct of witnesses who appear before legislative committees, this bill will not bind future Legislatures to abide by its procedures if subsequent Legislatures provide for different procedures in rules they adopt for themselves.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates new criminal offenses relating to knowingly providing false information to committees of the Legislature.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

LEGISLATIVE AUTHORITY OVER THE COMMITTEE PROCESS

Article III, s. 4(a) of the Florida Constitution provides in relevant part, “[e]ach house shall determine its rules of procedure.” Section 4(e) also provides that “[e]ach house shall be the sole judge for the interpretation, implementation, and enforcement of this section.” Pursuant to these provisions both houses of every edition of the Florida Legislature has the authority to decide for themselves how to conduct the state’s legislative business for the duration of their respective terms. Accordingly, during the organizational session of each newly elected Legislature, both the House and Senate adopt their respective rules to govern all aspects of the legislative process including the conduct of committee meetings, and the powers and privileges of committee chairs and members.

House Rule 13.5 states:

These rules are adopted pursuant to the specific authority granted and the inherent powers vested in the House of Representatives by the Florida Constitution. These rules are intended to facilitate the orderly, practical, and efficient completion of legislative work undertaken by the House. These rules shall govern procedures in the House notwithstanding any inconsistent parliamentary tradition and notwithstanding any joint rule or any statute enacted by a prior Legislature. Adoption of these rules constitutes the determination of the House that they do not violate any express regulation or limitation contained in the Florida Constitution. These rules may not be construed to limit any of the powers, rights, privileges, or immunities vested in or granted to the House by the Florida Constitution or other organic law.

Therefore, in terms of the hierarchy of legislative authority over its own procedure, the constitution is the supreme authority, the rules adopted by each chamber supersede any statute, and the statute may be used to the extent each succeeding Legislature chooses to follow it, or acquiesces to it, without adopting any rule that contradicts the statute. No prior or present Legislature can bind a future successor Legislature through the adoption rules or statute.¹

LEGISLATIVE INVESTIGATIONS AND WITNESS TESTIMONY

Article III, s. 5 of the Florida Constitution provides:

Investigations; witnesses.--Each house, when in session, may compel attendance of witnesses and production of documents and other evidence upon any matter under investigation before it or any of its committees, and may punish by fine not exceeding one thousand dollars or imprisonment not exceeding ninety days, or both, any person

¹ See Art. III, ss. 1 – 4 of the Florida Constitution. The one exception to this is a recently adopted constitutional amendment requiring the Legislature to create a joint rule to govern the joint legislative budget commission “which shall remain in effect until repealed or amended by concurrent resolution.” Art. III, s. 19 of the Florida Constitution; CS/SJR 2144 (2005).

not a member who has been guilty of disorderly or contemptuous conduct in its presence or has refused to obey its lawful summons or to answer lawful questions. Such powers, except the power to punish, may be conferred by law upon committees when the legislature is not in session. Punishment of contempt of an interim legislative committee shall be by judicial proceedings as prescribed by law.

Under this provision both houses of the Legislature may compel the attendance of witnesses while in session and during any interim period. In addition, this provision authorizes each house, while in session, to punish directly by a \$1,000 fine and imprisonment up to 90 days, any person who refuses to obey a lawful legislative summons or answer a lawful question.

House Rules 7.21 and 16.1 and Senate Rule 2.2 authorize the chair or any member of a council, committee, or subcommittee to administer oaths and affirmations "in the manner prescribed by law to witnesses. . ." There also are parallel rules providing authority for each chamber's presiding officer to authorize the issuance of subpoenas for their respective committees.²

Currently, the only statute that expressly provides the specific text of an oath to be administered for a witness giving sworn testimony is found in s. 90.605, F.S., of the Evidence Code. The Evidence Code, although not applicable to legislative committee meetings, serves as a template for the administration of oaths to witnesses in a manner provided by law through the language of s. 90.605, F.S.³ This section provides, in part:

Before testifying, each witness shall declare that he or she will testify truthfully, by taking an oath or affirmation in substantially the following form: [d]o you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

This language is commonly adapted for use in committee meetings and special master hearings on claim bills for putting witnesses under oath prior to providing testimony.

CRIMES INVOLVING LYING TO THE LEGISLATURE

Two sections of statute provide criminal sanctions for providing false testimony to legislative committees. The first section is perjury in an official proceeding under s. 837.02, F.S., which provides in part, ". . . whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter, commits a felony of the third degree."⁴

The second section of statute provides a more severe punishment than the perjury statute for the specific act of willfully affirming or swearing falsely about any material matter or thing before any standing or select committee or subcommittee. Section 11.143(4), F.S., makes this offense a second degree felony.⁵

PROPOSED CHANGES

This bill codifies an oath or affirmation that must be taken by any person as a precondition to their addressing a legislative committee. The bill states the oath or affirmation must be in substantially the following form: "Do you swear or affirm that the information you are about to

² As used in this analysis "committee" refers to councils and committees, including select committees, in the House and committees and subcommittees, including select committees, in the Senate. House Rules 7.20 and 16.1; Senate Rule 2.2.

³ Section 90.103, F.S.

⁴ A third degree felony is punishable by a maximum of five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S. The definition of "official proceeding" for use in the perjury statute includes legislative committee meetings. Section 837.011, F.S. A "material matter" is any subject that could affect the course or outcome of the proceeding. See s. 837.011, F.S. For purposes of perjury, the false statement must be one of fact not one of opinion or belief. *Vargas v. State*, 795 So.2d 270 (Fla. 3rd DCA 2001).

⁵ A second degree felony is punishable by a maximum of 15 years imprisonment and a \$10,000 fine. Sections 75.082 and 775.083, F.S.

share will be the truth, the whole truth, and nothing but the truth?" The person's response must be noted in the record.

The bill excludes from its mandate members of the public who are not registered lobbyists and who are not paid to appear before the committee on the issue they are addressing. It also excludes minors when the chair of the committee determines that the minor understands the duty to tell the truth.

As an alternative to taking the required oath, the bill authorizes the House and Senate, by rule, to require a person addressing a committee to complete and sign an appearance form before speaking to the legislative committee. The signed appearance form constitutes a written affirmation to "speak the truth, the whole truth, and nothing but the truth," and subjects a person to the penalties provided in the bill.

This bill removes the current second degree felony offense for anyone who willfully provides false testimony to a committee. The current offense applies regardless of whether the person providing false testimony to the committee was compelled to appear by subpoena.

This bill creates in its place two levels of felony offenses within chapter 11, F.S.:

- Any person who knowingly provides false testimony under oath or affirmation commits a third degree felony.⁶
- Any person who knowingly provides false testimony under oath or affirmation and who is compelled to appear by subpoena commits a felony of the second degree.⁷ This offense is punishable as provided in ss. 775.082, 775.083, and 775.084, F.S.

In short, the bill limits the circumstances in which someone lying under oath to the Legislature is subject to a second degree felony to only those instances where the person was compelled to appear by subpoena.

Although amending the criminal aspects of statute applicable to the conduct of witnesses who appear before legislative committees, this bill will not bind future Legislatures to abide by the particular procedure set forth in it if subsequent Legislatures provide for different procedures in rules adopted for them.

C. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 amends s. 11.143, F.S., to delete current provisions relating to the administration of oaths by legislators and to remove an offense regarding providing false testimony to the Legislature.

Section 3 creates s. 11.1435, F.S., to require the administration of oaths to persons testifying before legislative committees and to create crimes and penalties for providing false testimony to the Legislature.

Section 4 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁶ This offense is punishable as provided in ss. 775.082, 775.083, and 775.084, F.S. A felony of the third degree is punishable by imprisonment not exceeding five years and a fine not to exceed \$5,000.

⁷ This offense is punishable as provided in ss. 775.082, 775.083, and 775.084, F.S. A felony of the second degree is punishable by imprisonment not exceeding 15 years and a fine not to exceed \$10,000.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Florida House of Representatives and the Senate both have appearance cards for persons speaking before committees. If the House or Senate opted to use the appearance card option provided in the bill, there may be an insignificant fiscal impact associated with the cost of redesigning and printing the new appearance cards.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

This bill requires each legislator and all legislative staff to sign a card at the beginning of each regular and special session, which lasts the duration of that session, affirming that he or she promises to speak the truth. This provision may draw scrutiny, if challenged, on whether it violates the United States or Florida constitutions or Florida common law, which appear to provide legislators and staff with certain immunity related to their legislative duties.

Article I, section 6, clause 1 of the United States Constitution, commonly referred to as the "Speech and Debate Clause," provides, in part, "[t]he Senators and Representatives shall ... in all Cases, except Treason, Felony and Breach of the Peace, be privileged ... and for any Speech or Debate in either House, they shall not be questioned in any other Place." The federal Speech or Debate Clause protects both legislators and their staff against certain civil and criminal liability, as well as against compelled questioning or document production, as long as the matter is "an integral part of the deliberative and communicative processes' of legislating."⁸ The purpose of the Speech or Debate Clause is to "protect the 'independence and integrity' of members of the legislature from

⁸Steven F. Huefner, *The Neglected Value of the Legislative Privilege in State Legislatures*, 45 WM. & MARY L. REV. 221, 225 (2003) (quoting *Gravel v. United States*, 408 U.S. 606, 625 (1972)).

'intimidation' by both the executive branch and the judiciary."⁹

Florida's 1865 Constitution provided for a speech or debate clause similar to the United States Constitution, but the clause was omitted from the 1868, 1885, and 1968 Florida Constitutions.¹⁰ While Florida courts have acknowledged that state legislators are immune from civil suits while acting in their legislative capacity,¹¹ the Fourth District Court of Appeal emphasized that

No Florida legislative testimonial privilege has been recognized in the Evidence Code, statutes, or Florida constitution. The federal courts which have acknowledged and applied the privilege have done so based largely on the Speech and Debate Clause ... There is no counterpart to this clause in Florida's constitution or laws.¹²

It has been argued, however, that a legislative privilege may exist without needing a constitutional clause. For example, the Florida Supreme Court has indicated it may be willing to recognize a legislative privilege as a matter of common law.¹³

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not Applicable.

⁹Todd B. Tatelman, *The Speech or Debate Clause: Recent Developments*, CRS REPORT FOR CONGRESS (Congressional Research Service, Washington, D.C.), April 17, 2007, at 1-2 (quoting *United States v. Johnson*, 383 U.S. 169, 181 (1966)).

¹⁰ *Girardeau v. State of Florida*, 403 So.2d 513 (Fla. 1st DCA 1981).

¹¹ *Walker v. President of the Senate*, 658 So.2d 1200, 1200 (Fla. 5th DCA 1995) (emphasis added).

¹² *City of Pompano Beach v. Swerdlow Lightspeed Mgmt. Co., LLC*, 942 So.2d 455, 457 (Fla. 4th DCA 2006) (emphasis added).

¹³ See *Hauser v. Urchisin*, 231 So.2d 6, 8 (Fla. 1970); *Girardeau*, 403 So.2d at 516-17.

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A bill to be entitled
 An act relating to the Legislature; providing a short
 title; amending s. 11.143, F.S.; eliminating authority for
 members of a legislative committee to administer certain
 oaths and affirmations to witnesses; eliminating penalties
 for false swearing before a legislative committee;
 conforming to the creation of new provisions relating to
 oaths and affirmations before a legislative committee;
 creating s. 11.1435, F.S.; requiring persons who address a
 legislative committee to take an oath or affirmation of
 truthfulness; providing exceptions; requiring a member of
 the legislative committee to administer the oath or
 affirmation; providing criminal penalties for certain
 false statements before a legislative committee;
 authorizing the use of a signed appearance card in lieu of
 an oral oath or affirmation; prescribing conditions
 related to the use of the card; providing for penalties
 for making a false statement after signing the card;
 providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Truth in
 Government Act."

Section 2. Section 11.143, Florida Statutes, is amended to
 read:

11.143 Standing or select committees; powers.--

(1) (a) Each standing or select committee, or subcommittee

29 | thereof, is authorized to invite public officials and employees
 30 | and private individuals to appear before the committee for the
 31 | purpose of submitting information to it.

32 | **(b)** Each such committee is authorized to maintain a
 33 | continuous review of the work of the state agencies concerned
 34 | with its subject area and the performance of the functions of
 35 | government within each such subject area and for this purpose to
 36 | request reports from time to time, in such form as the committee
 37 | designates, concerning the operation of any state agency and
 38 | presenting any proposal or recommendation such agency may have
 39 | with regard to existing laws or proposed legislation in its
 40 | subject area.

41 | (2) In order to carry out its duties, each such committee
 42 | is empowered with the right and authority to inspect and
 43 | investigate the books, records, papers, documents, data,
 44 | operation, and physical plant of any public agency in this
 45 | state, including any confidential information.

46 | (3) (a) In order to carry out its duties, each such
 47 | committee, whenever required, may issue subpoena and other
 48 | necessary process to compel the attendance of witnesses before
 49 | such committee, and the chair thereof shall issue the process on
 50 | behalf of the committee, in accordance with the rules of the
 51 | respective house. ~~The chair or any other member of such~~
 52 | ~~committee may administer all oaths and affirmations in the~~
 53 | ~~manner prescribed by law to witnesses who appear before the~~
 54 | ~~committee for the purpose of testifying in any matter concerning~~
 55 | ~~which the committee desires evidence.~~

56 | (b) Each such committee, whenever required, may also

57 | compel by subpoena duces tecum the production of any books,
 58 | letters, or other documentary evidence, including any
 59 | confidential information, it desires to examine in reference to
 60 | any matter before it.

61 | (c) Either house during the session may punish by fine or
 62 | imprisonment any person not a member who has been guilty of
 63 | disorderly or contemptuous conduct in its presence or of a
 64 | refusal to obey its lawful summons, but such imprisonment must
 65 | not extend beyond the final adjournment of the session.

66 | (d) The sheriffs in the several counties or a duly
 67 | constituted agent of a Florida legislative committee 18 years of
 68 | age or older shall make such service and execute all process or
 69 | orders when required by such committees. Sheriffs shall be paid
 70 | as provided for in s. 30.231.

71 | ~~(4) (a) Whoever willfully affirms or swears falsely in~~
 72 | ~~regard to any material matter or thing before any such committee~~
 73 | ~~is guilty of false swearing, which constitutes a felony of the~~
 74 | ~~second degree, punishable as provided in s. 775.082, s. 775.083,~~
 75 | ~~or s. 775.084.~~

76 | ~~(b)~~ If a witness fails to respond to the lawful subpoena
 77 | of any such committee at a time when the Legislature is not in
 78 | session or, having responded, fails to answer all lawful
 79 | inquiries or to turn over evidence that has been subpoenaed,
 80 | such committee may file a complaint before any circuit court of
 81 | the state setting up such failure on the part of the witness. On
 82 | the filing of such complaint, the court shall take jurisdiction
 83 | of the witness and the subject matter of the complaint and shall
 84 | direct the witness to respond to all lawful questions and to

85 | produce all documentary evidence in the possession of the
 86 | witness which is lawfully demanded. The failure of a witness to
 87 | comply with such order of the court constitutes a direct and
 88 | criminal contempt of court, and the court shall punish the
 89 | witness accordingly.

90 | (5) All witnesses summoned before any such committee shall
 91 | receive reimbursement for travel expenses and per diem at the
 92 | rates provided in s. 112.061. However, the fact that such
 93 | reimbursement is not tendered at the time the subpoena is served
 94 | does not excuse the witness from appearing as directed therein.

95 | Section 3. Section 11.1435, Florida Statutes, is created
 96 | to read:

97 | 11.1435 Oath or affirmation; penalty.--

98 | (1) (a) Any person who addresses a standing or select
 99 | committee, or subcommittee thereof, shall first declare that he
 100 | or she will speak truthfully, by taking an oath or affirmation
 101 | in substantially the following form: "Do you swear or affirm
 102 | that the information you are about to share will be the truth,
 103 | the whole truth, and nothing but the truth?" The person's answer
 104 | shall be noted in the record.

105 | (b) Paragraph (a) does not apply to:

106 | 1. A member of the general public who is not a registered
 107 | lobbyist and who is not being paid to appear before the
 108 | committee on the issue he or she is addressing.

109 | 2. A minor, if the chair of the committee determines the
 110 | minor understands the duty to tell the truth or the duty not to
 111 | lie.

112 | (c) The chair or any other member of the committee shall

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113 administer the oath or affirmation required under paragraph (a).

114 (2) (a) Except as provided in paragraph (b), whoever makes
115 a false statement, which he or she does not believe to be true,
116 under the oath or affirmation required by this section in regard
117 to any material matter, commits a felony of the third degree,
118 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.


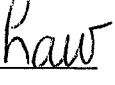
119 (b) Whoever is compelled by subpoena as a witness before a
120 committee under s. 11.143(3) and who makes a false statement,
121 which he or she does not believe to be true, under the oath or
122 affirmation required by this section in regard to any material
123 matter, commits a felony of the second degree, punishable as
124 provided in s. 775.082, s. 775.083, or s. 775.084.

125 (3) In lieu of the oral oath or affirmation required by
126 this section, the Senate or the House of Representatives may by
127 the rules of each respective house require any person, as
128 prescribed in subsection (1), who addresses a committee to
129 complete and sign an appearance form. The form must be signed
130 before the person addresses the committee. Signing the form
131 constitutes a written affirmation to speak the truth, the whole
132 truth, and nothing but the truth, and subjects the person to the
133 penalties as provided in this section. The form must notify the
134 person of the penalty provisions and include a statement
135 informing the person that signing the form constitutes an
136 affirmation. Legislators and legislative staff shall sign a card
137 complying with this section at the start of each regular or
138 special session of the Legislature covering the duration of the
139 session.

140 Section 4. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 677 Retirement
SPONSOR(S): Gardiner and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 294

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on State Affairs</u>	_____	Camara 	Williamson 
2) <u>Government Efficiency & Accountability Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Current law provides a definition of compensation for purposes of calculating the retirement benefit for a member of the Florida Retirement System (FRS). This bill expands the definition of "compensation" for firefighters, paramedics, and emergency medical technicians to allow any salary supplement received to be considered compensation for retirement purposes if the said supplement is for employer-approved educational training or for other additional job-related duties and responsibilities.

This bill also amends the definition of "average final compensation" (AFC) to provide that the AFC for members of the Special Risk Class at time of retirement is calculated using the average of the highest three fiscal years' salaries, instead of the average of the highest five fiscal years' salary.

This bill increases, from two percent to three percent, the accrual rate at which Special Risk Class members may upgrade certain past service. The bill also expands the qualifying past service to include special risk membership as an emergency medical technician or paramedic whose employer was a licensed Advanced Life Support or Basic Life Support provider.

Under current law, qualified members of the FRS who are totally and permanently disabled due to any condition or impairment of health caused by an injury or illness are entitled to disability benefits. If the injury or illness arises out of and in the actual performance of a member's job, the member is entitled to in-line-of-duty disability benefits, which bestow an increased rate of disability retirement benefits. This bill expands qualification for total and permanent in-line-of-duty disability benefits to law enforcement officers, firefighters, correctional officers, emergency medical technicians, paramedics, and community-based correctional probation officers who are prevented from performing useful and efficient service in the position held due to a job-related injury, unless proven otherwise by the plan administrator, thus creating an easier standard for an injured employee to meet in order to receive the higher disability benefit, and shifting the burden of proof from the employee to the administrator.

This bill also relaxes post-retirement restrictions, which presently do not permit a disabled retiree to receive disability benefits while gainfully employed, Special Risk Class members who qualify for in-line-of-duty disability retirement. Subject to certain conditions, the disabled officer, firefighter, emergency medical technician, or paramedic may be reemployed in any position other than the one held at the time of disability, while receiving disability benefits.

This bill requires an actuarial special study.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families – This bill allows affected members and their families to receive increased retirement benefits.

B. EFFECT OF PROPOSED CHANGES:

Background: General

FLORIDA RETIREMENT SYSTEM

Chapter 121, F.S., is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.¹

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 164 cities and 209 independent special districts that have elected to join the system.²

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over: 680,000 active members, 264,000 retirees and surviving beneficiaries, and 31,000 Deferred Retirement Option Program participants.³ Members of the FRS belong to one of five membership classes:

1. Regular Class ⁴	588,204 members	86.46% of membership
2. Special Risk Class ⁵	74,224 members	10.91% of membership
3. Special Risk Administrative Support Class ⁶	74 members	0.01% of membership
4. Elected Officers' Class ⁷	2,078 members	0.31% of membership
5. Senior Management Service Class ⁸	7,562 members	1.11% of membership ⁹

Each class is funded separately through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, F.S.¹⁰

SPECIAL RISK CLASS

The Special Risk Class of the FRS was created to recognize that certain employees, because of the nature of the work they perform,¹¹ might need to retire at an earlier age with less service than other

¹ Section 121.025, F.S.

² Department of Management Services, Division of Retirement: Florida Retirement System Annual Report, July 1, 2006 – June 30, 2007 at 91 (on file with the Committee on State Affairs).

³ Department of Management Services HB 677 (2008) Substantive Bill Analysis (Mar. 24, 2008) [hereafter referred to as DMS Analysis] at 2 (on file at the Committee on State Affairs).

⁴ Section 121.021(12), F.S.

⁵ Section 121.0515, F.S.

⁶ Section 121.0515(7), F.S.

⁷ Section 121.052, F.S.

⁸ Section 121.055, F.S.

⁹ FRS Annual Report at 43.

¹⁰ See, e.g., s. 121.055(3)(a)1., F.S.

¹¹ Section 125.0515(1), F.S. (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).

types of employees. As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.¹² Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.¹³ These increased benefits are funded through higher employer contribution rates: 19.76 percent of gross compensation, effective July 1, 2007, and 22.01 percent, effective July 1, 2008.¹⁴

Special Risk Class membership includes: law enforcement officers, correctional officers, and firefighters;¹⁵ emergency medical technicians and paramedics;¹⁶ community-based correctional probation officers;¹⁷ certain employees of correctional or forensic facilities or institutions;¹⁸ youth custody officers;¹⁹ and employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline.²⁰

COMPENSATION AND AVERAGE FINAL COMPENSATION

BACKGROUND

The amount of benefits a retired member receives is based on three key factors: (1) years of service, (2) accrual rate (which is three percent for members of the Special Risk Class), and (3) the member's Average Final Compensation.²¹ "Average Final Compensation" (AFC) is defined as the average of the five highest fiscal years of compensation for creditable service prior to retirement, termination, or death.²²

Relevant to the definition of AFC is the definition of "compensation," which is the monthly salary a member is paid by his or her employer for work performed arising from that employment.²³ Compensation also includes overtime payments, accumulated annual leave payments, amounts withheld for tax-sheltered annuities, deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code, and payments made in lieu of a permanent increase in the base rate of pay.²⁴ Bonuses, however, are specifically excluded from the definitions of compensation and AFC.²⁵

¹² Section 121.021(29), F.S., defines normal retirement date, which contrasts with members of the Regular Class who can retire at age 62 or with 30 years of creditable service.

¹³ Section 121.091(1)(a)2.h., F.S. (compared with 1.60 percent to 1.68 percent for Regular Class members).

¹⁴ Section 121.71(3), F.S. (compared with 8.69 percent, effective July 1, 2007, and 9.59 percent, effective July 1, 2008, for Regular Class members).

¹⁵ Ch. 78-308, L.O.F.; codified as s. 121.0515, F.S.

¹⁶ Ch. 99-392, L.O.F., s. 23.

¹⁷ Ch. 2000-169, L.O.F., s. 29.

¹⁸ *Id.* (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietician; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DRC; pharmacist; certain senior pharmacists; dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager).

¹⁹ Ch. 2001-125, L.O.F., s. 43.

²⁰ Ch. 2005-167, L.O.F., s. 1; codified as s. 121.0515(2)(h), F.S. (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification).

²¹ Section 121.091(1), F.S.

²² Section 121.021(24), F.S.

²³ Section 121.021(22), F.S.

²⁴ *Id.*

²⁵ See ss. 121.021(22)(b)2. and (24)(b)4., F.S.

EFFECT OF BILL

This bill expands the definition of "compensation" as it applies to firefighters, paramedics, and emergency medical technicians. It allows salary supplements received by a firefighter, paramedic, or emergency medical technician to be included in the definition of compensation, for retirement purposes, when said compensation is for employer-approved educational training or for other additional job-related duties and responsibilities.

This expansion of the definition for compensation may likely result in a higher AFC, which would result in a higher retirement benefit for firefighters, paramedics, and emergency medical technicians who are compensated for such training or other additional job-related duties and responsibilities. This change would set a precedent for other Special Risk Class members and membership groups in the FRS to seek more exceptions under the law for coverage of other supplemental payments not included in base pay as compensation. This benefit improvement may not be adequately prefunded by the bill's applicable contributions alone, especially if the bonuses tend to be given late in an employees' career.²⁶

Additionally, this bill amends the definition of "average final compensation" to provide that the AFC of a member of the Special Risk Class is calculated using the average of the highest three fiscal years' salaries for creditable service earned by the member instead of the average of the five highest fiscal years. The same applies when calculating the AFC for in-line-of duty disability benefits for such members.

According to the Department of Management Services, this is problematic when determining the benefits of an FRS member who has "dual normal" retirement.²⁷ In 2005, the Division of Retirement was advised of the legislative intent for a bill with an identical provision filed in that year. It was advised that, regardless of the membership class at the time of retirement, the 3-year AFC should apply solely to Special Risk Class service credit, as opposed to all service credit based on Special Risk Class membership at the time of retirement, and an actuarial study was conducted accordingly. If this bill is enacted as written, however, a "dual normal" member participating in the Special Risk Class at retirement could challenge the interpretation provided for the purpose of performing the 2005 actuarial special study and could seek to have their entire benefit calculated using a 3-year AFC, regardless of the class of service.²⁸

SPECIAL RISK CLASS PAST SERVICE

BACKGROUND

Section 121.0515, F.S., sets forth the criteria and procedures for designating members of the Special Risk Class. This section also permits Special Risk Class members to purchase retirement credit in the Special Risk Class based upon specified past service:

- Past service with a city or special district, which elected to join the FRS while the member was employed at the time it began participating in the FRS; or with a participating agency to which a member's governmental unit was transferred, merged, or consolidated.²⁹
- Past service for special risk membership as a law enforcement officer, firefighter, or correctional officer.³⁰

Special Risk Class members may upgrade retirement credit for this specified past service, up to two percent of the member's average monthly compensation.³¹ The contributions for upgrading this

²⁶ DMS Analysis at 9.

²⁷ FRS members who have service in the Special Risk Class and service in another membership class are referred to as "dual normal" because their benefit requires two different calculations. Benefits are calculated based on the normal retirement requirement for the Special Risk Class service and the normal retirement requirement that applies to service in all other classes of membership. The results of these dual calculations are added together to determine the benefit payable.

²⁸ DMS Analysis at 9.

²⁹ Section 121.0515(5)(a), F.S.

³⁰ *Id.*

additional special risk credit may be purchased by the member or by the employer on behalf of the member, but must be equal to the difference in the contributions paid and the special risk percentage rate of gross salary in effect at the time of purchase for the period being claimed, plus interest at a rate of 6.5 percent a year until the date of payment.³² As such, the benefit of being able to purchase this past service is offset because the full retirement benefit must be purchased even though the retirement benefit received is one percent lower (2 percent) than the normal retirement benefit for the Special Risk Class (3 percent).

EFFECT OF BILL

This bill increases from two percent to three percent the accrual rate at which certain Special Risk Class members may upgrade specified past service. This rate is the same as the normal retirement benefit for members of the Special Risk Class.

The bill also expands the qualifying past service, which may be purchased, to include special risk membership as an emergency medical technician or paramedic whose employer was a licensed Advanced Life Support or Basic Life Support provider. The contributions for upgrading this additional special risk credit may be purchased by the member or by the employer on behalf of the member, but must be equal to the difference in the contributions paid and the special risk percentage rate of gross salary in effect at the time of purchase for the period being claimed, plus interest at a rate of 6.5 percent a year until the date of payment.³³

According to the Department of Management Services, an actuarial study in 2005 determined that the cost of this enhancement could be funded by an increase in the Special Risk Class contribution rate of 0.07 percent. Since this increase is in the unfunded actuarial portion of the Special Risk Class contribution rate, this portion would be prefunded from the actuarial surplus of the FRS Pension Plan for as long as the surplus is available. When there is insufficient surplus to fund this improvement, the contribution rate would be increased.³⁴

IN-LINE-OF-DUTY DISABILITY DETERMINATION

BACKGROUND

The FRS provides disability benefits for its active members who are totally and permanently disabled from useful employment. Any member of the FRS who is totally and permanently disabled³⁵ due to any condition or impairment of health caused by an injury or illness is entitled to disability benefits. If the injury or illness arises out of and in the actual performance of duty, the member is entitled to in-line-of-duty disability³⁶ benefits.³⁷

There are several important differences in the laws applicable to disability benefits depending on whether the disability is found to be due to an injury or illness suffered in the line of duty.

³¹ Section 121.0515, F.S.

³² Section 121.0515(5)(b), F.S.

³³ Section 121.0515(5)(b), F.S.

³⁴ DMS Analysis at 10-11.

³⁵ Section 121.091(4)(b), F.S., establishes that "a member shall be considered totally and permanently disabled if, in the opinion of the administrator, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee."

³⁶ Section 121.021(13), F.S., defines "disability in line of duty" as "an injury or illness arising out of and in the actual performance of duty required by a member's employment during his or her regularly scheduled working hours or irregular working hours as required by the employer. Disability resulting from drug or alcohol abuse shall not be considered in the line of duty, except when the member is expected to use alcohol in the course of his or her official work in undercover law enforcement, and such use clearly results in the member's disability. The administrator may require such proof as he or she deems necessary as to the time, date, and cause of any such injury or illness, including evidence from any available witnesses. Workers' compensation records under the provisions of chapter 440 may also be used."

³⁷ Section 121.091(4)(a)1., F.S.

Eligibility – An FRS member is eligible for in-line-of-duty disability benefits from the first day on the job.³⁸ In contrast, an FRS member must have from five to 10 years of creditable service³⁹ before becoming disabled in order to receive disability retirement benefits for any disability which occurs other than in the line of duty. Effective July 1, 2001, the 10-year requirement was reduced to eight years.

Threshold Benefit Amount – The level of disability benefit to which a disabled member is entitled depends upon whether the disabling injury or illness was job related. If the disabling injury or illness occurs in the line of duty, the benefit will be at least 42 percent of the member's AFC as of the disability retirement date.⁴⁰ For Special Risk Class members retiring on or after July 1, 2000, the in-line-of-duty disability benefit threshold is 65 percent of the AFC as of the disability retirement date.⁴¹ If the disabling injury or illness did not occur in the line of duty, the benefit threshold is 25 percent of the AFC.⁴²

Burden of Proof – Unless a legal presumption applies, such as the one provided under s. 112.18, F.S.,⁴³ the member must show by competent evidence that the disability occurred in the line of duty to qualify to receive the higher in-line-of-duty disability benefits.⁴⁴

EFFECT OF BILL

This bill expands qualification for in-line-of-duty disability benefits to Special Risk Class members who are law enforcement officers, firefighters, correctional officers, emergency medical technicians, paramedics, and community-based correctional probation officers who, due to an illness or injury related to, but not necessarily in the line of duty or directly in the actual performance of, their employment⁴⁵ are prevented from performing useful and efficient service *in the position held*, as opposed to the current standard which requires inability to engage in *any type* of gainful employment.⁴⁶ This benefit would not be available to other members of the Special Risk Class, including youth custody officers or forensic workers.

This bill also provides that an affected employee will receive the higher in-line-of-duty benefit unless the plan administrator ("administrator") can provide "competent medical evidence to the contrary," thus shifting the burden of proof from the member to the administrator. This change would enable all such affected Special Risk Class members to qualify more easily for in-line-of-duty disability benefits based on the less restrictive definition of total and permanent disability and to maintain the disability eligibility to continue receiving those benefits due to removal of reemployment restrictions (described below). According to the Department of Management Services, these changes would increase disability retirements and associated costs that would arise from members becoming more easily eligible for in-line-of-duty disability benefits who would otherwise not be eligible under current criteria.⁴⁷

³⁸ *Id.*

³⁹ Section 121.091(4)(a)1., F.S., provides that any member with less than five years of creditable service on July 1, 1980, or any person who joins the FRS on or after that date must complete 10 years of creditable service to qualify for disability benefits for a disability that is not in the line of duty. Otherwise, five years of creditable service is required to qualify for a non-duty disability benefit.

⁴⁰ Section 121.091(4)(f)1.a., F.S.

⁴¹ Section 121.091(4)(f)1.b., F.S.

⁴² Section 121.091(4)(f)2., F.S.

⁴³ Section 112.18, F.S., provides that tuberculosis, heart disease, or hypertension that results in total or partial disability is presumed to have been accidental and suffered in the line of duty, unless the contrary is determined by competent evidence.

⁴⁴ Section 121.091(4)(c), F.S.

⁴⁵ Currently, in order to qualify for an "in-line-of-duty" disability benefit, the injury or illness must occur in the line of duty, as defined in s. 121.021(13), F.S.

⁴⁶ Section 121.091(4)(b), F.S.

⁴⁷ DMS Analysis at 11.

Because minimum threshold disability benefits are not considered taxable income,⁴⁸ an affected individual would receive a "tax-free" disability benefit of at least 65 percent of the AFC in addition to any worker's compensation benefit or social security benefit said individual would be entitled (as well as any future salary earned while working in any position other than the one filled at the time of injury, per this bill's easing of post-retirement reemployment restrictions). This provision, therefore, requires a favorable letter ruling from the Internal Revenue Service before implementing the provisions for disability from the job. The funding of this provision, however, would become effective July 1, 2008, regardless of the letter ruling response.

According to the enrolled actuary, liberalizing the standards for determining eligibility for in-line-of-duty disability would reduce the projected differences in relative life expectancies between disabled and non-disabled retirees. If this did happen, long-term disability costs would be even higher.⁴⁹

POST-RETIREMENT REEMPLOYMENT RESTRICTIONS

BACKGROUND

Anyone who is retired and receiving benefits from the FRS may be reemployed by any employing agency if:

1. The member did not retire under the disability retirement provisions;⁵⁰ and
2. For the first 12 months immediately after retirement, that the employer not be one that participates in a state-administered retirement plan. After 12 months from the date of retirement, a retiree may be both employed by an employing entity that participates in FRS, and receive retirement benefits.⁵¹

EFFECT OF BILL

This bill authorizes reemployment of Special Risk Class members who qualified for and elected to take an in-line-of-duty disability retirement, without limiting or restricting in any way the disability benefits payable to that person, provided that:

- Any such retired member is reemployed by any employer not participating in a state-administered retirement system in any position other than the position which the member was employed at the time of the disabling illness or injury; or
- After one calendar month of retirement, any such retired member is reemployed by any employer participating in a state-administered retirement system in any position other than a position that is included in the Special Risk Class. Any such member who is reemployed within one calendar month after retirement voids his or her application for retirement benefits, and any such member who is reemployed in a Special Risk Class position must terminate his or her disability retirement benefit effective the first day of the first month of reemployment in a Special Risk Class position.

According to the Department of Management Services, by effectively removing the reemployment limitation, disability payments would likely continue, since affected disabled retirees would be considered "recovered" only if they became reemployed in the same position they held at the time of the disabling injury, or reemployed in a Special Risk Class position. This change would create a significant financial disincentive for recovery from disability.⁵²

⁴⁸ Only the portion of the benefit that falls within the minimum benefit level, or 65 percent, is tax free; any person who receives a higher benefit based upon years of service must pay income taxes on the portion of the benefit received above and beyond the minimum benefit level.

⁴⁹ DMS Analysis at 16.

⁵⁰ Section 121.091(9), F.S.

⁵¹ *Id.* This limitation does not apply to retired firefighters and paramedics, who may be reemployed in the same capacity by an employer after 1 month from the date of retirement, but is limited to 780 hours of employment during the first year. Section 121.091(9)(b)11, F.S.

⁵² DMS Analysis at 12.

C. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., to revise definitions.

Section 2 provides employer contribution rate increases to fund benefits provided to certain Special Risk Class members.

Section 3 amends s. 121.0515, F.S., to increase the accrual rate for past service and to expand qualifying past service.

Section 4 provides contribution rate increases to fund benefits provided to certain Special Risk Class members.

Section 5 amends s. 121.091, F.S. to revise provisions relating to benefits payable for total and permanent disability for certain Special Risk Class members of the FRS who are injured in the line of duty.

Section 6 provides contribution rate increases to fund benefits provided to certain Special Risk Class members.

Section 7 requires the Division of Retirement to request a letter ruling from the Internal Revenue Service.

Section 8 provides a declaration of important state interest.

Section 9 provides an effective date of July 1, 2008, except that section 5 takes effect upon receipt of a favorable letter ruling by the Internal Revenue Service.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Florida Retirement System will receive increased contributions from FRS employers.

2. Expenditures:

FY 08-09: \$30,121,000
FY 09-10: \$31,326,000
FY 10-11: \$32,579,000⁵³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

FY 08-09: \$78,712,000
FY 09-10: \$81,861,000
FY 10-11: \$85,135,000⁵⁴

⁵³ Cost is based upon 2006 FRS valuation and will be revised when the new calculator for the 2007 Valuation is available based upon the funding requirements in the bill. This is for informational purposes; a new special study is required for HB 677. DMS Analysis at 14.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Management Services offered the following regarding the fiscal impact of the bill:

HB 677 provides the required funding for these provisions based upon the individual actuarial special studies that presumed these benefits were implemented separately. The consulting actuary has indicated that a new special study is required due to implementing these changes altogether.

Salary supplements as compensation – Under current law, the supplemental payments covered by this bill are not reported to the Division of Retirement, so the employer contribution portion of the cost impact cannot be directly determined from our records. Also, the language does not require employers to create new programs for these payments, only to report these payments as compensation for the FRS if they exist on or after July 1, 2008. Each impacted employer would pay an additional 20.92 percent of such payments to cover the contributions for the FRS benefit, PEORP administration fee, and the HIS based upon contribution rates for 2007-2008.

There will be a fiscal impact to the FRS resulting from additional compensation that would be allowed by this bill that is not covered under existing law. If implemented individually without the other provisions of HB 677, the fiscal impact is not anticipated to be sufficient to require a specific rate increase but these costs resulting from this change would be reflected in future valuations and experience studies of the FRS.

3-Year AFC – An actuarial special study dated April 8, 2005 was performed by Milliman Inc Consulting Actuaries, to determine the cost to the system to change the AFC calculation from a 5-year average to a 3-year average for Special Risk Class members as proposed by HB 677, but implemented without the other benefit improvements in HB 677. This special study determined the Special Risk Class contribution rate must increase by 2.36 percent, the Special Risk Administrative Support Class contribution rate must increase by 2.54 percent, the Legislative-Attorney-Cabinet subclass of the Elected Officers' Class contribution rate must increase by 0.01 percent, and the Senior Management Service Class contribution rate must increase by 0.01 percent.

Special Risk past service – An actuarial special study dated April 22, 2005 was performed by Milliman Inc. Consulting Actuaries, to determine the cost to the system to increase the accrual rate applicable to eligible past service purchased or upgraded by a Special Risk Class member from 2 percent to 3 percent as proposed by HB 677 without the other benefit improvements in this bill. This special study determined the Special Risk Class contribution rate must increase by 0.07 percent.

In-line-of-duty disability determination & Post-retirement reemployment restrictions – The liberalization of the standards for determining total and permanent disability and effective removal of post-retirement reemployment restrictions would make it easier for the specific Special Risk Class members to

⁵⁴ *Id.* at 13.

obtain and continue receiving monthly disability benefits. Once initiated, disability benefits would continue to be paid even after recovery as long as the retiree did not obtain employment in the job held when the disabling injury occurred or in a Special Risk Class position.

This benefit improvement would increase FRS in-line-of-duty disability retirements and thereby have a fiscal impact on the FRS. The bill proposes to increase the retirement contribution rate paid by employers for members of the Special Risk Class by 0.31 percent of gross payroll to fund the cost of the benefit improvement. This rate is based on Actuarial Special Study 2005-I, dated April 15, 2005, by Milliman Inc, consulting actuaries for the FRS, assuming this benefit was implemented without the other benefit improvements in HB 677.⁵⁵

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds; however, an exception applies because the bill provides that it fulfills an important state interest and the expenditure required by the bill applies to all persons similarly situated. As such, the bill appears to satisfy the requirements of Article VII, s. 18 of the Florida Constitution.

2. Other:

Article X, s. 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.⁵⁶ According to the enrolled actuary, a new special study is needed for HB 677 because the effect of implementing all of these changes in connection with each other affects the fiscal impact and was not contemplated in the single studies for these proposed benefit improvements.⁵⁷ As such, this bill does not appear to satisfy the requirements of Art. X, s. 14 of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effective date of section 5 of the bill is contingent upon a favorable letter ruling from the IRS. Because section 5 contains one of the substantive statutory changes of this bill, this may conceivably create a scenario where section 5 is rendered moot due to an unfavorable letter ruling by the IRS, thus resulting in an unnecessary higher employer contribution rate as mandated in section 6 of the bill. Amending the bill so that both sections 5 and 6 take effect upon the receipt of a favorable letter ruling from the Internal Revenue Service would appear to address this concern.

⁵⁵ *Id.* at 12-13.

⁵⁶ Part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of Art. X, s. 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees that is funded in whole or in part by public funds.

⁵⁷ DMS Analysis at 16.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled

2 An act relating to retirement; amending s. 121.021, F.S.;
3 redefining the term "compensation" to include certain
4 supplementary payments made to firefighters, paramedics,
5 and emergency medical technicians and certain employer-
6 reported retirement contributions; redefining the term
7 "average final compensation" with respect to members of
8 the Special Risk Class of the Florida Retirement System;
9 providing for contribution rate increases to fund the
10 modification in average final compensation; amending s.
11 121.0515, F.S.; authorizing certain employees to purchase
12 additional retirement credit for past service at a 3-
13 percent Special Risk Class accrual value; providing for
14 contribution rate increases to fund the benefits provided
15 in s. 121.0515, F.S., as amended; amending s. 121.091,
16 F.S.; revising provisions relating to benefits payable for
17 total and permanent disability for certain Special Risk
18 Class members who are injured in the line of duty;
19 authorizing reemployment of a person who retired with in-
20 line-of-duty disability benefits by employers not
21 participating in a state-administered retirement system;
22 authorizing reemployment of a person who retired with in-
23 line-of-duty disability benefits by an employer
24 participating in a state-administered retirement system
25 after 1 calendar month; providing for contribution rate
26 increases to fund the benefits provided in s. 121.091,
27 F.S., as amended; directing the Division of Statutory
28 Revision to adjust the uniform contribution rates set

29 | forth in s. 121.71, F.S., to conform to the changes made
 30 | by the act; requiring the Division of Retirement to
 31 | request a letter ruling from the Internal Revenue Service;
 32 | providing for certain contingent effect; providing
 33 | legislative findings and a declaration of important state
 34 | interest; providing effective dates.

35 |

36 | Be It Enacted by the Legislature of the State of Florida:

37 |

38 | Section 1. Paragraph (a) of subsection (22) and subsection
 39 | (24) of section 121.021, Florida Statutes, are amended to read:

40 | 121.021 Definitions.--The following words and phrases as
 41 | used in this chapter have the respective meanings set forth
 42 | unless a different meaning is plainly required by the context:

43 | (22) "Compensation" means the monthly salary paid a member
 44 | by his or her employer for work performed arising from that
 45 | employment.

46 | (a) Compensation shall include:

47 | 1. Overtime payments paid from a salary fund.

48 | 2. Accumulated annual leave payments.

49 | 3. Payments in addition to the employee's base rate of pay
 50 | if all the following apply:

51 | a. The payments are paid according to a formal written
 52 | policy that applies to all eligible employees equally;

53 | b. The policy provides that payments shall commence no
 54 | later than the 11th year of employment;

55 | c. The payments are paid for as long as the employee
 56 | continues his or her employment; and

57 d. The payments are paid at least annually.

58 4. Amounts withheld for tax sheltered annuities or
 59 deferred compensation programs, or any other type of salary
 60 reduction plan authorized under the Internal Revenue Code.

61 5. Payments made in lieu of a permanent increase in the
 62 base rate of pay, whether made annually or in 12 or 26 equal
 63 payments within a 12-month period, when the member's base pay is
 64 at the maximum of his or her pay range. When a portion of a
 65 member's annual increase raises his or her pay range and the
 66 excess is paid as a lump sum payment, such lump sum payment
 67 shall be compensation for retirement purposes.

68 6. Effective July 1, 2002, salary supplements made
 69 pursuant to s. 1012.72 requiring a valid National Board for
 70 Professional Standards certificate, notwithstanding the
 71 provisions of subparagraph 3.

72 7. Effective July 1, 2008, salary supplements made to
 73 firefighters, paramedics, or emergency medical technicians for
 74 the successful completion of employer-approved educational
 75 training or for additional job-related duties and
 76 responsibilities, notwithstanding the provisions of subparagraph
 77 3.

78 (24) "Average final compensation" means the average of the
 79 5 highest fiscal years of compensation for creditable service
 80 prior to retirement, termination, or death; however, "average
 81 final compensation" applicable to a member of the Special Risk
 82 Class means the average of the 3 highest fiscal years of
 83 compensation for creditable service prior to retirement,
 84 termination, or death. For in-line-of-duty disability benefits,

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85 if less than the number of years of creditable service specified
 86 for calculating average final compensation has ~~5 years of~~
 87 ~~creditable service~~ have been completed, the term "average final
 88 compensation" means the average annual compensation of the total
 89 number of years of creditable service. Each year used in the
 90 calculation of average final compensation shall commence on July
 91 1.

92 (a) The average final compensation shall include:

- 93 1. Accumulated annual leave payments, not to exceed 500
- 94 hours; and
- 95 2. All payments defined as compensation in subsection
- 96 (22).

97 (b) The average final compensation shall not include:

- 98 1. Compensation paid to professional persons for special
- 99 or particular services;
- 100 2. Payments for accumulated sick leave made due to
- 101 retirement or termination;
- 102 3. Payments for accumulated annual leave in excess of 500
- 103 hours;
- 104 4. Bonuses as defined in subsection (47);
- 105 5. Third party payments made on and after July 1, 1990; or
- 106 6. Fringe benefits (for example, automobile allowances or
- 107 housing allowances).

108 Section 2. Effective July 1, 2008, for the purpose of
 109 funding the 3-year average final compensation benefit change
 110 made by section 1 of this act:

111 (1) The contribution rate that applies to the Special Risk
 112 Class of the Florida Retirement System shall be increased by

113 2.36 percentage points.

114 (2) The contribution rate that applies to the Special Risk
 115 Administrative Support Class of the Florida Retirement System
 116 shall be increased by 2.54 percentage points.

117 (3) The contribution rate that applies to the legislative-
 118 attorney-Cabinet subclass of the Elected Officers' Class of the
 119 Florida Retirement System shall be increased by 0.01 percentage
 120 points.

121 (4) The contribution rate that applies to the Senior
 122 Management Service Class of the Florida Retirement System shall
 123 be increased by 0.01 percentage points.

124
 125 These increases shall be in addition to all other changes to
 126 contribution rates which may be enacted into law to take effect
 127 on that date. The Division of Statutory Revision is directed to
 128 adjust accordingly the contribution rates set forth in s.
 129 121.71, Florida Statutes.

130 Section 3. Subsection (5) of section 121.0515, Florida
 131 Statutes, is amended to read:

132 121.0515 Special risk membership.--

133 (5) CREDIT FOR PAST SERVICE.--A special risk member may
 134 purchase retirement credit in the Special Risk Class based upon
 135 past service, and may upgrade retirement credit for such past
 136 service, to the extent of 3 ~~2~~ percent of the member's average
 137 monthly compensation as specified in s. 121.091(1)(a) for such
 138 service as follows:

139 (a) The member may purchase special risk credit for past
 140 service with a city or special district which has elected to

141 join the Florida Retirement System, or with a participating
 142 agency to which a member's governmental unit was transferred,
 143 merged, or consolidated as provided in s. 121.081(1)(f), if the
 144 member was employed with the city or special district at the
 145 time it commenced participating in the Florida Retirement System
 146 or with the governmental unit at the time of its transfer,
 147 merger, or consolidation with the participating agency. The
 148 service must satisfy the criteria set forth in subsection (2)
 149 for special risk membership as a law enforcement officer, a
 150 firefighter, a ~~ex~~ correctional officer, an emergency medical
 151 technician, or a paramedic whose employer was a licensed Advance
 152 Life Support (ALS) or Basic Life Support (BLS) provider;
 153 however, no certificate or waiver of certificate of compliance
 154 with s. 943.1395 or s. 633.35 shall be required for such
 155 service.

156 (b) Contributions for upgrading the additional special
 157 risk credit pursuant to this subsection shall be equal to the
 158 difference in the contributions paid and the special risk
 159 percentage rate of gross salary in effect at the time of
 160 purchase for the period being claimed, plus interest thereon at
 161 the rate of 4 percent a year compounded annually from the date
 162 of such service until July 1, 1975, and 6.5 percent a year
 163 thereafter until the date of payment. This past service may be
 164 purchased by the member or by the employer on behalf of the
 165 member.

166 Section 4. Effective July 1, 2008, in order to fund the
 167 benefit improvements provided in s. 121.0515, Florida Statutes,
 168 as amended by section 3 of this act, the contribution rate that

169 applies to the Special Risk Class of the defined benefit program
 170 of the Florida Retirement System shall be increased by 0.07
 171 percentage points. This increase shall be in addition to all
 172 other changes to such contribution rates that may be enacted
 173 into law to take effect on that date. The Division of Statutory
 174 Revision is directed to adjust accordingly the contribution
 175 rates set forth in s. 121.71, Florida Statutes.

176 Section 5. Paragraph (b) of subsection (4) and subsection
 177 (9) of section 121.091, Florida Statutes, are amended to read:

178 121.091 Benefits payable under the system.--Benefits may
 179 not be paid under this section unless the member has terminated
 180 employment as provided in s. 121.021(39) (a) or begun
 181 participation in the Deferred Retirement Option Program as
 182 provided in subsection (13), and a proper application has been
 183 filed in the manner prescribed by the department. The department
 184 may cancel an application for retirement benefits when the
 185 member or beneficiary fails to timely provide the information
 186 and documents required by this chapter and the department's
 187 rules. The department shall adopt rules establishing procedures
 188 for application for retirement benefits and for the cancellation
 189 of such application when the required information or documents
 190 are not received.

191 (4) DISABILITY RETIREMENT BENEFIT.--

192 (b) Total and permanent disability.--

193 1. Except as provided in subparagraph 2., a member shall
 194 be considered totally and permanently disabled if, in the
 195 opinion of the administrator, he or she is prevented, by reason
 196 of a medically determinable physical or mental impairment, from

197 rendering useful and efficient service as an officer or
 198 employee.

199 2. A member of the Special Risk Class who is a law
 200 enforcement officer, firefighter, correctional officer,
 201 emergency medical technician, or paramedic as described in s.
 202 121.021(15)(c) or a community-based correctional probation
 203 officer as described in s. 121.021(15)(d)1. shall be considered
 204 totally and permanently disabled in the line of duty if he or
 205 she is prevented, by reason of a medically determinable physical
 206 or mental impairment caused by a job-related injury, from
 207 performing useful and efficient service in the position held,
 208 unless the administrator can provide competent medical evidence
 209 to the contrary.

210 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.--

211 (a)1. Except as provided in subparagraph 2., any person
 212 who is retired under this chapter, except under the disability
 213 retirement provisions of subsection (4), may be employed by an
 214 employer that does not participate in a state-administered
 215 retirement system and may receive compensation from that
 216 employment without limiting or restricting in any way the
 217 retirement benefits payable to that person.

218 2. Any member of the Special Risk Class who retired under
 219 the disability retirement provisions of subparagraph (4)(b)2.
 220 may be reemployed by any employer not participating in a state-
 221 administered retirement system in any position other than the
 222 position in which he or she was employed at the time of the
 223 disabling illness or injury and may receive compensation from
 224 that employment without limiting or restricting in any way the

225 disability benefits payable to that person under the Florida
 226 Retirement System.

227 (b)1.a. Except as provided in sub-subparagraph b., any
 228 person who is retired under this chapter, except under the
 229 disability retirement provisions of subsection (4), may be
 230 reemployed by any private or public employer after retirement
 231 and receive retirement benefits and compensation from his or her
 232 employer without any limitations, except that a person may not
 233 receive both a salary from reemployment with any agency
 234 participating in the Florida Retirement System and retirement
 235 benefits under this chapter for a period of 12 months
 236 immediately subsequent to the date of retirement. However, a
 237 DROP participant shall continue employment and receive a salary
 238 during the period of participation in the Deferred Retirement
 239 Option Program, as provided in subsection (13).

240 b. Any member of the Special Risk Class who retired under
 241 the disability retirement provisions of subparagraph (4)(b)2.
 242 may be reemployed by any employer participating in a state-
 243 administered retirement system after having been retired for 1
 244 calendar month, in accordance with s. 121.021(39). After 1
 245 calendar month of retirement, any such retired member may be
 246 reemployed in any position other than the one in which he or she
 247 was employed at the time of disability retirement, may be
 248 reemployed in any position other than a position that is
 249 included in the Special Risk Class, and may receive compensation
 250 from that employment without limiting or restricting in any way
 251 the retirement benefits payable to that person under this
 252 chapter. Any retired member who is reemployed within 1 calendar

253 month after retirement shall void his or her application for
 254 retirement benefits. Any retired member who is reemployed in a
 255 Special Risk Class position must terminate his or her disability
 256 retirement benefit effective the first day of the first month of
 257 reemployment in that position.

258 2. Any person to whom the limitation in subparagraph 1.
 259 applies who violates such reemployment limitation and who is
 260 reemployed with any agency participating in the Florida
 261 Retirement System before completion of the 12-month limitation
 262 period shall give timely notice of this fact in writing to the
 263 employer and to the division and shall have his or her
 264 retirement benefits suspended for the balance of the 12-month
 265 limitation period. Any person employed in violation of this
 266 paragraph and any employing agency which knowingly employs or
 267 appoints such person without notifying the Division of
 268 Retirement to suspend retirement benefits shall be jointly and
 269 severally liable for reimbursement to the retirement trust fund
 270 of any benefits paid during the reemployment limitation period.
 271 To avoid liability, such employing agency shall have a written
 272 statement from the retiree that he or she is not retired from a
 273 state-administered retirement system. Any retirement benefits
 274 received while reemployed during this reemployment limitation
 275 period shall be repaid to the retirement trust fund, and
 276 retirement benefits shall remain suspended until such repayment
 277 has been made. Benefits suspended beyond the reemployment
 278 limitation shall apply toward repayment of benefits received in
 279 violation of the reemployment limitation.

280 3. A district school board may reemploy a retired member

281 as a substitute or hourly teacher, education paraprofessional,
 282 transportation assistant, bus driver, or food service worker on
 283 a noncontractual basis after he or she has been retired for 1
 284 calendar month, in accordance with s. 121.021(39). A district
 285 school board may reemploy a retired member as instructional
 286 personnel, as defined in s. 1012.01(2)(a), on an annual
 287 contractual basis after he or she has been retired for 1
 288 calendar month, in accordance with s. 121.021(39). Any other
 289 retired member who is reemployed within 1 calendar month after
 290 retirement shall void his or her application for retirement
 291 benefits. District school boards reemploying such teachers,
 292 education paraprofessionals, transportation assistants, bus
 293 drivers, or food service workers are subject to the retirement
 294 contribution required by subparagraph 7.

295 4. A community college board of trustees may reemploy a
 296 retired member as an adjunct instructor, that is, an instructor
 297 who is noncontractual and part-time, or as a participant in a
 298 phased retirement program within the Florida Community College
 299 System, after he or she has been retired for 1 calendar month,
 300 in accordance with s. 121.021(39). Any retired member who is
 301 reemployed within 1 calendar month after retirement shall void
 302 his or her application for retirement benefits. Boards of
 303 trustees reemploying such instructors are subject to the
 304 retirement contribution required in subparagraph 7. A retired
 305 member may be reemployed as an adjunct instructor for no more
 306 than 780 hours during the first 12 months of retirement. Any
 307 retired member reemployed for more than 780 hours during the
 308 first 12 months of retirement shall give timely notice in

309 writing to the employer and to the division of the date he or
 310 she will exceed the limitation. The division shall suspend his
 311 or her retirement benefits for the remainder of the first 12
 312 months of retirement. Any person employed in violation of this
 313 subparagraph and any employing agency which knowingly employs or
 314 appoints such person without notifying the Division of
 315 Retirement to suspend retirement benefits shall be jointly and
 316 severally liable for reimbursement to the retirement trust fund
 317 of any benefits paid during the reemployment limitation period.
 318 To avoid liability, such employing agency shall have a written
 319 statement from the retiree that he or she is not retired from a
 320 state-administered retirement system. Any retirement benefits
 321 received by a retired member while reemployed in excess of 780
 322 hours during the first 12 months of retirement shall be repaid
 323 to the Retirement System Trust Fund, and retirement benefits
 324 shall remain suspended until repayment is made. Benefits
 325 suspended beyond the end of the retired member's first 12 months
 326 of retirement shall apply toward repayment of benefits received
 327 in violation of the 780-hour reemployment limitation.

328 5. The State University System may reemploy a retired
 329 member as an adjunct faculty member or as a participant in a
 330 phased retirement program within the State University System
 331 after the retired member has been retired for 1 calendar month,
 332 in accordance with s. 121.021(39). Any retired member who is
 333 reemployed within 1 calendar month after retirement shall void
 334 his or her application for retirement benefits. The State
 335 University System is subject to the retirement ~~retired~~
 336 contribution required in subparagraph 7., as appropriate. A

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337 | retired member may be reemployed as an adjunct faculty member or
 338 | a participant in a phased retirement program for no more than
 339 | 780 hours during the first 12 months of his or her retirement.
 340 | Any retired member reemployed for more than 780 hours during the
 341 | first 12 months of retirement shall give timely notice in
 342 | writing to the employer and to the division of the date he or
 343 | she will exceed the limitation. The division shall suspend his
 344 | or her retirement benefits for the remainder of the first 12
 345 | months of retirement. Any person employed in violation of this
 346 | subparagraph and any employing agency which knowingly employs or
 347 | appoints such person without notifying the Division of
 348 | Retirement to suspend retirement benefits shall be jointly and
 349 | severally liable for reimbursement to the retirement trust fund
 350 | of any benefits paid during the reemployment limitation period.
 351 | To avoid liability, such employing agency shall have a written
 352 | statement from the retiree that he or she is not retired from a
 353 | state-administered retirement system. Any retirement benefits
 354 | received by a retired member while reemployed in excess of 780
 355 | hours during the first 12 months of retirement shall be repaid
 356 | to the Retirement System Trust Fund, and retirement benefits
 357 | shall remain suspended until repayment is made. Benefits
 358 | suspended beyond the end of the retired member's first 12 months
 359 | of retirement shall apply toward repayment of benefits received
 360 | in violation of the 780-hour reemployment limitation.

361 | 6. The Board of Trustees of the Florida School for the
 362 | Deaf and the Blind may reemploy a retired member as a substitute
 363 | teacher, substitute residential instructor, or substitute nurse
 364 | on a noncontractual basis after he or she has been retired for 1

365 calendar month, in accordance with s. 121.021(39). Any retired
 366 member who is reemployed within 1 calendar month after
 367 retirement shall void his or her application for retirement
 368 benefits. The Board of Trustees of the Florida School for the
 369 Deaf and the Blind reemploying such teachers, residential
 370 instructors, or nurses is subject to the retirement contribution
 371 required by subparagraph 7. Reemployment of a retired member as
 372 a substitute teacher, substitute residential instructor, or
 373 substitute nurse is limited to 780 hours during the first 12
 374 months of his or her retirement. Any retired member reemployed
 375 for more than 780 hours during the first 12 months of retirement
 376 shall give timely notice in writing to the employer and to the
 377 division of the date he or she will exceed the limitation. The
 378 division shall suspend his or her retirement benefits for the
 379 remainder of the first 12 months of retirement. Any person
 380 employed in violation of this subparagraph and any employing
 381 agency which knowingly employs or appoints such person without
 382 notifying the Division of Retirement to suspend retirement
 383 benefits shall be jointly and severally liable for reimbursement
 384 to the retirement trust fund of any benefits paid during the
 385 reemployment limitation period. To avoid liability, such
 386 employing agency shall have a written statement from the retiree
 387 that he or she is not retired from a state-administered
 388 retirement system. Any retirement benefits received by a retired
 389 member while reemployed in excess of 780 hours during the first
 390 12 months of retirement shall be repaid to the Retirement System
 391 Trust Fund, and his or her retirement benefits shall remain
 392 suspended until payment is made. Benefits suspended beyond the

393 | end of the retired member's first 12 months of retirement shall
 394 | apply toward repayment of benefits received in violation of the
 395 | 780-hour reemployment limitation.

396 | 7. The employment by an employer of any retiree or DROP
 397 | participant of any state-administered retirement system shall
 398 | have no effect on the average final compensation or years of
 399 | creditable service of the retiree or DROP participant. Prior to
 400 | July 1, 1991, upon employment of any person, other than an
 401 | elected officer as provided in s. 121.053, who has been retired
 402 | under any state-administered retirement program, the employer
 403 | shall pay retirement contributions in an amount equal to the
 404 | unfunded actuarial liability portion of the employer
 405 | contribution which would be required for regular members of the
 406 | Florida Retirement System. Effective July 1, 1991, contributions
 407 | shall be made as provided in s. 121.122 for retirees with
 408 | renewed membership or subsection (13) with respect to DROP
 409 | participants.

410 | 8. Any person who has previously retired and who is
 411 | holding an elective public office or an appointment to an
 412 | elective public office eligible for the Elected Officers' Class
 413 | on or after July 1, 1990, shall be enrolled in the Florida
 414 | Retirement System as provided in s. 121.053(1)(b) or, if holding
 415 | an elective public office that does not qualify for the Elected
 416 | Officers' Class on or after July 1, 1991, shall be enrolled in
 417 | the Florida Retirement System as provided in s. 121.122, and
 418 | shall continue to receive retirement benefits as well as
 419 | compensation for the elected officer's service for as long as he
 420 | or she remains in elective office. However, any retired member

421 who served in an elective office prior to July 1, 1990,
 422 suspended his or her retirement benefit, and had his or her
 423 Florida Retirement System membership reinstated shall, upon
 424 retirement from such office, have his or her retirement benefit
 425 recalculated to include the additional service and compensation
 426 earned.

427 9. Any person who is holding an elective public office
 428 which is covered by the Florida Retirement System and who is
 429 concurrently employed in nonelected covered employment may elect
 430 to retire while continuing employment in the elective public
 431 office, provided that he or she shall be required to terminate
 432 his or her nonelected covered employment. Any person who
 433 exercises this election shall receive his or her retirement
 434 benefits in addition to the compensation of the elective office
 435 without regard to the time limitations otherwise provided in
 436 this subsection. No person who seeks to exercise the provisions
 437 of this subparagraph, as the same existed prior to May 3, 1984,
 438 shall be deemed to be retired under those provisions, unless
 439 such person is eligible to retire under the provisions of this
 440 subparagraph, as amended by chapter 84-11, Laws of Florida.

441 10. The limitations of this paragraph apply to
 442 reemployment in any capacity with an "employer" as defined in s.
 443 121.021(10), irrespective of the category of funds from which
 444 the person is compensated.

445 11. Except as provided in subparagraph 12., an employing
 446 agency may reemploy a retired member as a firefighter or
 447 paramedic after the retired member has been retired for 1
 448 calendar month, in accordance with s. 121.021(39). Any retired

449 member who is reemployed within 1 calendar month after
 450 retirement shall void his or her application for retirement
 451 benefits. The employing agency reemploying such firefighter or
 452 paramedic is subject to the retirement ~~retired~~ contribution
 453 required in subparagraph 7. ~~8.~~ Reemployment of a retired
 454 firefighter or paramedic is limited to no more than 780 hours
 455 during the first 12 months of his or her retirement. Any retired
 456 member reemployed for more than 780 hours during the first 12
 457 months of retirement shall give timely notice in writing to the
 458 employer and to the division of the date he or she will exceed
 459 the limitation. The division shall suspend his or her retirement
 460 benefits for the remainder of the first 12 months of retirement.
 461 Any person employed in violation of this subparagraph and any
 462 employing agency which knowingly employs or appoints such person
 463 without notifying the Division of Retirement to suspend
 464 retirement benefits shall be jointly and severally liable for
 465 reimbursement to the Retirement System Trust Fund of any
 466 benefits paid during the reemployment limitation period. To
 467 avoid liability, such employing agency shall have a written
 468 statement from the retiree that he or she is not retired from a
 469 state-administered retirement system. Any retirement benefits
 470 received by a retired member while reemployed in excess of 780
 471 hours during the first 12 months of retirement shall be repaid
 472 to the Retirement System Trust Fund, and retirement benefits
 473 shall remain suspended until repayment is made. Benefits
 474 suspended beyond the end of the retired member's first 12 months
 475 of retirement shall apply toward repayment of benefits received
 476 in violation of the 780-hour reemployment limitation.

477 12.a. An employing agency may reemploy a retired member
 478 who retired under the disability provisions of subparagraph
 479 (4) (b)2. as a law enforcement officer, firefighter, correctional
 480 officer, emergency medical technician, paramedic, or community-
 481 based correctional probation officer after the retired member
 482 has been retired for 1 calendar month, in accordance with s.
 483 121.021(39).

484 b. Such retired member may not be reemployed with any
 485 employer in the position he or she held at the time of the
 486 disabling illness or injury and may not be reemployed in a
 487 position that is included in the Special Risk Class.

488 c. Any retired member who is reemployed within 1 calendar
 489 month after retirement shall void his or her application for
 490 retirement benefits. Any retired member who is reemployed in a
 491 Special Risk Class position must terminate his or her disability
 492 retirement benefit effective the first day of the first month of
 493 reemployment in that position.

494 d. The employing agency reemploying such a member is
 495 subject to the retirement contribution required in subparagraph
 496 7.

497 (c) The provisions of this subsection apply to retirees,
 498 as defined in s. 121.4501(2)(j), of the Public Employee Optional
 499 Retirement Program created in part II, subject to the following
 500 conditions:

501 1. Such retirees may not be reemployed with an employer
 502 participating in the Florida Retirement System as provided in
 503 paragraph (b) until such person has been retired for 3 calendar
 504 months, unless the participant has reached the normal retirement

505 requirements of the defined benefit plan as provided in s.
 506 121.021(29).

507 2. Such retiree employed in violation of this subsection
 508 and any employing agency that knowingly employs or appoints such
 509 person shall be jointly and severally liable for reimbursement
 510 of any benefits paid to the retirement trust fund from which the
 511 benefits were paid, including the Retirement System Trust Fund
 512 and the Public Employee Optional Retirement Program Trust Fund,
 513 as appropriate. To avoid liability, such employing agency must
 514 have a written statement from the retiree that he or she is not
 515 retired from a state-administered retirement system.

516 Section 6. Effective July 1, 2008, in order to fund the
 517 benefit improvements provided in s. 121.091, Florida Statutes,
 518 as amended by section 5 of this act, the contribution rate that
 519 applies to the Special Risk Class of the defined benefit program
 520 of the Florida Retirement System shall be increased by 0.31
 521 percentage points. This increase shall be in addition to all
 522 other changes to such contribution rates that may be enacted
 523 into law to take effect on that date. The Division of Statutory
 524 Revision is directed to adjust accordingly the contribution
 525 rates set forth in s. 121.71, Florida Statutes.

526 Section 7. The Division of Retirement within the
 527 Department of Management Services shall request from the
 528 Internal Revenue Service, by October 1, 2008, a letter ruling
 529 regarding the provisions of s. 121.091, Florida Statutes, as
 530 amended by section 5 of this act.

531 Section 8. The Legislature finds that a proper and
 532 legitimate state purpose is served when employees and retirees

533 of the state and its political subdivisions, and the dependents,
 534 survivors, and beneficiaries of such employees and retirees, are
 535 extended the basic protections afforded by governmental
 536 retirement systems. These persons must be provided benefits that
 537 are fair and adequate and that are managed, administered, and
 538 funded in an actuarially sound manner, as required by s. 14,
 539 Art. X of the State Constitution and part VII of chapter 112,
 540 Florida Statutes. The Legislature further finds that
 541 firefighters, emergency medical technicians, paramedics, law
 542 enforcement officers, correctional officers, and correctional
 543 probation officers, as described in this act, perform state and
 544 municipal functions; that it is their duty to protect life and
 545 property at their own risk and peril; that it is their duty to
 546 continuously instruct school personnel, public officials, and
 547 private citizens about safety; and that their activities are
 548 vital to the public safety. Therefore, the Legislature declares
 549 that it is a proper and legitimate state purpose to provide a
 550 uniform retirement system for the benefit of firefighters,
 551 emergency medical technicians, paramedics, law enforcement
 552 officers, correctional officers, and correctional probation
 553 officers, as defined in this act, and intends, in implementing
 554 the provisions of s. 14, Art. X of the State Constitution as
 555 they relate to municipal and special district pension trust fund
 556 systems and plans, that such retirement systems or plans be
 557 managed, administered, operated, and funded in such manner as to
 558 maximize the protection of pension trust funds. Therefore,
 559 pursuant to s. 18, Art. VII of the State Constitution, the

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560 | Legislature determines and declares that this act fulfills an
 561 | important state interest.

562 | Section 9. This act shall take effect July 1, 2008, except
 563 | that the amendment of s. 121.091, Florida Statutes, in section 5
 564 | of this act shall take effect upon the receipt of a favorable
 565 | letter ruling from the Internal Revenue Service.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 677**

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Committee on State Affairs
2 Representative(s) Gardiner offered the following:

3


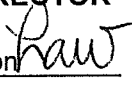
4 **Amendment**

5 Remove line 564 and insert:
6 of this act and the corresponding contribution rate increase in
7 section 6 of this act shall take effect upon the receipt of a
8 favorable

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 715
SPONSOR(S): Flores
TIED BILLS:

Local Government Revenue Sources
IDEN./SIM. BILLS: SB 2412

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on State Affairs</u>	_____	Camechis 	Williamson 
2) <u>Government Efficiency & Accountability Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Under current law, non-ad valorem taxes may not be levied by any local government entity without specific statutory authorization, and must be levied in accordance with procedures required by statute. Counties and municipalities have constitutional home rule power to levy special assessments and impact fees without statutory authorization; however, the Legislature may limit that power. Independent special districts, which do not include school boards, may levy special assessments and impact fees if authorized by the Legislature. Dependent special districts may levy special assessments and impact fees if authorized by the county or municipality that created the district, subject to limitations imposed by the Legislature. The governing boards of local government entities may levy special assessments and impact fees upon approval by a majority vote of the governing board.

Under current law, a municipality may annex property where the property owners have not petitioned for annexation. Such "involuntary" annexations must fulfill several requirements, including approval by a majority of the electors voting in a referendum of the registered voters living in the area to be annexed.

If this bill becomes law, beginning July 1, 2008, and notwithstanding any other general or special law, the governing board of a county, municipality, school board, or special district may not take the following actions unless the action is first approved by at least a three-fifths vote or a majority plus one, whichever is greater, of the governing board's membership:

- Levy a new tax, special assessment, non-ad valorem assessment or impact fee;
- Increase the rate of an existing tax, special assessment, non-ad valorem assessment, or impact fee;
- Expand a tax base or a geographic area subject to a tax, special assessment, non-ad valorem assessment, or impact fee; or
- Eliminate an exemption from a tax, special assessment, non-ad valorem assessment, or impact fee.

If the governing board of a county, municipality, school board, or special district takes action by supermajority vote, and the law otherwise requires approval by the electors voting in a referendum, the action requires approval by at least a three-fifths vote of electors voting in the referendum. In effect, the voter approval threshold for "involuntary" municipal annexations would increase from a simple majority to a three-fifths majority of the voting electors.

This bill does not:

- Apply to ad valorem taxes, fees other than impact fees, license fees, penalties, fines, or charges for services;
- Impose a cap on the amount of future revenues that may be raised from non-ad valorem taxes, special assessments, and impact fees;
- Reduce current local government revenues; or
- Apply to a tax, special assessment, non-ad valorem assessment, or impact fee levied or increased for the exclusive purpose of funding repair or replacement of public infrastructure damaged in a natural or man-made disaster that resulted in a declaration of emergency by the Governor.

This bill does not have a fiscal impact on state government, or a direct fiscal impact on local governments. Please refer to the Fiscal Analysis on p. 8 for additional information.

It is unclear whether the supermajority vote requirements of this bill represent a mandate, under s. 18, Art. VII of the State Constitution.

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

STORAGE NAME: h0715.SA.doc
DATE: 3/10/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill does not reduce the current levels of government at the local level, but may limit future growth in government by requiring a supermajority vote to increase taxes, special assessments, and impact fees in the future.

Ensure lower taxes – This bill does not directly reduce or increase taxes, special assessments, or impact fees currently paid by private parties; however, by requiring approval by a super majority of the governing body and approval by three-fifths of the electors voting in a referendum if a referendum is otherwise required by law, this bill may make it more difficult for a county, municipality, special district, or school board to increase taxes, special assessments, and impact fees in the future.

B. EFFECT OF PROPOSED CHANGES:

I. EFFECT OF PROPOSED CHANGES

Beginning July 1, 2008, and notwithstanding any other general or special law, the governing board of a county, municipality, school board, or special district may not take the following actions unless the action is first approved by at least a three-fifths vote or a majority plus one, whichever is greater, of the governing board's membership:

- Levy a new tax, special assessment, non-ad valorem assessment, or impact fee;
- Increase the rate of an existing tax, special assessment, non-ad valorem assessment, or impact fee;
- Expand a tax base or a geographic area subject to a tax, special assessment, non-ad valorem assessment, or impact fee; or
- Eliminate an exemption from a tax, special assessment, non-ad valorem assessment, or impact fee.

If the governing board of a county, municipality, school board, or special district takes action by supermajority vote, and the law otherwise requires approval by the electors voting in a referendum, the action requires approval by at least a three-fifths vote of electors voting in the referendum. For municipal annexations that require voter approval, this provision has the effect of increasing the voter approval threshold from a simple majority to a three-fifths majority of electors voting.

This bill does not:

- Apply to ad valorem taxes, fees other than impact fees, license fees, penalties, fines, or charges for services;
- Impose a cap on the amount of future revenues that may be raised from non-ad valorem taxes, special assessments, and impact fees;
- Reduce current local government revenues; or
- Apply to a tax, special assessment, non-ad valorem assessment, or impact fee levied or increased for the exclusive purpose of funding repair or replacement of public infrastructure damaged in a natural or man-made disaster that resulted in a declaration of emergency by the Governor.

The term "non-ad valorem assessment" is given the same meaning as provided in s. 197.3632, F.S., which defines "non-ad valorem assessment" as "only those assessments which are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution."

II. BACKGROUND

This section will provide a brief description of the sources of revenue affected by this bill, and the authority of counties, municipalities, special districts, and school districts to utilize those revenue sources. This bill does not affect ad valorem taxes, which will not be discussed below.

Ila. Taxes

A tax is an enforced burden imposed by sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called on to perform.¹ Examples of taxes that may be imposed by local governments pursuant to Legislative authority include tourist development taxes, local discretionary sales taxes, voter-approved indigent care surtax, and local option food and beverage taxes.

Pursuant to the Florida Constitution, taxes may not be levied by a county, municipality, special district, or school district unless specific statutory authorization is provided by the Legislature.² The Legislature may not create a special taxing district with general taxing authority; rather, a special district may be empowered to levy only those taxes bearing a substantial relation to the special purpose of the taxing district.³

The Legislature has authorized certain counties or cities to levy the following taxes, subject to statutory restrictions regarding the manner in which the taxes are imposed, the use of tax proceeds, and the amount of taxes that may be levied:

- Tourism-Related Local Option Taxes.⁴
- Local Option Fuel Taxes (up to 12 cents per county composed of three separate taxes).⁵
- Local Option Discretionary Sales Surtaxes.⁶
- Local Option Food and Beverage Taxes.
- Discretionary Surtax on Documents.
- Insurance Premium Tax.
- Municipal Pari-Mutual Tax.
- Public Service Tax.⁷

Some of these taxes may be levied by a majority vote of the governing board wishing to impose the tax, some taxes may be levied by ordinance adopted by an extraordinary vote of the governing body of the county or municipality levying the tax, and other taxes also must be approved by a majority vote of the affected electors voting in a referendum

Ilb. Special Assessments and Non-Ad Valorem Assessments

Special assessments generally are collected as part of a property owner's annual ad valorem tax bill using the uniform collection procedure provided in s. 197.3632, F.S. If a special assessment is collected using the uniform procedure, the special assessment is characterized as a "non-ad valorem

¹ *City of Boca Raton v. State*, 595 So.2d 25 (Fla.1992).

² Art. VII, § 9(a), Fla. Const.; *Collier County v. State*, 733 So.2d 1012, 1014 (Fla. 1999).

³ *State ex rel. City of Gainesville v. St. Johns River Water Management Dist.*, 408 So.2d 1067 (Fla. 1st DCA 1982).

⁴ These taxes include the Municipal Resort Tax, Tourist Development Taxes, 1 or 2 Percent Tax on transient rental transactions, Additional 1 Percent Tax on transient rental transactions, Professional Sports Franchise Facility Tax, Additional Professional Sports Franchise Facility Tax, Tourist Impact Tax within Areas of Critical State Concern, Convention Development Taxes, Consolidated County Convention Development Tax, and Charter County Convention Development Tax.

⁵ These taxes include Ninth-Cent Fuel Tax, 1 to 6 Cents Local Option Fuel Tax, and 1 to 5 Cents Local Option Fuel Tax.

⁶ These taxes include Charter County Transit System Surtax, Local Government Infrastructure Surtax, Small County Surtax Indigent Care and Trauma Center Surtax, County Public Hospital Surtax, School Capital Outlay Surtax, Voter-Approved Indigent Care Surtax.

⁷ See the 2006 Local Government Financial Information Handbook for a complete discussion of each tax, available at

<http://www.floridalcir.gov/reports/lgfih06.pdf>.

assessment.”⁸ The sole difference between a “special assessment” and a “non-ad valorem assessment” is the manner in which the assessments are collected. Therefore, for purposes of this analysis, the term “special assessment” refers to non-ad valorem assessments as well as special assessments that are not collected using the uniform procedure.

In 1992, the Florida Supreme Court explained that, although special assessments and taxes are both mandatory, a special assessment is distinct from a tax.⁹ Taxes are levied throughout a particular taxing unit for the general benefit of residents and property and are imposed under the theory that contributions must be made by the community at large to support the various functions of the government. Consequently, many citizens may pay a tax to support a particular government function from which they receive no direct benefit. Conversely, special assessments must confer a specific benefit on the land burdened by the assessment and are imposed under the theory that the portion of the community that bears the cost of the assessment will receive a special benefit from the improvement or service for which the assessment is levied.¹⁰

As established in Florida case law, two requirements exist for the imposition of a valid special assessment.¹¹ First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.¹² In order for property to derive a special benefit, there must be a “logical relationship’ between the services provided and the benefit to the real property.”¹³

A special assessment may provide funding for capital expenditures or the operational costs of services. Examples of services and improvements that may be funded by special assessments include:

- garbage collection and disposal
- fire protection
- street improvements
- landscaping
- erosion control
- parking facilities
- stormwater management services
- sewer improvements
- first response medical service
- mosquito control
- signage
- lighting
- downtown redevelopment
- water and sewer line extensions¹⁴

Services such as general law enforcement activities, the provision of courts, and indigent health care are, like fire protection services, functions required for an organized society. However, unlike fire protection services, those services provide no direct, special benefit to real property. Thus, such services may not be funded through special assessments.¹⁵

The following table illustrates the aggregate amount of special assessment revenues reported by counties, municipalities, and special districts for the years 1993 and 2005.¹⁶

	1993 Revenues	2005 Revenues	Percent Increase
Counties	\$204,456,351	\$322,788,976	58%
Municipalities	24,932,058	230,428,793	824%
Special Districts	91,290,876	299,106,986	228%

⁸ S. 197.3632(1)(d), F.S.; Madison v. Foxx, 636 So.2d 39 (1st DCA 1994).

⁹ Sarasota County v. Sarasota Church of Christ, Inc., 667 So.2d 180 (Fla.1995), citing City of Boca Raton v. State, 595 So.2d 25 (Fla.1992).

¹⁰ *Id.* at 183.

¹¹ City of Boca Raton, 555 So.2d 25 (Fla. 1992).

¹² 2006 Local Government Financial Information Handbook, at 19.

¹³ Lake County v. Water Oak Mgmt. Corp., 695 So.2d 667 (Fla. 1997).

¹⁴ 2006 Local Government Financial Information Handbook, at 19.

¹⁵ Lake County v. Water Oak Mgmt. Corp., 695 So.2d 667 (Fla. 1997).

¹⁶ Florida Legislative Committee on Intergovernmental Relations, based upon data reported by the entities to the Department of Financial Services.

TOTAL	320,679,285	852,324,755	166%
--------------	-------------	-------------	------

County Authority: A county has constitutional home rule authority to levy valid special assessments without specific authorization from the Legislature.¹⁷ However, charter county authority to impose special assessments may be limited by general law enacted by the Legislature or special law approved by the voters, and general or special law enacted by the Legislature may limit non-charter county authority.¹⁸ Section 125.01, F.S., authorizes the governing body of a county to levy and collect special assessments to the extent not inconsistent with general or special law.

Municipal Authority: A municipality has constitutional home rule authority to levy valid special assessments without specific authorization from the Legislature; however, general or special law enacted by the Legislature may limit that authority.¹⁹

Special District Authority: A special district possesses only those powers expressly provided by, or which can be reasonably implied from, the authority granted in the special district's charter.²⁰ Therefore, independent special districts may levy special assessments only if authorized by the Legislature in general or special law, while dependent special districts may levy special assessments if authorized by the county or municipality that created the district.

IIc. Impact Fees

An impact fee, which is considered a "regulatory fee," represents a total or partial reimbursement to local governments for the cost of additional facilities or services necessary as the result of new development. Rather than imposing the cost of these additional facilities or services upon the general public, impact fees shift the capital expense burden of growth from the general public to the developer and new residents.²¹

In Florida, impact fees are an outgrowth of local governments' home rule powers to provide certain services within their jurisdictions.²² Therefore, the characteristics and limitations of impact fees are found in Florida case law rather than statute.²³

In 1976, the Florida Supreme Court declared that an impact fee must meet the two-pronged "dual rational nexus test" in order to be a valid impact fee.²⁴ Under the dual rational nexus test, an entity imposing an impact fee must establish that the impact fee has:

- 1) A reasonable connection, or a rational nexus, between the anticipated need for the additional capital facilities and the growth generated by the new development; and
- 2) A reasonable connection, or a rational nexus, between how the collected funds are spent and the benefits received by the new development from those funds.²⁵

Legally sufficient impact fees share common characteristics, including: (1) the fee is levied on new development or new expansion of existing development; (2) the fee is a one-time charge, although collection may be spread over time; (3) the fee is earmarked for capital outlay only, operating costs are excluded; and (4) the fee represents a proportional share of the cost of the facilities needed to serve

¹⁷ Art. VIII, §1(f), (g), Fla. Const.; § 125.01(1)(r), F.S.; Collier County v. State, 733 So.2d 1012, 1014 (Fla. 1999).

¹⁸ Art. VIII, §1(f), (g), Fla. Const.

¹⁹ Art. VIII, § (2)(b), Fla. Const.; City of Boca Raton v. State, 595 So.2d 25, 30 (Fla. 1992).

²⁰ State ex rel. City of Gainesville v. St. Johns River Water Mgmt District, 408 So.2d 1067 (Fla. 1st DCA 1982).

²¹ 2006 Local Government Financial Information Handbook, at 25-26.

²² Art. VIII, §§1-2, Fla. Const.; Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976).

²³ *Id.* at 26.

²⁴ Florida Impact Fee Review Task Force, Final Report & Recommendations, Feb. 1, 2006, at 2; *See*, City of Dunedin at 320.

²⁵ *Id.*

the new development.²⁶

In 2006, the Legislature created the Florida Impact Fee Act in s. 163.31801, F.S., finding “that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth” and that “impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction.”²⁷ The Legislature, however, declared its intent that an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at a minimum:

- 1) Require that the fee’s calculation be based on the most recent and localized data;
- 2) Provide for accounting and reporting of impact fee collections and expenditures via the use of separate accounting funds;
- 3) Limit administrative charges for the collection of impact fees to actual costs; and
- 4) Require the provision of notice no less than 90 days before the effective date of an ordinance or resolution imposing a new or amended impact fee.²⁸

Impact fees are the most significant of the regulatory fees in terms of their fiscal impact on counties, municipalities, and school districts.²⁹ In 1993, reported impact fee revenues in Florida totaled \$177 million. In 2005, reported impact fee revenues totaled \$1.6 billion statewide. This growth in impact fee revenues represents at least an 800 percent increase with much of the accelerated growth since the late 1990s.

County Authority: A county may levy valid impact fees under its constitutional home rule power without specific authorization by the Legislature.³⁰ However, charter county authority to impose impact fees may be limited by general law enacted by the Legislature or special law approved by the voters, and general or special law enacted by the Legislature may limit non-charter county authority.³¹ School districts do not have independent authority to levy impact fees; therefore, county governments levy impact fees and share the proceeds with the school districts.

Municipal Authority: A municipality may levy valid impact fees under its constitutional home rule power without specific authorization by the Legislature; however, general or special law enacted by the Legislature may limit that authority.³²

Special District Authority: A special district possesses only those powers expressly provided by, or which can be reasonably implied from, the authority granted in the special district’s charter.³³ Therefore, independent special districts may levy impact fees only if authorized by the Legislature in general or special law, while dependent special districts may levy impact fees if authorized by the county or municipality that created the district.

IId. Revenue Sources that are not Affected by this Bill

Ad valorem property taxes: This bill does not affect county, municipal, special district, or school district authority to levy ad valorem taxes.

Proprietary and Regulatory Fees: Counties and municipalities possess home rule authority to impose a variety of proprietary and regulatory fees to pay the cost of providing a service or facility or regulating an activity.

²⁶ 2006 Local Government Financial Information Handbook, at 26.

²⁷ Ch. 2006-218, L.O.F. (CS/SB 1194)

²⁸ S. 163.31801, F.S.; 2006 Local Government Financial Information Handbook, at 25.

²⁹ 2006 Local Government Financial Information Handbook, paragraph at 25-26.

³⁰ Art. VIII, § 1(f), (g), Fla. Const.; § 125.01(1)(r), F.S.; *City of Dunedin*, 329 So.2d 314 (Fla. 1976).

³¹ Art. VIII, § 1(f), (g), Fla. Const.

³² Art. VIII, § (2)(b), Fla. Const.; *City of Dunedin*, 329 So.2d 314 (Fla. 1976).

³³ *State ex rel. City of Gainesville v. St. Johns River Water Mgmt District*, 408 So.2d 1067 (Fla. 1st DCA 1982).

Proprietary fees are based on the assertion that local governments have the exclusive legal right to impose such fees.³⁴ Two principles guide the use and application of such fees. The imposed fee must be reasonable in relation to the privilege or service provided by the local government, or the fee payer must receive a special benefit from the local government.

Regulatory fees are imposed pursuant to the local government's police powers in the exercise of its sovereign functions.³⁵ Two principles guide the use and application of such fees. The imposed fee cannot exceed the cost of the regulatory activity, and proceeds from the fee must be used solely to pay the cost of the regulatory activity for which it is imposed.³⁶

Ile. Municipal Annexations

A municipality may annex property where the property owners have not petitioned for annexation pursuant to s. 171.0413, F. S. This process is referred to as "involuntary" annexation. In general, the requirements for an involuntary annexation are:

- The adoption of an annexation ordinance by the annexing municipality's governing body;
- At least two advertised public hearings held by the governing body of the municipality prior to the adoption of the ordinance, with the first hearing on a weekday at least seven days after the first advertisement and the second hearing held on a weekday at least five days after the first advertisement; and
- Submission of the ordinance to a vote of the registered electors of the area proposed for annexation once the governing body has adopted the ordinance.

If there is a majority vote in favor of annexation in the area proposed to be annexed, the area becomes part of the city. If there is no majority vote, the area cannot be made the subject of another annexation proposal for two years from the date of the referendum.

If individuals, corporations, or legal entities, which are not registered electors of such area, own more than 70 percent of the land in an area proposed to be annexed the area cannot be annexed unless the owners of more than 50 percent of the land in such area consent to the annexation. Prior to the referendum, the parties proposing the annexation must obtain this consent.

If the area proposed to be annexed does not have any registered electors on the date the ordinance is finally adopted, a vote of electors of the area proposed to be annexed is not required. The area may not be annexed unless the owners of more than 50 percent of the parcels of land in the area proposed to be annexed consent to the annexation. If the governing body does not choose to hold a referendum of the annexing municipality, then the parties proposing the annexation prior to the final adoption of the ordinance must obtain the property owner consents.

C. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law requiring a super majority vote for actions by a local government to levy new, increase existing, expand a base or area subject to, or eliminate an exemption from taxes, special assessments, non-ad valorem assessments, or impact fees; requiring a super majority vote of electors voting in referenda on laws taking the same actions; providing an exception for certain emergencies; providing for nonapplication to certain other revenue sources; providing a definition of "non-ad valorem assessment."

Section 2 provides an effective date of July 1, 2008.

³⁴ Fees of this type include franchise fees, user fees, and utility fees.

³⁵ Examples of regulatory fees include building permit fees, inspection fees, and storm water fees.

³⁶ 2006 *Local Government Financial Information Handbook*, at 19.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not reduce the amount of current revenues by local government entities or cap the amount of future revenues that may be collected. See FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not directly reduce or increase taxes, special assessments, or impact fees currently paid by private parties; however, the bill may make it more difficult for a county, municipality, special district, or school board to increase taxes, special assessments, and impact fees by requiring approval by a super majority vote of the governing body and approval by three-fifths of the electors voting in a referendum if a referendum is otherwise required by law.

D. FISCAL COMMENTS:

This bill may make it more difficult for a county, municipality, special district, or school board to increase taxes, special assessments, and impact fees by requiring approval by a super majority vote of the governing body and approval by three-fifths of the electors voting in a referendum if a referendum is otherwise required by law.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require a county or municipality to spend funds and does not reduce the percentage of a state tax shared with counties and municipalities. Therefore, Subsections 18 (a) and (c), Article VII, of the Florida Constitution do not apply.

Subsection 18(b), Article VII, of the Florida Constitution provides that the Legislature, except upon approval by a 2/3 vote, may not enact a general law if the anticipated effect of doing so would be to reduce county and municipal authority to raise revenues in the aggregate. This bill does not directly reduce taxes, special assessments, or impact fees currently levied by counties or municipalities; however, this bill requires approval by a super majority of a county or municipal governing body and approval by three-fifths of the electors voting in a referendum, if a referendum is otherwise required by law, to increase taxes, special assessments, and impact fees in the future.

It is unclear whether the requirement for a supermajority vote by a county or municipality represents a reduction of revenue-raising authority as contemplated by subsection 18(b). If the purpose of

subsection 18(b) was to determine whether the amount of potential revenue available to cities and counties was reduced, then this bill does not reduce that potential and the requirement for a 2/3 vote is not applicable. However, if subsection 18(b) encompasses Legislative changes in the methods used by cities and counties to raise revenues, then the provisions of this bill that require a supermajority vote to increase revenues may be considered a mandate requiring a two-thirds vote of the Legislature. There does not appear to be any legal authority to guide the Legislature in making a determination regarding whether the bill constitutes a mandate under subsection 18(b).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not grant any agency a specific power, impose a duty that must be implemented by an agency, or require an agency to adopt rules to facilitate implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR:

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to local government revenue sources;
 3 requiring a super majority vote for actions by a local
 4 government to levy new, increase existing, expand a base
 5 or area subject to, or eliminate an exemption from taxes,
 6 special assessments, non-ad valorem assessments, or impact
 7 fees; requiring a super majority vote of electors voting
 8 in referenda on laws taking the same actions; providing an
 9 exception for certain emergencies; providing for
 10 nonapplication to certain other revenue sources; providing
 11 a definition; providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. (1) Beginning July 1, 2008, and
 16 notwithstanding any other general or special law, the governing
 17 board of a county, municipality, school board, or special
 18 district may not take the following actions unless the action is
 19 first approved by at least a three-fifths vote, or a majority
 20 plus one, whichever is greater, of the governing board's
 21 membership:

22 (a) Levy a new tax, special assessment, non-ad valorem
 23 assessment, or impact fee;

24 (b) Increase the rate of an existing tax, special
 25 assessment, non-ad valorem assessment, or impact fee;

26 (c) Expand a tax base or a geographic area subject to a
 27 tax, special assessment, non-ad valorem assessment, or impact
 28 fee; or

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29 (d) Eliminate an exemption from a tax, special assessment,
30 non-ad valorem assessment, or impact fee.

31 (2) If the governing board of a county, municipality,
32 school board, or special district takes action as required by
33 subsection (1), and the law otherwise requires approval by the
34 electors voting in a referendum, the action must be approved by
35 at least a three-fifths vote of electors voting in the
36 referendum.

37 (3) This section shall not apply to a tax, special
38 assessment, non-ad valorem assessment, or impact fee levied or
39 increased for the exclusive purpose of funding repair or
40 replacement of public infrastructure damaged in a natural or
41 man-made disaster that resulted in a declaration of emergency by
42 the Governor.

43 (4) This section shall not apply to ad valorem taxes, fees
44 other than impact fees, license fees, penalties, fines, or
45 charges for services.

46 (5) For purposes of this section, the term "non-ad valorem
47 assessment" has the same meaning as provided in s. 197.3632,
48 Florida Statutes.

49 Section 2. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 715**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Committee on State Affairs
 2 Representative(s) Skidmore offered the following:

Amendment (with title amendment)

Between lines 48 and 49 insert:

6 (6) This section shall not apply to annexations undertaken
 7 pursuant to chapter 171.

9 -----
 10 **T I T L E A M E N D M E N T**

11 Remove line 11 and insert:
 12 a definition; providing an exception for annexations; providing
 13 an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1061

Ad Valorem Tax Data

SPONSOR(S): Seiler

TIED BILLS:

IDEN./SIM. BILLS: SB 822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on State Affairs</u>	_____	Levin <i>JS</i>	Williamson <i>RAW</i>
2) <u>Government Efficiency & Accountability Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, the Department of Revenue (DOR) is responsible for the research and tabulation of data and conditions that relate to ad valorem taxation. DOR must publish this data annually and make recommendations to the Legislature to ensure that property is valued according to its just value and that it is equitably taxed throughout the state.

The bill specifies that the data DOR is currently reporting must include:

- The annual percentage increase in total nonvoted ad valorem taxes levied by each city and county.
- Information on the distribution of ad valorem taxes levied among the various classifications of property.
- The adopted millage rate for the previous year, the millage rate for the current year, and the current percentage increase in taxes levied above the rolled-back rate.

The bill also requires publication of this data, at a minimum, on the DOR website and on the existing websites of all property appraisers.

The bill has an effective date of July 1, 2008.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the responsibilities of the Department of Revenue to report specific data regarding ad valorem taxation.

B. EFFECT OF PROPOSED CHANGES:

Current situation

Section 195.052, F.S., requires the Department of Revenue (DOR) to conduct constant research and maintain accurate tabulations of data and conditions that relate to ad valorem taxation. DOR must publish the data annually and make recommendations to the Legislature to ensure that property is valued according to its just value, and that it is equitably taxed throughout the state.

Currently, DOR receives annual tax roll information from all Florida property appraisers. The records concerning approximately 9 million real property parcels are reported annually to DOR. Included in each parcel record is coding which describes the type of property, its value, and recent sales information. From this data, DOR describes the types and value of property for each county as a whole.

In addition to the tax roll data, DOR also receives the following:

- As part of a summary information sheet, property appraisers submit to DOR a listing of all taxes being levied in their county, the millage rate levied, and the taxable value used to levy assessments.
- DOR also oversees the Truth in Millage (TRIM) process for all taxing jurisdictions. In this role, DOR receives rolled-back rates and adopted millages from each taxing jurisdiction.

Proposed Change

The bill specifies that the data DOR reports after the effective date of this bill must include:

- The annual percentage increase in total nonvoted ad valorem taxes levied by each city and county;
- Information on the distribution of ad valorem taxes levied among the various classifications of property, including homestead, nonhomestead, residential, new construction, commercial, and industrial properties; and
- The adopted millage rate for the previous year, the millage rate for the current year, and the current percentage increase in taxes levied above the rolled-back rate.

The bill requires the publication of this data on DOR's website and on the existing websites of property appraisers. The current data reported by DOR is published in the Florida Property Valuations and Tax Data Book.¹ DOR will publish in the same tax data book the additional data required by this bill.

C. SECTION DIRECTORY:

Section 1 amends s. 195.052, F.S., to specify requirements for data to be published by the DOR.

Section 2 provides an effective date of July 1, 2008.

¹<http://dor.myflorida.com/dor/property/databk.html>.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Although the bill will require a slight expenditure of money since the bill requires all property appraisers to publish data on existing websites, the result can reasonably be expected to have an insignificant impact. If the fiscal impact is less than \$1.9 million, the impact is insignificant, and the bill is exempt from the mandate provision. Therefore, the bill is exempt from the mandate provision.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to ad valorem tax data; amending s.
 3 195.052, F.S.; specifying requirements for data to be
 4 published by the Department of Revenue; providing an
 5 effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Section 195.052, Florida Statutes, is amended
 10 to read:

11 195.052 Research and tabulation of data.--The department
 12 shall conduct constant research and maintain accurate
 13 tabulations of data and conditions existing as to ad valorem
 14 taxation, shall annually publish such data as may be appropriate
 15 to facilitate fiscal policymaking, and shall annually make such
 16 recommendations to the Legislature as are necessary to ensure
 17 that property is valued according to its just value and is
 18 equitably taxed throughout the state. Such data shall include
 19 the annual percentage increase in total nonvoted ad valorem
 20 taxes levied by each city and county and shall include
 21 information on the distribution of ad valorem taxes levied among
 22 the various classifications of property, including homestead,
 23 nonhomestead residential, new construction, commercial, and
 24 industrial properties. Such data shall include the previous
 25 year's adopted millage rate, the current year's millage rate,
 26 and the current percentage increase in taxes levied above the
 27 rolled-back rate. Such data shall be published, at a minimum, on
 28 the department's website and on the websites of all property

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29 | appraisers of this state, if available. Publication shall occur
30 | not later than 60 days after receipt of extended rolls for all
31 | counties pursuant to s. 193.122(7).

32 | Section 2. This act shall take effect July 1, 2008.

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A bill to be entitled
 An act relating to operation of the Florida Lottery;
 amending s. 20.317, F.S.; clarifying provisions concerning
 regional offices; amending s. 24.101, F.S.; revising a
 reference; amending s. 24.102, F.S.; revising provisions
 relating to legislative intent to provide for operation of
 the lottery under a concession agreement; amending s.
 24.103, F.S.; providing additional definitions; amending
 s. 24.104, F.S.; revising language concerning the purpose
 of the Department of the Lottery to permit operation of
 the lottery by the state through a concessionaire;
 amending s. 24.105, F.S.; revising provisions concerning
 the powers and duties of the Department of the Lottery to
 allow for possible operation of the lottery through a
 concessionaire; providing that specified provisions apply
 whether the department operates the lottery directly or
 through a concessionaire; deleting obsolete language;
 amending s. 24.107, F.S.; revising provisions concerning
 lottery security to conform to the possible operation of
 the lottery through a concessionaire; amending ss. 24.108
 and 24.111, F.S.; revising provisions to conform to the
 possible operation of the lottery through a
 concessionaire; creating s. 24.1115, F.S.; providing for a
 concession agreement under which the lottery may be
 operated; providing intent; providing definitions;
 limiting the duration of such an agreement; providing
 limits on the games that may be offered under such an
 agreement; providing for an initial payment to the

29 department by a concessionaire; providing for royalty
 30 payments by a concessionaire; providing for collection of
 31 funds in excess of a specified baseline growth percentage
 32 to ensure that the concessionaire does not earn excess
 33 revenue; providing requirements for the contents of a
 34 concession agreement; requiring periodic investigations of
 35 the performance by a concessionaire; providing for a
 36 request for qualifications process to select a
 37 concessionaire; providing for the public records status of
 38 specified materials under existing exemptions; providing
 39 for negotiations between one or more offerors and the
 40 department; providing selection procedures; requiring a
 41 public hearing; providing for designation of a
 42 concessionaire by the Governor; providing for status of
 43 debt offering by the concessionaire; providing for a time
 44 period for challenges to designation of a concessionaire;
 45 providing department powers; providing that there is no
 46 prohibition on additional legislative authorization of
 47 other forms of gambling; amending s. 24.112, F.S.;
 48 revising provisions concerning retailers of lottery
 49 tickets to conform to the possible operation of the
 50 lottery through a concessionaire; amending s. 24.113,
 51 F.S.; providing that provisions concerning minority
 52 participation also apply if the lottery is operated
 53 through a concessionaire; amending ss. 24.114, 24.115,
 54 24.1153, 24.117, 24.118, and 24.120, F.S.; revising
 55 provisions to conform to the possible operation of the
 56 lottery through a concessionaire; amending 24.121, F.S.;

57 | revising provisions to conform to the possible operation
 58 | of the lottery through a concessionaire; providing for a
 59 | minimum allocation of proceeds received under a concession
 60 | agreement to the Florida Bright Futures Scholarship
 61 | Program; amending ss. 24.122, 24.123, and 24.124, F.S.;
 62 | revising provisions to conform to the possible operation
 63 | of the lottery through a concessionaire; providing an
 64 | effective date.

65 |

66 | Be It Enacted by the Legislature of the State of Florida:

67 |

68 | Section 1. Subsection (3) of section 20.317, Florida
 69 | Statutes, is amended to read:

70 | 20.317 Department of the Lottery.--There is created a
 71 | Department of the Lottery.

72 | (3) The headquarters of the department shall be located in
 73 | Tallahassee. However, the department may establish such regional
 74 | offices throughout the state as the secretary deems necessary to
 75 | perform its duties concerning the efficient operation of the
 76 | state lottery.

77 | Section 2. Section 24.101, Florida Statutes, is amended to
 78 | read:

79 | 24.101 Short title.--This chapter ~~act~~ may be cited as the
 80 | "Florida Public Education Lottery Act."

81 | Section 3. Section 24.102, Florida Statutes, is amended to
 82 | read:

83 | 24.102 Purpose and intent.--

84 (1) The purpose of this chapter ~~aet~~ is to implement s. 15,
 85 Art. X of the State Constitution in a manner that enables the
 86 people of the state to benefit from significant additional
 87 moneys for education and also enables the people of the state to
 88 play the best lottery games available.

89 (2) The intent of the Legislature is:

90 (a) That the net proceeds of lottery games conducted
 91 pursuant to this chapter ~~aet~~ be used to support improvements in
 92 public education and that such proceeds not be used as a
 93 substitute for existing resources for public education.

94 (b) That the lottery games be operated by a department of
 95 state government that functions as much as possible in the
 96 manner of an entrepreneurial business enterprise or through a
 97 concession agreement with an entrepreneurial business enterprise
 98 operating with oversight by the department. The Legislature
 99 recognizes that the operation of a lottery is a unique activity
 100 for state government and that structures and procedures
 101 appropriate to the performance of other governmental functions
 102 are not necessarily appropriate to the operation of a state
 103 lottery.

104 (c) That the lottery games be operated by a self-
 105 supporting, revenue-producing department or through a concession
 106 agreement with an entrepreneurial business enterprise under
 107 government oversight.

108 (d) That the department be accountable to the Legislature
 109 and the people of the state through a system of audits and
 110 reports and through compliance with financial disclosure, open
 111 meetings, and public records laws and that any entity operating

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112 the lottery under a concession agreement must also be
 113 accountable to the Legislature and the people of the state.

114 Section 4. Section 24.103, Florida Statutes, is amended to
 115 read:

116 24.103 Definitions.--As used in this chapter act:

117 (1) "Concession agreement" means that agreement entered
 118 into pursuant to which the state may grant a license or other
 119 contractual right to manage or operate the lottery on the
 120 state's behalf to a concessionaire and further pursuant to which
 121 the concessionaire may receive certain lottery ticket or share
 122 sales and related proceeds in consideration of the payment of a
 123 fee or fees to the state.

124 (2) "Concessionaire " means an entity that manages or
 125 operates the lottery on behalf of the state under a concession
 126 agreement.

127 (3)~~(1)~~ "Department" means the Department of the Lottery.

128 (4) "Major procurement" means a procurement for a contract
 129 for the printing of tickets for use in any lottery game,
 130 consultation services for the startup of the lottery, any goods
 131 or services involving the official recording for lottery game
 132 play purposes of a player's selections in any lottery game
 133 involving player selections, any goods or services involving the
 134 receiving of a player's selection directly from a player in any
 135 lottery game involving player selections, any goods or services
 136 involving the drawing, determination, or generation of winners
 137 in any lottery game, the security report services provided for
 138 in this chapter act, or any goods and services relating to
 139 marketing and promotion that ~~which~~ exceed a value of \$25,000.

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140 ~~(5)(3)~~ "Person" means any individual, firm, association,
 141 joint adventure, partnership, estate, trust, syndicate,
 142 fiduciary, corporation, or other group or combination and shall
 143 include any agency or political subdivision of the state.

144 ~~(6)(5)~~ "Retailer" means a person who sells lottery tickets
 145 on behalf of the department or the concessionaire pursuant to a
 146 contract.

147 ~~(7)(2)~~ "Secretary" means the secretary of the department.

148 ~~(8)(6)~~ "Vendor" means a person who provides or proposes to
 149 provide goods or services to the department, but does not
 150 include an employee of the department, a retailer, or a state
 151 agency.

152 Section 5. Section 24.104, Florida Statutes, is amended to
 153 read:

154 24.104 Department; purpose.--The purpose of the department
 155 is to operate the state lottery as authorized by s. 15, Art. X
 156 of the State Constitution directly or through a concessionaire
 157 so as to maximize revenues in a manner consonant with the
 158 dignity of the state and the welfare of its citizens.

159 Section 6. Subsections (2), (4), (6), (7), (8), (9), (11),
 160 (15), (17), (18), and (19) of section 24.105, Florida Statutes,
 161 are amended to read:

162 24.105 Powers and duties of department.--The department
 163 shall:

164 (2) Supervise and administer the operation of the lottery
 165 itself or through a concessionaire in accordance with the
 166 provisions of this chapter ~~aet~~ and rules adopted pursuant
 167 thereto.

168 (4) Submit monthly and annual reports to the Governor, the
 169 Chief Financial Officer, the President of the Senate, and the
 170 Speaker of the House of Representatives disclosing the total
 171 lottery revenues, prize disbursements, and other expenses of the
 172 department during the preceding month or, if the lottery is
 173 operated under a concession agreement, comparable information
 174 provided by the concessionaire. The annual report shall
 175 additionally describe the organizational structure of the
 176 department, including its hierarchical structure, and shall
 177 identify the divisions and bureaus created by the secretary and
 178 summarize the departmental functions performed by each.

179 (6) Maintain weekly or more frequent records of lottery
 180 transactions, including the distribution of tickets to
 181 retailers, revenues received, claims for prizes, prizes paid,
 182 and other financial transactions of the department. If the
 183 lottery is operated under a concession agreement, the agreement
 184 shall require the concessionaire to maintain comparable
 185 information.

186 (7) Make a continuing study of the lottery to ascertain
 187 any defects of this chapter ~~act~~ or rules adopted thereunder
 188 which could result in abuses in the administration of the
 189 lottery; make a continuing study of the operation and the
 190 administration of similar laws in other states and of federal
 191 laws that ~~which~~ may affect the lottery; and, if the department
 192 directly operates the lottery, make a continuing study of the
 193 reaction of the public to existing and potential features of the
 194 lottery.

195 (8) If the lottery is operated directly by the department,
 196 conduct such market research as is necessary or appropriate,
 197 which may include an analysis of the demographic characteristics
 198 of the players of each lottery game and an analysis of
 199 advertising, promotion, public relations, incentives, and other
 200 aspects of communications.

201 (9) Adopt rules governing the establishment and operation
 202 of the state lottery, including:

203 (a) 1. If the lottery is operated directly by the
 204 department, the type of lottery games to be conducted.

205 2. Regardless of whether the lottery is operated directly
 206 by the department or through a concessionaire, except that:

207 a.1- No name of an elected official shall appear on the
 208 ticket or play slip of any lottery game or on any prize or on
 209 any instrument used for the payment of prizes, unless such prize
 210 is in the form of a state warrant.

211 b.2- No coins or currency shall be dispensed from any
 212 electronic computer terminal or device used in any lottery game.

213 c.3- Other than as provided in sub-subparagraph d.
 214 ~~subparagraph 4-~~, no terminal or device may be used for any
 215 lottery game that ~~which~~ may be operated solely by the player
 216 without the assistance of the retailer.

217 d.4- The only player-activated machine that ~~which~~ may be
 218 utilized is a machine that ~~which~~ dispenses instant lottery game
 219 tickets following the insertion of a coin or currency by a
 220 ticket purchaser. To be authorized a machine must+ be under the
 221 supervision and within the direct line of sight of the lottery
 222 retailer to ensure that the machine is monitored and only

223 operated by persons at least 18 years of age ~~and~~, be capable of
 224 being electronically deactivated by the retailer to prohibit use
 225 by persons less than 18 years of age through the use of a
 226 lockout device that maintains the machine's deactivation for a
 227 period of no less than 5 minutes unless the machine uses a
 228 method of verifying the age of an operator that the department
 229 certifies is equivalent or superior to line-of-sight monitoring
 230 and lockout by the retailer. Such a machine must also, ~~and~~ be
 231 designed to prevent its use or conversion for use in any manner
 232 other than the dispensing of instant lottery tickets. Authorized
 233 machines may dispense change to players purchasing tickets but
 234 may not be utilized for paying the holders of winning tickets of
 235 any kind. At least one clerk must be on duty at the lottery
 236 retailer while the machine is in operation. However, at least
 237 two clerks must be on duty at any lottery location that ~~which~~
 238 has violated s. 24.1055.

239 (b) If the lottery is operated directly by the department,
 240 the sales price of tickets.

241 (c) If the lottery is operated directly by the department,
 242 the number and sizes of prizes.

243 (d) If the lottery is operated directly by the department,
 244 the method of selecting winning tickets. However, regardless of
 245 whether the lottery is operated directly by the department or
 246 through a concessionaire, if a lottery game involves a drawing,
 247 the drawing shall be public and witnessed by an accountant
 248 employed by an independent certified public accounting firm. The
 249 equipment used in the drawing shall be inspected before and
 250 after the drawing.

251 (e) If the lottery is operated directly by the department,
 252 the manner of payment of prizes to holders of winning tickets.

253 (f) If the lottery is operated directly by the department,
 254 the frequency of drawings or selections of winning tickets.

255 (g) If the lottery is operated directly by the department,
 256 the number and type of locations at which tickets may be
 257 purchased.

258 (h) If the lottery is operated directly by the department,
 259 the method to be used in selling tickets.

260 (i) If the lottery is operated directly by the department,
 261 the manner and amount of compensation of retailers.

262 (j) Such other matters necessary or desirable for the
 263 efficient or economical operation of the lottery directly by the
 264 department or for the convenience of the public.

265 (11) In the selection of games and method of selecting
 266 winning tickets, be sensitive to the impact of the lottery upon
 267 the pari-mutuel industry and, accordingly, the department or the
 268 concessionaire may use for any game the theme of horseracing,
 269 dogracing, or jai alai and may allow a lottery game to be based
 270 upon a horserace, dograce, or jai alai activity so long as the
 271 outcome of such lottery game is determined entirely by chance.

272 (15) Or the concessionaire, if any, shall have the
 273 authority to charge fees to persons applying for contracts as
 274 vendors or retailers, which fees are reasonably calculated to
 275 cover the costs of investigations and other activities related
 276 to the processing of the application.

277 (17) Or the concessionaire, if any, shall, in accordance
 278 with the provisions of this chapter ~~act~~, enter into contracts

279 with retailers so as to provide adequate and convenient
 280 availability of tickets to the public for each game.

281 (18) Or the concessionaire, if any, shall have the
 282 authority to enter into agreements with other states for the
 283 operation and promotion of a multistate lottery if such
 284 agreements are in the best interest of the state lottery. ~~The~~
 285 ~~authority conferred by this subsection is not effective until 1~~
 286 ~~year after the first day of lottery ticket sales.~~

287 (19) Employ division directors and other staff as may be
 288 necessary to carry out the provisions of this chapter act;
 289 however:

290 (a) No person shall be employed by the department who has
 291 been convicted of, or entered a plea of guilty or nolo
 292 contendere to, a felony committed in the preceding 10 years,
 293 regardless of adjudication, unless the department determines
 294 that:

295 1. The person has been pardoned or his or her civil rights
 296 have been restored; or

297 2. Subsequent to such conviction or entry of plea the
 298 person has engaged in the kind of law-abiding commerce and good
 299 citizenship that would reflect well upon the integrity of the
 300 lottery.

301 (b) No officer or employee of the department having
 302 decisionmaking authority shall participate in any decision
 303 involving any vendor or retailer with whom the officer or
 304 employee has a financial interest. No such officer or employee
 305 may participate in any decision involving any vendor or retailer
 306 with whom the officer or employee has discussed employment

307 opportunities without the approval of the secretary or, if such
 308 officer is the secretary, without the approval of the Governor.
 309 Any officer or employee of the department shall notify the
 310 secretary of any such discussion or, if such officer is the
 311 secretary, he or she shall notify the Governor. A violation of
 312 this paragraph is punishable in accordance with s. 112.317.

313 (c) No officer or employee of the department who leaves
 314 the employ of the department shall represent any vendor or
 315 retailer or the concessionaire, if any, before the department
 316 regarding any specific matter in which the officer or employee
 317 was involved while employed by the department, for a period of 1
 318 year following cessation of employment with the department. A
 319 violation of this paragraph is punishable in accordance with s.
 320 112.317.

321 (d) The department shall establish and maintain a
 322 personnel program for its employees, including a personnel
 323 classification and pay plan which may provide any or all of the
 324 benefits provided in the Senior Management Service or Selected
 325 Exempt Service. Each officer or employee of the department shall
 326 be a member of the Florida Retirement System. The retirement
 327 class of each officer or employee shall be the same as other
 328 persons performing comparable functions for other agencies.
 329 Employees of the department shall serve at the pleasure of the
 330 secretary and shall be subject to suspension, dismissal,
 331 reduction in pay, demotion, transfer, or other personnel action
 332 at the discretion of the secretary. Such personnel actions are
 333 exempt from the provisions of chapter 120. All employees of the
 334 department are exempt from the Career Service System provided in

335 chapter 110 and, notwithstanding the provisions of s.
 336 110.205(5), are not included in either the Senior Management
 337 Service or the Selected Exempt Service. However, all employees
 338 of the department are subject to all standards of conduct
 339 adopted by rule for career service and senior management
 340 employees pursuant to chapter 110. In the event of a conflict
 341 between standards of conduct applicable to employees of the
 342 Department of the Lottery the more restrictive standard shall
 343 apply. Interpretations as to the more restrictive standard may
 344 be provided by the Commission on Ethics upon request of an
 345 advisory opinion pursuant to s. 112.322(3)(a), for purposes of
 346 this subsection the opinion shall be considered final action.

347 (e) No employee of a concessionaire operating the lottery
 348 shall receive membership in the Florida Retirement System or any
 349 other state retirement or other state employee benefits on the
 350 basis of such employment.

351 Section 7. Section 24.107, Florida Statutes, is amended to
 352 read:

353 24.107 Advertising and promotion of lottery games.--

354 (1) The Legislature recognizes the need for extensive and
 355 effective advertising and promotion of lottery games. It is the
 356 intent of the Legislature that such advertising and promotion be
 357 consistent with the dignity and integrity of the state. In
 358 advertising the value of a prize that will be paid over a period
 359 of years, the department or the concessionaire, if any, may
 360 refer to the sum of all prize payments over the period.

361 (2) The department or the concessionaire, if any, may act
 362 as a retailer and may conduct promotions that ~~which~~ involve the
 363 dispensing of lottery tickets free of charge.

364 Section 8. Subsections (2), (5), (6), and (7) of section
 365 24.108, Florida Statutes, are amended to read:

366 24.108 Division of Security; duties; security report.--

367 (2) The director and all investigators employed by the
 368 division shall meet the requirements for employment and
 369 appointment provided by s. 943.13 and shall satisfy the
 370 requirements for certification established by the Criminal
 371 Justice Standards and Training Commission pursuant to chapter
 372 943. The director and such investigators shall be designated law
 373 enforcement officers and shall have the power to investigate and
 374 arrest for any alleged violation of this chapter ~~act~~ or any rule
 375 adopted pursuant thereto, or any law of this state. Such law
 376 enforcement officers may enter upon any premises in which
 377 lottery tickets are sold, manufactured, printed, or stored
 378 within the state for the performance of their lawful duties and
 379 may take with them any necessary equipment, and such entry shall
 380 not constitute a trespass. In any instance in which there is
 381 reason to believe that a violation has occurred, such officers
 382 have the authority, without warrant, to search and inspect any
 383 premises where the violation is alleged to have occurred or is
 384 occurring. Any such officer may, consistent with the United
 385 States and Florida Constitutions, seize or take possession of
 386 any papers, records, tickets, currency, or other items related
 387 to any alleged violation.

388 (5) The Department of Law Enforcement shall provide
 389 assistance in obtaining criminal history information relevant to
 390 investigations required for honest, secure, and exemplary
 391 lottery operations, and such other assistance as may be
 392 requested by the secretary and agreed to by the executive
 393 director of the Department of Law Enforcement. Any other state
 394 agency, including the Department of Business and Professional
 395 Regulation and the Department of Revenue, shall, upon request,
 396 provide the Department of the Lottery with any information
 397 relevant to any investigation conducted pursuant to this chapter
 398 ~~act~~. The Department of the Lottery shall maintain the
 399 confidentiality of any confidential information it receives from
 400 any other agency. The Department of the Lottery shall reimburse
 401 any agency for the actual cost of providing any assistance
 402 pursuant to this subsection.

403 (6) If the lottery is operated directly by the department,
 404 the division shall monitor ticket validation and lottery
 405 drawings.

406 (7) (a) If the lottery is operated directly by the
 407 department ~~After the first full year of sales of tickets to the~~
 408 ~~public, or sooner if the secretary deems necessary,~~ the
 409 department shall, as it deems appropriate, but at least once
 410 every 2 years engage an independent firm experienced in security
 411 procedures, including, but not limited to, computer security and
 412 systems security, to conduct a comprehensive study and
 413 evaluation of all aspects of security in the operation of the
 414 department.

415 (b) The portion of the security report containing the
 416 overall evaluation of the department in terms of each aspect of
 417 security shall be presented to the Governor, the President of
 418 the Senate, and the Speaker of the House of Representatives. The
 419 portion of the security report containing specific
 420 recommendations shall be confidential and shall be presented
 421 only to the secretary, the Governor, and the Auditor General;
 422 however, upon certification that such information is necessary
 423 for the purpose of effecting legislative changes, such
 424 information shall be disclosed to the President of the Senate
 425 and the Speaker of the House of Representatives, who may
 426 disclose such information to members of the Legislature and
 427 legislative staff as necessary to effect such purpose. However,
 428 any person who receives a copy of such information or other
 429 information that ~~which~~ is confidential pursuant to this chapter
 430 ~~act~~ or rule of the department shall maintain its
 431 confidentiality. The confidential portion of the report is
 432 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I.
 433 of the State Constitution.

434 ~~(c) Thereafter, similar studies of security shall be~~
 435 ~~conducted as the department deems appropriate but at least once~~
 436 ~~every 2 years.~~

437 Section 9. Subsection (1) and paragraph (h) of subsection
 438 (2) of section 24.111, Florida Statutes, are amended to read:

439 24.111 Vendors; disclosure and contract requirements.--

440 (1) The department may enter into contracts for the
 441 purchase, lease, or lease-purchase of such goods or services as
 442 are necessary for effectuating the purposes of this chapter ~~act~~.

443 The department may ~~not~~ contract with any person or entity for
 444 the total operation and administration of the state lottery
 445 established by this chapter as provided in s. 24.1115 or ~~act~~ ~~but~~
 446 may make procurements that ~~which~~ integrate functions such as
 447 lottery game design, supply of goods and services, and
 448 advertising. In all procurement decisions, the department shall
 449 take into account the particularly sensitive nature of the state
 450 lottery and shall consider the competence, quality of product,
 451 experience, and timely performance of the vendors in order to
 452 promote and ensure security, honesty, fairness, and integrity in
 453 the operation and administration of the lottery and the
 454 objective of raising net revenues for the benefit of the public
 455 purpose described in this chapter ~~act~~.

456 (2) The department shall investigate the financial
 457 responsibility, security, and integrity of each vendor with
 458 which it intends to negotiate a contract for major procurement.
 459 Such investigation may include an investigation of the financial
 460 responsibility, security, and integrity of any or all persons
 461 whose names and addresses are required to be disclosed pursuant
 462 to paragraph (a). Any person who submits a bid, proposal, or
 463 offer as part of a major procurement must, at the time of
 464 submitting such bid, proposal, or offer, provide the following:

465 (h) If the department operates the lottery directly, it
 466 ~~The department~~ shall lease all instant ticket vending machines.

467
 468 The department shall not contract with any vendor who fails to
 469 make the disclosures required by this subsection, and any
 470 contract with a vendor who has failed to make the required

471 disclosures shall be unenforceable. Any contract with any vendor
 472 who does not comply with such requirements for periodically
 473 updating such disclosures during the tenure of such contract as
 474 may be specified in such contract may be terminated by the
 475 department. This subsection shall be construed broadly and
 476 liberally to achieve the ends of full disclosure of all
 477 information necessary to allow for a full and complete
 478 evaluation by the department of the competence, integrity,
 479 background, and character of vendors for major procurements.

480 Section 10. Section 24.1115, Florida Statutes, is created
 481 to read:

482 24.1115 Concession agreement.--

483 (1) In construing this section, it is the intent of the
 484 Legislature that the concessionaire be accountable to the
 485 Legislature and the people of this state through a system of
 486 audits and reports and by complying with the financial
 487 disclosure requirements of this section. The powers conferred by
 488 this section are in addition and supplemental to the powers
 489 conferred by any other law. If any other law or rule is
 490 inconsistent with this section, this section is controlling as
 491 to any concession agreement entered into under this section.

492 (2) As used in this section, the term:

493 (a) "Offeror" means a person that responds to a request
 494 for qualifications under this section.

495 (b) "Request for qualifications" means all materials and
 496 documents prepared by the department to solicit the following
 497 from offerors:

498 1. Statements of qualifications.

499 2. Proposals to enter into a management agreement.

500 (c) "Selected offer" means the final offer of an offeror
 501 that is the preliminary selection to be the concessionaire for
 502 the lottery under subsection (12).

503 (3) (a) This section contains full and complete authority
 504 for a concession agreement between the department and a
 505 concessionaire and any rules adopted thereunder. No law,
 506 procedure, proceeding, publication, notice, consent, approval,
 507 order, or act by the department or any other officer,
 508 department, agency, or instrumentality of the state or any
 509 political subdivision is required for the department to enter
 510 into a concession agreement under this section.

511 (b) This section contains full and complete authority for
 512 the department to approve any subcontracts entered into by a
 513 concessionaire under the terms of a management agreement.

514 (4) Subject to the other provisions of this section, the
 515 department may enter into a concession agreement with a
 516 concessionaire for a term not to exceed 30 years.

517 (5) The department may not enter into a concession
 518 agreement that authorizes a concessionaire to operate any of the
 519 following games or a game simulating any of the following games:

520 (a) Video lottery games.

521 (b) Pari-mutuel wagering on any form of racing.

522 (c) A game in which winners are selected on the results of
 523 a race or sporting event.

524 (d) Any other game commonly considered to be a form of
 525 gambling that is not a game or a variation of a game that the
 526 department operated before the concession agreement is executed

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527 or is operating on the date the concession agreement is
 528 executed.

529 (6) (a) The concession agreement must establish a
 530 substantial benchmark amount. The concession agreement must
 531 require the concessionaire to make an initial payment to the
 532 department on the effective date of the concession agreement in
 533 an amount that exceeds the benchmark amount established in the
 534 management agreement.

535 (b) The initial payment required under paragraph (a) shall
 536 be deposited as provided in s. 24.121.

537 (c) If the concessionaire fails to make any payment under
 538 this section by the due date of the payment, the concession
 539 agreement is terminated.

540 (7) (a) The concession agreement must require the
 541 concessionaire to pay a royalty in the amount equal to one
 542 quarter of the lottery's annual profits in the last full fiscal
 543 year preceding the agreement to the department four times each
 544 year beginning on a date that is specified in the concession
 545 agreement and that occurs during the first year after the
 546 execution of the management agreement. The payments received
 547 under this subsection shall be deposited as provided in s.
 548 24.121.

549 (b) The concession agreement must include the following
 550 provisions to ensure that the concessionaire does not earn
 551 excess revenue under the concession agreement:

552 1. The Office of Policy and Budget in the Executive Office
 553 of the Governor shall calculate the percentage rate of average
 554 annual growth in gross revenue earned by the department during

555 the last 5 full state fiscal years preceding the commencement of
 556 the concession agreement. For purposes of this subsection, this
 557 percentage is referred to as the "baseline growth percentage".

558 2. Beginning with the second full state fiscal year after
 559 the execution of the management agreement, the Office of Policy
 560 and Budget in the Executive Office of the Governor shall for
 561 each state fiscal year calculate the growth, expressed as a
 562 percentage, in gross revenue earned by the concessionaire under
 563 the concession agreement, as compared to the preceding state
 564 fiscal year.

565 3. The department shall establish an excess payments
 566 account for purposes of this paragraph. Any earnings from money
 567 in the excess payments account accrue to the account. Money in
 568 the excess payments account may be used only to make payments to
 569 a concessionaire as required by this paragraph and to receive
 570 payments from a concessionaire as required by this paragraph.

571 4. If the percentage calculated by the Office of Policy
 572 and Budget in the Executive Office of the Governor under
 573 subparagraph 2. for a particular state fiscal year exceeds the
 574 baseline growth percentage, the concessionaire must make an
 575 additional payment to the department. The amount of the
 576 additional payment for the state fiscal year is equal to the
 577 gross revenue earned by the concessionaire from lottery tickets
 578 in the state fiscal year multiplied by one-half the difference
 579 between the percentage calculated by the Office of Policy and
 580 Budget in the Executive Office of the Governor under
 581 subparagraph 2. for the state fiscal year and the baseline
 582 growth percentage. The department shall deposit any additional

583 payment made by the concessionaire under this subparagraph into
 584 the excess payments account.

585 5. If the baseline growth percentage exceeds the
 586 percentage calculated by the Office of Policy and Budget in the
 587 Executive Office of the Governor under subparagraph 2. for a
 588 particular state fiscal year, the department must make a payment
 589 to the concessionaire from the excess payments account. However,
 590 the department is required to make a payment to the
 591 concessionaire only if the excess payments account has a
 592 positive balance. The amount of the payment by the department
 593 for the state fiscal year is equal to the lesser of:

594 a. The result of the gross revenue earned by the
 595 concessionaire from lottery tickets in the state fiscal year
 596 multiplied by one-half the difference between the baseline
 597 growth percentage and the percentage calculated by the Office of
 598 Policy and Budget in the Executive Office of the Governor under
 599 subparagraph 2. for the state fiscal year; or

600 b. The balance in the excess payments account.

601 6. The concession agreement must specify the time by which
 602 a payment required under this paragraph shall be made.

603 7. If at the expiration or termination of the concession
 604 agreement there is money remaining in the excess payments
 605 account, it shall be transferred to the department and deposited
 606 as provided in s. 24.121.

607 (8) A concession agreement must contain the following:

608 (a) The original term of the management agreement.

609 (b) A requirement that the concessionaire locate its
 610 principal office within this state.

611 (c) The transition of rights and obligations from the
 612 department to the concessionaire with respect to the operation
 613 of the lottery, including the following:
 614 1. The right to use, or ownership of, equipment and other
 615 assets used in the operation of the lottery.
 616 2. The rights and obligations under contracts with
 617 retailers and vendors.
 618 3. The implementation of a comprehensive security program
 619 by the concessionaire.
 620 4. The implementation of a comprehensive system of
 621 internal audits.
 622 5. The implementation of a program by the concessionaire
 623 to curb compulsive gambling by persons playing the lottery.
 624 6. A system for determining the following:
 625 a. The type of lottery games to be conducted.
 626 b. The method of selecting winning tickets.
 627 c. The manner of payment of prizes to holders of winning
 628 tickets.
 629 d. The frequency of drawings of winning tickets.
 630 e. The method to be used in selling tickets.
 631 f. A system for verifying the validity of tickets claimed
 632 to be winning tickets.
 633 g. The basis upon which retailer commissions are
 634 established by the concessionaire.
 635 h. Minimum payouts.
 636 7. A requirement that advertising and promotion must be
 637 consistent with the dignity and integrity of the state.

638 (d) Guidelines to ensure that advertising and promoting of
 639 the lottery by the concessionaire are not misleading and fairly
 640 balance the potential benefits and the potential costs and risks
 641 of playing lottery games.

642 (e) A code of ethics for the concessionaire's officers and
 643 employees.

644 (f) Monitoring of the concessionaire's practices by the
 645 department and the taking of action that the department
 646 considers appropriate to ensure that the concessionaire is in
 647 compliance with the terms of the concession agreement, while
 648 allowing the concessionaire, unless specifically prohibited by
 649 law or the concession agreement, to negotiate and sign its own
 650 contracts with vendors.

651 (g) A provision requiring the concessionaire to
 652 periodically file appropriate financial statements in a form and
 653 manner acceptable to the department.

654 (h) Cash reserve requirements.

655 (i) Procedural requirements for obtaining approval by the
 656 department when a management agreement or an interest in a
 657 management agreement is sold, assigned, transferred, or pledged
 658 as collateral to secure financing. A management agreement or an
 659 interest in a management agreement may not be sold, assigned,
 660 transferred, or pledged as collateral to secure financing
 661 without the approval of the department.

662 (j) Grounds for termination of the concession agreement by
 663 the department or the concessionaire.

664 (k) Procedures for amendment of the management agreement.

665 (l) A provision prohibiting the department from entering
 666 into another concession agreement under this section as long as
 667 the original concession agreement has not been terminated.

668 (m) The transition of rights and obligations, including
 669 any associated equipment or other assets used in the operation
 670 of the lottery, from the concessionaire to any successor
 671 concessionaire of the lottery, including the department,
 672 following the termination of or foreclosure upon the management
 673 agreement.

674 (n) Ownership of all copyrights, trademarks, and service
 675 marks by the department in the name of the state.

676 (o) Minority participation as provided in s. 24.113.

677 (9) (a) The concessionaire shall undergo a complete
 678 investigation every 3 years by the department to determine
 679 whether the concessionaire remains in compliance with this
 680 chapter and the management agreement.

681 (b) The concessionaire shall bear the cost of an
 682 investigation or reinvestigation of the concessionaire under
 683 this subsection.

684 (10) (a) Before the department enters into a concession
 685 agreement pursuant to this section, a request for qualifications
 686 must be issued as set forth in this section. A request for
 687 qualifications for a concession agreement may be issued in one
 688 or more phases.

689 (b) A request for qualifications must include the
 690 following:

691 1. The factors or criteria that will be used in evaluating
 692 an offeror's statement of qualifications and proposal.

693 2. A statement that a proposal must be accompanied by
 694 evidence of the offeror's financial responsibility.

695 3. A statement concerning whether discussions may be
 696 conducted with the offerors for the purpose of clarification to
 697 ensure full understanding of and responsiveness to the
 698 solicitation requirements.

699 4. A statement concerning any other information to be
 700 considered in evaluating the offeror's qualifications and
 701 proposal.

702 (c) Notice of a request for qualifications shall be
 703 published twice at least 7 calendar days apart, with the second
 704 publication made at least 7 days before any initial submission
 705 is due.

706 (d) As provided in a request for qualifications,
 707 discussions may be conducted with the offerors for the purpose
 708 of clarification to ensure full understanding of and
 709 responsiveness to the solicitation requirements.

710 (11) The contents of proposals are competitive sealed
 711 replies in response to an invitation to negotiate for purposes
 712 of s. 119.071(1)(b) and are exempt from s. 119.07(1) and s.
 713 24(a), Art. I of the State Constitution until disclosure of the
 714 contents that are not otherwise exempt under s. 119.071 or other
 715 law is required under s. 119.071(1)(b).

716 (12) (a) The department may negotiate with one or more
 717 offerors the department determines are responsible and
 718 reasonably capable of managing the lottery and may seek to
 719 obtain a final offer from one or more of those offerors.

720 (b) The department shall consider the statement of
 721 qualifications and the proposals to enter into a concession
 722 agreement that are submitted in response to a request for
 723 qualifications in making a determination under this section,
 724 including the following as they apply to the offeror and its
 725 partners, if any:

726 1. Expertise, qualifications, competence, skills, and plan
 727 to perform obligations under the concession agreement in
 728 accordance with the management agreement.

729 2. Financial strength, including capitalization and
 730 available financial resources.

731 3. Experience in operating government-authorized lotteries
 732 and gaming and other similar projects and the quality of any
 733 past or present performance on similar or equivalent
 734 engagements.

735 4. Integrity, background, and reputation.

736 (c) The requirements set forth in paragraph (b) also apply
 737 to the approval of any successor concessionaire.

738 (13) (a) After the final offers from offerors have been
 739 negotiated under subsection (12), the department shall:

740 1. Make a preliminary selection of an offeror as the
 741 concessionaire for the lottery; or

742 2. Terminate the request for qualifications process.

743 (b) If the department makes a preliminary selection of the
 744 concessionaire under this subsection, the department shall
 745 schedule a public hearing on the preliminary selection and
 746 provide public notice of the hearing at least 7 days before the
 747 hearing. The notice must include the following:

- 748 1. The date, time, and place of the hearing.
- 749 2. The subject matter of the hearing.
- 750 3. A brief description of the concession agreement to be
 751 awarded.
- 752 4. The identity of the offeror that has been preliminarily
 753 selected as the concessionaire .
- 754 5. The address and telephone number of the department.
- 755 6. A statement indicating that, subject to subsection
 756 (11), and except for those parts that are confidential under s.
 757 s. 119.071 or other applicable law, the selected offer and an
 758 explanation of the basis upon which the preliminary selection
 759 was made are available for public inspection and copying at the
 760 principal office of the department during regular business hours
 761 and, to the extent feasible, on the Internet.
- 762 (c) Subject to subsection (11), and except for those parts
 763 that are confidential under s. s. 119.071 or other applicable
 764 law, the selected offer and a written explanation of the basis
 765 upon which the preliminary selection was made shall be made
 766 available for inspection and copying in accordance with s.
 767 119.07 and, to the extent feasible, on the Internet at least 7
 768 calendar days before the hearing scheduled under this section.
- 769 (d) At the hearing, the department shall allow the public
 770 to be heard on the preliminary selection.
- 771 (14) (a) After the hearing required under subsection (13),
 772 the department shall determine if a concession agreement should
 773 be entered into with the offeror that submitted the selected
 774 offer. If the department makes a favorable determination, the
 775 department shall submit the determination to the Governor.

776 (b) After review of the department's determination, the
 777 Governor may accept or reject the department's determination. If
 778 the Governor accepts the department's determination, the
 779 Governor shall designate the offeror who submitted the selected
 780 offer as the concessionaire for the lottery.

781 (c) After the Governor designates the concessionaire, the
 782 department may execute a concession agreement with the
 783 designated concessionaire.

784 (15) The concessionaire may finance its obligations with
 785 respect to the lottery and the concession agreement in the
 786 amounts and upon the terms and conditions determined by the
 787 concessionaire. However, any bonds, debt, other securities, or
 788 other financing issued for the purposes of this section shall
 789 not be considered to constitute a debt of the state or any
 790 political subdivision of the state or a pledge of the faith and
 791 credit of the state or any political subdivision of the state.

792 (16) An action to contest the validity of a concession
 793 agreement entered into under this section may not be brought
 794 after the 15th day after the publication of the notice of the
 795 designation of the concessionaire under the concession agreement
 796 as provided in subsection (14).

797 (17) (a) The department must use appropriate experts and
 798 professionals needed to conduct a competitive bidding proceeding
 799 as required under this section and may use the services of
 800 outside professionals to the extent necessary to carry out its
 801 obligations under this section.

802 (b) The department may exercise any powers provided under
 803 this section in participation or cooperation with any other

804 governmental entity and enter into any contracts to facilitate
 805 that participation or cooperation without compliance with any
 806 other statute.

807 (c) The department may make and enter into all contracts
 808 and agreements necessary or incidental to the performance of the
 809 department's duties under this section and the execution of the
 810 department's powers under this section. These contracts or
 811 agreements are not subject to any approval by any other
 812 governmental entity and may be for any term of years and contain
 813 any terms that are considered reasonable by the department.

814 (d) The department may make and enter into all contracts
 815 and agreements with a state agency necessary or incidental to
 816 the performance of the duties and the execution of the powers
 817 granted to the department or the state agency in accordance with
 818 this section or the management agreement. These contracts or
 819 agreements are not subject to any approvals by any other
 820 governmental entity and may be for any term of years and contain
 821 any terms that are considered reasonable by the department or
 822 the state agency.

823 (18) (a) The department may not sell the authorization to
 824 operate the lottery.

825 (b) Any tangible personal property used exclusively in
 826 connection with the lottery that is owned by the department and
 827 leased to the concessionaire shall be owned by the department in
 828 the name of the state and shall be considered to be public
 829 property devoted to an essential public and governmental
 830 function.

831 (c) Any bonds, debt, other securities, or other financing
 832 issued by the concessionaire to finance its obligations with
 833 respect to the concession agreement shall not be considered to
 834 constitute a debt of the state or any political subdivision of
 835 the state or a pledge of the faith and credit of the state or
 836 any political subdivision.

837 (19) The department may exercise any of its powers under
 838 this chapter or any other law as necessary or desirable for the
 839 execution of the department's powers under this section.

840 (20) Neither this section nor any concession agreement
 841 entered into under this section prohibits the Legislature from
 842 authorizing forms of gambling that are not in direct competition
 843 with the lottery.

844 Section 11. Section 24.112, Florida Statutes, is amended
 845 to read:

846 24.112 Retailers of lottery tickets.--

847 (1) If the department directly operates the lottery, the
 848 department shall promulgate rules specifying the terms and
 849 conditions for contracting with retailers who will best serve
 850 the public interest and promote the sale of lottery tickets.

851 (2) If the department directly operates the lottery, in
 852 the selection of retailers, the department shall consider
 853 factors such as financial responsibility, integrity, reputation,
 854 accessibility of the place of business or activity to the
 855 public, security of the premises, the sufficiency of existing
 856 retailers to serve the public convenience, and the projected
 857 volume of the sales for the lottery game involved. In the
 858 consideration of these factors, the department may require the

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859 information it deems necessary of any person applying for
 860 authority to act as a retailer. However, the department may not
 861 establish a limitation upon the number of retailers and shall
 862 make every effort to allow small business participation as
 863 retailers. It is the intent of the Legislature that retailer
 864 selections be based on business considerations and the public
 865 convenience and that retailers be selected without regard to
 866 political affiliation.

867 (3) If the department directly operates the lottery, the
 868 department shall not contract with any person as a retailer who:

869 (a) Is less than 18 years of age.

870 (b) Is engaged exclusively in the business of selling
 871 lottery tickets; however, this paragraph shall not preclude the
 872 department from selling lottery tickets.

873 (c) Has been convicted of, or entered a plea of guilty or
 874 nolo contendere to, a felony committed in the preceding 10
 875 years, regardless of adjudication, unless the department
 876 determines that:

877 1. The person has been pardoned or the person's civil
 878 rights have been restored;

879 2. Subsequent to such conviction or entry of plea the
 880 person has engaged in the kind of law-abiding commerce and good
 881 citizenship that would reflect well upon the integrity of the
 882 lottery; or

883 3. If the person is a firm, association, partnership,
 884 trust, corporation, or other entity, the person has terminated
 885 its relationship with the individual whose actions directly
 886 contributed to the person's conviction or entry of plea.

887 (4) If the department directly operates the lottery, the
 888 department shall issue a certificate of authority to each person
 889 with whom it contracts as a retailer for purposes of display
 890 pursuant to subsection (6). The issuance of the certificate
 891 shall not confer upon the retailer any right apart from that
 892 specifically granted in the contract. The authority to act as a
 893 retailer shall not be assignable or transferable.

894 (5) Any contract executed by the department under ~~pursuant~~
 895 ~~to~~ this section shall specify the reasons for any suspension or
 896 termination of the contract by the department, including, but
 897 not limited to:

898 (a) Commission of a violation of this chapter ~~act~~ or rule
 899 adopted pursuant thereto.

900 (b) Failure to accurately account for lottery tickets,
 901 revenues, or prizes as required by the department.

902 (c) Commission of any fraud, deceit, or misrepresentation.

903 (d) Insufficient sale of tickets.

904 (e) Conduct prejudicial to public confidence in the
 905 lottery.

906 (f) Any material change in any matter considered by the
 907 department in executing the contract with the retailer.

908 (6) Every retailer shall post and keep conspicuously
 909 displayed in a location on the premises accessible to the public
 910 its certificate of authority and, with respect to each game, a
 911 statement supplied by the department or the concessionaire of
 912 the estimated odds of winning some prize for the game.

913 (7) No contract with a retailer shall authorize the sale
 914 of lottery tickets at more than one location, and a retailer may

915 | sell lottery tickets only at the location stated on the
 916 | certificate of authority.

917 | (8) If the department directly operates the lottery, with
 918 | respect to any retailer whose rental payments for premises are
 919 | contractually computed, in whole or in part, on the basis of a
 920 | percentage of retail sales, and where such computation of retail
 921 | sales is not explicitly defined to include sales of tickets in a
 922 | state-operated lottery, the compensation received by the
 923 | retailer from the department shall be deemed to be the amount of
 924 | the retail sale for the purposes of such contractual
 925 | compensation.

926 | (9) If the department directly operates the lottery:

927 | (a) The department may require every retailer to post an
 928 | appropriate bond as determined by the department, using an
 929 | insurance company acceptable to the department, in an amount not
 930 | to exceed twice the average lottery ticket sales of the retailer
 931 | for the period within which the retailer is required to remit
 932 | lottery funds to the department. For the first 90 days of sales
 933 | of a new retailer, the amount of the bond may not exceed twice
 934 | the average estimated lottery ticket sales for the period within
 935 | which the retailer is required to remit lottery funds to the
 936 | department. This paragraph shall not apply to lottery tickets
 937 | that ~~which~~ are prepaid by the retailer.

938 | (b) In lieu of such bond, the department may purchase
 939 | blanket bonds covering all or selected retailers or may allow a
 940 | retailer to deposit and maintain with the Chief Financial
 941 | Officer securities that are interest bearing or accruing and
 942 | that, with the exception of those specified in subparagraphs 1.

943 and 2., are rated in one of the four highest classifications by
 944 an established nationally recognized investment rating service.
 945 Securities eligible under this paragraph shall be limited to:

946 1. Certificates of deposit issued by solvent banks or
 947 savings associations organized and existing under the laws of
 948 this state or under the laws of the United States and having
 949 their principal place of business in this state.

950 2. United States bonds, notes, and bills for which the
 951 full faith and credit of the government of the United States is
 952 pledged for the payment of principal and interest.

953 3. General obligation bonds and notes of any political
 954 subdivision of the state.

955 4. Corporate bonds of any corporation that is not an
 956 affiliate or subsidiary of the depositor.

957

958 Such securities shall be held in trust and shall have at all
 959 times a market value at least equal to an amount required by the
 960 department.

961 (10) Every contract entered into by the department
 962 pursuant to this section shall contain a provision for payment
 963 of liquidated damages to the department for any breach of
 964 contract by the retailer.

965 (11) If the department directly operates the lottery, the
 966 department shall establish procedures by which each retailer
 967 shall account for all tickets sold by the retailer and account
 968 for all funds received by the retailer from such sales. The
 969 contract with each retailer shall include provisions relating to
 970 the sale of tickets, payment of moneys to the department,

971 reports, service charges, and interest and penalties, if
 972 necessary, as the department shall deem appropriate.

973 (12) If the department directly operates the lottery, no
 974 payment by a retailer to the department for tickets shall be in
 975 cash. All such payments shall be in the form of a check, bank
 976 draft, electronic fund transfer, or other financial instrument
 977 authorized by the secretary.

978 (13) Each retailer shall provide accessibility for
 979 disabled persons on habitable grade levels. This subsection does
 980 not apply to a retail location that ~~which~~ has an entrance door
 981 threshold more than 12 inches above ground level. As used herein
 982 and for purposes of this subsection only, the term
 983 "accessibility for disabled persons on habitable grade levels"
 984 means that retailers shall provide ramps, platforms, aisles and
 985 pathway widths, turnaround areas, and parking spaces to the
 986 extent these are required for the retailer's premises by the
 987 particular jurisdiction where the retailer is located.
 988 Accessibility shall be required to only one point of sale of
 989 lottery tickets for each lottery retailer location. The
 990 requirements of this subsection shall be deemed to have been met
 991 if, in lieu of the foregoing, disabled persons can purchase
 992 tickets from the retail location by means of a drive-up window,
 993 provided the hours of access at the drive-up window are not less
 994 than those provided at any other entrance at that lottery
 995 retailer location. Inspections for compliance with this
 996 subsection shall be performed by those enforcement authorities
 997 responsible for enforcement pursuant to s. 553.80 in accordance
 998 with procedures established by those authorities. Those

999 enforcement authorities shall provide to the Department of the
 1000 Lottery a certification of noncompliance for any lottery
 1001 retailer not meeting such requirements.

1002 (14) If the department directly operates the lottery, the
 1003 secretary may, after filing with the Department of State his or
 1004 her manual signature certified by the secretary under oath,
 1005 execute or cause to be executed contracts between the department
 1006 and retailers by means of engraving, imprinting, stamping, or
 1007 other facsimile signature.

1008 Section 12. Section 24.113, Florida Statutes, is amended
 1009 to read:

1010 24.113 Minority participation.--

1011 (1) It is the intent of the Legislature that the
 1012 department or the concessionaire, whichever is operating the
 1013 lottery, encourage participation by minority business
 1014 enterprises as defined in s. 288.703. Accordingly, 15 percent of
 1015 the retailers shall be minority business enterprises as defined
 1016 in s. 288.703(2); however, no more than 35 percent of such
 1017 retailers shall be owned by the same type of minority person, as
 1018 defined in s. 288.703(3). The department or the concessionaire
 1019 is encouraged to meet the minority business enterprise
 1020 procurement goals set forth in s. 287.09451 in the procurement
 1021 of commodities, contractual services, construction, and
 1022 architectural and engineering services. This section shall not
 1023 preclude or prohibit a minority person from competing for any
 1024 other retailing or vending agreement awarded by the department
 1025 or the concessionaire.

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1026 (2) The department or the concessionaire, whichever is
 1027 operating the lottery, shall ~~is directed to~~ undertake training
 1028 programs and other educational activities to enable minority
 1029 persons to compete for such contracts on an equal basis.

1030 Section 13. Section 24.114, Florida Statutes, is amended
 1031 to read:

1032 24.114 Bank deposits and control of lottery
 1033 transactions.--

1034 (1) If the department directly operates the lottery, all
 1035 moneys received by each retailer from the operation of the state
 1036 lottery, including, but not limited to, all ticket sales,
 1037 interest, gifts, and donations, less the amount retained as
 1038 compensation for the sale of the tickets and the amount paid out
 1039 as prizes, shall be remitted to the department or deposited in a
 1040 qualified public depository, as defined in s. 280.02, as
 1041 directed by the department. The department shall have the
 1042 responsibility for all administrative functions related to the
 1043 receipt of funds. The department may also require each retailer
 1044 to file with the department reports of the retailer's receipts
 1045 and transactions in the sale of lottery tickets in such form and
 1046 containing such information as the department may require. The
 1047 department may require any person, including a qualified public
 1048 depository, to perform any function, activity, or service in
 1049 connection with the operation of the lottery as it may deem
 1050 advisable pursuant to this chapter ~~act~~ and rules of the
 1051 department, and such functions, activities, or services shall
 1052 constitute lawful functions, activities, and services of such
 1053 person.

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1054 (2) If the department directly operates the lottery, the
 1055 department may require retailers to establish separate
 1056 electronic funds transfer accounts for the purpose of receiving
 1057 moneys from ticket sales, making payments to the department, and
 1058 receiving payments from the department.

1059 (3) If the department directly operates the lottery, each
 1060 retailer is liable to the department for any and all tickets
 1061 accepted or generated by any employee or representative of that
 1062 retailer, and the tickets shall be deemed to have been purchased
 1063 by the retailer unless returned to the department within the
 1064 time and in the manner prescribed by the department. All moneys
 1065 received by retailers from the sale of lottery tickets, less the
 1066 amount retained as compensation for the sale of tickets and the
 1067 amount paid out as prizes by the retailer, shall be held in
 1068 trust prior to delivery to the department or electronic transfer
 1069 to the Operating Trust Fund.

1070 Section 14. Section 24.115, Florida Statutes, is amended
 1071 to read:

1072 24.115 Payment of prizes.--

1073 (1) If the department directly operates the lottery, the
 1074 department shall promulgate rules to establish a system of
 1075 verifying the validity of tickets claimed to win prizes and to
 1076 effect payment of such prizes; however, the following shall
 1077 apply whether the lottery is operated directly by the department
 1078 or through a concessionaire:

1079 (a) The right of any person to a prize, other than a prize
 1080 that is payable in installments over time, is not assignable.
 1081 However, any prize, to the extent that it has not been assigned

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1082 or encumbered pursuant to s. 24.1153, may be paid to the estate
 1083 of a deceased prize winner or to a person designated pursuant to
 1084 an appropriate court order. A prize that is payable in
 1085 installments over time is assignable, but only pursuant to an
 1086 appropriate court order as provided in s. 24.1153.

1087 (b) No prize shall be paid to any person under the age of
 1088 18 years unless the winning ticket was lawfully purchased and
 1089 made a gift to the minor. In such case, the department or the
 1090 concessionaire, if the concessionaire operates the lottery,
 1091 shall direct payment to an adult member of the minor's family or
 1092 the legal guardian of the minor as custodian for the minor. The
 1093 person named as custodian shall have the same powers and duties
 1094 as prescribed for a custodian pursuant to chapter 710, the
 1095 Florida Uniform Transfers to Minors Act.

1096 (c) No prize may be paid arising from claimed tickets that
 1097 are stolen, counterfeit, altered, fraudulent, unissued, produced
 1098 or issued in error, unreadable, not received or not recorded by
 1099 the department or the concessionaire, if the concessionaire
 1100 operates the lottery, by applicable deadlines, lacking in
 1101 captions that confirm and agree with the lottery play symbols as
 1102 appropriate to the lottery game involved, or not in compliance
 1103 with such additional specific rules and public or confidential
 1104 validation and security tests of the department or the
 1105 concessionaire, if the concessionaire operates the lottery,
 1106 appropriate to the particular lottery game involved.

1107 (d) No particular prize in any lottery game may be paid
 1108 more than once, and in the event of a binding determination that
 1109 more than one claimant is entitled to a particular prize, the

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1110 sole remedy of such claimants is the award to each of them of an
 1111 equal share in the prize.

1112 (e) For the convenience of the public, retailers may be
 1113 authorized to pay winners amounts less than \$600 after
 1114 performing validation procedures on their premises appropriate
 1115 to the lottery game involved.

1116 (f) Holders of tickets shall have the right to claim
 1117 prizes for 180 days after the drawing or the end of the lottery
 1118 game or play in which the prize was won; except that with
 1119 respect to any game in which the player may determine instantly
 1120 if he or she has won or lost, such right shall exist for 60 days
 1121 after the end of the lottery game. If a valid claim is not made
 1122 for a prize within the applicable period, the prize shall
 1123 constitute an unclaimed prize for purposes of subsection (2).

1124 (g) No prize shall be paid upon a ticket purchased or sold
 1125 in violation of this chapter ~~act~~ or to any person who is
 1126 prohibited from purchasing a lottery ticket pursuant to this
 1127 chapter ~~act~~. Any such prize shall constitute an unclaimed prize
 1128 for purposes of subsection (2).

1129 (2) (a) Eighty percent of all unclaimed prize money shall
 1130 be deposited in the Educational Enhancement Trust Fund
 1131 consistent with the provisions of s. 24.121(2). Subject to
 1132 appropriations provided in the General Appropriations Act, these
 1133 funds may be used to match private contributions received under
 1134 the postsecondary matching grant programs established in ss.
 1135 1011.32, 1011.85, 1011.94, and 1013.79.

1136 (b) The remaining 20 percent of unclaimed prize money
 1137 shall be added to the pool from which future prizes are to be
 1138 awarded or used for special prize promotions.

1139 (3) The department or the concessionaire, if the
 1140 concessionaire operates the lottery, shall be discharged of all
 1141 liability upon payment of a prize.

1142 (4) It is the responsibility of the appropriate state
 1143 agency and of the judicial branch to identify to the department
 1144 or the concessionaire, in the form and format prescribed by the
 1145 department or the concessionaire, persons owing an outstanding
 1146 debt to any state agency or owing child support collected
 1147 through a court, including spousal support or alimony for the
 1148 spouse or former spouse of the obligor if the child support
 1149 obligation is being enforced by the Department of Revenue. Prior
 1150 to the payment of a prize of \$600 or more to any claimant having
 1151 such an outstanding obligation, the department or the
 1152 concessionaire shall transmit the amount of the debt to the
 1153 agency claiming the debt and shall authorize payment of the
 1154 balance to the prize winner after deduction of the debt. If a
 1155 prize winner owes multiple debts subject to offset under this
 1156 subsection and the prize is insufficient to cover all such
 1157 debts, the amount of the prize shall be transmitted first to the
 1158 agency claiming that past due child support is owed. If a
 1159 balance of lottery prize remains after payment of past due child
 1160 support, the remaining lottery prize amount shall be transmitted
 1161 to other agencies claiming debts owed to the state, pro rata,
 1162 based upon the ratio of the individual debt to the remaining
 1163 debt owed to the state.

1164 Section 15. Section 24.1153, Florida Statutes, is amended
 1165 to read:

1166 24.1153 Assignment of prizes payable in installments.--

1167 (1) The right of any person to receive payments under a
 1168 prize that is paid in installments over time by the department
 1169 or the concessionaire may be voluntarily assigned, in whole or
 1170 in part, if the assignment is made to a person or entity
 1171 designated pursuant to an order of a court of competent
 1172 jurisdiction located in the judicial district where the
 1173 assigning prize winner resides or where the headquarters of the
 1174 department is located or where in the state the headquarters of
 1175 the concessionaire is located. A court may issue an order
 1176 approving a voluntary assignment and directing the department or
 1177 the concessionaire to make prize payments in whole or in part to
 1178 the designated assignee, if the court finds that all of the
 1179 following conditions have been met:

1180 (a) The assignment is in writing, is executed by the
 1181 assignor, and is, by its terms, subject to the laws of this
 1182 state.

1183 (b) The purchase price being paid for the payments being
 1184 assigned represents a present value of the payments being
 1185 assigned, discounted at an annual rate that does not exceed the
 1186 state's usury limit for loans.

1187 (c) The assignor provides a sworn affidavit attesting that
 1188 he or she:

1189 1. Is of sound mind, is in full command of his or her
 1190 faculties, and is not acting under duress;

1191 2. Has been advised regarding the assignment by his or her
 1192 own independent legal counsel, who is unrelated to and is not
 1193 being compensated by the assignee or any of the assignee's
 1194 affiliates, and has received independent financial or tax advice
 1195 concerning the effects of the assignment from a lawyer or other
 1196 professional who is unrelated to and is not being compensated by
 1197 the assignee or any of the assignee's affiliates;

1198 3. Understands that he or she will not receive the prize
 1199 payments or portions thereof for the years assigned;

1200 4. Understands and agrees that with regard to the assigned
 1201 payments the department or the concessionaire and its officials
 1202 and employees will have no further liability or responsibility
 1203 to make the assigned payments to him or her;

1204 5. Has been provided with a one-page written disclosure
 1205 statement setting forth, in bold type of not less than 14
 1206 points, the payments being assigned, by amounts and payment
 1207 dates; the purchase price being paid; the rate of discount to
 1208 present value, assuming daily compounding and funding on the
 1209 contract date; and the amount, if any, of any origination or
 1210 closing fees that will be charged to him or her; and

1211 6. Was advised in writing, at the time he or she signed
 1212 the assignment contract, that he or she had the right to cancel
 1213 the contract, without any further obligation, within 3 business
 1214 days following the date on which the contract was signed.

1215 (d) Written notice of the proposed assignment and any
 1216 court hearing concerning the proposed assignment is provided to
 1217 the department's or the concessionaire's counsel at least 10
 1218 days prior to any court hearing. The department or the

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1219 concessionaire is not required to appear in or be named as a
 1220 party to any such action seeking judicial confirmation of an
 1221 assignment under this section, but may intervene as of right in
 1222 any such proceeding.

1223 (2) A certified copy of a court order approving a
 1224 voluntary assignment must be provided to the department or the
 1225 concessionaire no later than 14 days before the date on which
 1226 the payment is to be made.

1227 (3) In accordance with the provisions of s. 24.115(4), a
 1228 voluntary assignment may not include or cover payments or
 1229 portions of payments that are subject to offset on account of a
 1230 defaulted or delinquent child support obligation or on account
 1231 of a debt owed to a state agency. Each court order issued under
 1232 subsection (1) shall provide that any delinquent child support
 1233 obligations of the assigning prize winner and any debts owed to
 1234 a state agency by the assigning prize winner, as of the date of
 1235 the court order, shall be offset by the department or the
 1236 concessionaire first against remaining payments or portions
 1237 thereof due the prize winner and then against payments due the
 1238 assignee.

1239 (4) The department or the concessionaire, and its
 1240 respective officials and employees, shall be discharged of all
 1241 liability upon payment of an assigned prize under this section.

1242 (5) The department or the concessionaire may establish a
 1243 reasonable fee to defray any administrative expenses associated
 1244 with assignments made under this section, including the cost to
 1245 the department or the concessionaire of any processing fee that
 1246 may be imposed by a private annuity provider. The fee amount

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1247 shall reflect the direct and indirect costs associated with
 1248 processing such assignments.

1249 (6) If at any time the Internal Revenue Service or a court
 1250 of competent jurisdiction issues a determination letter, revenue
 1251 ruling, other public ruling of the Internal Revenue Service, or
 1252 published decision to any state lottery or prize winner of any
 1253 state lottery declaring that the voluntary assignment of prizes
 1254 will affect the federal income tax treatment of prize winners
 1255 who do not assign their prizes, the secretary of the department
 1256 shall immediately file a copy of that letter, ruling, or
 1257 published decision with the Secretary of State and the Office of
 1258 the State Courts Administrator. A court may not issue an order
 1259 authorizing a voluntary assignment under this section after the
 1260 date any such ruling, letter, or published decision is filed.

1261 Section 16. Section 24.117, Florida Statutes, is amended
 1262 to read:

1263 24.117 Unlawful sale of lottery tickets; penalty.--Any
 1264 person who knowingly:

1265 (1) Sells a state lottery ticket when not authorized by
 1266 the department or this chapter ~~act~~ to engage in such sale;

1267 (2) Sells a state lottery ticket to a minor; or

1268 (3) If the department directly operates the lottery, sells
 1269 a state lottery ticket at any price other than that established
 1270 by the department;

1271

1272 ~~commits is guilty of~~ a misdemeanor of the first degree,
 1273 punishable as provided in s. 775.082 or s. 775.083.

1274 Section 17. Subsections (4) and (5) of section 24.118,
 1275 Florida Statutes, are amended to read:

1276 24.118 Other prohibited acts; penalties.--

1277 (4) BREACH OF CONFIDENTIALITY.--Any person who, with
 1278 intent to defraud or with intent to provide a financial or other
 1279 advantage to himself, herself, or another, knowingly and
 1280 willfully discloses any information relating to the lottery
 1281 designated as confidential and exempt from the provisions of s.
 1282 119.07(1) pursuant to this chapter commits ~~act is guilty of~~ a
 1283 felony of the first degree, punishable as provided in s.
 1284 775.082, s. 775.083, or s. 775.084.

1285 (5) UNLAWFUL REPRESENTATION.--

1286 (a) Any person who uses point-of-sale materials issued by
 1287 the department or the concessionaire or otherwise holds himself
 1288 or herself out as a retailer without being authorized by the
 1289 department or the concessionaire to act as a retailer commits is
 1290 ~~guilty of~~ a misdemeanor of the first degree, punishable as
 1291 provided in s. 775.082 or s. 775.083.

1292 (b) Any person who without being authorized by the
 1293 department or the concessionaire in writing uses the term
 1294 "Florida Lottery," "State Lottery," "Florida State Lottery," or
 1295 any similar term in the title or name of any charitable or
 1296 commercial enterprise, product, or service commits is ~~guilty of~~
 1297 a misdemeanor of the first degree, punishable as provided in s.
 1298 775.082 or s. 775.083.

1299 Section 18. Subsections (1) and (2) of section 24.120,
 1300 Florida Statutes, are amended to read:

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1301 24.120 Financial matters; Operating Trust Fund;
 1302 interagency cooperation.--

1303 (1) There is hereby created in the State Treasury an
 1304 Operating Trust Fund to be administered in accordance with
 1305 chapters 215 and 216 by the department. If the department
 1306 directly operates the lottery, all money received by the
 1307 department which remains after payment of prizes and initial
 1308 compensation paid to retailers shall be deposited into the
 1309 Operating Trust Fund. All moneys in the trust fund are
 1310 appropriated to the department for the purposes specified in
 1311 this chapter act.

1312 (2) Moneys available for the payment of prizes awarded by
 1313 the department in its direct operation of the lottery on a
 1314 deferred basis shall be invested by the State Board of
 1315 Administration in accordance with a trust agreement approved by
 1316 the secretary and entered into between the department and the
 1317 State Board of Administration in accordance with ss. 215.44-
 1318 215.53. The investments authorized by this subsection shall be
 1319 done in a manner designed to preserve capital and to ensure the
 1320 integrity of the lottery disbursement system by eliminating the
 1321 risk of payment of funds when due and to produce equal annual
 1322 sums of money over the required term of the investments.

1323 Section 19. Subsections (1), (2), and (3) of section
 1324 24.121, Florida Statutes, are amended to read:

1325 24.121 Allocation of revenues and expenditure of funds for
 1326 public education.--

1327 (1) If the department directly operates the lottery,
 1328 variable percentages of the gross revenue from the sale of

1329 | online and instant lottery tickets shall be returned to the
 1330 | public in the form of prizes paid by the department or retailers
 1331 | as authorized by this chapter ~~act~~. The variable percentages of
 1332 | gross revenue from the sale of online and instant lottery
 1333 | tickets returned to the public in the form of prizes shall be
 1334 | established by the department in a manner designed to maximize
 1335 | the amount of funds deposited under subsection (2).

1336 | (2) Each fiscal year, if the department directly operates
 1337 | the lottery, variable percentages of the gross revenue from the
 1338 | sale of online and instant lottery tickets as determined by the
 1339 | department consistent with subsection (1), and other earned
 1340 | revenue, excluding application processing fees, shall be
 1341 | deposited in the Educational Enhancement Trust Fund, which is
 1342 | hereby created in the State Treasury to be administered by the
 1343 | Department of Education. If the department operates the lottery
 1344 | through a concession agreement, the proceeds to the department
 1345 | from the concession agreement shall be deposited in the
 1346 | Educational Enhancement Trust Fund, with, at minimum, the
 1347 | greater of \$400 million or one-third of the funds deposited into
 1348 | the trust fund to be allocated the Florida Bright Futures
 1349 | Scholarship Program. The Department of the Lottery shall
 1350 | transfer moneys to the Educational Enhancement Trust Fund at
 1351 | least once each quarter. Funds in the Educational Enhancement
 1352 | Trust Fund shall be used to the benefit of public education in
 1353 | accordance with the provisions of this chapter ~~act~~.
 1354 | Notwithstanding any other provision of law, lottery revenues
 1355 | transferred to the Educational Enhancement Trust Fund shall be
 1356 | reserved as needed and used to meet the requirements of the

1357 documents authorizing the bonds issued by the state pursuant to
 1358 s. 1013.68, s. 1013.70; or s. 1013.737 or distributed to school
 1359 districts for the Classrooms First Program as provided in s.
 1360 1013.68. Such lottery revenues are hereby pledged to the payment
 1361 of debt service on bonds issued by the state pursuant to s.
 1362 1013.68, s. 1013.70, or s. 1013.737. Debt service payable on
 1363 bonds issued by the state pursuant to s. 1013.68, s. 1013.70, or
 1364 s. 1013.737 shall be payable from, and is secured by a first
 1365 lien on, the first lottery revenues transferred to the
 1366 Educational Enhancement Trust Fund in each fiscal year. Amounts
 1367 distributable to school districts that request the issuance of
 1368 bonds pursuant to s. 1013.68(3) are hereby pledged to such bonds
 1369 pursuant to s. 11(d), Art. VII of the State Constitution.

1370 (3) The funds remaining in the Operating Trust Fund after
 1371 transfers to the Educational Enhancement Trust Fund shall be
 1372 used for the payment of administrative expenses of the
 1373 department. These expenses shall include all costs incurred in
 1374 the department's direct operation and administration of the
 1375 lottery or the concession agreement and all costs resulting from
 1376 any contracts entered into for the purchase or lease of goods or
 1377 services required by the lottery, including, but not limited to:

- 1378 (a) The compensation paid to retailers;
- 1379 (b) The costs of supplies, materials, tickets, independent
 1380 audit services, independent studies, data transmission,
 1381 advertising, promotion, incentives, public relations,
 1382 communications, security, bonding for retailers, printing,
 1383 distribution of tickets, and reimbursing other governmental
 1384 entities for services provided to the lottery; and

1385 (c) The costs of any other goods and services necessary
 1386 for effectuating the purposes of this chapter act.

1387 Section 20. Section 24.122, Florida Statutes, is amended
 1388 to read:

1389 24.122 Exemption from taxation; state preemption;
 1390 inapplicability of other laws.--

1391 (1) This chapter act shall not be construed to authorize
 1392 any lottery except the lottery operated by the department or the
 1393 concessionaire under ~~pursuant to~~ this chapter act.

1394 (2) No state or local tax shall be imposed upon any prize
 1395 paid or payable under this chapter act or upon the sale of any
 1396 lottery ticket pursuant to this chapter act.

1397 (3) All matters relating to the operation of the state
 1398 lottery are preempted to the state, and no county, municipality,
 1399 or other political subdivision of the state shall enact any
 1400 ordinance relating to the operation of the lottery authorized by
 1401 this chapter act. However, this subsection shall not prohibit a
 1402 political subdivision of the state from requiring a retailer to
 1403 obtain an occupational license for any business unrelated to the
 1404 sale of lottery tickets.

1405 (4) Any state or local law providing any penalty,
 1406 disability, restriction, or prohibition for the possession,
 1407 manufacture, transportation, distribution, advertising, or sale
 1408 of any lottery ticket, including chapter 849, shall not apply to
 1409 the tickets of the state lottery operated pursuant to this
 1410 chapter act; nor shall any such law apply to the possession of a
 1411 ticket issued by any other government-operated lottery. In

1412 addition, activities of the department under this chapter ~~act~~
 1413 are exempt from the provisions of:

1414 (a) Chapter 616, relating to public fairs and expositions.

1415 (b) Chapter 946, relating to correctional work programs.

1416 (c) Chapter 282, relating to communications and data
 1417 processing.

1418 (d) Section 110.131, relating to other personal services.

1419 Section 21. Section 24.123, Florida Statutes, is amended
 1420 to read:

1421 24.123 Annual audit of financial records and reports.--

1422 (1) The Legislative Auditing Committee shall contract with
 1423 a certified public accountant licensed pursuant to chapter 473
 1424 for an annual financial audit of the department. The certified
 1425 public accountant shall have no financial interest in any vendor
 1426 or concessionaire with whom the department is under contract.

1427 The certified public accountant shall present an audit report no
 1428 later than 7 months after the end of the fiscal year and shall
 1429 make recommendations to enhance the earning capability of the
 1430 state lottery or the concession agreement and to improve the
 1431 efficiency of department operations. The certified public
 1432 accountant shall also perform a study and evaluation of internal
 1433 accounting controls and shall express an opinion on those
 1434 controls in effect during the audit period. The cost of the
 1435 annual financial audit shall be paid by the department.

1436 (2) The Auditor General may at any time conduct an audit
 1437 of any phase of the operations of the state lottery or the
 1438 concession agreement and shall receive a copy of the yearly

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1439 independent financial audit and any security report prepared
 1440 pursuant to s. 24.108.

1441 (3) A copy of any audit performed pursuant to this section
 1442 shall be submitted to the secretary, the Governor, the President
 1443 of the Senate, the Speaker of the House of Representatives, and
 1444 members of the Legislative Auditing Committee.

1445 Section 22. Section 24.124, Florida Statutes, is amended
 1446 to read:

1447 24.124 Responsibility for ticket accuracy; department,
 1448 retailer, and vendor liability.--

1449 (1) If the department directly operates the lottery,
 1450 purchasers of online games tickets shall be responsible for
 1451 verifying the accuracy of their tickets, including the number or
 1452 numbers printed on the tickets. In the event of an error, the
 1453 ticket may be canceled and a replacement ticket issued pursuant
 1454 to rules promulgated by the department ~~of the Lottery.~~

1455 (2) If the department directly operates the lottery, other
 1456 than the issuance of a replacement ticket, there shall be no
 1457 right or cause of action and no liability on the part of the
 1458 department, retailer, vendor, or any other person associated
 1459 with selling an online games ticket, with respect to errors or
 1460 inaccuracies contained in the ticket, including errors in the
 1461 number or numbers printed on the ticket.

1462 Section 23. This act shall take effect January 1, 2009.

