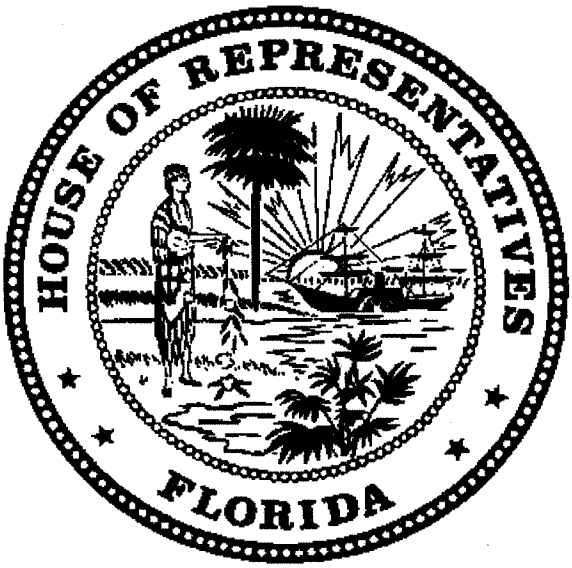

Government Operations Appropriations Subcommittee

Wednesday April 10, 2013
9:00 AM – 11:00 AM
Morris Hall (17 HOB)

MEETING PACKET

Will Weatherford
Speaker

Clay Ingram
Chair

The Florida House of Representatives

Appropriations Committee

Government Operations Appropriations Subcommittee

Will Weatherford
Speaker

Clay Ingram
Chair

April 10, 2013

AGENDA
9:00 AM – 11:00 AM
Morris Hall

I. Call to Order/Roll Call

II. CS/HB 217 Money Services Businesses by Rep. Cummings

III. CS/HB1107 Florida Hurricane Catastrophe Fund by Rep. Hager

IV. CS/HB 1145 State-Owned or State-Leased Space by Rep. La Rosa

V. CS/HB 1225 Administrative Procedures by Rep. Adkins

VI. CS/HB 1247 Public Model for Hurricane Loss Projections by Rep. Nunez

VII. Closing/Adjourn

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850)717-4813 Fax: (850)488-9633

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 217 Money Services Businesses
SPONSOR(S): Insurance & Banking; Cummings
TIED BILLS: **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 2 N, As CS	Bauer	Cooper
2) Government Operations Appropriations Subcommittee		Keith AK	Topp BT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates Chapter 560, F.S., the Money Services Businesses Act (the Act), which covers payment instrument sellers, check cashers, foreign currency exchangers, and deferred presentment providers. Currently, licensed check cashers are required to maintain specified records, such as copies of all checks cashed, and for checks exceeding $1,000, certain transactional data in an electronic log. These records are reviewed as part of OFR's examination authority under the Act.

In 2011, the Chief Financial Officer convened a work group of regulators (including the OFR), law enforcement, and industry stakeholders to study the issue of workers' compensation premium fraud, with particular regard to the role that check cashers play in facilitating the fraudulent schemes. The work group made a number of findings and recommendations, including the establishment of a statewide, real-time database for regulators and law enforcement to quickly and effectively detect and deter workers' compensation premium fraud. The work group recommended that the database interface with the Secretary of State's database for verifying corporate registration records and with the Department of Financial Services' database for verifying workers' compensation coverage.

Currently, the Act requires deferred presentment providers (DPPs; commonly known as payday lenders) to use a database that is maintained by a service provider contracted with OFR. This database enables DPPs to comply with the Act's prohibition against entering into a deferred presentment agreement with a customer if the customer already has an outstanding deferred presentment agreement, or terminated an agreement within less than 24 hours. The Act specifies that DPPs can charge $1 for each transaction, which partly supports the operation and maintenance of the database and partly supports the OFR's regulatory functions.

The bill requires OFR to oversee the creation of a check-cashing database, and defines "database" to mean a common database with the DPP database. The bill specifies that up to a $0.25 of every $1 DPP transaction fee collected may be used to support this database, and requires check cashers to enter specified transactional information into the database. The bill grants authority to the Financial Services Commission to adopt rules to implement the bill.

The bill has a significant negative fiscal impact on state government. The bill would result in the loss of an estimated $1.9 million in revenue currently deposited on an annual basis into the OFR's Regulatory Trust Fund. The OFR also lacks sufficient appropriation to fund the cost of the operation and maintenance for the newly created check-cashing database. In addition, the OFR indicates a need for $323,930 for 5.00 FTE relating to workload associated with the new database. There may be an indirect positive impact on the private sector as a result of simplified recordkeeping.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Office of Financial Regulation ("OFR" or "the Office") regulates and licenses a wide range of entities and individuals in the banking, securities, and consumer finance industries. Chapter 560, Florida Statutes, is the Money Services Business Act ("the Act"), which the OFR is responsible for administering and enforcing. The Act consists of four parts: (I) general provisions, (II) payment instruments and funds transmission; (III) check cashing and foreign currency exchange; and (IV) deferred presentment. The Act does not apply to state and federally chartered banks, credit unions, trust companies, and other financial depository institutions, nor does it apply to the sovereign.[1] Part I of the Act gives supervisory, licensing, and enforcement authority to the OFR, and authorizes the OFR's rulemaking body, the Financial Services Commission, to adopt rules to implement the Act's requirements regarding books and records, examinations, forms, and fees.

Money services businesses ("MSBs") are persons who act as one or more of the following:

- Part II:
  - *Payment instrument seller*: a qualified entity that sells instruments like checks, money orders, and travelers checks. Payment instruments do not include gift cards, credit card vouchers, and letters of credit.
  - *Money transmitter*: a qualified entity that receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means to, within, or from the U.S.

- Part III:
  - *Foreign currency exchanger*: a person who exchanges currency of one country to that of another for compensation.
  - *Check casher*: a person who sells currency in exchange for payment instruments received, excluding travelers checks.

- Part IV:
  - *Deferred presentment provider ("DPP", commonly known as payday lenders):* DPPs are a MSB designation, not a separate license. DPPs are persons licensed under part II or part III of the Act, and have filed a declaration of intent with the OFR to engage in *deferred presentment transactions*, which means providing currency or a payment instrument in exchange for a customer's check and agreeing to hold the check for a deferment period.

According to the OFR, these are the number of licensees, categorized by license type:[2]

Part II	163 licensees
Part III	1,133 licensees
Part IV	162 total declarations of intent[3] • 21 DPPs are licensed under Part II • 141 DPPs are licensed under Part III

[1] Section 560.104, F.S.

[2] Information from the OFR (February 25, 2013), on file with the Insurance & Banking Subcommittee staff. It should be noted that MSBs may also designate branches and authorized vendor locations under their Part II or Part III licenses, pursuant to s. 560.141, F.S. More information on those numbers can be found at OFR Money Services Business Statistics: http://www.flofr.com/PDFs/mtstats.pdf

[3] Information provided by the OFR (March 11, 2013), on file with the Insurance & Banking Subcommittee staff.

The Office's MSB program is self-sustaining in that the operating revenues come from the regulated entities and individuals. License application and renewal fees, administrative fines, and other fees, costs, or penalties provided for in the Act are deposited into the OFR's Regulatory Trust Fund, which is used to pay the costs of the OFR as necessary to carry out its responsibilities under the Act.[4]

2012 Legislation – CS/HB 1277 as a Response to Workers' Compensation Fraud

In 2011, the Chief Financial Officer convened the Money Service Business Facilitated Workers' Comp Fraud Work Group ("Work Group") to study the issue of workers' compensation premium fraud in Florida, as facilitated by check cashers, and to develop recommendations to resolve the issue. It was comprised of representatives from state government and industry stakeholders. A report containing the work group's findings and recommendations is available online[5].

A typical fraud scheme involves a facilitator's creation of a fake shell company and purchase of a minimal workers' compensation insurance policy in the name of the shell company. The facilitator then "rents" the shell company's name and workers' compensation insurance policy to uninsured subcontractors, who are otherwise unable to find work without the workers' comp insurance. After the subcontractor completes work under the guise of the shell company, the general contractor pays the subcontractor wages with a company check made payable to the shell company. However, most banks generally do not cash checks made out to businesses or third parties, but rather will require that the check be deposited into the payee's bank account. Thus, the subcontractors take their checks to nonbank check cashers, who, until 2012, could cash third-party business-to-business checks by certain persons "authorized" by the payee.

As part of the scheme, check cashers would withhold two fees from the checks: (1) a fee for cashing the check, usually between 1.5% to 2%, and (2) a fee between 6% to 8% for the facilitator's "rent" of the shell company and workers' comp insurance policy. The balance would then be paid in cash to the subcontractor under the guise of the shell company.

The resulting unreported payroll taxes, unreported premium taxes, and higher costs to insurance carriers who must process workers' comp claims from uninsured workers adversely impact law-abiding businesses, which absorb the resulting costs of this fraud. In addition, the Work Group estimated that this fraud costs the state up to $1 billion annually.

In 2012, the Florida Legislature enacted CS/HB 1277, an act relating to money services businesses.[6] The bill provided for prevention of workers' compensation premium fraud, and specifically addresses the role played by unscrupulous check cashers. CS/HB 1277, which became effective July 1, 2012, made the following changes to the Act:

- Eliminated the requirement that the OFR provide a 15-day advance notice to MSB licensees prior to conducting an examination or investigation;
- Eliminated the requirement that the OFR conduct an initial examination of a MSB within 6 months of the MSB obtaining a license, while retaining the requirement that each MSB be examined at least once every five years;
- Required check cashers to deposit payment instruments into its own commercial account at a federal insured financial institution, which licensees must maintain as a licensure requirement and must notify the OFR if such account is closed;
- Authorized the OFR to take administrative action against a check casher if it fails to maintain a depository account in its own name or fails to deposit all payment instruments into its own account.

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[4] Section 560.144, F.S.

[5] Money Service Business Workers' Comp Fraud Work Group, http://www.myfloridacfo.com/sitepages/agency/sections/moneyservicebusiness.aspx (last accessed February 26, 2013).

[6] CS/1277 was codified at Ch. 2012-85, L.O.F.

- Defined "fraudulent identification paraphernalia" and specifies that possession and use of fraudulent identification paraphernalia is a prohibited act punishable as a felony of the third degree.
- Stated that a check casher may only accept or cash a payment instrument from the original payee or a customer who is an authorized officer of the corporate payee name on the instrument's face. Acceptance and cashing of third-party checks is no longer authorized.
- Codified a maximum $5 fee to customers, currently established by rule, which is linked to the direct of verifying such things as a customer's identity or employment.

Current Situation

One of the Work Group's recommendations, which was not implemented in the 2012 legislation, was to create a statewide, real-time, online database for check-cashing transactions above $1,000 to facilitate the flow of information between check cashers, the OFR, and the Department of Financial Services' Division of Workers' Compensation and Division of Insurance Fraud. As the Work Group noted, it is critical to have coordinated, real-time data to quickly identify and target persons engaged in violations of the Code or other unlawful activity the fraud is occurring, instead of retracing the fraud after the fact. One illustration of this necessity is the generally brief life span of the shell corporations, which the perpetrators may form and dissolve in attempts to evade regulators and law enforcement.

Currently, the Act requires check cashers to maintain records of all payment instruments cashed, and for payment instruments of $1,000 or more, are required to maintain an electronic log of payment instruments accepted, which includes the following information at a minimum:[7]

- Transaction date,
- Payor name,
- Payee name,
- Conductor name, if other than the payee,
- Amount of payment instrument,
- Amount of currency provided,
- Type of payment instrument (personal, payroll, government, corporate, third-party, or other),
- Fees charged for the cashing of the payment instrument,
- Branch or location where the instrument was accepted, and
- Identification type and number presented by the customer.

Check cashers must maintain this information in an electronic format that is "readily retrievable and capable of being exported to most widely available software applications including Microsoft EXCEL." This information is reviewed during the OFR's examination process. However, as concluded by the Work Group, that information could serve a more proactive and efficient purpose if it were accessible to the other regulatory and law enforcement groups in a real-time database.

Deferred Presentment Transaction Database

Currently, the Act requires DPPs to utilize an online database with real-time access.[8] DPPs are required to submit specified transactional data into the database. The database enables DPPs to comply with the Act's prohibition against entering into a deferred presentment transaction if a borrower already has an outstanding deferred presentment transaction or terminated any transaction within the previous 24 hours.[9] As stated in s. 560.408, F.S., the legislative intent of Part IV is "to prevent fraud, abuse, and other unlawful activity associated with deferred presentment transactions in part by: (1) Providing for sufficient regulatory authority

[7] Section 560.310, F.S. and Rule 69V-560.704, F.A.C. In addition, the federal Bank Secrecy Act and U.S. Treasury regulations require financial institutions, including MSBs, to file currency transaction reports for any cash transaction over *$10,000* a day. 31 U.S.C. §§ 5311-5330 and 31 C.F.R. § 103.22. Section 560.123, F.S. requires MSBs to comply with these CTR requirements.
[8] State of Florida Deferred Presentment Transaction System, https://www.fladpp.com/ (last accessed February 26, 2013). The DPP legislation was enacted in 2001, codified at Ch. 2001-119, L.O.F
[9] Section 560.404(19), F.S.

and resources to monitor deferred presentment transactions. (2) Preventing rollovers.[10] (3) Regulating the allowable fees charged in connection with a deferred presentment transaction."

The OFR (and its predecessor agency, the Department of Banking and Finance) has contracted with Veritec Solutions, LLC, to develop and maintain the DPP database.[11] There was no initial development cost for the DPP database, but Veritec recovered the cost over the term of the initial contract and over subsequent renewals.[12]

The Act also authorizes the Financial Services Commission to impose, by rule, a fee of up to $1 per transaction for the data that DPPs are required to submit.[13] The Commission rule states that the database transaction fee shall be $1.00 per transaction, and each DPP will be assessed this fee for each transaction registered and recorded on the database. The rule also states that the database vendor (Veritec) shall collect all transaction fees on behalf of the OFR.

The DPP database generates between $7.2 million to $7.6 million in total fee revenue annually. The current DPP contract (between Veritec and the OFR) gives Veritec 41 cents for every dollar collected to manage the DPP database, leaving the remaining 59 cents to go into the OFR's Regulatory Trust Fund.[14] Assuming revenue of $7.6 million for the DPP database, OFR receives $4.48 million and Veritec receives $3.12 million annually.[15] According to information from the OFR, the Regulatory Trust Fund supports the operation of the OFR's Division of Consumer Finance, which includes the MSB program, as well as the other program areas of mortgage brokering and lending, consumer finance lending, retail installment sales finance, title loans, and collection agencies. The Division of Consumer Finance includes licensing, enforcement, and legal staff, who provide services for all of these regulatory programs.[16]

The Act does not require a specific DPP license, but does require a money service business to be licensed either under Part II (payment instrument issuers and funds transmitters) or Part III (check cashers and foreign currency exchangers), and to file a declaration of intent to act as a DPP.[17]

Currently, 142 licensed check cashers are authorized to act as DPPs, and thus are already using the DPP database.[18]

Effect of HB 217

HB 217 requires check cashers to enter specified transactional information into a real-time, online database for payment instruments exceeding $1,000. The transactional information is substantially similar to what check cashers are currently required to maintain in electronic logs. The bill requires the OFR to oversee the shared database, which would interface with databases maintained by DFS

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[10] Section 560.402(6), F.S. defines a "rollover" as the termination or extension of a deferred presentment agreement by the payment of an additional fee and the continued holding of the check, or the substitution of a new check by the drawer pursuant to a new deferred presentment agreement. Rollovers occur when the customer is unable to redeem a check and has insufficient funds on deposit to cover the check if present, and so negotiates an extension by paying additional fees. Because this practice can implicate violations of interest rate caps, rollovers are prohibited by s. 560.404(18), F.S.

[11] About Veritec Solutions, https://www.veritecs.com/About.aspx (last accessed February 26, 2013). Veritec also provides database services to 13 other states with similar DPP laws.

[12] Information provided by the OFR (dated March 8, 2013), on file with the Insurance & Banking Subcommittee staff.

[13] Rule 69V-560.910, F.A.C.

[14] Information provided by the OFR (dated February 8, 2013), on file with the Insurance & Banking Subcommittee staff.

[15] It is noted that the current DPP contract between Veritec and OFR is currently in renegotiation. According to the OFR, the parties have until August or September of this year to finalize renegotiations

[16] Information provided by OFR, on file with the Insurance & Banking Subcommittee staff.

[17] Section 560.403, F.S.

[18] See footnote 2 above.

database for purposes of determining proof of coverage for workers' compensation[19] and by the Secretary of State[20] for purposes of verifying corporate registration and articles of incorporation. The bill creates a definition of "database" in Part I of the Act (general provisions) to mean the common database already implemented by s. 560.404(23), F.S., i.e., the DPP database. "Database" appears in the bill's new requirements for check cashers, and thus contemplates that check cashers and DPPs would be using one database to enter their respective transactional data. As discussed above, the functions of the DPP database differ from the Work Group's recommendations for a check casher database. The DPP database was implemented to enable DPPs to enter queries into customers' transactions to avoid multiple outstanding payday loans. This bill's database requirements for check cashers, on the other hand, enable regulators to enter queries into check cashing data and to compare it against corporate registration and workers' comp policy information for possible workers' comp fraud.

The bill provides that the database would be funded by a portion of the existing DPP database fee. Specifically, up to 25 cents of each $1 DPP transaction fee, collected on each DPP transaction, may be used for data required to be submitted by a licensees for purposes of the operation and maintenance of the database. Since the OFR and Veritec already have a contractual split of the $1 DPP fee, the bill would alter the current 59/41 fee split between OFR and Veritec, the $0.25 shift could result in *up to* 66 cents going to Veritec and a minimum of 34 cents going to OFR.

However, Veritec estimates that the actual implementation and operational costs of a check-cashing database would be closer to 12 to 15 cents per transaction,[21] which would affect the current fee split to 53-56% for Veritec and 44-47% for OFR for purposes of actual revenue.

The following chart demonstrates the various scenarios in which the DPP transaction fees are divided between the OFR and Veritec:

	OFR	Veritec
Current DPP Contract	59%	41%
Under HB 217 – maximum $0.25 shifted towards overall database	34%	66%
Veritec's projected actual costs of CC database ($0.12 to $0.15 in addition to DPP costs)[22]	53-56%	44-47%

The fiscal impact of the bill is discussed in further detail below.

The bill also grants rulemaking authority to the commission to administer the section, to require additional information to be submitted into the database, and to ensure that licensees are using the database in accordance with the section.

The bill provides an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1: Amends s. 560.103, F.S., by creating a definition of "database."

Section 2: Amends s. 560.309, F.S., relating to conduct of business; authorizes the Financial Services Commission to use a portion of verification fees for the database.

Section 3: Amends s. 560.310, F.S., relating to records of check cashers and foreign currency exchangers; requires licensed check cashers to submit certain transaction information to the OFR

[19] DFS Division of Workers' Compensation Compliance Proof of Coverage Search Page, at https://apps8.fldfs.com/proofofcoverage/Search.aspx (last accessed March 9, 2013).
[20] Florida Department of State, Division of Corporations Document Searches, at http://www.sunbiz.org/search.html (last accessed March 9, 2013).
[21] Information provided by Veritec (received February 8, 2013); on file with Insurance & Banking Subcommittee staff.
[22] *Ibid.*

related to payment instruments cashed; requires the OFR to maintain the transaction information in a centralized database; and provides rulemaking authority.

Section 4: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill is expected to have a significant negative fiscal impact on OFR revenues.

2. Expenditures:

   See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As a regulatory and law enforcement tool, the check-cashing database may indirectly benefit the law-abiding businesses that have been negatively impacted by workers' compensation insurance fraud.

The bill will also facilitate recordkeeping requirements for licensed check cashers.

D. FISCAL COMMENTS:

The bill provides that the check casher component of the database is to be funded with up to one-fourth of the existing DPP database fees. Based on the OFR's estimate,[23] the bill would have a negative fiscal impact to the OFR of up to $1.9 million in revenue currently deposited into the OFR's Regulatory Trust Fund. The OFR also lacks sufficient appropriation to fund the cost of the operation and maintenance for the newly created check-cashing database. In addition, the OFR indicates a need for $323,930 and 5.00 FTE relating to workload associated with the new database. The impact of the bill would have the effect of redirecting up to $0.25 of the existing DPP fee from OFR to Veritec. The current $1 fee supports both the operation and maintenance of the Veritec DPP system ($0.41) in addition to support of the regulatory functions of the OFR ($0.59).

Projected transactions: 7.6 Million @ $1.00 DPP fee
Projected revenue: $7.6 Million
Operation and maintenance cost: $0.25 per $1.00
$7,600,000 x $0.25 = $1,900,000

The actual volume of checks over $1,000 cashed annually is not known with certainty. Additionally, there are no clear projections as to the year-to-year fluctuations in the number of checks over $1,000 cashed by Florida-licensed check cashers.

[23] OFR's amended bill analysis (March 29, 2012), on file with the Government Operations Appropriations Subcommittee.

- The OFR estimated that in calendar year 2012, 17 million total checks were cashed by licensed check cashers in Florida, representing approximately $8 billion with an average check amount of $470.60.[24]
- However, according to Veritec, the check-cashing industry estimates that the total number of checks cashed by check cashers nationally is 127 million. Based on a proportional number of Florida residents to the U.S. population, approximately 6% of 127 million, or 7.62 million, would be attributed to the state of Florida. However, it is unknown what the industry estimate of checks above $1,000 is.[25]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   Public Records

   Currently, Part IV of the Act provides that information identifying a drawer (customer) or a deferred presentment provider contained in the DPP database is confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution. It does not appear that there is a corresponding statutory or constitutional exemption for similar information (or any other information) that the bill requires to be entered into the check-cashing database.

   As noted above, check cashers are currently required to maintain and produce copies of all checks cashed, which contain bank account numbers and customer names, and amounts of fees charged. Also, check cashers must maintain certain transactional data for checks exceeding $1,000. Neither current law nor the bill specifically exempts these records. However, current law does provide that:

   - Bank account numbers are exempt from ch. 119, F.S.[26] Under the Act, bank account numbers would be confidential and exempt as "personal financial information," if part of an investigation or examination.[27]
   - Motor vehicle records pertaining to a driver's license or I.D. card issued by the Department of Highway Safety and Motor Vehicles are confidential and exempt.[28] However, it is unclear whether this exemption applies only to motor vehicle records held by the DHSMV or provided by DHSMV, or held by other agencies such as the OFR.
   - The remaining information, i.e., amounts of the payment instrument and amounts of currency provided, payor and payee names, fees charged, and type of payment instruments could arguably be protected under the Act to varying degrees, if part of an investigation or examination.
     - The Act provides that all information relating to an "active" investigation or examination is confidential and exempt, and remains confidential and exempt even after an investigation or examination is no longer active, to the extent disclosure

[24] OFR's updated bill analysis (received March 5, 2013), on file with the Insurance & Banking Subcommittee staff. The OFR's initial bill analysis (received February 22, 2013), estimated check cashers cashed 200 million total checks, representing almost $11.5 billion and an average check amount of $57.51.
[25] Information from Veritec (received February 22, 2013), on file with the Insurance & Banking Subcommittee staff.
[26] Section 119.071(5)(b), F.S.
[27] Section 560.129(2) and (4)(c), F.S.
[28] Section 119.0712(2), F.S.; Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 *et seq.*

would reveal personal financial information, would jeopardize the integrity of another active examination, and under other limited conditions.[29]

- However, whether current law would require OFR to disclose other check-cashing transactional data in response to a public records request would depend on the particular facts, including whether the information was part of an investigation or examination. The confidentiality would be a legal determination for the OFR, and potentially and ultimately for the courts.

If the Legislature wishes all or part of the check-cashing transaction information to be specifically confidential after it is provided to the OFR, a statutory exemption must be enacted. Under s. 24(c), Art. I of the State Constitution, a separate bill creating this exemption would need to be introduced.

B. RULE-MAKING AUTHORITY:

The bill gives rulemaking authority to the Financial Services Commission to "use" a fee up to $0.25 of the existing fee authorized in s. 560.404(23), F.S., and to specify the data to be entered into the database.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following issues are noted:

- The bill specifies an effective date of July 1, 2013. The OFR has indicated that an effective date of January 1, 2014 would give more time to train the check-cashing industry to use the new database and to seek procurement if necessary, and for the Financial Services Commission to adopt rules in accordance with this legislation.
- The bill creates a definition of "database" in Part I of the Act (general provisions) to mean the common database already implemented by s. 560.404(23), F.S., i.e., the DPP database.
  - The OFR states that statutory clarification is needed to distinguish the function of the DPP database (industry queries) from the bill's requirements for check cashers (regulatory queries).[30] For example, the bill requires the OFR to ensure that "the database" interfaces with the DFS and Secretary of State databases, which is inapplicable to the DPPs and Part IV of the Act.
  - However, the OFR has indicated that it was amenable to a single provider implementing and maintaining both functions on the same database platform/servers, if it is the most cost-effective option.[31]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Insurance and Banking Subcommittee considered and adopted a strike-all amendment to the bill. The amendment retained the provisions of the bill, and made the following changes:

- Eliminated current law's requirement for check cashers to maintain transactional information in an electronic log format. This will avoid duplication of recordkeeping requirements for check cashers since the bill will require check cashers to enter the same information into the database instead.
- Clarified that the bill's database requirements apply only to payment instruments exceeding $1,000.
- Clarified the type of transactional information that the bill requires check cashers to enter into the database.
- Clarified that the bill requires the check-cashing database to maintain an electronic log of the cashing of payment instruments, as opposed to the "sale of issuance" of payment instruments.

[29] Section 560.129, F.S.
[30] Information from the OFR (March 8, 2013), on file with the Insurance & Banking Subcommittee staff.
[31] *Ibid.*

- Deleted language that is substantially similar to language in current statute under s. 560.404(23), F.S., regarding a DPP's reliance on database information and the right of a DPP to enforce deferred presentment agreements. This language is inapplicable to the check-cashing context.
- Clarified that the bill gives rulemaking authority to the Financial Services Commission, not the OFR, to adopt rules to administer this section.

The Insurance and Banking Subcommittee reported the bill favorably as a committee substitute. This analysis is drafted to the committee substitute as passed by the Insurance and Banking Subcommittee.

A bill to be entitled

An act relating to money services businesses; amending s. 560.103, F.S.; providing a definition; amending s. 560.309, F.S.; authorizing the Financial Services Commission to use a portion of the fees that licensees may charge for the direct costs of verification of payment instruments cashed for certain purposes; amending s. 560.310, F.S.; requiring licensees engaged in check cashing to submit certain transaction information to the Office of Financial Regulation related to the payment instruments cashed; requiring the office to maintain the transaction information in a centralized database; providing rulemaking authority; providing an effective date.

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

Section 1. Subsections (12) through (35) of section 560.103, Florida Statutes, are renumbered as subsections (13) through (36), respectively, and a new subsection (12) is added to that section, to read:

560.103 Definitions.—As used in this chapter, the term:

(12) "Database" means the common database implemented pursuant to s. 560.404(23).

Section 2. Subsection (8) of section 560.309, Florida Statutes, is amended, subsections (9) and (10) of that section are renumbered as subsections (10) and (11), respectively, and a new subsection (9) is added to that section, to read:

560.309 Conduct of business.—

(8) Exclusive of the direct costs of verification and database submission, which shall be established by rule not to exceed $5, a check casher may not:

(a) Charge fees, except as otherwise provided by this part, in excess of 5 percent of the face amount of the payment instrument, or $5, whichever is greater;

(b) Charge fees in excess of 3 percent of the face amount of the payment instrument, or $5, whichever is greater, if such payment instrument is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument; or

(c) Charge fees for personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or $5, whichever is greater.

(9) The commission may, by rule, use up to $0.25 of an existing fee authorized under s. 560.404(23) for data that must be submitted by a licensee for purposes of the operation and maintenance of the database.

Section 3. Section 560.310, Florida Statutes, is amended to read:

560.310 Records of check cashers and foreign currency exchangers.—

(1) A licensee engaged in check cashing must maintain for the period specified in s. 560.1105 a copy of each payment instrument cashed.

(2) If the payment instrument exceeds $1,000, the following additional information must be maintained:

(a) Customer files, as prescribed by rule, on all customers who cash corporate payment instruments that exceed $1,000.

(b) A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer. Acceptable personal identification is limited to a valid driver license; a state identification card issued by any state of the United States or its territories or the District of Columbia, and showing a photograph and signature; a United States Government Resident Alien Identification Card; a passport; or a United States Military identification card.

(c) A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.

(d) The office shall require licensees to submit the following information to the database, before entering into each check cashing transaction for each ~~A~~ payment instrument being cashed, in such format as required ~~log that must be maintained electronically as prescribed~~ by rule:

1. Transaction date.

2. Payor name as displayed on the payment instrument.

3. Payee name as displayed on the payment instrument.

4. Conductor name, if different from the payee name.

5. Amount of the payment instrument.

6. Amount of currency provided.

7. Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument.

8. Amount of the fee charged for cashing of the payment instrument.

9. Branch or location where the payment instrument was accepted.

10. The type of identification and identification number presented by the payee or conductor.

11. Payee's workers' compensation insurance policy number or exemption certificate number, if the payee is a business.

12. Such additional information as required by rule.

For purposes of this subsection ~~paragraph~~, multiple payment instruments accepted from any one person on any given day which total $1,000 or more must be aggregated and reported in ~~on~~ the database ~~log~~.

(3) A licensee under this part may engage the services of a third party that is not a depository institution for the maintenance and storage of records required by this section if all the requirements of this section are met.

(4) The office shall ensure that the database:

(a) Provides an interface with the Secretary of State's database for purposes of verifying corporate registration and articles of incorporation pursuant to this section.

(b) Provides an interface with the Department of Financial Services' database for purposes of determining proof of coverage for workers' compensation.

(c) Maintains an electronic log of the cashing of payment instruments pursuant to this section.

(5) The commission may adopt rules to administer this

section, require that additional information be submitted to the database, and ensure that the database is used by the licensee in accordance with this section.

Section 4. This act shall take effect July 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Cummings offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 560.310, Florida Statutes, is amended to read:

560.310 Records of check cashers and foreign currency exchangers.—

(1) A licensee engaged in check cashing must maintain for the period specified in s. 560.1105 a copy of each payment instrument cashed.

(2) If the payment instrument exceeds $1,000, the following additional information must be maintained or submitted:

(a) Customer files, as prescribed by rule, on all customers who cash corporate payment instruments that exceed $1,000.

(b) A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer. Acceptable personal identification is limited to a valid driver license; a state identification card issued by any state of the United States or its territories or the District of Columbia, and showing a photograph and signature; a United States Government Resident Alien Identification Card; a passport; or a United States Military identification card.

(c) A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.

(d) The office shall, at a minimum, require licensees to submit the following information to the check cashing database or electronic log, before entering into each check cashing transaction for each ~~A~~ payment instrument being cashed, in such format as required ~~log that must be maintained electronically as prescribed~~ by rule:~~.~~

1. Transaction date.

2. Payor name as displayed on the payment instrument.

3. Payee name as displayed on the payment instrument.

4. Conductor name, if different from the payee name.

5. Amount of the payment instrument.

6. Amount of currency provided.

7. Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument.

8. Amount of the fee charged for cashing of the payment instrument.

9. Branch or location where the payment instrument was accepted.

10. The type of identification and identification number presented by the payee or conductor.

11. Payee's workers' compensation insurance policy number or exemption certificate number, if the payee is a business.

12. Such additional information as required by rule.

For purposes of this subsection ~~paragraph~~, multiple payment instruments accepted from any one person on any given day which total $1,000 or more must be aggregated and reported in the check cashing database or on the log.

(3) A licensee under this part may engage the services of a third party that is not a depository institution for the maintenance and storage of records required by this section if all the requirements of this section are met.

(4) The office shall issue a competitive solicitation as provided in s. 287.057 for a statewide, real time, on-line check cashing database to combat fraudulent check cashing activity. After completing the competitive solicitation process, but prior to executing a contract, the office may request funds in the Fiscal Year 2014-2015 Legislative Budget Request and submit any necessary draft conforming legislation, if needed to implement this act.

(5) The office shall ensure that the check cashing database:

(a) Provides an interface with the Secretary of State's database for purposes of verifying corporate registration and

articles of incorporation pursuant to this section.

(b) Provides an interface with the Department of Financial Services' database for purposes of determining proof of coverage for workers' compensation.

(6) The commission may adopt rules to administer this section, require that additional information be submitted to the check cashing database, and ensure that the database is used by the licensee in accordance with this section.

Section 2. This act shall take effect July 1, 2013

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:
An act relating to money services businesses; amending s. 560.310, F.S.; requiring licensees engaged in check cashing to submit certain transaction information to the office related to the payment instruments cashed; requiring the Office of Financial Regulation to issue a competitive solicitation for a database to maintain certain transaction information relating to check cashing; authorizing the office to request funds and to submit draft legislation after certain requirements are met; requiring the office to maintain the transaction information in a centralized database; authorizing the Financial Services Commission to adopt rules; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1107 Florida Hurricane Catastrophe Fund
SPONSOR(S): Insurance & Banking Subcommittee; Hager
TIED BILLS: **IDEN./SIM. BILLS:** HB 1055

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee		Keith AK	Topp BDT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created as a form of reinsurance for residential property insurers. The Fund reimburses (reinsures) insurers for a portion of their hurricane losses to residential property. Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF. The deductible amount insurers must pay for reinsurance in the FHCF is set by statute and the maximum amount of coverage from the FHCF insurers can buy is also set by statute.

The overarching goal of the bill is to restructure the FHCF to reduce the size and exposure of the Fund so that the Fund relies less on bonding and more on cash resources to pay its obligations to insurers. This will also result in a reduced likelihood and reduced amount of assessments against property and casualty policyholders. Specifically, the FHCF restructuring proposed by the bill:

- reduces the size of the mandatory coverage from $17 billion to $14 billion over three years (2014 to 2016),
- extends the exemption for medical malpractice premiums from the FHCF assessment for another three years (until May 31, 2016), and
- changes the name of the finance corporation used for bonding by the FHCF.

The bill also repeals outdated provisions in the FHCF law.

Currently, some insurers purchase private reinsurance duplicating FHCF coverage to insure against any shortfalls of the Fund. If purchased, current law prohibits these reinsurance costs from being recouped in rates. The bill repeals the prohibition in current law and allows these costs to be recouped in rates, but only for private reinsurance bought to duplicate any FHCF estimated shortfall.

In 2014, property insurance rates will likely increase due to the FHCF restructuring provided by the bill as insurers replace reinsurance sold by the FHCF with more expensive reinsurance sold by private reinsurers. Rates are likely to increase until the bill is fully implemented in 2016. Estimates vary as to the amount of yearly and cumulative rate increases, as discussed in the fiscal analysis. The cumulative rate increase ranges from 3.1% to 4.7%. If private reinsurance costs decrease during the bill's three year implementation period, then the rate increases could be offset by the decrease in these costs. Rates will also increase for insurers who buy reinsurance duplicating the estimated FHCF bonding shortfall because the bill allows these costs to be included in rates and thus passed on to policyholders. This rate increase will occur in the year the insurer purchases the private reinsurance, which could be 2013. The impact the bill could have on Citizens Property Insurance Corporation, insurer solvency, and timely payment of homeowner's insurance claims is discussed in the fiscal analysis.

The bill has no fiscal impact on state government.

The bill is effective upon becoming a law, unless expressly provided otherwise.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers.[1] The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

The FHCF sells reinsurance to property insurance companies significantly cheaper than reinsurance sold by private reinsurance companies. It is estimated that coverage purchased through the FHCF costs insurers one-fourth to one-third what it would cost in the private reinsurance market.[2] There are several reasons for these cost savings:[3]

1. The FHCF operating cost is less than 1% of the annual premium collected, whereas, the operating costs for private reinsurance can range from 10% to 15% of the premium collected.
2. The FHCF does not pay reinsurance brokerage commissions.
3. The FHCF has no underwriting costs.
4. The FHCF is a tax-exempt entity that does not pay federal income taxes or state taxes.
5. The FHCF has the ability to issue tax-exempt debt which results in lower financing costs should it become necessary to finance losses with revenue bonds.
6. The FHCF does not include a factor for profit for reinsurance sold by the FHCF.
7. The FHCF does not include a risk load for reinsurance sold by the FHCF.

Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF. (s. 215.555(4)(a), F.S. and s. 215.555(2)(c), F.S.). Residential property is defined in s. 627.4025(1), F.S. to include personal lines and commercial lines residential coverage. This coverage includes the following insurance policies: homeowner's, mobile homeowner's, dwelling, tenant's, condominium unit owner's, condominium association, cooperative association, and apartment building.

The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage (45, 75, or 90%) of hurricane losses to residential property above the insurer's retention (deductible).[4] The amount of hurricane losses the FHCF will not reimburse (45, 25, or 10%) is the insurer's co-pay for FHCF reinsurance. Insurers finance the co-pay with funds from insurance premiums paid by homeowners or with private reinsurance. Most property insurers select the 90% coverage level, meaning the FHCF will reimburse the insurer 90% of the insurer's specified hurricane losses with the insurer paying the remaining co-pay of 10% from other sources.

A reimbursement contract between the FHCF and the property insurer governs an insurer's participation in the FHCF and the percentage of the insurer's reimbursement. Reimbursement contracts run from June 1st–May 30th. The current contract year (2012-2013 contract year) runs from June 1, 2012–May 30, 2013.

The FHCF must offer two options for reinsurance coverage for all residential property insurers. One of the two options is mandatory and thus must be purchased by all insurers on their residential property exposure. The voluntary coverage option, Temporary Increase In Coverage Limit Options (TICL), offers reinsurance to insurers above the mandatory coverage.

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[1] s. 215.555, F.S. The FHCF was created after Hurricane Andrew in 1992.
[2] Annual Report of the Florida Hurricane Catastrophe Fund Fiscal Year 2010-2011, p. 19.
[3] Annual Report of the Florida Hurricane Catastrophe Fund Fiscal Year 2010-2011, p. 19.
[4] Retention is defined to mean the amount of losses below which an insurer is not entitled to reimbursement from the Fund. A retention is calculated for each insurer based on its proportionate share of Fund premiums.

For the mandatory coverage, the FHCF charges insurers the "actuarially indicated" premium for the coverage provided by the FHCF, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. Each insurer's premium amount for mandatory coverage is different because the premium is based on the insured value of the residential property the insurer insures, the location of the property insured, the construction type of the property insured, the deductible amounts for the property insured, and other factors. The premium for mandatory coverage also includes a cash build-up factor which is charged on top of the actuarially indicated premium. For the 2012-2013 contract year, the cash build-up factor is 20%, meaning an insurer's premium is 20% greater than the actuarially indicated premium. The cash build-up factor increases by 5% each year until it is 25% (2013-2014 contract year).

Florida law sets the maximum amount the FHCF reimburses insurers each year for the mandatory coverage.[5] This is the FHCF's capacity. Under current law, the FHCF's capacity is $17 billion for each contract year. The capacity does not increase until the FHCF's cash and bonding ability exceeds $34 billion. This allows the FHCF to accumulate funds to pay the maximum mandatory coverage FHCF obligations ($17 billion a year) for claims resulting from hurricanes in back-to-back seasons.[6] Once a $34 billion funding level is reached by the FHCF, the FHCF's capacity will increase. The method for calculating the Fund's capacity under current law allows the FCHF's cash balance to grow in years where there are no hurricanes while keeping the FHCF's exposure (capacity) frozen so that the FHCF is less reliant on bonding to meet its mandatory coverage obligations. For the current contract year, the insurance industry as a whole is covered for losses up to $17 billion by the mandatory coverage.

Before FHCF monies are available to pay claims each insurer must meet a retention/deductible. The retention amount for each insurer is different because the amount is based on the amount of premium the insurer pays to the FHCF. For the 2012-2013 contract year, the insurance industry as a whole has an aggregate retention of $7.389 billion for mandatory coverage, meaning the total of all individual insurer retentions/deductibles will total $7.389 billion per hurricane event if all participating insurers reached their retention. Although the insurance industry's aggregate deductible/retention totals $7.389 billion, insurers can obtain reimbursement from the FHCF before the insurance industry losses total $7.389 billion because loss recovery from the FHCF is based on an individual insurer meeting its own retention for mandatory coverage prior to losses being reimbursed.

The TICL options were added to the FHCF in 2007.[7] The purchase of these options is voluntary and if purchased provides the insurer a share of additional coverage above the mandatory FHCF coverage in $1 billion increments. When the TICL options were created in 2007, $12 billion of additional FHCF coverage was available for purchase. However, due to the statutory reductions in TICL options available, for the 2012-2013 Fund contract year, only $4 billion is available for purchase.[8] Of the $4 billion available in TICL coverage this contract year, $0.023 billion was purchased by insurance companies, representing less than 1% of the available coverage. By law, the 2013-2014 contract year is the last contract year TICL options can be purchased by insurers.

For the 2012-13 contract year (June 1, 2012–May 31, 2013), the maximum amount the FHCF would have to reimburse insurers is $17.023 billion, allocated as follows:

- $17 billion for the mandatory coverage.
- $.023 billion for the TICL coverage option.[9]

To fund its obligations of $17.023 billion the FHCF has $8.503 billion in cash.

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[5] s. 215.555(4)(c)1., F.S.
[6] The funds may be accumulated from premiums and bonding.
[7] Ch. 2007-1, L.O.F.
[8] Under current law, the maximum amount of TICL coverage offered for purchase by the FHCF decreases by $2 billion each contract year.
[9] Report of Claims-Paying Capacity Estimates dated October 9, 2012, available at http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx (last accessed March 8, 2013).

Because the obligations of the FHCF exceed the cash of the FHCF by approximately $8.5 billion, if the FHCF had to pay its maximum actual obligations of $17.023 billion in the 2012-2013 contract year, the FHCF would have to bond for additional funds of $8.5 billion to pay claims. In October 2012, the Fund estimated it could borrow $7 billion through bonding.[10] Thus, the FHCF would be short $1.5 billion to pay claims. However, it is noteworthy that the projected shortfall of $1.5 billion is for the contract year ending on May 31, 2013. Absent a major hurricane before the current contract year expires, the projected shortfall for the hurricane season beginning on June 1, 2013, should be lower. This is because the FHCF will receive additional revenue from the collection of premium for the 2013-2014 contract year. The current estimated additional premium is approximately $1.1 billion.[11]

Revenue bonds issued by the FHCF to pay claims when the FHCF's funds are inadequate are funded by emergency assessments on property and casualty policyholders.[12] The FHCF is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2013, medical malpractice), including surplus lines policyholders, when reimbursement premiums and other FHCF resources are insufficient to cover the FHCF's obligations.[13] Annual assessments are capped at 6% of premium with respect to losses from any one year and a maximum of 10% of premium to fund hurricane losses from multiple years.[14] Revenue bonds issued by the FHCF may be amortized over a term up to 30 years. Thus, the FHCF may levy assessments for as long as 30 years.

Currently, the FHCF is levying an assessment of 1.3% of premium against all property and casualty insurance policyholders subject to the assessment.[15] Typically, insurers pass this assessment directly to policyholders. The current FHCF assessment is due to a deficit in the Fund associated with the 2005 hurricanes. This is the first assessment the FHCF has had to levy to cover a deficit since its creation in 1993. The current assessment of 1.3% will be levied until December 31, 2016.

Effect of Proposed Changes

The overarching goal of the bill is to restructure the FHCF to reduce the size and exposure of the Fund so that the Fund relies less on bonding and more on cash resources to pay its obligations to insurers. This will also result in a reduced likelihood and reduced amount of assessments against property and casualty policyholders.

Specifically, the FHCF restructuring proposed by the bill:

- reduces the size of the mandatory coverage over three years from 2014-2016,
- extends the exemption for medical malpractice premiums from the FHCF assessment for three years, and
- changes the name of the finance corporation used for bonding by the FHCF.

The bill also allows private reinsurance costs for private reinsurance bought to duplicate FHCF coverage in property insurance rate filings, but only for private reinsurance bought to duplicate any FHCF estimated shortfall. It repeals current law relating to FHCF coverage below the retention which has expired by operation of law.

Reduces the Size of the Mandatory Coverage

Over a three year period starting in 2014, the bill reduces the limits of the FHCF mandatory coverage from the current $17 billion. For the 2014-2015 contract year, the limit is reduced to $16.5 billion; for the 2015-2016 contract year, the limit is reduced to $15.5 billion; and for the 2016-2017 and subsequent

[10] https://www.flrules.org/gateway/readFile.asp?sid=12&tid=12136269&type=1&File=19.htm (last accessed March 8, 3013).
[11] The additional $1.1 billion is not all collected at the beginning of the contract year. Instead, it is collected quarterly. Thus, the entire $1.1 billion will not be available to pay claims starting June 1, 2013.
[12] s. 215.555(6)(a)1., F.S.; s. 215.555(6)(b)1., F.S.
[13] s. 215.555(6)(b)1., F.S.; s. 215.555(6)(b)(10), F.S.
[14] s. 215.555(6)(b)2., F.S.
[15] A 1% assessment was levied and paid by insurers from January 1, 2007–December 31, 2010. The 1% assessment was increased to 1.3% on January 1, 2011 due to increasing losses from the 2005 hurricanes.

contract years, the limit is reduced to $14 billion. After the 2016-2017 contract year, the limit will be more than $14 billion only if the FHCF has enough funding to fully fund a $14 billion single season and a $14 billion second season capacity (a total of $28 billion in funding). The current $17 billion mandatory coverage maximum stays in effect for the 2013-2014 contract year.

The change to the mandatory coverage will reduce the FHCF's reliance on large bonding transactions to raise funds to pay claims. Currently, if the FHCF had to pay its obligations in full, the FHCF is $8.5 billion short in funding and is relying on bonding to raise the needed funds. In fact, the Fund's financial advisors estimate the Fund could only borrow $7 billion through bonding in the current financial market. Thus, the Fund has a potential shortfall of over $1.5 billion.

Because of fluctuating financial markets, there is a great deal of risk and uncertainty associated with large bond transactions, making large bond transactions impossible or extremely expensive. Under current law, the FHCF is only obligated to use cash on hand and funds raised through bonding to reimburse insurers for claims.[16] Thus, if the FHCF cannot raise enough funds through bonding to pay its obligations, then the FHCF is not required to pay all its obligations to insurers. This could be problematic for insurers as they rely on the Fund being able to reimburse them for claims when constructing their business model for catastrophes. Insurers do not typically purchase private reinsurance to duplicate reinsurance bought from the FHCF as duplicative reinsurance costs cannot be passed through to policyholders in a rate filing and thus is an added expense for the insurer that cannot be recouped. Furthermore, keeping bonding costs as low as possible is important because bonding costs are included in the calculation of assessments levied by the FHCF and passed through to most property and casualty policyholders.

Reducing the mandatory coverage of the FHCF will likely result in increased property insurance rates for homeowners, if all other costs to the insurer factored into rates are static. Reinsurance purchased from the FHCF is considerably cheaper than reinsurance purchased from private reinsurance companies. It is estimated that coverage purchased through the FHCF costs insurers between one-fourth to one-third what it would cost in the private reinsurance market.[17] For solvency reasons, property insurers are required by the Office of Insurance Regulation (OIR) to purchase reinsurance.[18] Reducing the mandatory coverage layer of the FHCF will require most property insurers to replace FHCF reinsurance with more expensive reinsurance from private reinsurers. The increased reinsurance costs will be passed through to homeowners.[19]

Extends the Exemption for Medical Malpractice Premiums from the FHCF Assessment:

Revenue bonds are issued by the FHCF to pay claims when the FHCF's funds are inadequate. These bonds are funded by emergency assessments levied by the FHCF against property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2013, medical malpractice), including surplus lines policyholders.[20] The FHCF assessment base is over $34.6 billion.[21] Annual assessments are capped at 6% of premium with respect to losses from any one year and a maximum of 10% of premium to fund hurricane losses from multiple years.[22]

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[16] s. 215.555(2)(m), F.S.; s. 215.555(4)(c)1., F.S.

[17] Annual Report of the Florida Hurricane Catastrophe Fund Fiscal Year 2009-2010 , p. 18.

[18] The amount of reinsurance required to be purchased varies from insurer to insurer and is based, in part, on the insurer's exposure and funds on hand to pay claims.

[19] Section 627.062(2)(b), F.S. requires the OIR to consider reinsurance costs when reviewing a rate filing for approval. Section 627.062(2)(k), F.S. allows insurers to make an expedited rate filing in order to change rates based solely on reinsurance costs.

[20] s. 215.555(6)(b)1., F.S.; s. 215.555(6)(b)(10), F.S.

[21] Assessment base total is as of the end of 2011. See Report Prepared for the Florida Hurricane Catastrophe Fund on Claims-Paying Capacity Estimates by Raymond James Public Finance Department, dated October 9, 2012, available at http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx (last accessed February 27, 2013).

[22] s. 215.555(6)(b)2., F.S.

The bill allows medical malpractice insurance policyholders to be exempt from FHCF assessments until May 31, 2016. Although these policyholders are currently exempt from the assessment base, they will be added to the base starting June 1, 2013 because their exemption expires on May 31, 2013.

Changes the Name of the Finance Corporation Used For Bonding By the FHCF The bill changes the name of the Florida Hurricane Catastrophe Fund Finance Corporation to the "State Board of Administration Finance Corporation." The Florida Hurricane Catastrophe Fund Finance Corporation is the corporation that issues revenue bonds for the Florida Hurricane Catastrophe Fund. The Florida Hurricane Catastrophe Fund Corporation had long-term ratings of Aa3/AA-/AA from Moody's, Standard and Poor's, and Fitch, respectively.[23]

This change should not impact property insurance rates. However, the change may prevent confusion among bond purchasers with other types of catastrophe bonding and may make bonds issued by the FHCF easier to sell at a lower price.

Allows Costs for FHCF Duplicate Coverage in Property Insurance Rate Filings
The Rating Law for property, casualty, and surety insurance is located in Part I of ch. 627, F.S., (ss. 627.011 – 627.311, F.S.). The primary purpose of the Rating Law is to ensure insurance rates are not excessive, inadequate, or unfairly discriminatory. This standard applies to every property insurance rate.

Section 627.0645, F.S, requires every property insurance company to make a rate filing with the OIR each year. The rate filing contains the insurance company's proposed rates. The OIR reviews the rate filing and either approves or disapproves the proposed rates. If an insurance company does not want to change its rates one year, instead of a rate filing, the insurer can file a certification by an actuary that the existing rate level produces rates which are actuarially sound and which are not inadequate.

In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the OIR uses the following statutory factors.[24]

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, when applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.
- Other relevant factors impacting frequency and severity of claims or expenses.

The Rating Law specifically allows insurers to fully recoup the premiums paid to the FHCF for coverage and private reinsurance costs in rate filings. This means the costs are ultimately passed on to the insurer's policyholders.

Currently, some insurers purchase private reinsurance within the covered layers of the FHCF to insure against any shortfalls of the Fund. If purchased, the costs cannot be recouped in a rate filing because

[23] Report Prepared for the Florida Hurricane Catastrophe Fund Claims-Paying Capacity Estimates, dated October 9, 2012, available at http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx (last accessed March 5, 2013).
[24] s. 627.062(2), F.S.

current law specifically prohibits insurers from recouping private reinsurance costs that duplicate coverage provided by the FHCF. The bill allows insurers to recoup private reinsurance costs that duplicate FHCF coverage in rates, but only for the reinsurance purchased to cover any FHCF estimated shortfall. If recouped, these costs are ultimately passed on to the insurer's policyholders.

Repeals Provisions Relating to FHCF Coverage

The bill repeals several provisions in the FHCF governing statute that are obsolete because they sunset. For example, current law allowing certain insurers to buy $10 million of FHCF coverage below their FHCF retention is repealed because current law allowing this purchase expired on May 31, 2012. Also, current law allowing insurers to buy additional reinsurance from the FHCF below their retention (TEACO coverage) is repealed because current law allowed this purchase only through May 31, 2010.

B. SECTION DIRECTORY:

Section 1: Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund, effective June 1, 2013.

Section 2: Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund, effective June 1, 2013.

Section 3: Amends s. 627.062, F.S., relating to rate standards.

Section 4: Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

Section 5: Provides an effective date of upon becoming law unless expressly provided otherwise.

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:

Provision Relating to Recoupment of Duplicative Private Reinsurance

Allowing insurers to fully recoup costs for private reinsurance that duplicates any FHCF coverage in the FHCF estimated bonding shortfall will increase property insurance rates and the resulting premiums paid by policyholders if insurers buy duplicative reinsurance. However, if the FHCF has a bonding shortfall, insurers who replace FHCF coverage with private insurance for their amount of FHCF coverage in the shortfall will be able to collect reinsurance proceeds for this amount. This ensures the insurer has sufficient funds to pay claims and remain solvent.

Provision Relating to Medical Malpractice Exemption from Assessments
Extending the exemption for medical malpractice insurance from the FHCF assessment base for another three years will cause policyholders of the other types of property and casualty insurance included in the assessment base to pay higher assessments for those three years. Although medical malpractice is not currently in the FHCF assessment base, it was to be added as of June 1, 2013. Adding additional types of insurance to the assessment base increases the base which lowers the assessment for all types of insurance in the base. As of December 31, 2011, medical malpractice premiums totaled almost $555 million.[25] Thus, the bill precludes the FHCF assessment base of $34.6 billion[26] to increase by $555 million.

If the FHCF has to issue revenue bonds to pay claims, it is likely to obtain more favorable bonding terms with a larger assessment base. Thus, preventing medical malpractice from being added to the assessment base for another three years may result in the FHCF receiving less favorable bonding terms than it would receive had medical malpractice been added to the base on June 1, 2013.

Policyholders of medical malpractice insurance will not have to pay FHCF assessments on their medical malpractice insurance for another three years under the bill. Under current law, these policyholders would have had to start paying FHCF assessments levied due to hurricanes occurring on or after June 1, 2013.

Provisions Relating to Restructuring the FHCF
Because the restructuring of the FHCF proposed by the bill reduces the amount of reinsurance sold by the FHCF, property insurers will likely replace the reinsurance coverage currently sold by the FHCF with more expensive reinsurance sold by private reinsurers. Thus, it is anticipated property insurance rates and resulting premiums will increase due to the changes to the FHCF made by the bill.

The proposed changes will result in no increase in residential property insurance rates for the 2013-2014 contract year (June 1, 2013–May 31, 2014) because the changes reduce coverage offered by the FHCF starting in the 2014–2015 contract year.

Estimate by the Insurance Consumer Advocate (ICA)[27]
The ICA estimates the following rate impact associated with the reduction of the mandatory FHCF coverage as the bill provides:
2014-2015 Contract Year: 0.5% increase
2015-2016 Contract Year: 1.0% increase
2016-2017 Contract Year: 1.6% increase
Cumulative Premium Increase 2014-2016: 3.1%.

Estimate by the Office of Insurance Regulation[28]
The OIR opined the rate impact is different, depending on whether the insurer is Citizens Property Insurance Corporation (Citizens) or not.

For insurers other than Citizens, the OIR estimated the following rate impact associated with the reduction of the mandatory FHCF coverage as the bill provides:
2014-2015 Contract Year: 0.5% increase
2015-2016 Contract Year: 1.1% increase
2016-2017 Contract Year: 1.6% increase

[25] This total includes premiums from surplus lines insurance and risk retention groups. Information obtained from the OIR on February 27, 2013, on file with the Insurance & Banking Subcommittee.
[26] Assessment base total is as of the end of 2011. See Report Prepared for the Florida Hurricane Catastrophe Fund on Claims-Paying Capacity Estimates by Raymond James Public Finance Department, dated October 9, 2012, available at http://www.sbafla.com/fhcf/AdvisoryCouncil/2012MeetingMaterials/tabid/1311/Default.aspx (last viewed February 27, 2013).
[27] Email from the ICA dated March 29, 2013, on file with the Insurance & Banking Subcommittee.
[28] Email from the OIR dated March 29, 2013, on file with the Insurance & Banking Subcommittee.

Total Estimated Cumulative Premium Increase 2014-2016: 3.2%.

For Citizens, the OIR estimated the following rate impact associated with the reduction of the mandatory FHCF coverage as the bill provides:[29]
2014-2015 Contract Year: 0.8% increase
2015-2016 Contract Year: 1.6% increase
2016-2017 Contract Year: 2.3% increase
Total Estimated Cumulative Premium Increase 2014-2016: 4.7%.

The OIR also notes rates will increase if any private reinsurance cost that duplicates FHCF coverage is included in an insurer's rates as is allowed under the bill. However, the amount of rate increase is indeterminable because the private reinsurance costs would be specific and different to each insurer.

Impact of Decreasing Private Reinsurance Costs on Rate Increases Resulting from the Bill
Some proponents of the bill assert costs for private reinsurance will decrease for reinsurance sold effective June 1, 2013 because there is more than adequate supply of private reinsurance in the market.[30] Accordingly, the proponents conclude the reduction in private reinsurance costs, which are fully passed through to policyholders in property insurance rates, will more than offset the rate increase associated with restructuring the FHCF. The ICA estimated private insurance rates would have to decrease 1.4% in 2014, 3.1% in 2015, and 4.6% in 2016 (for a cumulative decrease of 9.2% from 2014-2016) to completely offset the rate increase associated with the bill's reduction of the mandatory layer of the FHCF.[31] However, the ICA notes it is impossible to predict whether these estimated revenue neutral reductions in reinsurance premiums will be realized.[32]

Furthermore, the information provided by proponents of the bill to document the anticipated decrease in private reinsurance costs are for costs effective June 1, 2013. No information has been provided to document there will also be a decrease in private reinsurance costs effective June 1, 2014 when the changes made to the FHCF mandatory layer take effect. Because private reinsurance rates depend, in part, on the capacity of the market which depends, in part, on the amount of losses private reinsurers sustained the previous year, it is very speculative to extrapolate reinsurance cost decreases in 2013 to 2014.

Impact on Policy Count of Citizens Property Insurance Corporation
The bill may have a collateral fiscal impact of the bill for Citizens.[33] As property insurance rates in the private market increase due to changes made by the bill while Citizens rate increases are capped,[34] an unintended consequence could develop where consumers decided to enter or remain in Citizens where lower rates may be available. In addition, Citizens' reinsurance costs could increase if reinsurance currently sold by the FHCF is eliminated by the bill and Citizens replaces that reinsurance with more expensive private reinsurance. In this case, Citizens may be unable to fully recoup their reinsurance costs in rates due to the Citizens' rate cap of 10%.[35]

Moreover, further disparity between Citizens' rates and those of private sector insurers may be created if private insurers raise rates more than 10% due to the increased cost of replacing FHCF reinsurance with private reinsurance and Citizens also needs to raise rates more than 10% to recoup reinsurance costs, but cannot due to the 10% rate cap. Additionally, even if Citizens does not replace FHCF

[29] The OIR estimate assumes Citizens will purchase private reinsurance to replace the reduced FHCF reinsurance coverage.
[30] Testimony presented at the Insurance & Banking Subcommittee meeting on March 13, 2013.
[31] Email from the ICA dated March 29, 2013, on file with the Insurance & Banking Subcommittee.
[32] Email from the ICA dated March 29, 2013, on file with the Insurance & Banking Subcommittee.
[33] Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company. As of January 31, 2013, Citizens is the largest property insurer in Florida with almost 1.3 million policies extending approximately $418 billion of property coverage to Floridians.
[34] Citizens' rate increases are capped under current law from increasing more than 10% per policy per year until the rates are actuarially sound. (s. 627.351(6)(n), F.S.)
[35] By law, Citizens cannot increase rates more than 10% per policy per year (s. 627.351(6)(n)6., F.S.).

reinsurance with private reinsurance, then the rate disparity between Citizens' rates and those of private sector insurers could increase as private insurer's rates go up to account for the purchase of more private reinsurance to replace FHCF reinsurance and Citizens' rates do not increase because the corporation chooses not to purchase private reinsurance to replace FHCF insurance.[36] Thus, depending on Citizens' response to the changes to the FHCF provided by the bill, the bill could result in Citizens offering lower rates than private sector insurers which may increase the number of policies in Citizens, assuming homeowners purchase property insurance solely on rates.

Impact on Solvency of Insurers
The bill could present solvency concerns for some private insurers. As FHCF reimbursements are reduced by the bill, insurers may not be able to obtain or maintain sufficient reinsurance amounts to cover potential losses arising from a hurricane. Insufficient reinsurance impairs the solvency of the insurers.[37]

Based on input from its financial advisors, the Fund estimates it cannot issue bonds to obtain over $1.5 billion needed to pay claims if the Fund had to pay its maximum obligations of over $17 billion in the 2012-2013 contract year. Thus, insurers who have purchased reinsurance from the FHCF may not be fully reimbursed by the Fund. Some insurers rely on Fund reimbursement to meet solvency requirements, so not receiving full reimbursement could impair solvency of these insurers. However, because the bill allows insurers that buy duplicate FHCF coverage for the estimated FHCF shortfall to recoup the costs of such in a rate filing, the insurers who buy private reinsurance to cover the projected FHCF shortfall should continue to meet solvency requirements.

Reducing the structure and size of the Fund will provide more assurance to property insurers in the private sector that the Fund will be able to fully reimburse insurers.

Impact on Homeowners' Ability to Have Their Claims Timely Paid
Reducing the size of the FHCF could increase the likelihood homeowners will have their property insurance claims paid in a timely manner following a hurricane. If the FHCF has a bonding shortfall after a hurricane, then the FHCF may have to reimburse insurers at a slower pace while the Fund seeks additional funds to reimburse insurers through bonding. If this happens, property insurers may take longer to pay policyholders' claims as some of the funds they likely rely on to pay these claims of are derived from their receipt of reimbursements from the FHCF.

D. FISCAL COMMENTS:

The bill has no fiscal impact on state government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

[36] Private insurance companies must maintain a certain amount of reinsurance for solvency purposes, however, Citizens does not have to comply with the solvency requirements required of private insurers so does not have to maintain a certain amount of reinsurance.
[37] This impact was initially noted in the OIR Bill Analysis for HB 833 filed in 2012, but the OIR indicated in an email to staff of the Insurance & Banking Subcommittee on March 12, 2013, the impact would apply to HB 1107 too.

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Some assert the FHCF current bonding shortfall estimate is theoretical because the FHCF would not have to pay its full obligations in one year as the estimate assumes. Rather, the FHCF would pay the obligations as they are requested by insurers, likely over two or three years. Thus, if the FHCF could not bond for funds to pay its full obligations soon after a hurricane, the FHCF would still have ample time to bond for the remaining funds needed before the full obligations were requested by insurers.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2013, the Insurance & Banking Subcommittee, heard the bill, adopted a strike-all amendment and an amendment to the strike-all amendment, and reported the bill favorably with a committee substitute. The amendments adopted made the following changes to the bill:

- Starting June 1, 2104, reduced the size of the mandatory coverage of the FHCF from $17 billion to $14 billion over three years (reduction of $.5 billion in 2014, $1 billion in 2015, and $1.5 billion in 2016).
- Removed the increases in the insurer's co-pay amounts contained in the bill.
- Removed the increase in payment of loss adjustment expenses by the FHCF contained in the bill.
- Maintained current law allowing commercial self-insurance funds to participate in the FHCF.
- Changed the name of the FHCF Finance Corporation to the State Board of Administration Finance Corporation.
- Extended the exemption for medical malpractice insurance premiums from emergency assessments levied by the FHCF for another three years, until May 31, 2016.
- Deleted obsolete language that has expired by operation of law.
- Allowed private insurers to include the cost of private reinsurance that duplicates the reinsurance sold by the FHCF in property insurance rates, but only the private reinsurance that covers the FHCF's estimated bonding shortfall.

The staff analysis was updated to reflect the committee substitute.

A bill to be entitled

An act relating to the Florida Hurricane Catastrophe Fund; amending s. 215.555, F.S.; revising the definition of the term "corporation"; deleting an outdated coverage level; revising coverage levels available under the reimbursement contract; revising aggregate coverage limits; providing for the phase-in of changes to coverage levels and limits; requiring the board to perform certain calculations under specified circumstances; revising the exemption of medical malpractice insurance premiums from emergency assessments if certain revenues are determined to be insufficient to fund the obligations, costs, and expenses of the Florida Hurricane Catastrophe Fund and the Florida Hurricane Catastrophe Fund Finance Corporation; changing the name of the Florida Hurricane Catastrophe Fund Finance Corporation; amending s. 215.555, F.S.; deleting provisions relating to temporary emergency options for additional coverage; amending s. 627.062, F.S.; providing for recoupment of certain costs of reinsurance; amending s. 627.0629, F.S.; conforming a cross-reference; providing effective dates.

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

Section 1. Effective June 1, 2013, paragraph (n) of subsection (2), paragraphs (b) and (c) of subsection (4), and

paragraphs (b) and (d) of subsection (6) of section 215.555, Florida Statutes, are amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(n) "Corporation" means the State Board of Administration ~~Florida Hurricane Catastrophe Fund~~ Finance Corporation created in paragraph (6)(d).

(4) REIMBURSEMENT CONTRACTS.—

(b)1. The contract shall contain a promise by the board to reimburse the insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer's retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses.

2. The insurer must elect one of the percentage coverage levels specified in this paragraph and may, upon renewal of a reimbursement contract, elect a lower percentage coverage level if no revenue bonds issued under subsection (6) after a covered event are outstanding, or elect a higher percentage coverage level, regardless of whether or not revenue bonds are outstanding. All members of an insurer group must elect the same percentage coverage level. Any joint underwriting association, risk apportionment plan, or other entity created under s. 627.351 must elect the 90-percent coverage level.

3. The contract shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

~~4. Notwithstanding any other provision contained in this section, the board shall make available to insurers that~~

~~purchased coverage provided by this subparagraph in 2008, insurers qualifying as limited apportionment companies under s. 627.351(6)(c), and insurers that have been approved to participate in the Insurance Capital Build-Up Incentive Program pursuant to s. 215.5595 a contract or contract addendum that provides an additional amount of reimbursement coverage of up to $10 million. The premium to be charged for this additional reimbursement coverage shall be 50 percent of the additional reimbursement coverage provided, which shall include one prepaid reinstatement. The minimum retention level that an eligible participating insurer must retain associated with this additional coverage layer is 30 percent of the insurer's surplus as of December 31, 2008, for the 2009-2010 contract year; as of December 31, 2009, for the 2010-2011 contract year; and as of December 31, 2010, for the 2011-2012 contract year. This coverage shall be in addition to all other coverage that may be provided under this section. The coverage provided by the fund under this subparagraph shall be in addition to the claims-paying capacity as defined in subparagraph (c)1., but only with respect to those insurers that select the additional coverage option and meet the requirements of this subparagraph. The claims-paying capacity with respect to all other participating insurers and limited apportionment companies that do not select the additional coverage option shall be limited to their reimbursement premium's proportionate share of the actual claims-paying capacity otherwise defined in subparagraph (c)1. and as provided for under the terms of the reimbursement contract. The optional coverage retention as specified shall be~~

~~accessed before the mandatory coverage under the reimbursement contract, but once the limit of coverage selected under this option is exhausted, the insurer's retention under the mandatory coverage will apply. This coverage will apply and be paid concurrently with mandatory coverage. This subparagraph expires on May 31, 2012.~~

(c)1. The contract shall also provide that the obligation of the board with respect to all contracts covering a particular contract year shall not exceed the actual claims-paying capacity of the fund up to the limit specified in this subparagraph.

a. For the 2013-2014 contract year, the limit is $17 billion.

b. For the 2014-2015 contract year, the limit is $16.5 billion.

c. For the 2015-2016 contract year, the limit is $15.5 billion.

d. For the 2016-2017 contract year and subsequent contract years, the limit is $14 billion.

e. For contract years after the 2016-2017 contract year, if ~~a limit of $17 billion for that contract year, unless~~ the board determines that there is sufficient estimated claims-paying capacity to provide $14 ~~$17~~ billion of capacity for the current contract year and an additional $14 ~~$17~~ billion of capacity for subsequent contract years~~. If the board makes such a determination~~, the estimated claims-paying capacity for the particular contract year shall be determined by adding to the $14 ~~$17~~ billion limit one-half of the fund's estimated claims-paying capacity in excess of $28 ~~$34~~ billion. However, the

dollar growth in the limit may not increase in any year by an amount greater than the dollar growth of the balance of the fund as of December 31~~, less any premiums or interest attributable to optional coverage~~, as defined by rule which occurred over the prior calendar year.

2. In May and October of the contract year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31. After the end of each calendar year, the board shall notify insurers of the estimated borrowing capacity, estimated claims-paying capacity, and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes. In conjunction with the development of the premium formula, as provided for in subsection (5), the board shall publish factors or multiples that assist insurers in determining their retention and projected payout for the next contract year. For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected balance of the fund as of December 31 and the estimated borrowing capacity for that contract year as reported under this subparagraph.

(6) REVENUE BONDS.—

(b) Emergency assessments—

1. If the board determines that the amount of revenue

produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of direct written premium and is subject to annual adjustments by the board in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent

of premium. An annual assessment under this paragraph shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

3. Emergency assessments shall be collected from policyholders. Emergency assessments shall be remitted by insurers as a percentage of direct written premium for the preceding calendar quarter as specified in the order from the Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the

Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent provided that the assessments in the aggregate do not exceed the

limits specified in subparagraph 2.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless and until the Office of Insurance Regulation and the Florida Surplus Lines Service Office have received from the corporation and the fund a notice, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments under paragraph (c). On or after the date of the notice and until the date the corporation has no bonds outstanding, the fund shall have no right, title, or interest in or to the assessments, except as provided in the fund's agreement with the corporation.

7. Emergency assessments are not premium and are not subject to the premium tax, to the surplus lines tax, to any fees, or to any commissions. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

8. When an insurer is required to return an unearned premium, it shall also return any collected assessment attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

9. When a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service

Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the unearned premium prior to remitting the emergency assessment collected to the fund or corporation.

10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2016 ~~2013~~, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2016 ~~2013~~.

(d) State Board of Administration ~~Florida Hurricane Catastrophe Fund~~ Finance Corporation.—

1. In addition to the findings and declarations in subsection (1), the Legislature also finds and declares that:

a. The public benefits corporation created under this paragraph will provide a mechanism necessary for the cost-effective and efficient issuance of bonds. This mechanism will eliminate unnecessary costs in the bond issuance process, thereby increasing the amounts available to pay reimbursement for losses to property sustained as a result of hurricane damage.

b. The purpose of such bonds is to fund reimbursements through the Florida Hurricane Catastrophe Fund to pay for the costs of construction, reconstruction, repair, restoration, and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane.

c. The efficacy of the financing mechanism will be

enhanced by the corporation's ownership of the assessments, by the insulation of the assessments from possible bankruptcy proceedings, and by covenants of the state with the corporation's bondholders.

2.a. There is created a public benefits corporation, which is an instrumentality of the state, to be known as the State Board of Administration ~~Florida Hurricane Catastrophe Fund~~ Finance Corporation.

b. The corporation shall operate under a five-member board of directors consisting of the Governor or a designee, the Chief Financial Officer or a designee, the Attorney General or a designee, the director of the Division of Bond Finance of the State Board of Administration, and the Chief Operating Officer ~~senior employee of the State Board of Administration responsible for operations~~ of the Florida Hurricane Catastrophe Fund.

c. The corporation has all of the powers of corporations under chapter 607 and under chapter 617, subject only to the provisions of this subsection.

d. The corporation may issue bonds and engage in such other financial transactions as are necessary to provide sufficient funds to achieve the purposes of this section.

e. The corporation may invest in any of the investments authorized under s. 215.47.

f. There shall be no liability on the part of, and no cause of action shall arise against, any board members or employees of the corporation for any actions taken by them in the performance of their duties under this paragraph.

3.a. In actions under chapter 75 to validate any bonds

issued by the corporation, the notice required by s. 75.06 shall be published in two newspapers of general circulation in the state, and the complaint and order of the court shall be served only on the State Attorney of the Second Judicial Circuit.

b. The state hereby covenants with holders of bonds of the corporation that the state will not repeal or abrogate the power of the board to direct the Office of Insurance Regulation to levy the assessments and to collect the proceeds of the revenues pledged to the payment of such bonds as long as any such bonds remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

4. The bonds of the corporation are not a debt of the state or of any political subdivision, and neither the state nor any political subdivision is liable on such bonds. The corporation does not have the power to pledge the credit, the revenues, or the taxing power of the state or of any political subdivision. The credit, revenues, or taxing power of the state or of any political subdivision shall not be deemed to be pledged to the payment of any bonds of the corporation.

5.a. The property, revenues, and other assets of the corporation; the transactions and operations of the corporation and the income from such transactions and operations; and all bonds issued under this paragraph and interest on such bonds are exempt from taxation by the state and any political subdivision, including the intangibles tax under chapter 199 and the income tax under chapter 220. This exemption does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt

obligations owned by corporations other than the State Board of Administration ~~Florida Hurricane Catastrophe Fund~~ Finance Corporation.

b. All bonds of the corporation shall be and constitute legal investments without limitation for all public bodies of this state; for all banks, trust companies, savings banks, savings associations, savings and loan associations, and investment companies; for all administrators, executors, trustees, and other fiduciaries; for all insurance companies and associations and other persons carrying on an insurance business; and for all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state and shall be and constitute eligible securities to be deposited as collateral for the security of any state, county, municipal, or other public funds. This sub-subparagraph shall be considered as additional and supplemental authority and shall not be limited without specific reference to this sub-subparagraph.

6. The corporation and its corporate existence shall continue until terminated by law; however, no such law shall take effect as long as the corporation has bonds outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds. Upon termination of the existence of the corporation, all of its rights and properties in excess of its obligations shall pass to and be vested in the state.

7. The State Board of Administration Finance Corporation is for all purposes the successor to the Florida Hurricane

Catastrophe Fund Finance Corporation.

Section 2. Effective June 1, 2013, subsections (17) and (18) of section 215.555, Florida Statutes, are renumbered as subsections (16) and (17), respectively, and present subsection (16) of that section is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

~~(16) TEMPORARY EMERGENCY OPTIONS FOR ADDITIONAL COVERAGE.—~~

~~(a) Findings and intent.—~~

~~1. The Legislature finds that:~~

~~a. Because of temporary disruptions in the market for catastrophic reinsurance, many property insurers were unable to procure reinsurance for the 2006 hurricane season with an attachment point below the insurers' respective Florida Hurricane Catastrophe Fund attachment points, were unable to procure sufficient amounts of such reinsurance, or were able to procure such reinsurance only by incurring substantially higher costs than in prior years.~~

~~b. The reinsurance market problems were responsible, at least in part, for substantial premium increases to many consumers and increases in the number of policies issued by the Citizens Property Insurance Corporation.~~

~~c. It is likely that the reinsurance market disruptions will not significantly abate prior to the 2007 hurricane season.~~

~~2. It is the intent of the Legislature to create a temporary emergency program, applicable to the 2007, 2008, and 2009 hurricane seasons, to address these market disruptions and enable insurers, at their option, to procure additional coverage from the Florida Hurricane Catastrophe Fund.~~

~~(b) Applicability of other provisions of this section.—All provisions of this section and the rules adopted under this section apply to the program created by this subsection unless specifically superseded by this subsection.~~

~~(c) Optional coverage.—For the contract year commencing June 1, 2007, and ending May 31, 2008, the contract year commencing June 1, 2008, and ending May 31, 2009, and the contract year commencing June 1, 2009, and ending May 31, 2010, the board shall offer for each of such years the optional coverage as provided in this subsection.~~

~~(d) Additional definitions.—As used in this subsection, the term:~~

~~1. "TEACO options" means the temporary emergency additional coverage options created under this subsection.~~

~~2. "TEACO insurer" means an insurer that has opted to obtain coverage under the TEACO options in addition to the coverage provided to the insurer under its reimbursement contract.~~

~~3. "TEACO reimbursement premium" means the premium charged by the fund for coverage provided under the TEACO options.~~

~~4. "TEACO retention" means the amount of losses below which a TEACO insurer is not entitled to reimbursement from the fund under the TEACO option selected. A TEACO insurer's retention options shall be calculated as follows:~~

~~a. The board shall calculate and report to each TEACO insurer the TEACO retention multiples. There shall be three TEACO retention multiples for defining coverage. Each multiple shall be calculated by dividing $3 billion, $4 billion, or $5~~

~~billion by the total estimated mandatory FHCF reimbursement premium assuming all insurers selected the 90-percent coverage level.~~

~~b. The TEACO retention multiples as determined under sub-subparagraph a. shall be adjusted to reflect the coverage level elected by the insurer. For insurers electing the 90-percent coverage level, the adjusted retention multiple is 100 percent of the amount determined under sub-subparagraph a. For insurers electing the 75-percent coverage level, the retention multiple is 120 percent of the amount determined under sub-subparagraph a. For insurers electing the 45-percent coverage level, the adjusted retention multiple is 200 percent of the amount determined under sub-subparagraph a.~~

~~c. An insurer shall determine its provisional TEACO retention by multiplying its estimated mandatory FHCF reimbursement premium by the applicable adjusted TEACO retention multiple and shall determine its actual TEACO retention by multiplying its actual mandatory FHCF reimbursement premium by the applicable adjusted TEACO retention multiple.~~

~~d. For TEACO insurers who experience multiple covered events causing loss during the contract year, the insurer's full TEACO retention shall be applied to each of the covered events causing the two largest losses for that insurer. For other covered events resulting in losses, the TEACO option does not apply and the insurer's retention shall be one-third of the full retention as calculated under paragraph (2)(c).~~

~~5. "TEACO addendum" means an addendum to the reimbursement contract reflecting the obligations of the fund and TEACO~~

~~insurers under the program created by this subsection.~~

~~6. "FHCF" means the Florida Hurricane Catastrophe Fund.~~

~~(e) TEACO addendum.~~

~~1. The TEACO addendum shall provide for reimbursement of TEACO insurers for covered events occurring during the contract year, in exchange for the TEACO reimbursement premium paid into the fund under paragraph (f). Any insurer writing covered policies has the option of choosing to accept the TEACO addendum for any of the 3 contract years that the coverage is offered.~~

~~2. The TEACO addendum shall contain a promise by the board to reimburse the TEACO insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer's TEACO retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses. The percentage shall be the same as the coverage level selected by the insurer under paragraph (4)(b).~~

~~3. The TEACO addendum shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.~~

~~4. The TEACO addendum shall also provide that the obligation of the board with respect to all TEACO addenda shall not exceed an amount equal to two times the difference between the industry retention level calculated under paragraph (2)(c) and the $3 billion, $4 billion, or $5 billion industry TEACO retention level options actually selected, but in no event may the board's obligation exceed the actual claims-paying capacity of the fund plus the additional capacity created in paragraph (g). If the actual claims-paying capacity and the additional~~

~~capacity created under paragraph (g) fall short of the board's obligations under the reimbursement contract, each insurer's share of the fund's capacity shall be prorated based on the premium an insurer pays for its mandatory reimbursement coverage and the premium paid for its optional TEACO coverage as each such premium bears to the total premiums paid to the fund times the available capacity.~~

~~5. The priorities, schedule, and method of reimbursements under the TEACO addendum shall be the same as provided under subsection (4).~~

~~6. A TEACO insurer's maximum reimbursement for a single event shall be equal to the product of multiplying its mandatory FHCF premium by the difference between its FHCF retention multiple and its TEACO retention multiple under the TEACO option selected and by the coverage selected under paragraph (4)(b), plus an additional 5 percent for loss adjustment expenses. A TEACO insurer's maximum reimbursement under the TEACO option selected for a TEACO insurer's two largest events shall be twice its maximum reimbursement for a single event.~~

~~(f) TEACO reimbursement premiums.~~

~~1. Each TEACO insurer shall pay to the fund, in the manner and at the time provided in the reimbursement contract for payment of reimbursement premiums, a TEACO reimbursement premium calculated as specified in this paragraph.~~

~~2. The insurer's TEACO reimbursement premium associated with the $3 billion retention option shall be equal to 85 percent of a TEACO insurer's maximum reimbursement for a single event as calculated under subparagraph (e)6. The TEACO~~

~~reimbursement premium associated with the $4 billion retention option shall be equal to 80 percent of a TEACO insurer's maximum reimbursement for a single event as calculated under subparagraph (c)6. The TEACO premium associated with the $5 billion retention option shall be equal to 75 percent of a TEACO insurer's maximum reimbursement for a single event as calculated under subparagraph (c)6.~~

~~(g) Effect on claims-paying capacity of the fund. For the contract term commencing June 1, 2007, the contract year commencing June 1, 2008, and the contract term beginning June 1, 2009, the program created by this subsection shall increase the claims-paying capacity of the fund as provided in subparagraph (4)(c)1. by an amount equal to two times the difference between the industry retention level calculated under paragraph (2)(c) and the $3 billion industry TEACO retention level specified in sub-subparagraph (d)4.a. The additional capacity shall apply only to the additional coverage provided by the TEACO option and shall not otherwise affect any insurer's reimbursement from the fund.~~

Section 3. Subsection (5) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(5) With respect to a rate filing involving coverage of the type for which the insurer is required to pay a reimbursement premium to the Florida Hurricane Catastrophe Fund, the insurer may fully recoup in its property insurance premiums any reimbursement premiums paid to the fund, together with reasonable costs of other reinsurance, including reinsurance

purchased solely to insure against potential deficits within the fund which the most recent estimate made pursuant to s. 215.555(4)(c)2. predicts would be funded through revenue bonds issued under s. 215.555(6)~~; however, except as otherwise provided in this section, the insurer may not recoup reinsurance costs that duplicate coverage provided by the fund~~. An insurer may not recoup more than 1 year of reimbursement premium at a time. Any under-recoupment from the prior year may be added to the following year's reimbursement premium, and any over-recoupment must be subtracted from the following year's reimbursement premium.

Section 4. Subsection (5) of section 627.0629, Florida Statutes, is amended to read:

627.0629 Residential property insurance; rate filings.—

(5) In order to provide an appropriate transition period, an insurer may implement an approved rate filing for residential property insurance over a period of years. Such insurer must provide an informational notice to the office setting out its schedule for implementation of the phased-in rate filing. The insurer may include in its rate the actual cost of private market reinsurance that corresponds to available coverage of the Temporary Increase in Coverage Limits, TICL, from the Florida Hurricane Catastrophe Fund. The insurer may also include the cost of reinsurance to replace the TICL reduction implemented pursuant to s. 215.555(16)(d)9. ~~215.555(17)(d)9.~~ However, this cost for reinsurance may not include any expense or profit load or result in a total annual base rate increase in excess of 10 percent.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1145 State-Owned or State-Leased Space
SPONSOR(S): Government Operations Subcommittee; La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1074

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N, As CS	Stramski	Williamson
2) Government Operations Appropriations Subcommittee		White CCW	Topp BDT
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill addresses various inventory, sales, lease, and reporting requirements applicable to state-owned and state-leased property. The bill:

- Revises reporting requirements applicable to the annual inventory of state-owned facilities.
- Requires the Division of State Lands in the Department of Environmental Protection (DEP) to consider a comparable sales analysis or a broker's opinion of value, as opposed to an appraisal, when determining the sale price of lands determined to be surplus if such property has an estimated value of $500,000 or less.
- Provides and revises various reporting and notice requirements applicable to surplus property.
- Requires state agencies, state universities, and Florida colleges to submit a business plan for the proposed use of a building or parcel determined to be surplus.
- Defines terms.
- Modifies requirements applicable to notices relating to the occupation of state-owned and state-leased facilities.
- Authorizes the Department of Management Services (DMS) to direct a state agency to occupy or relocate to space in any state-owned office building.
- Permits DMS to implement renovations or construction that more efficiently use state-owned buildings, if authorized by law.
- Requires DMS to include the strategic leasing plan in the annual master leasing report, and directs DMS to submit the report by October 1 of each year.
- Requires the leasing report to contain recommendations for using capital improvement funds to implement the consolidation of state agencies into state-owned office buildings.
- Requires DMS to procure services of tenant brokers, and provides when a state agency may or must use the services of a tenant broker.
- Subjects the Department of Transportation to DMS' leasing procedures as established by rule.
- Removes the authorization for an agency to negotiate a replacement lease with the lessor if that agency determines that it is in its best interest to remain in the space it currently occupies.
- Authorizes DMS to approve emergency acquisition of space without competitive bids under certain conditions.
- Revises energy performance analysis requirements.

The bill is likely to have a minimal fiscal impact on state agencies. It is anticipated that the provisions of the bill will be handled within existing agency resources.

The bill has an effective date of July 1, 2013, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Inventory of Facilities and Real Property

Background

State-owned and State-leased Facilities
Current law requires the Department of Management Services (DMS) to develop and maintain an automated inventory of all facilities[1] owned, leased, rented, or otherwise occupied or maintained by any agency of the state, the judicial branch, or the water management districts. DMS must use the data for determining maintenance needs and conducting strategic analyses.[2]

For assessing needed repairs and renovations of facilities, DMS must update its inventory with condition information for facilities of 3,000 square feet or more, and the inventories must record acquisitions of new facilities and significant changes in existing facilities as they occur. DMS must provide each agency and the judicial branch with the most recent inventory applicable to that agency or to the judicial branch.[3]

Each agency and the judicial branch must report significant changes in the inventory as they occur. Items relating to the condition and life-cycle cost of a facility must be updated at least every five years.[4] DMS must publish a complete report detailing this inventory every three years, and must publish an annual update of the report.[5]

State-owned Real Property
In 2010, the Legislature required the Department of Environmental Protection (DEP) to create, administer, and maintain a comprehensive system for all state lands and real property leased, owned, rented, and otherwise occupied or maintained by any state agency, by the judicial branch, and by any water management district.[6] The comprehensive state-owned real property system must allow the Board of Trustees of the Internal Improvement Trust Fund to perform its statutory responsibilities and the Division of State Lands in DEP to conduct strategic analyses and prepare annual valuation and disposition analyses and recommendations for all state real property assets.[7]

The division must annually submit a report that lists the state-owned real property recommended for disposition, including a report by DMS of surplus buildings recommended for disposition. The report must include specific information that documents the valuation and analysis process used to identify the specific state-owned real property recommended for disposition.[8]

DEP and DMS are implementing the Florida State Owned Lands and Records Information System, designed with two main components:
- Facility Information Tracking System (FITS); and
- Lands Information Tracking System (LITS).

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[1] Section 216.0152(1), F.S., defines the term "facility" to mean buildings, structures, and building systems, but does not include transportations facilities of the state transportation system.
[2] Section 216.0152(1), F.S.
[3] Section 216.0152(2), F.S.
[4] *Id.*
[5] Section 216.0152(3), F.S.
[6] Chapter 2010-280, L.O.F.; codified as s. 216.0153, F.S.
[7] Section 216.0153(1), F.S.
[8] Section 216.0153(3), F.S.

The FITS component is now operational and is designed to give agencies an online interface to record data on state-owned facilities, as well as provide the mechanism for agencies' annual identification and reporting of properties that are candidates for disposition.[9]

Effect of the Bill
The bill revises s. 216.0152, F.S., to require:

- By July 1 of each year, the Board of Governors of the State University System and DEP to provide to DMS an inventory of all state university and community college facilities.
- By October 1 of each year, DMS and DEP to publish a complete report of the inventory of all state-owned facilities, including the inventories of the Board of Governors, the Department of Education, and the Department of Transportation, excluding the transportation facilities of the state transportation system. The report must include the report on state-owned real property recommended for disposition.

The bill clarifies that deeds may be signed by agents of the Board of Trustees of the Internal Improvement Trust Fund.

Surplus of State-Owned Lands

Background
The Board of Trustees of the Internal Improvement Trust Fund (board) is authorized and directed to administer all state-owned lands. The board is responsible for the creation of an overall and comprehensive plan of development concerning the acquisition, management, and disposition of state-owned lands so as to ensure maximum benefit and use.[10]

The board must determine which lands, the title to which is vested in the board, may be surplused.[11] The sale price of land determined to be surplus must be determined by DEP's Division of State Lands (division) and must take into consideration an appraisal if the property if the estimated value is over $100,000. At the discretion of the division, a second appraisal may be required if the value is determined to be equal or greater than $1 million. All property less than $100,000 may be valued by a comparable sales analysis or a broker's opinion of value.[12]

Before a building or parcel of land is offered for lease, sublease, or sale to a local or federal unit of government or a private party, it must first be offered for lease to state agencies, state universities, and community colleges, with a priority consideration given to state universities and community colleges. Once a state agency, county, or local government has requested the use of surplus property, it has six months to secure the property under lease.[13]

Effect of the Bill
The bill requires the division to consider a comparable sales analysis or a broker's opinion of value, as opposed to an appraisal, when determining the sale price of lands determined to be surplus if such property has an estimated value of $500,000 or less, instead of $100,000 or less. It permits the division to obtain a second appraisal regardless of the value of the surplus property.

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[9] Information available at: http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/facilities_inventory_tracking_system_fits (last visited March 23, 2013).
[10] Section 253.03(7)(a), F.S.
[11] For conservation lands, the board must make a determination that the lands are no longer needed for conservation purposes and may dispose of them by an affirmative vote of at least three members. In the case of a land exchange involving the disposition of conservation lands, the board must determine by an affirmative vote of at least three members that the exchange will result in a net positive conservation benefit. For all other lands, the board must make a determination that the lands are no longer needed and may dispose of them by an affirmative vote of at least three members. Section 253.034(6), F.S.
[12] Section 253.034(6)(g), F.S.
[13] Section 253.03(15), F.S.

The bill requires parcels with a market value of over $500,000 to initially be offered for sale by competitive bid. Parcels that are not sold by competitive bid, and parcels with a market value of $500,000 or less, may be sold by any reasonable means, including through real estate services, auction, negotiated direct sales, or other appropriate services.

The bill decreases the time a state agency, county, or local government has to secure surplus property under lease from six months to 90 days after being notified that it may use such property.

Before a building or parcel of land is offered for lease, sublease, or sale to a local or federal unit of government or a private party, it must first be offered for lease to state agencies, state universities, and Florida colleges. The bill makes the offer for lease contingent upon the submission of a business plan, within 60 days after the offer, for the proposed use of the building or parcel. The business plan must, at a minimum, include the proposed use, the cost of renovation, the replacement cost for a new building for the same proposed use, a capital improvement plan for the building, evidence that the building or parcel meets an existing need that cannot be otherwise met, and other criteria developed by DEP rule. The business plan must be submitted for review and approval by the board or its designee regarding the intended use of the building or parcel of land before approval of a lease. The board or its designee must compare the appraised value of the building or parcel to any submitted business plan for proposed use of the building or parcel to determine if the transfer or sale is in the best interest of the state.

State Agency Leasing

Background

Leasing and DMS Authority
Current law provides the statutory authority for DMS to manage and operate the Florida Facilities Pool and specifies the oversight role DMS has in the leasing of privately owned space.[14]

A state agency may not lease a building unless prior approval of the lease conditions and the need is provided by DMS.[15] For a lease of less than 5,000 square feet, a state agency must notify DMS at least 30 days before the execution of the lease. DMS must review the lease and determine whether suitable space is available in a state-owned building located in the same geographic region.[16]

Except for emergency space needs,[17] no state agency may enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations.[18] While DMS is responsible for prior approval of lease terms for leases over 5,000 square feet, the lease is executed between the landlord and the agency.

Current law requires DMS to promulgate rules to provide procedures for: soliciting and accepting competitive proposals for leased space of 5,000 square feet or more in privately owned buildings; evaluating the proposals received; exempting from competitive bidding requirements any lease for which the purpose is the provision of care and living space for persons or emergency space needs as; and securing at least three documented quotes for a lease that is not required to be competitively bid.[19]

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[14] *See* ss. 255.248-255.25, F.S.
[15] Section 255.25(2)(a), F.S.
[16] Section 255.25(2)(b), F.S.
[17] Section 255.25(10), F.S., provides that DMS may approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action, if the chief administrator of the state agency or designated representative certifies that no other agency-controlled space is available to meet this emergency need, but in no case shall the lease for such space exceed 11 months.
[18] Section 255.25(3)(a), F.S. The size at which a leased space must be competitively bid was raised in 1990 from 2,000 square feet to 3,000 square feet by s. 3, chapter 90-224, L.O.F., and raised in 1999 to 5,000 square feet by s. 22, chapter 99-399, L.O.F.
[19] Section 255.249(4), F.S.

In 2007, the Legislature granted DMS the authority to contract for a tenant broker or real estate consultant to assist with carrying out its responsibilities and required DMS to submit an annual master leasing report to the Legislature. The report must contain analyses and other information on the status of state-owned facilities and private sector leased space. To assist DMS in preparing the report, state agencies must provide projected requirements for leased space based on active and planned full-time employee data, lease-expiration schedules for each geographic region of the state, and opportunities for consolidating operations, as well as costs relating to occupancy and relocation.[20]

Legislative Direction on Leased Space

In 2009, the Legislature directed DMS to compile a list of all state-owned surplus real property that has a value greater than $1,000 in order to determine potential cost savings and revenue opportunities from the sale or lease of assets, identify current contracts for leased office space in which the leased space is not fully used or occupied, and include a plan for contract renegotiation or subletting unoccupied space.[21] DMS subsequently reported[22] the following regarding space leased by state agencies:

- There are 566 private leases with 1.3 million square feet in potential excess space.
- More than 500,000 square feet of potential excess space is in Leon County.
- There are 276 leases with potential excess space with terms of 24 months or less.
- Eighty percent of the leases have less than 2,500 square feet of potential excess space.

In 2011, DMS was directed to use the services of a tenant broker to renegotiate all leases over 150,000 square feet,[23] and report to the Legislative Budget Commission the projected savings, implementation costs, and recommendations for leases to terminate.

In 2012, DMS and other agencies were directed to use tenant broker services to renegotiate or reprocure all private lease agreements expiring between July 1, 2013, and June 30, 2015, in order to achieve a reduction in costs in future years.[24] DMS incorporated this initiative into its 2012 Master Leasing Report and used tenant broker services to explore the possibilities of co-location, to review the space needs of each agency, and to review the length and terms of potential renewals or renegotiations. DMS was directed to provide a report by March 1, 2013, which lists each lease contract for private office or storage space, the status of renegotiations, and the savings achieved. According to the Lease Renegotiation Stats Report released by DMS,[25] renegotiations since July 1, 2011, have resulted in a projected reduction in lease costs of $25.1 million and a net reduction of 709,296 square feet for fiscal years 2011-12 and 2012-13.

Energy Performance and Reporting

The "Florida Energy Conservation and Sustainable Buildings Act"[26] creates duties for agencies and DMS with regards to energy efficiency in buildings leased and owned by the state.

Section 255.252(4), F.S., encourages agencies to consider shared savings financing of energy-efficiency and conservation projects, using contracts that split the resulting savings for a specified period of time between the state and the vendor. Such energy contracts may be funded from the operating budget.

Section 255.254, F.S., requires DMS to evaluate life-cycle costs based on sustainable building ratings for all leased or newly constructed facilities. Agencies must perform an energy performance analysis for all leased facilities larger than 5,000 square feet. The energy performance analysis must project forward through the term of the proposed lease the annual energy consumption and cost of the major

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[20] Section 255.249(3), F.S.
[21] Chapter 2009-15, L.O.F.
[22] DMS' Interim Report to the Legislature, *State of Florida Surplus Real Estate and Private Lease Renegotiation Plan*, March 3, 2009.
[23] Section 76, Chapter 2011-47, L.O.F.
[24] Section 23, Chapter 2012-119, L.O.F.
[25] *Supra.* at Fn. 9.
[26] Sections 255.251-255.2575, F.S.

energy-consuming systems and the analysis must be based on actual expenses. Potential leases may only be made where there is a showing that the energy costs incurred by the state are minimal compared to available like facilities. A lease agreement for any building leased by the state from a private sector entity must include provisions for monthly energy use data to be collected and submitted monthly to DMS by the owner of the building.

Section 255.257, F.S., requires all agencies to collect energy consumption and cost data for all state-owned and metered state-leased facilities of 5,000 square feet and larger, and report all such data to DMS.

Consultants' Competitive Negotiation Act
The Consultants' Competitive Negotiation Act (CCNA)[27] is used by public entities for the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services in construction, rehabilitation, or renovation activities. The CCNA must be used when professional services on a project for which the basic cost of construction, as estimated by the agency, will exceed $325,000, or for planning or study activity where compensation exceeds $35,000. The CCNA process generally involves a competitive selection process, in which compensation is not considered, followed by a competitive negotiation process, during which compensation is determined.

Effect of the Bill
As used in ss. 255.248-255.25, F.S., the bill defines the terms:

- "Managing agency" as an agency that serves as the title entity or that leases property from the Board of Trustees of the Internal Improvement Trust Fund for the operation and maintenance of a state-owned office building; and
- "Tenant broker" as a private real estate broker or brokerage firm licensed to do business in this state and under contract with the department to provide real estate transaction, portfolio management, and strategic planning services for state agencies.

The bill requires an agency that intends to terminate a lease of privately owned space before the expiration of its base term to notify DMS 90 days before termination.

DMS may direct a state agency to occupy or relocate to space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Records Information System managed by DEP.

The bill authorizes DMS to implement renovations or construction that more efficiently use state-owned buildings, if expressly authorized by the General Appropriations Act and if such renovations or construction are in the best interest of the state. Such use of tenant-improvement funds applies only to state-owned buildings, and all expenditures must be reported by DMS in the master leasing report.

The bill requires DMS to include the strategic leasing plan in the annual master leasing report, and directs DMS to submit the report to the Executive Office of the Governor and the Legislature by October 1 of each year instead of September 15. DMS must include in the leasing report recommendations for using capital improvement funds to consolidate state agencies into state-owned office buildings.

For purposes of complying with the annual reporting requirements in current law, the bill allows a state agency to use the services of a tenant broker when preparing information that must be furnished to DMS such as agency programs that affect the need for or use of space by that agency, reviews of lease-expiration schedules for each geographic area, active and planned full-time equivalent data, and business case analyses related to consolidation plans by an agency.

The bill also requires a title entity or managing agency to report to DMS any vacant or underutilized space for all state-owned office buildings and any restrictions that apply to any other agency occupying

[27] Section 287.055, F.S.

the vacant or underutilized space. The title entity or managing agency must notify DMS of any significant changes to its occupancy for the coming fiscal year.

The bill revises DMS' rulemaking authority to allow it to address state agency use of space identified in the Florida State-Owned Lands and Records Information System.

A state agency must notify DMS at least 90 days before the execution of a lease of less than 5,000 square feet, including a lease for nominal or no consideration. DMS must determine if suitable space is available in a state-owned or state-leased building in the same geographic region. If DMS determines that the lease is not in the best interests of the state, it must notify in writing the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill subjects the Department of Transportation to DMS's leasing procedures as established by rule.

The bill removes the authorization for an agency to negotiate a replacement lease with the lessor if that agency determines that it is in its best interest to remain in the space it currently occupies.

The bill requires DMS to procure term contracts for tenant broker services. DMS may contract with multiple tenant brokers for such services. In addition, agencies must use the services of a tenant broker to assist with a lease action undertaken by the agency, with the exception of leases between governmental entities.

The bill requires a lessor to provide DMS with documentation that a facility meets all uniform firesafety standards of the State Fire Marshal, and prohibits the state from taking occupancy without the Division of the State Fire Marshal's final approval.

The bill provides that s. 255.25, F.S., applies to leases for nominal or no consideration.

The bill authorizes DMS to approve emergency acquisition of space without competitive bids if an agency head certifies in writing that there is an immediate danger to the public health, safety, or welfare, or if other substantial loss to the state requires emergency action, and if the chief administrator of the state agency or the chief administrator's designated representative certifies in writing that no other agency-controlled space is available to meet this emergency need. Such lease may not exceed 11 months.

The bill provides that a vendor for an energy contract may be selected in accordance with s. 287.055, F.S., which is the Consultants' Competitive Negotiation Act.

The bill requires that an energy performance analysis that calculates the total annual energy consumption and energy costs be performed for leased facilities larger than 2,000 square feet. The analysis also must compare the energy performance of the proposed lease to similar facilities. A lease may not be finalized until the energy performance analysis has been approved by DMS. The bill removes the requirement of a showing that that the energy costs incurred by the state are minimal compared to available like facilities. The bill repeals the requirement that a lease agreement for any building leased by the state from a private sector entity must include provisions for monthly energy use data to be collected and submitted monthly to DMS by the owner of the building.

The bill requires each state agency to collect data on energy consumption and cost for each state-owned and state-leased facility.

Effective Date

The bill provides an effective date of July 1, 2013, except as otherwise expressly provided in the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 216.0152, F.S., revising provisions relating to the update of an inventory of certain facilities needing repairs or innovation maintained by DMS and revising provisions relating to a report detailing an inventory of state-owned facilities

Section 2 amends s. 253.031, F.S., clarifying that deeds may be signed by agents of the Board of Trustees of the Internal Improvement Trust Fund.

Section 3 amends s. 253.034, F.S., revising provisions relating to decisions by the board to surplus lands, revising the valuation of lands that are subject to certain requirements and requiring state entities to submit a business plan if a building or parcel is offered for use to the entity.

Section 4 amends s. 255.248, F.S., defining the terms "managing agency" and "tenant broker".

Section 5 amends s. 255.249, F.S., revising the responsibilities of DMS with respect to state-owned buildings, prohibiting a state agency from leasing space in a private building under certain circumstances, requiring an agency to notify DMS of an early termination of a lease within a certain timeframe, authorizing the department to direct state agencies to occupy space in a state-owned building, authorizing DMS to implement renovations in order to more efficiently use state-owned buildings, revising the contents of the master leasing report, authorizing state agencies to use the services of a tenant broker to provide certain information to DMS, requiring the title entity or managing agency to report any vacant or underutilized space to the department, and authorizing DMS to adopt additional rules.

Section 6 amends s. 255.25, F.S., deleting an exemption that allows an agency to negotiate a replacement lease under certain circumstances, and requiring a state agency to use a tenant broker to assist with lease actions.

Section 7 amends s. 255.252, F.S., specifying that a vendor for certain energy efficiency contracts must be selected in accordance with state procurement requirements.

Section 8 amends s. 255.254, F.S., revising provisions relating to requirements for energy performance analysis for certain buildings.

Section 9 amends s. 255.257, F.S., requiring all state-owned facilities to report energy consumption and cost data.

Section 10 amends s. 110.171, F.S., conforming cross-references.

Section 11 amends s. 985.682, F.S., conforming cross-references.

Section 12 provides an effective date of July 1, 2013, unless otherwise specified in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   The bill is likely to have a minimal fiscal impact on state agencies. It is anticipated that the provisions of the bill will be handled within existing agency resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase state agency business for tenant brokers.

D. FISCAL COMMENTS:

Agencies may incur insignificant costs associated with the requirement to use a tenant broker to assist with a lease action undertaken by the agency. However, the use of such tenant brokers will likely realize cost savings for the state. In fiscal years 2011-12 and 2012-13, state agencies saved a total of $25.1 million in savings by utilizing the tenant brokers to renegotiate existing leases or to procure new leases[28]. The savings from using tenant brokers should be greater than the associated costs. Any fiscal impact will be handled within existing agency resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to DEP to develop criteria that must be included in the business plan required by s. 253.034(15), F.S.

The bill revises DMS' rulemaking authority under s. 255.249, F.S., to allow it to address state agency use of space identified in the Florida State-Owned Lands and Records Information System.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:
The bill authorizes DMS to direct a state agency to occupy or relocate to space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Records Information System managed by DEP. It is unclear what standards, if any, would apply to DMS issuing such a direction.

[28] Agency Lease Cost Savings Snapshot for March 29, 2013:
http://www.dms.myflorida.com/content/download/90278/515097/version/1/file/Agency+Cost+Saving+Summary+3-27-13.pdf

Drafting Issues:
"Lease action" is not defined in the bill. It is therefore unclear precisely when the requirement that an agency use a tenant broker would apply.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Government Operations Subcommittee adopted two amendments to House Bill 1145 and reported the bill favorably as a committee substitute.

The committee substitute removes the requirement that the Department of Transportation provide an inventory of transportation facilities to DMS and DEP; restores the size of a lease that triggers a competitive bid requirement from 2,000 square feet to 5,000 square feet; restores the size threshold for the applicability of certain notice and procedural requirements for state leases from 2,000 square feet to 5,000 square feet; removes the authority for DMS to charge fees directly to state employees for the use of parking facilities.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

A bill to be entitled

An act relating to state-owned or state-leased space; amending s. 216.0152, F.S.; revising provisions relating to the update of an inventory of certain facilities needing repairs or innovation maintained by the Department of Management Services; revising provisions relating to a report detailing an inventory of state-owned facilities; amending s. 253.031, F.S.; clarifying that deeds may be signed by agents of the Board of Trustees of the Internal Improvement Trust Fund; amending s. 253.034, F.S.; revising provisions relating to decisions by the board to surplus lands; revising the valuation of lands that are subject to certain requirements; requiring state entities to submit a business plan if a building or parcel is offered for use to the entity; amending s. 255.248, F.S.; defining the terms "managing agency" and "tenant broker"; amending s. 255.249, F.S.; revising the responsibilities of the Department of Management Services with respect to state-owned buildings; prohibiting a state agency from leasing space in a private building under certain circumstances; requiring an agency to notify the department of an early termination of a lease within a certain timeframe; authorizing the department to direct state agencies to occupy space in a state-owned building; authorizing the department to implement renovations in order to more efficiently use state-owned buildings;

revising the contents of the master leasing report; authorizing state agencies to use the services of a tenant broker to provide certain information to the department; requiring the title entity or managing agency to report any vacant or underutilized space to the department; authorizing the department to adopt additional rules; amending s. 255.25, F.S.; deleting an exemption that allows an agency to negotiate a replacement lease under certain circumstances; requiring a state agency to use a tenant broker to assist with lease actions; amending s. 255.252, F.S.; specifying that a vendor for certain energy efficiency contracts must be selected in accordance with state procurement requirements; amending s. 255.254, F.S.; revising provisions relating to requirements for energy performance analysis for certain buildings; amending 255.257, F.S.; requiring all state-owned facilities to report energy consumption and cost data; amending ss. 110.171 and 985.682, F.S.; conforming cross-references; providing effective dates.

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

Section 1. Section 216.0152, Florida Statutes, is amended to read:

216.0152 Inventory of state-owned facilities or state-occupied facilities.—

(1) The Department of Management Services shall develop

and maintain an automated inventory of all facilities owned, leased, rented, or otherwise occupied or maintained by a state ~~any~~ agency ~~of the state~~, the judicial branch, or the water management districts. The inventory data shall be provided annually by July 1 by the owning or operating agency in a format prescribed by the department and must ~~shall~~ include the location, occupying agency, ownership, size, condition assessment, valuations, operating costs, maintenance record, age, parking and employee facilities, building uses, full-time equivalent occupancy, known restrictions or historic designations, leases or subleases, associated revenues, and other information as required by ~~in a~~ rule adopted by the department. The department shall use this data for determining maintenance needs, conducting strategic analyses, including, but not limited to, analyzing and identifying candidates for surplus, valuation, and disposition, and life-cycle cost evaluations of the facility. ~~Inventory data shall be provided to the department on or before July 1 of each year by the owning or operating agency in a format prescribed by the department.~~ The inventory need not include a condition assessment or maintenance record of facilities not owned by a state agency, the judicial branch, or a water management district. The term "facility," as used in this section, means buildings, structures, and building systems, but does not include transportation facilities of the state transportation system.

(a) For reporting purposes, the Department of Transportation shall develop and maintain an inventory of the transportation facilities of the state transportation system.

The Department of Transportation shall also identify and dispose of surplus property pursuant to ss. 337.25 and 339.04.

(b) The Board of Governors of the State University System and the Department of Education, respectively, shall develop and maintain an inventory, in the manner prescribed by the Department of Management Services, of all state university and community college facilities and, by July 1 of each year, provide this inventory ~~shall make the~~ data ~~available~~ in a format acceptable to the Department of Management Services. ~~By March 15, 2011, the department shall adopt rules pursuant to ss. 120.536 and 120.54 to administer this section.~~

~~(2) For the purpose of assessing needed repairs and renovations of facilities, the Department of Management Services shall update its inventory with condition information for facilities of 3,000 square feet or more and cause to be updated the other inventories required by subsection (1) at least once every 5 years, but the inventories shall record acquisitions of new facilities and significant changes in existing facilities as they occur. The Department of Management Services shall provide each agency and the judicial branch with the most recent inventory applicable to that agency or to the judicial branch. Each agency and the judicial branch shall, in the manner prescribed by the Department of Management Services, report significant changes in the inventory as they occur. Items relating to the condition and life-cycle cost of a facility shall be updated at least every 5 years.~~

(2) ~~(3)~~ The Department of Management Services and the Department of Environmental Protection shall, by October 1 of

each year, ~~every 3 years,~~ publish a complete report detailing the ~~this~~ inventory of all state-owned facilities, including the inventories of the Board of Governors of the State University System, the Department of Education, and the Department of Transportation, excluding the transportation facilities of the state transportation system. The annual report of state-owned real property recommended for disposition required under s. 216.0153 must be included in this report ~~and shall publish an annual update of the report. The department shall furnish the updated report to the Executive Office of the Governor and the Legislature no later than September 15 of each year~~.

(3) The Department of Management Services shall adopt rules to administer this section.

Section 2. Subsection (8) of section 253.031, Florida Statutes, is amended to read:

253.031 Land office; custody of documents concerning land; moneys; plats.—

(8) The board shall keep a suitable seal of office. An impression of this seal shall be made upon the deeds conveying lands sold by the state, by the Board of Education, and by the Board of Trustees of the Internal Improvement Trust Fund of this state; and all such deeds shall be ~~personally~~ signed by the ~~officers or~~ trustees or their agents as authorized under s. 253.431, making the same and impressed with the ~~said~~ seal and are ~~shall be~~ operative and valid without witnesses to the execution thereof; and the impression of such seal on any such deeds entitles ~~shall entitle~~ the same to record and to be received in evidence in all courts.

Section 3. Subsections (6) and (15) of section 253.034, Florida Statutes, are amended to read:

253.034 State-owned lands; uses.—

(6) The Board of Trustees of the Internal Improvement Trust Fund shall determine which lands, the title to which is vested in the board, may be surplused. For conservation lands, the board shall determine whether ~~make a determination that~~ the lands are no longer needed for conservation purposes and may dispose of them by an affirmative vote of at least three members. In the case of a land exchange involving the disposition of conservation lands, the board must determine by an affirmative vote of at least three members that the exchange will result in a net positive conservation benefit. For all other lands, the board shall determine whether ~~make a determination that~~ the lands are no longer needed and may dispose of them by an affirmative vote of at least three members.

(a) For the purposes of this subsection, all lands acquired by the state before ~~prior to~~ July 1, 1999, using proceeds from ~~the~~ Preservation 2000 bonds, the Conservation and Recreation Lands Trust Fund, the Water Management Lands Trust Fund, Environmentally Endangered Lands Program, and the Save Our Coast Program and titled to the board~~,~~ which ~~lands~~ are identified as core parcels or within original project boundaries are~~, shall be~~ deemed to have been acquired for conservation purposes.

(b) For any lands purchased by the state on or after July 1, 1999, before ~~a determination shall be made by the board prior~~

~~to~~ acquisition, the board must determine which ~~as to those~~ parcels must ~~that shall~~ be designated as having been acquired for conservation purposes. ~~No~~ Lands acquired for use by the Department of Corrections, the Department of Management Services for use as state offices, the Department of Transportation, except those specifically managed for conservation or recreation purposes, or the State University System or the Florida Community College System may not ~~shall~~ be designated as having been purchased for conservation purposes.

(c) At least every 10 years, as a component of each land management plan or land use plan and in a form and manner prescribed by rule by the board, each manager shall evaluate and indicate to the board those lands that are not being used for the purpose for which they were originally leased. For conservation lands, the council shall review and ~~shall~~ recommend to the board whether such lands should be retained in public ownership or disposed of by the board. For nonconservation lands, the division shall review such lands and ~~shall~~ recommend to the board whether such lands should be retained in public ownership or disposed of by the board.

(d) Lands owned by the board which are not actively managed by any state agency or for which a land management plan has not been completed pursuant to subsection (5) must ~~shall~~ be reviewed by the council or its successor for its recommendation as to whether such lands should be disposed of by the board.

(e) Before ~~Prior to~~ any decision by the board to surplus lands, the Acquisition and Restoration Council shall review and make recommendations to the board concerning the request for

surplusing. The council shall determine whether the request for surplusing is compatible with the resource values of and management objectives for such lands.

(f) In reviewing lands owned by the board, the council shall consider whether such lands would be more appropriately owned or managed by the county or other unit of local government in which the land is located. The council shall recommend to the board whether a sale, lease, or other conveyance to a local government would be in the best interests of the state and local government. The provisions of this paragraph in no way limit the provisions of ss. 253.111 and 253.115. Such lands shall be offered to the state, county, or local government for a period of 45 days. Permittable uses for such surplus lands may include public schools; public libraries; fire or law enforcement substations; governmental, judicial, or recreational centers; and affordable housing meeting the criteria of s. 420.0004(3). County or local government requests for surplus lands shall be expedited throughout the surplusing process. If the county or local government does not elect to purchase such lands in accordance with s. 253.111, ~~then~~ any surplusing determination involving other governmental agencies shall be made when ~~upon~~ the board decides ~~deciding~~ the best public use of the lands. Surplus properties in which governmental agencies have expressed no interest must ~~shall~~ then be available for sale on the private market.

(g)~~1.~~ The sale price of lands determined to be surplus pursuant to this subsection and s. 253.82 shall be determined by the division, which shall consider ~~and shall take into~~

~~consideration~~ an appraisal of the property, or, if ~~when~~ the estimated value of the land is $500,000 or less ~~than $100,000~~, a comparable sales analysis or a broker's opinion of value. ~~If the appraisal referenced in this paragraph yields a value equal to or greater than $1 million,~~ The division~~, in its sole discretion,~~ may require a second appraisal. The individual or entity that requests ~~requesting~~ to purchase the surplus parcel shall pay all ~~appraisal~~ costs associated with determining the property's value, if any.

1.~~2.a.~~ A written valuation of land determined to be surplus pursuant to this subsection and s. 253.82, and related documents used to form the valuation or which pertain to the valuation, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

a.~~b.~~ The exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the board.

b.~~c.~~ Before ~~Prior to~~ expiration of the exemption, the division may disclose confidential and exempt appraisals, valuations, or valuation information regarding surplus land:

(I) During negotiations for the sale or exchange of the land.

(II) During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land to facilitate closure of such effort or process.

(III) When the passage of time has made the conclusions of value invalid.

(IV) When negotiations or marketing efforts concerning the

land are concluded.

2.~~3.~~ A unit of government that acquires title to lands hereunder for less than appraised value may not sell or transfer title to all or any portion of the lands to any private owner for ~~a period of~~ 10 years. Any unit of government seeking to transfer or sell lands pursuant to this paragraph must ~~shall~~ first allow the board of trustees to reacquire such lands for the price at which the board sold such lands.

(h) Parcels with a market value over $500,000 must be initially offered for sale by competitive bid. The division may use agents, as authorized by s. 253.431, for this process. Any parcels unsuccessfully offered for sale by competitive bid, and parcels with a market value of $500,000 or less, may be sold by any reasonable means, including procuring real estate services, open or exclusive listings, competitive bid, auction, negotiated direct sales, or other appropriate services, to facilitate the sale.

(i) ~~(h)~~ After reviewing the recommendations of the council, the board shall determine whether lands identified for surplus are to be held for other public purposes or ~~whether such lands~~ are no longer needed. The board may require an agency to release its interest in such lands. A state ~~For an~~ agency, county, or local government that has requested the use of a property that was to be declared as surplus, ~~said agency~~ must secure ~~have~~ the property under lease within 90 days after being notified that it may use such property ~~6 months of the date of expiration of the notice provisions required under this subsection and s. 253.111~~.

(j) ~~(i)~~ Requests for surplusing may be made by any public

or private entity or person. All requests shall be submitted to the lead managing agency for review and recommendation to the council or its successor. Lead managing agencies ~~shall~~ have 90 days to review such requests and make recommendations. Any surplusing requests that have not been acted upon within the 90-day time period shall be immediately scheduled for hearing at the next regularly scheduled meeting of the council or its successor. Requests for surplusing pursuant to this paragraph are ~~shall~~ not ~~be~~ required to be offered to local or state governments as provided in paragraph (f).

(k) ~~(j)~~ Proceeds from any sale of surplus lands pursuant to this subsection shall be deposited into the fund from which such lands were acquired. However, if the fund from which the lands were originally acquired no longer exists, such proceeds shall be deposited into an appropriate account to be used for land management by the lead managing agency assigned the lands before ~~prior to~~ the lands were ~~being~~ declared surplus. Funds received from the sale of surplus nonconservation lands, or lands that were acquired by gift, by donation, or for no consideration, shall be deposited into the Internal Improvement Trust Fund.

(l) ~~(k)~~ Notwithstanding ~~the provisions of~~ this subsection, ~~no~~ such disposition of land may not ~~shall~~ be made if it ~~such disposition~~ would have the effect of causing all or any portion of the interest on any revenue bonds issued to lose the exclusion from gross income for federal income tax purposes.

(m) ~~(l)~~ The sale of filled, formerly submerged land that does not exceed 5 acres in area is not subject to review by the council or its successor.

(n) ~~(m)~~ The board may adopt rules to administer ~~implement the provisions of~~ this section~~,~~ which may include procedures for administering surplus land requests and criteria for when the division may approve requests to surplus nonconservation lands on behalf of the board.

(15) Before a building or parcel of land is offered for lease, sublease, or sale to a local or federal unit of government or a private party, it must ~~shall~~ first be offered for lease to state agencies, state universities, and community colleges, contingent upon the submission of a business plan for the proposed use of the building or parcel. Within 60 days after the offer of a surplus building or parcel, a state agency, state university, or Florida College System institution that requests the transfer of a surplus building or parcel must develop and submit a business plan for the proposed use of the building or parcel. The business plan must, at a minimum, include the proposed use, the cost of renovation, the replacement cost for a new building for the same proposed use, a capital improvement plan for the building, evidence that the building or parcel meets an existing need that cannot be otherwise met, and other criteria developed by rule by the department ~~with priority consideration given to state universities and community colleges~~. A state agency, university, or Florida College System institution shall ~~community college must~~ submit its business ~~a~~ plan for review and approval by the Board of Trustees of the Internal Improvement Trust Fund or its designee regarding the intended use of the building or parcel of land before approval of a lease. The board or its designee shall compare the

appraised value of the building or parcel to any submitted business plan for proposed use of the building or parcel to determine if the transfer or sale is in the best interest of the state.

Section 4. Section 255.248, Florida Statutes, is amended to read:

255.248 Definitions~~; ss. 255.249 and 255.25~~.~~—~~As used in this section and ss. 255.249-255.25 ~~255.249 and 255.25~~, the term:

(1) "Best leasing value" means the highest overall value to the state based on objective factors that include, but are not limited to, rental rate, renewal rate, operational and maintenance costs, tenant-improvement allowance, location, lease term, condition of facility, landlord responsibility, amenities, and parking.

(2) "Competitive solicitation" means an invitation to bid, a request for proposals, or an invitation to negotiate.

(3) "Department" means the Department of Management Services.

(4) "Managing agency" means an agency that serves as the title entity or that leases property from the Board of Trustees of the Internal Improvement Trust Fund for the operation and maintenance of a state-owned office building.

(5)~~(4)~~ "Privately owned building" means any building not owned by a governmental agency.

(6)~~(5)~~ "Responsible lessor" means a lessor that ~~who~~ has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure

good faith performance.

(7) ~~(6)~~ "Responsive bid," "responsive proposal," or "responsive reply" means a bid or proposal, or reply submitted by a responsive and responsible lessor, which conforms in all material respects to the solicitation.

(8) ~~(7)~~ "Responsive lessor" means a lessor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.

(9) ~~(8)~~ "State-owned office building" means any building whose title ~~to which~~ is vested in the state and which is used by one or more executive agencies predominantly for administrative direction and support functions. The ~~This~~ term excludes:

(a) District or area offices established for field operations where law enforcement, military, inspections, road operations, or tourist welcoming functions are performed.

(b) All educational facilities and institutions under the supervision of the Department of Education.

(c) All custodial facilities and institutions used primarily for the care, custody, or treatment of wards of the state.

(d) Buildings or spaces used for legislative activities.

(e) Buildings purchased or constructed from agricultural or citrus trust funds.

(10) "Tenant broker" means a private real estate broker or brokerage firm licensed to do business in this state and under contract with the department to provide real estate transaction, portfolio management, and strategic planning services for state agencies.

Section 5. Section 255.249, Florida Statutes, is amended to read:

255.249 Department of Management Services; responsibility; department rules.—

(1) The department shall have responsibility and authority for the operation, custodial care, ~~and~~ preventive maintenance, repair, alteration, modification, and allocation of space for ~~of~~ all buildings in the Florida Facilities Pool and adjacent ~~the~~ grounds ~~located adjacent thereto~~.

(2) A state agency may not lease space in a private building that is to be constructed for state use without first obtaining prior approval of the architectural design and preliminary construction from the department.

(3) ~~(2)~~ The department shall require a ~~any~~ state agency planning to terminate a lease for the purpose of occupying space in a new state-owned office building~~, the funds for which are appropriated after June 30, 2000,~~ to state why the proposed relocation is in the best interest of the state.

(4) ~~(3)(a)~~ An agency that intends to terminate a lease of privately owned space before the expiration of its base term, must notify the department 90 days before the termination. The department shall, to the extent feasible, coordinate the vacation of privately owned leased space with the expiration of the lease on that space and, when a lease is terminated before expiration of its base term, will make a reasonable effort to place another state agency in the space vacated. A ~~Any~~ state agency may lease the space in any building that was subject to a lease terminated by a state agency for a period of time equal to

the remainder of the base term without ~~the requirement of~~ competitive solicitation.

(5) The department may direct a state agency to occupy, or relocate to, space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Records Information System managed by the Department of Environmental Protection.

(6) If expressly authorized by the General Appropriations Act and in the best interest of the state, the department may implement renovations or construction that more efficiently use state-owned buildings. Such use of tenant-improvement funds applies only to state-owned buildings, and all expenditures must be reported by the department in the master leasing report identified in subsection (8).

(7) ~~(b)~~ The department shall develop and implement a strategic leasing plan. The strategic leasing plan must ~~shall~~ forecast space needs for all state agencies and identify opportunities for reducing costs through consolidation, relocation, reconfiguration, capital investment, and the renovation, building, or acquisition of state-owned space.

(8) ~~(c)~~ The department shall annually publish a master leasing report that includes the strategic leasing plan created under subsection (7). The department shall annually submit ~~furnish~~ the ~~master~~ leasing report to the Executive Office of the Governor and the Legislature by October 1. The report must provide ~~September 15 of each year which provides the following information~~:

(a) ~~1.~~ A list, by agency and by geographic market, of all

leases that are due to expire within 24 months.

(b) ~~2.~~ Details of each lease, including location, size, cost per leased square foot, lease-expiration date, and a determination of whether sufficient state-owned office space will be available at the expiration of the lease to accommodate affected employees.

(c) ~~3.~~ A list of amendments and supplements to and waivers of terms and conditions in lease agreements that have been approved pursuant to s. 255.25(2) ~~(a)~~ during the previous 12 months and an associated comprehensive analysis, including financial implications, showing that any amendment, supplement, or waiver is in the state's long-term best interest.

(d) ~~4.~~ Financial impacts to the Florida Facilities Pool rental rate due to the sale, removal, acquisition, or construction of pool facilities.

(e) ~~5.~~ Changes in occupancy rate, maintenance costs, and efficiency costs of leases in the state portfolio. Changes to occupancy costs in leased space by market and changes to space consumption by agency and by market.

(f) ~~6.~~ An analysis of portfolio supply and demand.

(g) ~~7.~~ Cost-benefit analyses of acquisition, build, and consolidation opportunities, recommendations for strategic consolidation, and strategic recommendations for disposition, acquisition, and building.

(h) Recommendations for using capital improvement funds to implement the consolidation of state agencies into state-owned office buildings.

(i) ~~8.~~ The updated plan required by s. 255.25(4)(c).

(9) ~~(d)~~ Annually, by June 30: ~~of each year,~~

(a) Each state agency shall ~~annually~~ provide to the department all information regarding agency programs affecting the need for or use of space by that agency, reviews of lease-expiration schedules for each geographic area, active and planned full-time equivalent data, business case analyses related to consolidation plans by an agency, a telework program under s. 110.171, and current occupancy and relocation costs, inclusive of furnishings, fixtures and equipment, data, and communications. State agencies may use the services of a tenant broker in preparing this information.

(b) The title entity or managing agency shall report to the department any vacant or underutilized space for all state-owned office buildings and any restrictions that apply to any other agency occupying the vacant or underutilized space. The title entity or managing agency shall also notify the department of any significant changes to its occupancy for the coming fiscal year.

(10) ~~(4)~~ The department shall adopt rules ~~pursuant to chapter 120~~ providing:

(a) Methods for accomplishing the duties outlined in subsection (1).

(b) Procedures for soliciting and accepting competitive solicitations for leased space of 5,000 square feet or more in privately owned buildings, for evaluating ~~the~~ proposals received, for exemption from competitive solicitations requirements of any lease for ~~the purpose of which is~~ the provision of care and living space for persons or emergency

space needs as provided in s. 255.25(10), and for ~~the~~ securing ~~of~~ at least three documented quotes for a lease that is not required to be competitively solicited.

(c) A standard method for determining square footage or any other measurement used as the basis for lease payments or other charges.

(d) Methods of allocating space in both state-owned office buildings and privately owned buildings leased by the state based on use, personnel, and office equipment.

(e)~~1.~~ Acceptable terms and conditions for inclusion in lease agreements.

~~2.~~ At a minimum, such terms and conditions must ~~shall~~ include~~, at a minimum,~~ the following clauses, which may not be amended, supplemented, or waived:

1.~~a.~~ As provided in s. 255.2502, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

2.~~b.~~ "The lessee has ~~shall have~~ the right to terminate this lease, without penalty, if ~~this lease in the event~~ a state-owned building becomes available to the lessee for occupancy and the lessee has given ~~upon giving~~ 6 months' advance written notice to the lessor by certified mail, return receipt requested."

(f) State agency use of space identified in the Florida State-Owned Lands and Records Information System under subsection (5) ~~Maximum rental rates, by geographic areas or by county, for leasing privately owned space~~.

(g) A standard method for the assessment of rent to state

agencies and other authorized occupants of state-owned office space, notwithstanding the source of funds.

(h) For full disclosure of the names and the extent of interest of the owners holding a 4 percent ~~4-percent~~ or more interest in ~~any~~ privately owned property leased to the state or in the entity holding title to the property, for exemption from such disclosure of any beneficial interest that ~~which~~ is represented by stock in a ~~any~~ corporation registered with the Securities and Exchange Commission or registered pursuant to chapter 517~~,~~ which ~~stock~~ is for sale to the general public, and for exemption from such disclosure of any leasehold interest in property located outside the territorial boundaries of the United States.

(i) For full disclosure of the names of all public officials, agents, or employees holding any interest in any privately owned property leased to the state or in the entity holding title to the property, and the nature and extent of their interest, for exemption from such disclosure of any beneficial interest that ~~which~~ is represented by stock in any corporation registered with the Securities and Exchange Commission or registered pursuant to chapter 517~~,~~ which ~~stock~~ is for sale to the general public, and for exemption from such disclosure of any leasehold interest in property located outside the territorial boundaries of the United States.

(j) A method for reporting leases for nominal or no consideration.

(k) For a lease of less than 5,000 square feet, a method for certification by the agency head or the agency head's

designated representative that all criteria for leasing have been fully complied with and for ~~the~~ filing ~~of~~ a copy of such lease and all supporting documents with the department for its review and approval as to technical sufficiency and whether it is in the best interests of the state.

(l) A standardized format for state agency reporting of the information required by paragraph (9)(a) ~~(3)(d)~~.

(m) Procedures for the effective and efficient administration of this section.

(11) ~~(5)~~ The department shall prepare a form listing all conditions and requirements adopted pursuant to this chapter which must be met by any state agency leasing any building or part thereof. Before executing any lease, this form must ~~shall~~ be certified by the agency head or the agency head's designated representative and submitted to the department.

(12) ~~(6)~~ The department may contract for real estate consulting or tenant brokerage services in order to carry out its duties relating to the strategic leasing plan under subsection (7). The contract must ~~shall~~ be procured pursuant to s. 287.057. The vendor ~~that is~~ awarded the contract shall be compensated ~~by the department,~~ subject to the provisions of the contract, and such compensation is subject to appropriation by the Legislature. A ~~The~~ real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered pursuant to the contract. Moneys paid by a lessor to the department under a facility-leasing arrangement are not subject to the charges imposed under s. 215.20.

Section 6. Section 255.25, Florida Statutes, is amended to

read:

255.25 Approval required before ~~prior to~~ construction or lease of buildings.—

(1) ~~(a) A state agency may not lease space in a private building that is to be constructed for state use unless prior approval of the architectural design and preliminary construction plans is first obtained from the department.~~

~~(b)~~ During the term of existing leases, each agency shall consult with the department regarding opportunities for consolidation, use of state-owned space, build-to-suit space, and potential acquisitions; shall monitor market conditions; and shall initiate a competitive solicitation or, if appropriate, lease-renewal negotiations for each lease held in the private sector to effect the best overall lease terms reasonably available to that agency.

(a) Amendments to leases may be permitted to modify any lease provisions or ~~any~~ other terms or conditions unless~~, except to the extent~~ specifically prohibited under ~~by~~ this chapter.

(b) The department shall serve as a mediator in lease-renewal negotiations if the agency and the lessor are unable to reach a compromise within 6 months after renegotiation and if ~~either~~ the agency or lessor requests intervention by the department.

(c) If ~~When specifically~~ authorized by the General Appropriations Act, and in accordance with s. 255.2501, if applicable, the department may approve a lease-purchase, sale-leaseback, or tax-exempt leveraged lease contract or other financing technique for the acquisition, renovation, or

construction of a state fixed capital outlay project if ~~when~~ it is in the best interest of the state.

(2) ~~(a)~~ Except as provided in ss. 255.249 and ~~s.~~ 255.2501, a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and of the need for the lease ~~therefor~~ is first obtained from the department. An ~~Any~~ approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department, subject to final approval by the head of the department ~~of Management Services~~ and s. 255.2502.

(a) ~~(b)~~ For the lease of less than 5,000 square feet of space, including space leased for nominal or no consideration, a state agency must notify the department at least 90 ~~30~~ days before the execution of the lease. The department shall review the lease and determine whether suitable space is available in a state-owned or state-leased building located in the same geographic region. If the department determines that space is not available, the department shall determine whether the state agency lease is in the best interests of the state. If the department determines that the execution of the lease is not in the best interests of the state, the department shall notify the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives ~~and the presiding officers of each house of the Legislature~~ of such finding in writing. A lease that is for a term extending beyond the end of a fiscal year is subject to ~~the provisions of~~ ss. 216.311, 255.2502, and 255.2503.

(b) ~~(c)~~ The department shall adopt ~~as a rule~~ uniform leasing procedures by rule for use by each state agency ~~other than the Department of Transportation~~. Each state agency shall ensure that the leasing practices of that agency are in substantial compliance with the uniform leasing rules adopted under this section and ss. 255.249, 255.2502, and 255.2503.

(c) ~~(d) Notwithstanding paragraph (a) and except as provided in ss. 255.249 and 255.2501, a state agency may not lease a building or any part thereof unless prior approval of the lease terms and conditions and of the need therefor is first obtained from the department.~~ The department may not approve any term or condition in a lease agreement which has been amended, supplemented, or waived unless a comprehensive analysis, including financial implications, demonstrates that such amendment, supplement, or waiver is in the state's long-term best interest. An ~~Any~~ approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department, subject to final approval by the head of the department, ~~of Management Services~~ and the provisions of s. 255.2502.

(3)(a) Except as provided in subsection (10), a state agency may not enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations.

1.a. An invitation to bid must ~~shall~~ be made available simultaneously to all lessors and ~~must~~ include a detailed description of the space sought; the time and date for the

receipt of bids and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the bid. If the agency contemplates renewing ~~renewal of~~ the contract, that fact must be stated in the invitation to bid. The bid must include the price for each year for which the contract may be renewed. Evaluation of bids must ~~shall~~ include consideration of the total cost for each year as submitted by the lessor. Criteria that were not set forth in the invitation to bid may not be used in determining the acceptability of the bid.

b. The contract shall be awarded with reasonable promptness by written notice to the responsible and responsive lessor that submits the lowest responsive bid. The contract file must contain a written determination that the bid meets ~~This bid must be determined in writing to meet~~ the requirements and criteria set forth in the invitation to bid.

2.a. If an agency determines in writing that the use of an invitation to bid is not practicable, leased space shall be procured by competitive sealed proposals. A request for proposals shall be made available simultaneously to all lessors and must include a statement of the space sought; the time and date for the receipt of proposals and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria, which must include, but need not be limited to, price, to be used in determining the acceptability of the proposal. The relative importance of price and other evaluation criteria must ~~shall~~ be indicated. If the

agency contemplates renewing ~~renewal of~~ the contract, that fact must be stated in the request for proposals. The proposal must include the price for each year for which the contract may be renewed. Evaluation of proposals must ~~shall~~ include consideration of the total cost for each year as submitted by the lessor.

b. The contract shall be awarded to the responsible and responsive lessor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the other criteria set forth in the request for proposals. The contract file must contain documentation supporting the basis on which the award is made.

3.a. If the agency determines in writing that the use of an invitation to bid or a request for proposals will not result in the best leasing value to the state, the agency may procure leased space by competitive sealed replies. The agency's written determination must specify reasons ~~that explain~~ why negotiation may be necessary in order for the state to achieve the best leasing value and must be approved in writing by the agency head or his or her designee before ~~prior to the~~ advertisement of an invitation to negotiate. Cost savings related to the agency procurement process are not sufficient justification for using an invitation to negotiate. An invitation to negotiate shall be made available to all lessors simultaneously and must include a statement of the space sought; the time and date for the receipt of replies and of the public opening; and all terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the reply. If the

agency contemplates renewing ~~renewal of~~ the contract, that fact must be stated in the invitation to negotiate. The reply must include the price for each year for which the contract may be renewed.

b. The agency shall evaluate and rank responsive replies against all evaluation criteria set forth in the invitation to negotiate and ~~shall~~ select, based on the ranking, one or more lessors with which to commence negotiations. After negotiations are conducted, the agency shall award the contract to the responsible and responsive lessor that the agency determines will provide the best leasing value to the state. The contract file must contain a short, plain statement that explains the basis for lessor selection and sets forth the lessor's deliverables and price pursuant to the contract, and an explanation of how these deliverables and price provide the best leasing value to the state.

(b) The department ~~of Management Services~~ shall have the authority to approve a lease for 5,000 square feet or more of space which ~~that~~ covers more than 12 consecutive months ~~1 fiscal year~~, subject to ~~the provisions of~~ ss. 216.311, 255.2501, 255.2502, and 255.2503, if such lease is, in the judgment of the department, in the best interests of the state. In determining best interest, the department shall consider availability of state-owned space and analyses of build-to-suit and acquisition opportunities. This paragraph does not apply to buildings or facilities of any size leased for the purpose of providing care and living space to individuals ~~for persons~~.

(c) The department may approve extensions of an existing

lease of 5,000 square feet or more of space if such extensions are determined to be in the best interests of the state; however, ~~but in no case shall~~ the total of such extensions may not exceed 11 months. If at the end of the 11th month an agency still needs that space, it must ~~shall~~ be procured by competitive bid in accordance with s. 255.249(10)(b) ~~255.249(4)(b)~~. ~~However, an agency that determines that it is in its best interest to remain in the space it currently occupies may negotiate a replacement lease with the lessor if an independent comparative market analysis demonstrates that the rates offered are within market rates for the space and the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs. A present-value analysis and the consumer price index shall be used in the calculation of lease costs. The term of the replacement lease may not exceed the base term of the expiring lease.~~

(d) Any person who files an action protesting a decision or intended decision pertaining to a competitive solicitation for space to be leased by the agency pursuant to s. 120.57(3)(b) shall post with the state agency at the time of filing the formal written protest a bond payable to the agency in an amount equal to 1 percent of the estimated total rental of the basic lease period or $5,000, whichever is greater, which bond is ~~shall be~~ conditioned on ~~upon~~ the payment of all costs that may be adjudged against him or her in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. If the agency prevails after completion of the administrative hearing process and any appellate court

proceedings, it shall recover all costs and charges, which must ~~shall~~ be included in the final order or judgment, excluding attorney ~~attorney's~~ fees. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to him or her. If the person protesting the award prevails, the bond shall be returned to that person and he or she shall recover from the agency all costs and charges, which must ~~shall~~ be included in the final order of judgment, excluding attorney ~~attorney's~~ fees.

(e) The agency and the lessor, when entering into a lease for 5,000 or more square feet of a privately owned building, shall, before the effective date of the lease, agree upon and separately state the cost of tenant improvements which may qualify for reimbursement if the lease is terminated before the expiration of its base term. The department shall serve as mediator if the agency and the lessor are unable to agree. The amount agreed upon and stated shall, if appropriated, be amortized over the original base term of the lease on a straight-line basis.

(f) The unamortized portion of tenant improvements, if appropriated, shall be paid in equal monthly installments over the remaining term of the lease. If any portion of the original leased premises is occupied after termination but during the original term by a tenant who ~~that~~ does not require material changes to the premises, the repayment of the cost of tenant improvements applicable to the occupied but unchanged portion shall be abated during occupancy. The portion of the repayment to be abated must ~~shall~~ be based on the ratio of leased space to

unleased space.

(g) Notwithstanding s. 287.056(1), a state agency shall ~~may, at the sole discretion of the agency head or his or her designee,~~ use the services of a tenant broker under a state term contract to assist with a lease action ~~a competitive solicitation~~ undertaken by the agency, with the exception of leases between governmental entities. If using ~~In making its determination whether to use a tenant broker, a state agency shall consult with the department. A state agency may not use the services of a tenant broker unless the tenant broker is under a term contract with the state which complies with paragraph (h). If a state agency uses~~ the services of a tenant broker with respect to a transaction, the agency may not enter into a lease with a ~~any~~ landlord for whom ~~to which~~ the tenant broker is providing brokerage services for that transaction.

(h) ~~The Department of Management Services may,~~ Pursuant to s. 287.042(2)(a), the department shall procure ~~a~~ term contracts ~~contract~~ for tenant broker ~~real estate consulting and brokerage~~ services. A state agency may not purchase services from the contract unless the contract has been procured under s. 287.057(1) ~~after March 1, 2007,~~ and contains the following provisions or requirements:

1. Awarded tenant brokers must maintain an office or presence in the market served. In awarding the contract, preference must be given to brokers who ~~that~~ are licensed in this state under chapter 475 and who ~~that~~ have 3 or more years of experience in the market served. The contract may be made with multiple ~~up to three~~ tenant brokers in order to serve the

marketplace ~~in the north, central, and south areas of the state~~.

2. Each contracted tenant broker works ~~shall work~~ under the direction, supervision, and authority of the state agency, subject to the rules governing lease procurements.

3. The department shall provide training for the awarded tenant brokers concerning the rules governing the procurement of leases.

4. Tenant brokers must comply with all applicable provisions of s. 475.278.

5. Real estate consultants and tenant brokers shall be compensated by the state agency, subject to the provisions of the term contract, and such compensation is subject to appropriation by the Legislature. A real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered under the term contract. Moneys paid by a lessor to the state agency under a facility leasing arrangement are not subject to the charges imposed under s. 215.20. All terms relating to the compensation of the real estate consultant or tenant broker must ~~shall~~ be specified in the term contract and may not be supplemented or modified by the state agency using the contract.

6. The department shall conduct periodic customer-satisfaction surveys.

7. Each state agency shall report the following information to the department:

a. The number of leases that adhere to the goal of the workspace-management initiative of 180 square feet per full-time employee ~~FTE~~.

b. The quality of space leased and the adequacy of tenant-improvement funds.

c. The timeliness of lease procurement, measured from the date of the agency's request to the finalization of the lease.

d. Whether cost-benefit analyses were performed before execution of the lease in order to ensure that the lease is in the best interest of the state.

e. The lease costs compared to market rates for similar types and classifications of space according to the official classifications of the Building Owners and Managers Association.

(4)(a) The department may ~~shall~~ not authorize any state agency to enter into a lease agreement for space in a privately owned building if ~~when~~ suitable space is available in a state-owned building located in the same geographic region, except upon presentation to the department of sufficient written justification, acceptable to the department, that a separate space is required in order to fulfill the statutory duties of the agency making the ~~such~~ request. The term "state-owned building" as used in this subsection means any state-owned facility regardless of use or control.

(b) State agencies shall cooperate with local governmental units by using suitable, existing publicly owned facilities, subject to ~~the provisions of~~ ss. 255.2501, 255.2502, and 255.2503. Agencies may use ~~utilize~~ unexpended funds appropriated for lease payments to:

1. Pay their proportion of operating costs.

2. Renovate applicable spaces.

(c) Because the state has a substantial financial

investment in state-owned buildings, it is legislative policy and intent that if ~~when~~ state-owned buildings meet the needs of state agencies, agencies must fully use such buildings before leasing privately owned buildings. ~~By September 15, 2006,~~ The department ~~of Management Services~~ shall create a 5-year plan for implementing this policy. The department shall update this plan annually, detailing proposed departmental actions to meet the plan's goals, and include ~~shall furnish~~ this plan annually as part of the master leasing report.

(5) Before construction or renovation of any state-owned building or state-leased space is commenced, the department ~~of Management Services~~ shall determine ~~ascertain~~, through the ~~by~~ submission of proposed plans to the Division of State Fire Marshal for review, whether ~~that~~ the proposed construction or renovation plan complies with the uniform firesafety standards required by the division ~~of State Fire Marshal~~. The review of construction or renovation plans for state-leased space must ~~shall~~ be completed within 10 calendar days after ~~of~~ receipt of the plans by the division ~~of State Fire Marshal~~. The review of construction or renovation plans for a state-owned building must ~~shall~~ be completed within 30 calendar days after ~~of~~ receipt of the plans by the division ~~of State Fire Marshal~~. The responsibility for submission and retrieval of the plans may ~~called for in this subsection shall~~ not be imposed on the design architect or engineer, but is ~~shall be~~ the responsibility of the two agencies. If ~~Whenever~~ the division ~~of State Fire Marshal~~ determines that a construction or renovation plan is not in compliance with ~~such~~ uniform firesafety standards, the division

~~of State Fire Marshal~~ may issue an order to cease all construction or renovation activities until compliance is obtained, except those activities required to achieve ~~such~~ compliance. The lessor shall provide the department with ~~of Management Services~~ documentation certifying that the facility meets all of ~~shall withhold approval of any proposed lease until the construction or renovation plan complies with~~ the uniform firesafety standards ~~of the Division of State Fire Marshal~~. The cost of all modifications or renovations made for the purpose of bringing leased property into compliance with the uniform firesafety standards are ~~shall be~~ borne by the lessor. The state may not take occupancy without the division's final approval.

(6) Before construction or substantial improvement of any state-owned building is commenced, the department ~~of Management Services~~ must determine ~~ascertain~~ that the proposed construction or substantial improvement complies with the flood plain management criteria for mitigation of flood hazards, as prescribed in the October 1, 1986, rules and regulations of the Federal Emergency Management Agency, and the department shall monitor the project to assure compliance with the criteria. ~~In accordance with chapter 120,~~ The department ~~of Management Services~~ shall adopt rules ~~any~~ necessary ~~rules~~ to ensure that all ~~such~~ proposed state construction and substantial improvement of state buildings in designated flood-prone areas complies with the flood plain management criteria. If ~~Whenever~~ the department determines that a construction or substantial improvement project is not in compliance with such ~~with the established flood plain management~~ criteria, the department may issue an

order to cease all construction or improvement activities until compliance is obtained, except those activities required to achieve such compliance.

(7) This section does not apply to any lease having a term of less than 120 consecutive days for the purpose of securing the one-time special use of the leased property. ~~This section does not apply to any lease for nominal or no consideration.~~

(8) An agency may not enter into more than one lease for space in the same privately owned facility or complex within any 12-month period except upon competitive solicitation.

(9) Specialized educational facilities, excluding classrooms, are ~~shall be~~ exempt from the competitive bid requirements for leasing pursuant to this section if the executive head of a ~~any~~ state agency certifies in writing that the ~~said~~ facility is available from a single source and that the competitive bid requirements would be detrimental to the state. Such certification must ~~shall~~ include documentation of evidence of steps taken to determine sole-source status.

(10) The department ~~of Management Services~~ may approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action, or if the agency head certifies in writing that there is an immediate danger to the public health, safety, or welfare, or if other substantial loss to the state requires emergency action and ~~if~~ the chief administrator of the state agency or the chief administrator's designated representative certifies in writing

that no other agency-controlled space is available to meet this emergency need; however, ~~but in no case shall~~ the lease for such space may not exceed 11 months. If the lessor elects not to replace or renovate the destroyed or uninhabitable facility, the agency shall procure the needed space by competitive bid in accordance with s. 255.249(10)(b) ~~255.249(4)(b)~~. If the lessor elects to replace or renovate the destroyed or uninhabitable facility and the construction or renovations will not be complete at the end of the 11-month lease, the agency may modify the lease to extend it on a month-to-month basis for up to ~~an additional~~ 6 months to allow completion of such construction or renovations.

(11) In any leasing of space which occurs ~~that is accomplished~~ without competition, the individuals taking part in the development or selection of criteria for evaluation, in the evaluation, and in the award processes must ~~shall~~ attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected.

Section 7. Subsection (4) of section 255.252, Florida Statutes, is amended to read:

255.252 Findings and intent.—

(4) In addition to designing and constructing new buildings to be energy-efficient, it is the policy of the state to operate and maintain state facilities in a manner that minimizes energy consumption and maximizes building sustainability and to operate facilities leased by the state so as to minimize energy use. It is further the policy of the state that the renovation of existing state facilities be in

accordance with a sustainable building rating or a national model green building code. State agencies are encouraged to consider shared savings financing of energy-efficiency and conservation projects, using contracts that split the resulting savings for a specified period of time between the state agency and the private firm or cogeneration contracts and that otherwise permit the state to lower its net energy costs. Such energy contracts may be funded from the operating budget. The vendor for such energy contracts may be selected in accordance with s. 287.055.

Section 8. Effective July 1, 2014, subsection (1) of section 255.254, Florida Statutes, is amended to read:

255.254 No facility constructed or leased without life-cycle costs.—

(1) A ~~No~~ state agency may not ~~shall~~ lease, construct, or have constructed, within limits prescribed in this section, a facility without having secured from the department an evaluation of life-cycle costs based on sustainable building ratings. ~~Furthermore,~~ Construction shall proceed only upon disclosing to the department, for the facility chosen, the life-cycle costs as determined in s. 255.255, the facility's sustainable building rating goal, and the capitalization of the initial construction costs of the building. The life-cycle costs and the sustainable building rating goal shall be primary considerations in the selection of a building design. For leased facilities larger ~~buildings more~~ than 2,000 ~~5,000~~ square feet in area within a given building boundary, an energy performance analysis that calculates ~~consisting of a projection of~~ the total

annual energy consumption and energy costs ~~in dollars~~ per square foot ~~of major energy-consuming equipment and systems based on actual expenses from the last 3 years and projected forward for the term of the proposed lease~~ shall be performed. The analysis must also compare the energy performance of the proposed lease to ~~lease shall only be made where there is a showing that the energy costs incurred by the state are minimal compared to available~~ like facilities. A lease may not be finalized until the energy performance analysis has been approved by the department. ~~A lease agreement for any building leased by the state from a private sector entity shall include provisions for monthly energy use data to be collected and submitted monthly to the department by the owner of the building.~~

Section 9. Effective July 1, 2014, subsection (1) of section 255.257, Florida Statutes, is amended to read:

255.257 Energy management; buildings occupied by state agencies.—

(1) ENERGY CONSUMPTION AND COST DATA.— Each state agency shall collect data on energy consumption and cost for all~~. The data gathered shall be on~~ state-owned facilities and metered state-leased facilities ~~of 5,000 net square feet or more~~. These data will be used in the computation of the effectiveness of the state energy management plan and the effectiveness of the energy management program of each of the state agencies. Collected data shall be reported annually to the department in a format prescribed by the department.

Section 10. Subsection (7) of section 110.171, Florida Statutes, is amended to read:

110.171 State employee telework program.—

(7) Agencies that have a telework program shall establish and track performance measures that support telework program analysis and report data annually to the department in accordance with s. 255.249(9) ~~255.249(3)(d)~~. Such measures must include, but need not be limited to, those that quantify financial impacts associated with changes in office space requirements resulting from the telework program. Agencies operating in office space owned or managed by the department shall consult the department to ensure consistency with the strategic leasing plan required under s. 255.249(7) ~~255.249(3)(b)~~.

Section 11. Paragraph (b) of subsection (15) of section 985.682, Florida Statutes, is amended to read:

985.682 Siting of facilities; study; criteria.—

(15)

(b) Notwithstanding s. 255.25(1)~~(b)~~, the department may enter into lease-purchase agreements to provide juvenile justice facilities for ~~the~~ housing ~~of~~ committed youths, contingent upon available funds. The facilities provided through such agreements must ~~shall~~ meet the program plan and specifications of the department. The department may enter into such lease agreements with private corporations and other governmental entities. However, notwithstanding ~~the provisions of~~ s. 255.25(3)(a), a ~~no such~~ lease agreement may not be entered into except upon advertisement for the receipt of competitive bids and award to the lowest and best bidder except if ~~when~~ contracting with other governmental entities.

Section 12. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative La Rosa offered the following:

Amendment

Remove line 329 and insert:

criteria developed by rule by the Board of Trustees of the Internal Improvement Trust Fund. ~~with priority~~

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative La Rosa offered the following:

Amendment (with title amendment)

Remove lines 423-434 and insert:

(5) The department may direct a state agency to occupy, or relocate to, space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Records Information System managed by the Department of Environmental Protection. The Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services are excluded from this subsection. However, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services may elect to comply with the provisions of this subsection in whole or in part. Any relocation of any agency at the direction of the department shall be implemented within existing appropriations of the

agency and shall not require a transfer of any funds pursuant to chapter 216, F.S.

T I T L E A M E N D M E N T

Remove lines 27-28

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative La Rosa offered the following:

Amendment

Remove line 494 and insert:

fiscal year. The Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services are excluded from this subsection. However, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services may elect to comply with the provisions of this subsection in whole or in part.

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative La Rosa offered the following:

Amendment (with title amendment)

Remove lines 528-531 and insert:

~~(f) Maximum rental rates, by geographic areas or by county, for leasing privately owned space.~~

T I T L E A M E N D M E N T

Remove lines 34-35 and insert:

the department; amending s. 255.25, F.S.; deleting

Amendment No. 5

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative La Rosa offered the following:

Amendment (with title amendment)

Remove lines 568-569

T I T L E A M E N D M E N T

Remove lines 34-35 and insert:

the department; amending s. 255.25, F.S.; deleting

Amendment No. 6

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative La Rosa offered the following:

Amendment (with title amendment)

Remove lines 762-772 and insert:

bid in accordance with s. 255.249(10)(b) ~~255.249(4)(b)~~. However, if the Department of Agriculture and Consumer Services, the Department of Financial Services, or the Department of Legal Affairs ~~an agency that~~ determines that it is in its best interest to remain in the space it currently occupies, it may negotiate a replacement lease with the lessor if an independent comparative market analysis demonstrates that the rates offered are within market rates for the space and the cost of the new lease does not exceed the cost of a comparable lease plus documented moving costs. A present-value analysis and the consumer price index shall be used in the calculation of lease costs. The term of the replacement lease may not exceed the base term of the expiring lease. For those agencies for which the department may approve lease actions, the department may approve

a replacement lease with a lessor for an agency to remain in the space it currently occupies if such lease is, in the judgment of the department, in the best interests of the state. In determining best interest, the department shall consider availability of state-owned space and analyses of build-to-suit and acquisition opportunities. The term of the replacement lease may not exceed the base term of the expiring lease. Any relocation of any agency at the direction of the department shall be within existing appropriations and shall not require a transfer of any funds pursuant to chapter 216, F.S.

T I T L E A M E N D M E N T

Remove lines 35-36 and insert:

additional rules; amending s. 255.25, F.S.; revising an exemption that allows certain agencies to negotiate a

Amendment No. 7

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative La Rosa offered the following:

Amendment

Remove lines 814-905

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1225 Administrative Procedures
SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee; Adkins
TIED BILLS: **IDEN./SIM. BILLS:** SB 1696

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Rulemaking Oversight & Repeal Subcommittee	12 Y, 0 N, As CS	Rubottom	Rubottom
2) Government Operations Appropriations Subcommittee		White CCW	Topp BDT
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill amends five provisions of ch. 120, Florida Statutes, the Administrative Procedure Act (APA) to enhance the opportunity of substantially affected parties to challenge rules, mediate declaratory statements, and be awarded attorney fees in certain challenges. Specifically, the bill:

- Adopts a definition of "small business" applicable to the entire APA;
- Expands the class of small businesses benefiting from attorney fee awards under the Equal Access to Justice Act;[1]
- Clarifies the burden of pleading and proof of challengers and agencies in challenges to proposed and unadopted rules;
- Removes the defense to an unadopted rule challenge that an agency did not know or should not have known that an agency statement or policy was an unadopted rule in cases where notice is actually provided;
- Extends the time to appeal certain final orders when notice thereof to the party appealing was delayed;
- Authorizes rule challenges in defense of agency actions on the same terms as petitions challenging rules and unadopted rules, including the award of attorney fees to prevailing challengers;
- Authorizes parties to request mediation in proceedings relating to declaratory statements and in rule challenges;
- Removes discretion of agencies, the Governor and the Governor and Cabinet to identify rules for which first time, minor violations, should be addressed by a notice of noncompliance;
- Removes discretion of cabinet officers to exempt certain licensing rules from the notice of noncompliance provisions;

The bill also makes conforming changes to statutes cross-referencing provisions renumbered in the bill.

The bill has an indeterminate negative fiscal impact to the state. It would eliminate the ability of agencies to collect fines for many first-time violations of rules that do not cause harm. This would likely have a significant negative fiscal impact on revenues collected by the state.

The bill is effective July 1, 2013.

[1] Section 57.111, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current situation

Small business

Florida's Administrative Procedure Act (APA) provides certain accommodations for small businesses[2] but does not provide a definition of "small business". In rulemaking, an agency must consider the impact on small businesses defined for that purpose as employing less than 200 employees and having a net worth less than $5 million,[3] but agencies are authorized to define "small business" to included businesses having more than 200 employees. By contrast, Florida's Equal Access to Justice Act provides for attorney fees to be awarded in administrative proceedings to prevailing parties who are small businesses, defined as having not more than 25 employees with a net worth not more than $2 million.[4]

Notice of Rules

Presently, the only notice of adopted rules is the filing with the Department of State. The Department publishes such rules in the Florida Administrative Code. However, as a courtesy, the DOS, once each week, lists newly adopted rules in the Florida Administrative Register, and includes a cumulative list of rules filed for adoption pending legislative ratification.

Attorney fees

In addition to the special attorney fee provisions in the Equal Access to Justice Act, the APA provides for the recovery of attorney fees when a non-prevailing party has participated for an improper purpose, when an agency's actions are not substantially justified, when an agency relies upon an unadopted rule and is successfully challenged after 30 days' notice of the need to adopt rules, and when an agency loses an appeal in a proceeding challenging an unadopted rule.[5] These attorney fee provisions supplement the attorney fee provisions provided by other laws.[6]

For purposes of the Equal Access to Justice Act, awarding attorney fees to small businesses, an agency action is reasonably justified if it has a reasonable basis in law and fact at the time the agency acted. In such cases, no fees are allowable.

Burden of proof

In general, laws carry a presumption of validity and those challenging the validity of a law carry the burden of proving invalidity. The APA retains this presumption of validity by requiring those challenging adopted rules to carry the burden of proving that a rule constitutes an invalid exercise of delegated authority.[7] However, in the case of proposed rules, the APA places the burden on the agency to demonstrate the validity of the rule as proposed, once the challenger has raised specific objections to the rule's validity.[8] In addition, a rule may not be filed for adoption until any pending challenge is resolved.[9]

In the case of a statement or policy in force that was not adopted as a rule, a challenger must prove that the statement or policy meets the definition of a rule under the APA. If so, and if the statement or

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[2] Sections 120.54, 120.541, and 120.74, F.S.
[3] Section 120.54(3)(b), F.S., incorporates by reference the definition of "small business" in s. 288.703(6), F.S.
[4] Section 57.111, F.S.
[5] Section 120.595, F.S.
[6] See, for example, ss. 57.105, 57.111, F.S. These sections are specifically preserved in s. 120.595(6), F.S.
[7] Section 120.56(3), F.S. Section 120.52(8), F.S., defines "invalid exercise of delegated legislative authority."
[8] Section 120.56(2), F.S.
[9] Section 120.54(3)(e)2., F.S.

policy has not been validly adopted, the agency must prove that rulemaking is not feasible or practicable.[10]

Proceedings Involving Rule Challenges

The APA presently applies different procedures when proposed rules, existing rules and unadopted rules are challenged by petition, compared to a challenge to the validity of an existing rule, or an unadopted rule defensively in a proceeding initiated by agency action. In addition to the attorney fees awardable to small businesses under the Equal Access to Justice Act, the APA provides attorney fee awards when a party petitions for invalidation of a rule or unadopted rule, but not when the same successful legal case is made in defense of an enforcement action or grant or denial of a permit or license.

The APA does provide that a DOAH judge may determine that an agency has attempted to rely on an unadopted rule in proceedings initiated by agency action. However, this is qualified by a provision that an agency may overrule the DOAH determination if clearly erroneous, and if the agency rejects the DOAH determination and is later reversed on appeal, the challenger is awarded attorney fees for the entire proceeding.[11] Additionally, in proceedings initiated by agency action, when a DOAH judge determines that a rule constitutes an invalid exercise of delegated legislative authority the agency has full de novo authority to reject or modify such conclusions of law, provided the final order states with particularity the reasons for rejection or modifying such determination.[12]

In proceedings initiated by a party challenging a rule or unadopted rule, the DOAH judge enters a final order that cannot be overturned by the agency. The only appeal is to the District Court of Appeals.

Final Orders

An agency has 90 days to render a final order in any proceeding, after the hearing if the agency conducts the hearing, or after the recommended order is submitted to the agency if DOAH conducts the hearing (excepting the rule challenge proceedings described above in which the DOAH judge enters the final order).

Mediation

The APA provides for mediation by agreement of the parties in those cases where the agency offers mediation to a person whose substantial interests are affected by an agency's action.[13] The APA does not require mediation in any particular case. Mediation is a process that is most likely to be effective when the parties agree to that form of dispute resolution. Because mediation is only concluded by agreement, rather than the determination of a third party—a judge or arbiter—compelling mediation is not often practical. Without any formal mediation, many administrative disputes are resolved by negotiation prior to or after the initiation of formal proceedings in the Division of Administrative Hearings.

Declaratory Statements

The APA provides for the opportunity to request, for notice and opportunity for public input, and for the issuance of a "declaratory statement" of an agency's opinion on the applicability of a law or rule over which the agency has authority to a particular set of facts set forth in the petition.[14] When issued, a declaratory statement is the agency's legal opinion that binds the agency under principles of estoppel. An agency has the option to deny the petition, and will typically do so if a live enforcement action is pending with respect to similar facts. Anecdotal evidence indicates that the declaratory statement process in the APA has not proven productive in Florida. By contrast, the Internal Revenue Service and the Florida Department of Revenue each frequently issue binding opinions upon request of taxpayers.

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[10] Section 120.56(4), F.S.
[11] Section 120.57(1)(e)3., F.S.
[12] Section 120.57(1)(k-*l*), F.S.
[13] Section 120.573, F.S.
[14] Section 120.565, F.S.

Judicial Review

A notice of appeal of an appealable order under the APA must be filed within 30 days of the rendering of the order.[15] An order, however, is rendered when filed with the agency clerk. On occasion, a party may not receive notice of the order in time to meet the 30 day appeal deadline. Under the current statute, a party may not seek judicial review of the validity of a rule by appealing its adoption but authorizes an appeal from a final order in a rule challenge.[16]

Minor Violations

The APA directs agencies to issue a "notice of noncompliance" as the first response when the agency encounters a first minor violation of a rule.[17] The law provides that a violation is a minor violation if it "does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm". Agencies are authorized to designate those rules for which a violation would be a minor violation. An agency's designation of rules under the provision is excluded from challenge under the APA but may be subject to review and revision by the Governor or Governor and Cabinet.[18] An agency under the direction of a cabinet officer has the discretion not to use the "notice of noncompliance" once each licensee is provided a copy of all rules upon issuance of a license, and annually thereafter.

Effect of the Bill

Section 1 amends s. 57.111(3) to expand the definition of small business for the purpose of awarding attorney fees in administrative proceedings from 25 employees to 200 and from $2 million net worth to $5 million. This will greatly expand the number of businesses protected in administrative proceedings by the Equal Access to Justice Act.

In addition, the bill provides that an agency may not establish that its action is substantially justified if it acts in contradiction to its own declaratory statement or the agency denies a petition for declaratory statement and thereafter pursues enforcement on facts submitted in the petition. This will only apply when the agency is wrong on the law. While agencies do not like to issue declaratory statements on facts that have already occurred, the change should motivate an agency to review its legal position carefully before denying the petition and then attempting to punish the circumstances raised by the petition.

Section 2 amends s.120.52, F.S., to adopt a definition of "small business" for the APA. The definition references s. 288.703 which defines "small business" as a business having less than 200 employees and $5 million in net worth. As described above, that definition is already incorporated elsewhere in the APA. The effect might be interpreted to reduce the flexibility allowed in rulemaking for agencies to expand the definition to businesses with 200 or more employees. However, the definition would likely not have any effect on the operation of the APA.

Section 3 amends s. 120.55, F.S., to enhance notice of new rules. The bill requires the Department of State to publish in the Florida Administrative Register a listing of rules filed for adoption in the previous 7 days and a listing of all rules filed for adoption but awaiting legislative ratification.

The bill also requires those agencies with e-mail alert services that provide regulatory information to interested parties to include notices of new rule development, proposed rules and notice of adoption of rules in those e-mail alerts.

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[15] Section 120.68(2)(a), F.S.

[16] Section 120.68(9), F.S.

[17] Section 120.695, F.S. The statute contains the following legislative intent: "It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it."

[18] Section 120.695(2)(c), (d), F.S. The statute provides for final review and revision of these agency designations to be at the discretion of elected constitutional officers.

Section 4 amends s. 120.56, F.S., relating to petitions challenging the validity of rules, proposed rules and unadopted rules. The changes clarify the terminology relating to unadopted rules. The amendments also clarify the initial burden of pleading for proposed rules and unadopted rules. For unadopted rules the revision requires the agency to prove the statement alleged to be an unadopted rule is not a rule, that it was validly adopted, or that rulemaking is not feasible or not practicable.

Section 5 amends s. 120.569(2)(l) to alter the time for entry of final orders in proceedings relating to agency actions to allow, at the agency's discretion, for legal appeals of rule challenges proceeding concurrently with the enforcement action. An agency will have 10 days after the determination of the appeal to enter the final order on a related matter.

Section 6 amends s. 120.57, F.S., relating to DOAH hearings of agency initiated actions involving disputed issues of material fact. The bill incorporates many of the provisions of s. 120.56, allows the DOAH hearing officer to enter a final order on the challenge to the validity of a rule or to an unadopted rule, to treat a challenge to a rule in defensive position much as a challenge in an action initiated by the non-agency party. The bill allows the agency, within 15 days of notice of the challenge, to waive its reliance on an unadopted rule or a rule alleged to be invalid, and thereby eliminate that aspect of the litigation, without prejudice to the agency reasserting its position in another matter or lawsuit. This will help an agency advance a proceeding beyond a weak legal position on the rule issue, particularly in matters initiated by field investigators without the benefit of legal deliberation by counsel.

To conform to the intention that rule challenges be fairly litigated in defensive cases, the bill excludes those challenges from summary final order procedures that are not well suited to the resolution of the claims.

The section also revises the procedures of using challenges to the validity of rules and unadopted rules in defensive cases where there is no dispute of material fact, staying the proceeding on agency action during a separate proceeding challenging the rule.

Section 7 amends s. 120.573, F.S., relating to mediation of disputes, to authorize a party to request mediation in any case involving a challenge to the validity of an existing rule, proposed rule or an unadopted rule, or a proceeding pursuant to a petition seeking declaratory statement. This would have no substantial impact on the effect of present law, particularly in light of the nature of the matters referenced, which constitute determinations of law that are not ordinarily amenable to mediation.

Section 8 amends s. 120.595, F.S., relating to attorney fees in APA proceedings, to clarify the statute respecting participating in a proceeding for improper purposes and applying the attorney fee provisions for petitions challenging the validity of rules or unadopted rules to the defensive challenges revised in Section 6 of the bill. It also makes conforming changes to the revised terminology regarding unadopted rules supplied in Section 4 of the bill.

The bill provides that reasonable costs and attorney fees incurred in proving and prosecuting a claim for attorney fees under the statute are not subject to the fee cap applicable to costs and fees awardable in the underlying action.

The bill eliminates the defense that an agency's action can be "substantially justified" when a rule or unadopted rule is successfully challenged. It also eliminates a defense that the agency "did not know or should not have known" that it was relying on an unadopted rule. The bill retains an equitable defense of "special circumstances".

The bill rewrites the provisions for notice of an invalid rule or proposed rule, or of an unadopted rule, requiring notice 30 days prior to filing of a petition challenging a rule or unadopted rule, and 5 days prior to filing the petition challenging a proposed rule. Reasonable costs and attorney fees may be awarded only for the period beginning after notice. The agency may avoid an award of attorney fees and costs if,

within the notice period provided, the agency provides notice that it will not adopt the proposed rule or will not rely upon the adopted rule or statement challenged as an unadopted rule until after the agency has complied with the rulemaking procedures of the APA to ensure its rules conform to the law. The bill also provides that taking such steps to cure its faults would constitute "special circumstances" protecting the agency from an attorney fees judgment on the rule challenge.

The bill clarifies that the notice provisions do not apply to rule challenges raised in defense to agency actions.

Section 9 alters the appellate provisions to clarify that a final order on a rule challenge in a defensive action is directly appealable in the same manner as a final order in a petition challenging a rules. The bill also provides that the 30 day time to file a notice of appeal is extended 10 days if the party receives notice of the final order more than 25 days after the order was rendered. This section also makes conforming technical changes resulting from other amendments in the bill.

Section 10 amends s. 120.695, F.S., to remove the discretion of agencies to designate rules for which minor violations would be subject to a notice of noncompliance and the discretion of cabinet officers to opt out of the provisions of the section by keeping licensees regularly advised of the content of governing rules. As a result, every first violation of a rule that does not cause harm or threaten the public health, safety or welfare could only addressed by a notice of noncompliance. This would likely reduce the deterrence of many rules not currently designated for treatment as minor violations, would likely increase litigation over what is or is not a minor violation, and likely increase the cost of enforcement to counter-balance the lost deterrence, while reducing the revenues generated from fines for first violations of many rules.

Sections 11-13 are conforming changes to separate statutes which do not add to the effect of the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 57.111(3) relating to attorney fees for small businesses in administrative proceedings.

Section 2 creates a new s.120.52(18), F.S., and renumbers existing subsections (18)-(22), to adopt a definition of "small business" for purposes of the APA.

Section 3 amends s. 120.55, F.S., relating to publication of APA notices.

Section 4 amends s. 120.56(1), (2) and (4), F.S., relating to petitions challenging existing rules, proposed rules and unadopted rules.

Section 5 amends s. 120.569(2)(l), F.S., relating to the deadline for an agency to render a final order after a DOAH proceeding.

Section 6 amends s. 120.57(1)(e) and (h) and (2), F.S., revising the procedures when rules or unadopted rules are challenged defensively in proceedings on agency actions.

Section 7 amends s. 120.573, F.S., relating to mediation of disputes.

Section 8 amends s. 120.595, F.S., relating to attorney fees in certain APA proceedings.

Section 9 amends s. 120.68(1), (2) and (9), F.S., relating to judicial review of final agency actions.

Section 10 amends s. 120.695(2), F.S., relating to notice of noncompliance and minor violations of rules.

Section 11 makes conforming changes to s. 420.9072, F.S.

Section 12 makes conforming changes to s. 420.9075, F.S.

Section 13 makes conforming changes to s. 443.092, F.S.

Section 14 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill would eliminate the ability of agencies to collect fines for many first-time violations of rules that do not cause harm. This would likely have a significant negative fiscal impact on revenues collected by the state. Three examples of potential lost fine revenues using actual fiscal year 2011-12 receipts are $25.5 million in the Department of Health, $24.5 million in the Department of Financial Services, and $4.7 million in the Department of Business and Professional Regulation. While these examples are of total fines collected, not just fines from first-time violators, it does indicate that the potential loss of revenue could be significant.

2. Expenditures:

The bill might require additional enforcement expenditures in some regulatory areas where penalties for first-time violations actually deter wrongdoing. The bill may require some additional expenditures by the Department of State complying with additional Florida Administrative Register notice requirements. However, some of the notices the bill would require are currently being published weekly by the Department as a public convenience. In addition, the ability of prevailing parities to recover attorney fees and costs will also likely have a negative fiscal impact on state agencies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments are not typically governed by the APA, but some are made subject to it by special law. In such cases, some revenues presently raised by fines for first time violations of rules would be lost.

2. Expenditures:

The bill would be unlikely to impact local government expenditures. Local governments might benefit from a reduction in fines assessed by state agencies, but those governed by the APA might have to increase enforcement expenditures to overcome the loss of deterrence described in A.2 above. Those governed by the APA may also experience a reduction in revenues from fines for first time violations of rules.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector might see some positive impact from a reduction of fines for first time violations of many rules. However, the impact upon business costs of any increase in investigations might offset any reduction in fines paid. The private sector may benefit slightly by the increased incentives for agencies to conform their rules to the law, thereby increasing clarity and certainty in the application of the law.

D. FISCAL COMMENTS:

The fiscal impacts described above are indeterminate, but likely have a negative significant fiscal impact to the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   It is unlikely that the fiscal impact on local governments would be significant enough to implicate the provisions of s. 18, Art. VII, Florida Constitution.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not alter rulemaking authority except by abolishing the discretion, exempt from the rulemaking provisions of the APA, to designate rules for which first-time violations might be addressed through a notice of noncompliance.

The bill enhances the procedures provided by the APA for challenging rules, particularly in the defense against agency actions that are not based on valid rules. As such, it provides incentives and opportunities for private parties to hold agency rulemaking accountable under the law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Rulemaking Oversight & Repeal Subcommittee adopted two amendments to the original House Bill. The first amendment redrafted the following sections of the original bill:

- Section 2 (amending s. 120.56, F.S.) is completely revised in Section 4 of the CS version. The amendment restored present law on burden of proof, while clarifying the present law.
- Section 3 (amending s. 120.595, F.S.) is completely revised in Section 8 of the CS. The amendment restores the 30 day period between notice of an unadopted rule and the filing of a petition challenging the unadopted rule, while allowing fees to accrue from the time of notice. The provisions as amended are more fully explained in the analysis above.

The amendment added new sections:

- Section 1 (amending s. 57.111(3), F.S.)
- Section 3 (amending s. 120.55, F.S.)
- Section 5 (amending s. 120.569(2)(l), F.S.)
- Section 6 (amending s. 120.57, F.S.)
- Section 9 (amending s. 120.68, F.S.)

The amendment retains the following sections of the original bill:

- Section 1 (amending s. 120.52, F.S.) becomes Section 2 in the CS.
- Section 4 (amending s. 120.573, F.S.) becomes Section 7 of the CS.
- Section 5 (amending s. 120.695, F.S.) becomes Section 10 of the CS.
- Sections 6-8 making conforming changes become Sections 11-13 of the CS.

An amendment to the amendment was also adopted providing that attorney fees may be awarded above the fee caps in the APA for the litigation to establish and collect fees properly awarded. That language was incorporated into Section 8 of the CS.

The substance of the amendments is fully explained in the analysis above.

A bill to be entitled

An act relating to administrative procedures; amending s. 57.111, F.S.; revising the definition of the term "small business party"; providing conditions under which a proceeding is not substantially justified for purposes of an award under the Florida Equal Access to Justice Act; amending s. 120.52, F.S.; defining the term "small business" as used in the Administrative Procedure Act; amending s. 120.55, F.S.; providing for publication of notices of rule development and of rules filed for adoption; providing additional notice of rule development, proposals, and adoptions; amending s. 120.56, F.S.; providing that the petitioner challenging a proposed rule or unadopted agency statement has the burden of establishing a prima facie case; amending s. 120.569, F.S.; providing for extension of time to render final agency action in certain circumstances; amending s. 120.57, F.S.; conforming proceedings opposing agency action based on an invalid rule or unadopted rule to proceedings for challenging rules; requiring notice of whether the agency will rely on the challenged rule or unadopted rule; providing for the administrative law judge to make certain findings and enter a final order on the validity of the rule or the use of an unadopted rule; providing for stay of proceedings not involving disputed issues of fact upon timely filing of rule challenge; amending s. 120.573, F.S.; authorizing any

party to request mediation of rule challenge and declaratory statement proceedings; amending s. 120.595, F.S.; providing for an award of attorney fees and costs in specified challenges to agency action; removing certain exceptions from requirements that attorney fees and costs be rendered against the agency in proceedings in which the petitioner prevails in a rule challenge; requiring service of notice of invalidity to an agency before bringing a rule challenge as a condition precedent to award of attorney fees and costs; providing for award of additional attorney fees and costs for litigating entitlement to and amount of attorney fees and costs in administrative actions; providing that such awards of additional attorney fees and costs are not subject to certain statutory limits; amending s. 120.68, F.S.; providing for appellate review of orders rendered in challenges to specified rules or unadopted rules; amending s. 120.695, F.S.; removing obsolete provisions with respect to required agency review and designation of minor violations; amending ss. 420.9072, 420.9075, and 443.091, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraphs (d) and (e) of subsection (3) of section 57.111, Florida Statutes, are amended to read:

57.111 Civil actions and administrative proceedings initiated by state agencies; attorney ~~attorneys'~~ fees and costs.—

(3) As used in this section:

(d) The term "small business party" means:

1.a. A sole proprietor of an unincorporated business, including a professional practice, whose principal office is in this state, who is domiciled in this state, and whose business or professional practice has, at the time the action is initiated by a state agency, not more than 25 full-time employees or a net worth of not more than $2 million, including both personal and business investments;

b. A partnership or corporation, including a professional practice, which has its principal office in this state and has at the time the action is initiated by a state agency not more than 25 full-time employees or a net worth of not more than $2 million; or

c. An individual whose net worth did not exceed $2 million at the time the action is initiated by a state agency when the action is brought against that individual's license to engage in the practice or operation of a business, profession, or trade; or

2. Any small business party as defined in subparagraph 1., without regard to the number of its employees or its net worth, in any action under s. 72.011 or in any administrative proceeding under that section to contest the legality of any assessment of tax imposed for the sale or use of services as

provided in chapter 212, or interest thereon, or penalty therefor; or

3. Any small business as defined in s. 288.703 in any administrative proceeding pursuant to chapter 120 and any appeal thereof.

(e) A proceeding is "substantially justified" if it had a reasonable basis in law and fact at the time it was initiated by a state agency. A proceeding is not substantially justified when the agency action involves identical or substantially similar facts and circumstances and the specified law, rule, or order on which the party substantially affected by the agency action petitioned for a declaratory statement under s. 120.565, and:

1. The agency action contradicts a declaratory statement issued under s. 120.565 to the substantially affected party; or

2. The agency denied the petition under s. 120.565 before initiating the agency action against the substantially affected party.

Section 2. Subsections (18) through (22) of section 120.52, Florida Statutes, are renumbered as subsections (19) through (23), respectively, and a new subsection (18) is added to that section to read:

120.52 Definitions.—As used in this act:

(18) "Small business" has the same meaning as provided in s. 288.703.

Section 3. Section 120.55, Florida Statutes, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on an Internet website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and

telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its Internet website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with

and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(b) Electronically publish on an Internet website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication and must contain:

1. All notices required by s. 120.54(2) and (3)(a) ~~s. 120.54(3)(a)~~, showing the text of all rules proposed for consideration.

2. All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

3. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

4. Notice of petitions for declaratory statements or administrative determinations.

5. A summary of each objection to any rule filed by the Administrative Procedures Committee.

6. A listing of rules filed for adoption in the previous 7 calendar days.

7. A listing of all rules filed for adoption pending legislative ratification under s. 120.541(3) until notice of ratification or withdrawal of such rule is received.

8.~~6.~~ Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

(d) Charge each agency using the Florida Administrative Register a space rate to cover the costs related to the Florida Administrative Register and the Florida Administrative Code.

(e) Maintain a permanent record of all notices published in the Florida Administrative Register.

(2) The Florida Administrative Register Internet website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency.

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with publication of the electronic Florida Administrative Register. Such notification must include in the text of the e-mail a summary of the content of each notice.

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on the Florida Administrative Register Internet website does not

preclude publication of such material on an agency's website or by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Each agency that provides an e-mail alert service to inform licensees or other registered recipients of important notices shall use such service to notify recipients of each notice required under s. 120.54(2) and (3)(a), including, but not limited to, notice of rule development, notice of proposed rules, and notice of filing rules for adoption, and provide internet links to the appropriate rule page on the Secretary of State's website, or Internet links to an agency website that contains the proposed rule or final rule.

(6) ~~(5)~~ Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Register or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the agency head who approved the rule, and the date upon which the rule was approved.

(7) ~~(6)~~ Access to the Florida Administrative Register Internet website and its contents, including the e-mail notification service, shall be free for the public.

(8) ~~(7)~~(a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed $300,000 at the beginning of each fiscal year, and any excess shall be transferred to the General Revenue Fund.

Section 4. Paragraph (b) of subsection (1), paragraph (a) of subsection (2), and subsection (4) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.—

(1) GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF A RULE OR A PROPOSED RULE.—

(b) The petition challenging the validity of a proposed or adopted rule or an agency statement defined as a rule under this section ~~seeking an administrative determination~~ must state with particularity:

1. The provisions alleged to be invalid and a statement ~~with sufficient explanation~~ of the facts establishing a prima facie case of ~~or grounds for the alleged~~ invalidity; and

2. Facts sufficient to show that the petitioner ~~person challenging a rule~~ is substantially affected by the challenged adopted rule or agency statement defined as a rule ~~it,~~ or ~~that the person challenging a proposed rule~~ would be substantially affected by the proposed rule ~~it~~.

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the

final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition must state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The petitioner has the burden of presenting a prima facie case demonstrating the invalidity of the proposed rule ~~going forward~~. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. ~~A person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change.~~ A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the resulting rule ~~and is not limited to challenging the change to the proposed rule~~.

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED RULES; SPECIAL PROVISIONS.—

(a) Any person substantially affected by an agency statement that is an unadopted rule may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a description of the statement and shall state with particularity

facts sufficient to show that the statement constitutes an ~~a~~ unadopted rule ~~under s. 120.52 and that the agency has not adopted the statement by the rulemaking procedure provided by s. 120.54~~.

(b) The administrative law judge may extend the hearing date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. ~~If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving~~

(c) The petitioner has the burden of presenting a prima facie case demonstrating that the agency statement constitutes an unadopted rule. The agency then has the burden to prove by a preponderance of the evidence that the statement does not meet the definition of an unadopted rule, the statement was adopted as a rule in compliance with s. 120.54, or that rulemaking is not feasible or not practicable under s. 120.54(1)(a).

(d) ~~(c)~~ The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final

order to the Department of State and the committee. The Department of State shall publish notice of the final order in the first available issue of the Florida Administrative Weekly.

(e) ~~(d)~~ If an administrative law judge enters a final order that all or part of an unadopted rule ~~agency statement~~ violates s. 120.54(1)(a), the agency must immediately discontinue all reliance upon the unadopted rule ~~statement~~ or any substantially similar statement as a basis for agency action.

(f) ~~(e)~~ If proposed rules addressing the challenged unadopted rule ~~statement~~ are determined to be an invalid exercise of delegated legislative authority as defined in s. 120.52(8)(b)-(f), the agency must immediately discontinue reliance on the unadopted rule ~~statement~~ and any substantially similar statement until rules addressing the subject are properly adopted, and the administrative law judge shall enter a final order to that effect.

(g) ~~(f)~~ All proceedings to determine a violation of s. 120.54(1)(a) shall be brought pursuant to this subsection. A proceeding pursuant to this subsection may be consolidated with a proceeding under subsection (3) or under any other section of this chapter. This paragraph does not prevent a party whose substantial interests have been determined by an agency action from bringing a proceeding pursuant to s. 120.57(1)(e).

Section 5. Paragraph (l) of subsection (2) of section 120.569, Florida Statutes, is amended to read:

120.569 Decisions which affect substantial interests.—

(2)

(1) Unless the time period is waived or extended with the consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days:

1. After the hearing is concluded, if conducted by the agency;

2. After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by an administrative law judge, provided that, at the election of the agency, the time for rendering the final order may be extended until 10 days after entry of final judgment on any appeal from a final order under s. 120.57(1)(e)5.; or

3. After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

Section 6. Paragraphs (e) and (h) of subsection (1) and subsection (2) of section 120.57, Florida Statutes, are amended to read:

120.57 Additional procedures for particular cases.—

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. ~~The administrative law judge shall determine whether an agency statement constitutes an unadopted rule.~~ This subparagraph does not

preclude application of valid ~~adopted~~ rules and applicable provisions of law to the facts.

2. In a matter initiated by agency action proposing to determine the substantive interests of a party, the party's timely petition for hearing may challenge the proposed agency action as based on a rule that is an invalid exercise of delegated legislative authority or based on an unadopted rule. For challenges brought under this subsection:

a. The challenge shall be pled as a defense with the particularity required in s. 120.56(1)(b);

b. Section 120.56(3)(a) applies to a challenge alleging a rule is an invalid exercise of delegated legislative authority;

c. Section 120.56(4)(c) applies to a challenge alleging an unadopted rule.

d. The agency shall have 15 days from the date of receiving a challenge under this paragraph to serve the challenging party with a notice that the agency will continue to rely upon the rule or the alleged unadopted rule as a basis for the action determining the party's substantive interests. Failure to timely serve the notice shall constitute a binding stipulation that the agency shall not rely upon the rule or unadopted rule further in the proceeding. The agency shall include a copy of this notice with the referral of the matter to the division under s. 120.569(2)(a).

e. This subparagraph does not preclude the consolidation of any proceeding under s. 120.56 with any proceeding under this paragraph.

3.~~2.~~ Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to adopt rules, that the agency has not had time to adopt those rules because the requirement was so recently enacted, and that the agency has initiated rulemaking and is proceeding expeditiously and in good faith to adopt the required rules, then the agency's action may be based upon those unadopted rules if~~, subject to de novo review by~~ the administrative law judge determines rulemaking is neither feasible nor practicable and the unadopted rules would not constitute an invalid exercise of delegated legislative authority if adopted as rules. An unadopted rule ~~The agency action~~ shall not be presumed valid ~~or invalid~~. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority vested in the agency by ~~derived from~~ the State Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

e. Is not being applied to the substantially affected party without due notice; and

f. Does not impose excessive regulatory costs on the regulated person, county, or city.

4. The administrative law judge shall determine under subparagraph 2. whether a rule is an invalid exercise of delegated legislative authority or an agency statement constitutes an unadopted rule and shall determine whether an unadopted rule meets the requirements of subparagraph 3. The determination shall be rendered as a separate final order no earlier than the date on which the administrative law judge serves the recommended order.

5.~~3.~~ The recommended and final orders in any proceeding shall be governed by the provisions of paragraphs (k) and (l), except that the administrative law judge's determination ~~regarding an unadopted rule~~ under subparagraph 4. ~~1. or subparagraph 2.~~ shall be included as a conclusion of law that the agency may not reject ~~not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney's fee for the initial proceeding and the proceeding for review~~.

(h) Any party to a proceeding in which an administrative law judge of the Division of Administrative Hearings has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order. <u>This paragraph does not apply to proceedings authorized by paragraph (e).</u>

(2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give parties or their counsel the option, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) An agency may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. No later than the date provided by the agency under subparagraph (a)2. for presenting material in opposition to the agency's proposed action or refusal to act, the party may file a petition under s. 120.56 challenging the rule, portion of rule, or unadopted rule on which the agency bases its proposed action or refusal to act. The filing of a challenge under s. 120.56 pursuant to this paragraph shall stay all proceedings on the agency's proposed action or refusal to act until entry of the final order by the administrative law judge, which shall provide additional notice that the stay of the pending agency action is terminated and any further stay pending appeal of the final order must be sought from the appellate court.

(c) ~~(b)~~ The record shall only consist of:

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

5. All matters placed on the record after an ex parte communication.

6. The official transcript.

7. Any decision, opinion, order, or report by the presiding officer.

Section 7. Section 120.573, Florida Statutes, is amended to read:

120.573 Mediation of disputes.—

(1) Each announcement of an agency action that affects substantial interests shall advise whether mediation of the administrative dispute for the type of agency action announced is available and that choosing mediation does not affect the right to an administrative hearing. If the agency and all parties to the administrative action agree to mediation, in writing, within 10 days after the time period stated in the announcement for election of an administrative remedy under ss. 120.569 and 120.57, the time limitations imposed by ss. 120.569 and 120.57 shall be tolled to allow the agency and parties to mediate the administrative dispute. The mediation shall be concluded within 60 days of such agreement unless otherwise agreed by the parties. The mediation agreement shall include provisions for mediator selection, the allocation of costs and fees associated with mediation, and the mediating parties' understanding regarding the confidentiality of discussions and documents introduced during mediation. If mediation results in settlement of the administrative dispute, the agency shall enter a final order incorporating the agreement of the parties. If mediation terminates without settlement of the dispute, the agency shall notify the parties in writing that the administrative hearing processes under ss. 120.569 and 120.57 are resumed.

(2) Any party to a proceeding conducted pursuant to a petition seeking an administrative determination of the

invalidity of an existing rule, proposed rule, or unadopted agency statement under s. 120.56 or a proceeding conducted pursuant to a petition seeking a declaratory statement under s. 120.565 may request mediation of the dispute under this section.

Section 8. Section 120.595, Florida Statutes, is amended to read:

120.595 Attorney ~~Attorney's~~ fees.—

(1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.57(1).—

(a) The provisions of this subsection are supplemental to, and do not abrogate, other provisions allowing the award of fees or costs in administrative proceedings.

(b) The final order in a proceeding pursuant to s. 120.57(1) shall award reasonable costs and ~~a~~ reasonable attorney fees ~~attorney's fee~~ to the prevailing party if the administrative law judge determines ~~only where~~ the nonprevailing adverse party ~~has been determined by the administrative law judge to have~~ participated in the proceeding for an improper purpose.

1.~~(c)~~ Other than as provided in paragraph (d), in proceedings pursuant to s. 120.57(1), and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection. ~~In making such determination, the administrative law judge shall consider whether~~ The nonprevailing adverse party shall be presumed to have participated in the pending proceeding for an improper purpose if:

a. Such party was an adverse party ~~has participated~~ in two or more other such proceedings involving the same prevailing party and the same subject; ~~project as an adverse party and in~~

b. In those ~~which such two or more~~ proceedings the nonprevailing adverse party did not establish either the factual or legal merits of its position;~~, and shall consider~~

c. ~~Whether~~ The factual or legal position asserted in the pending ~~instant~~ proceeding would have been cognizable in the previous proceedings; and~~. In such event, it shall be rebuttably presumed that the nonprevailing adverse party participated in the pending proceeding for an improper purpose~~

d. The nonprevailing adverse party has not rebutted the presumption of participating in the pending proceeding for an improper purpose.

2.~~(d)~~ If ~~In any proceeding in which the administrative law judge determines that~~ a party is determined to have participated in the proceeding for an improper purpose, the recommended order shall include such findings of fact and conclusions of law to establish the conclusion ~~so designate~~ and shall determine the award of costs and attorney ~~attorney's~~ fees.

(c)~~(e)~~ For the purpose of this subsection:

1. "Improper purpose" means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.

2. "Costs" has the same meaning as the costs allowed in civil actions in this state as provided in chapter 57.

3. "Nonprevailing adverse party" means a party that has failed to have substantially changed the outcome of the proposed or final agency action which is the subject of a proceeding. In the event that a proceeding results in any substantial modification or condition intended to resolve the matters raised in a party's petition, it shall be determined that the party having raised the issue addressed is not a nonprevailing adverse party. The recommended order shall state whether the change is substantial for purposes of this subsection. In no event shall the term "nonprevailing party" or "prevailing party" be deemed to include any party that has intervened in a previously existing proceeding to support the position of an agency.

(d) For challenges brought under s. 120.57(1)(e), if the appellate court or the administrative law judge declares a rule or portion of a rule to be invalid or that the agency statement is an unadopted rule which does not meet the requirements of s. 120.57(1)(e)4., a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney fees, unless the agency demonstrates that special circumstances exist which would make the award unjust. Reasonable costs and reasonable attorney fees shall be awarded only for the period beginning 15 days after the receipt of the petition for hearing challenging the rule or unadopted rule. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (c). An award of

attorney fees as provided by this subsection may not exceed $50,000.

(2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION 120.56(2).—If the appellate court or administrative law judge declares a proposed rule or portion of a proposed rule invalid pursuant to s. 120.56(2), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates ~~that its actions were substantially justified or~~ special circumstances exist which would make the award unjust. ~~An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency.~~ If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(c) ~~(1)(c)~~. An ~~No~~ award of attorney ~~attorney's~~ fees as provided by this subsection may not ~~shall~~ exceed $50,000.

(3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3) AND (5).—If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that ~~its actions were substantially justified or~~ special circumstances exist which would make the award unjust.

~~An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency.~~ If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(c) ~~(1)(c)~~. An ~~No~~ award of attorney ~~attorney's~~ fees as provided by this subsection may not ~~shall~~ exceed $50,000.

(4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT TO SECTION 120.56(4).—

(a) If the appellate court or administrative law judge determines that all or part of an unadopted rule ~~agency statement~~ violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance on the unadopted rule ~~statement~~ and any substantially similar statement pursuant to s. 120.56(4)(e), a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

(b) Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge may vacate the stay for

good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the petitioner before ~~prior to~~ the date the notice was published~~,~~ ~~unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorneys' fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the agency received notice that the statement may constitute an unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7)~~. An award of attorney ~~attorney's~~ fees as provided by this paragraph may not exceed $50,000.

(c) Notwithstanding the provisions of chapter 284, an award shall be paid from the budget entity of the secretary, executive director, or equivalent administrative officer of the agency, and the agency is ~~shall~~ not ~~be~~ entitled to payment of an award or reimbursement for payment of an award under any provision of law.

(d) If the agency prevails in the proceedings, the appellate court or administrative law judge shall award

reasonable costs and attorney ~~attorney's~~ fees against a party if the appellate court or administrative law judge determines that the party participated in the proceedings for an improper purpose as defined in paragraph (1)(c) ~~(e)~~ or that the party or the party's attorney knew or should have known that a claim was not supported by the material facts necessary to establish the claim or would not be supported by the application of then-existing law to those material facts.

(5) APPEALS.—When there is an appeal, the court in its discretion may award reasonable attorney ~~attorney's~~ fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process, or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion. Upon review of agency action that precipitates an appeal, if the court finds that the agency improperly rejected or modified findings of fact in a recommended order, the court shall award reasonable attorney ~~attorney's~~ fees and reasonable costs to a prevailing appellant for the administrative proceeding and the appellate proceeding.

(6) NOTICE OF INVALIDITY.—A party failing to serve a notice of invalidity under this subsection is not entitled to an award of reasonable costs and reasonable attorney fees under this section except as provided in paragraph (d).

(a) Before filing a petition challenging the validity of a proposed rule under s. 120.56(2), an adopted rule under s. 120.56(3), or an agency statement defined as an unadopted rule under s. 120.56(4), the substantially affected person shall

serve the agency head with notice of the proposed challenge. The notice shall identify the proposed or adopted rule or the unadopted rule the person proposes to challenge and a brief explanation of the basis for that challenge. The notice must be received by the agency head at least 5 days before the filing of a petition under s. 120.56(2), and at least 30 days before the filing of a petition under s. 120.56(3) or s. 120.56(4).

(b) Reasonable costs and reasonable attorney fees shall be awarded only for the period beginning after the date on which the agency head receives the notice of invalidity under paragraph (a).

(c) Within the time limits specified in paragraph (a), if the agency provides the substantially affected person with written notice that the agency will not adopt the proposed rule or will not rely upon the adopted rule or the agency statement defined as an unadopted rule until after the agency has complied with the requirements of s. 120.54 to amend the proposed rule or the adopted rule or adopt the unadopted rule, such written notice shall constitute a special circumstance under this section.

(d) This subsection does not apply to defenses raised and challenges authorized by s. 120.57(1)(e) or s. 120.57(2)(b).

(7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For purposes of this chapter, s. 57.105(5), and s. 57.111, in addition to an award of attorney fees and costs, the prevailing party shall also recover attorney fees and costs incurred in litigating entitlement to, and the determination or quantification of, attorney fees and costs for the underlying

matter. Attorney fees and costs awarded for litigating entitlement to, and the determination or quantification of, attorney fees and costs for the underlying matter are not subject to the limitations on amounts provided in this chapter or s. 57.111.

(8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions, including ss. 57.105 and 57.111, authorize the award of attorney ~~attorney's~~ fees and costs in administrative proceedings. Nothing in this section shall affect the availability of attorney ~~attorney's~~ fees and costs as provided in those sections.

Section 9. Subsections (1), (2), and (9) of section 120.68, Florida Statutes, are amended to read:

120.68 Judicial review.—

(1)(a) A party who is adversely affected by final agency action is entitled to judicial review.

(b) A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings, or a final order under s. 120.57(1)(e)4., is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2)(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.

(b) All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the date that ~~rendition of~~ the order being appealed was filed with the agency clerk. Such time is hereby extended for any party 10 days from

receipt by such party of the notice of the order, if such notice is received after the 25th day from the filing of the order. If the appeal is of an order rendered in a proceeding initiated under s. 120.56, or a final order under s. 120.57(1)(e)4., the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(c) ~~(b)~~ When proceedings under this chapter are consolidated for final hearing and the parties to the consolidated proceeding seek review of final or interlocutory orders in more than one district court of appeal, the courts of appeal are authorized to transfer and consolidate the review proceedings. The court may transfer such appellate proceedings on its own motion, upon motion of a party to one of the appellate proceedings, or by stipulation of the parties to the appellate proceedings. In determining whether to transfer a proceeding, the court may consider such factors as the interrelationship of the parties and the proceedings, the desirability of avoiding inconsistent results in related matters, judicial economy, and the burden on the parties of reproducing the record for use in multiple appellate courts.

(9) No petition challenging an agency rule as an invalid exercise of delegated legislative authority shall be instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56, under s. 120.57(1)(e)5., or under s. 120.57(2)(b), or an agency's findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule pursuant to s. 120.54(4), unless the sole issue presented by the petition is

the constitutionality of a rule and there are no disputed issues of fact.

Section 10. Subsection (2) of section 120.695, Florida Statutes, is amended to read:

120.695 Notice of noncompliance.—

(2)(a) Each agency shall issue a notice of noncompliance as a first response to a minor violation of a rule. A "notice of noncompliance" is a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule. A rule is agency action that regulates a business, occupation, or profession, or regulates a person operating a business, occupation, or profession, and that, if not complied with, may result in a disciplinary penalty.

(b) ~~Each agency shall review all of its rules and designate those for which~~ A violation would be a minor violation ~~and~~ for which a notice of noncompliance must be the first enforcement action taken against a person or business subject to regulation~~. A violation of a rule is a minor violation~~ if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. ~~If an agency under the direction of a cabinet officer mails to each licensee a notice of the designated rules at the time of licensure and at least~~

~~annually thereafter, the provisions of paragraph (a) may be exercised at the discretion of the agency. Such notice shall include a subject-matter index of the rules and information on how the rules may be obtained.~~

~~(c) The agency's review and designation must be completed by December 1, 1995; each agency under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet by January 1, 1996, on which of its rules have been designated as rules the violation of which would be a minor violation.~~

~~(d) The Governor or the Governor and Cabinet, as appropriate pursuant to paragraph (c), may evaluate the review and designation effects of each agency and may apply a different designation than that applied by the agency.~~

(c) ~~(e)~~ This section does not apply to the regulation of law enforcement personnel or teachers.

~~(f) Designation pursuant to this section is not subject to challenge under this chapter.~~

Section 11. Paragraph (a) of subsection (1) of section 420.9072, Florida Statutes, is amended to read:

420.9072 State Housing Initiatives Partnership Program.—The State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and eligible municipalities as an incentive for the creation of local housing partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to

increase housing-related employment.

(1)(a) In addition to the legislative findings set forth in s. 420.6015, the Legislature finds that affordable housing is most effectively provided by combining available public and private resources to conserve and improve existing housing and provide new housing for very-low-income households, low-income households, and moderate-income households. The Legislature intends to encourage partnerships in order to secure the benefits of cooperation by the public and private sectors and to reduce the cost of housing for the target group by effectively combining all available resources and cost-saving measures. The Legislature further intends that local governments achieve this combination of resources by encouraging active partnerships between government, lenders, builders and developers, real estate professionals, advocates for low-income persons, and community groups to produce affordable housing and provide related services. Extending the partnership concept to encompass cooperative efforts among small counties as defined in s. 120.52 ~~120.52(19)~~, and among counties and municipalities is specifically encouraged. Local governments are also intended to establish an affordable housing advisory committee to recommend monetary and nonmonetary incentives for affordable housing as provided in s. 420.9076.

Section 12. Subsection (7) of section 420.9075, Florida Statutes, is amended to read:

420.9075 Local housing assistance plans; partnerships.—

(7) The moneys deposited in the local housing assistance trust fund shall be used to administer and implement the local

housing assistance plan. The cost of administering the plan may not exceed 5 percent of the local housing distribution moneys and program income deposited into the trust fund. A county or an eligible municipality may not exceed the 5-percent limitation on administrative costs, unless its governing body finds, by resolution, that 5 percent of the local housing distribution plus 5 percent of program income is insufficient to adequately pay the necessary costs of administering the local housing assistance plan. The cost of administering the program may not exceed 10 percent of the local housing distribution plus 5 percent of program income deposited into the trust fund, except that small counties, as defined in s. 120.52 ~~120.52(19)~~, and eligible municipalities receiving a local housing distribution of up to $350,000 may use up to 10 percent of program income for administrative costs.

Section 13. Paragraph (d) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least

five prospective employers for each week of unemployment claimed. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least five prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this

subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52 ~~120.52(19)~~, a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

Section 14. This act shall take effect July 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Adkins offered the following:

Amendment (with title amendment)

Remove lines 55-107 and insert:

Section 1. Paragraph (e) of subsection (3) of section 57.111, Florida Statutes, is amended to read:

57.111 Civil actions and administrative proceedings initiated by state agencies; attorneys' fees and costs.—

(3) As used in this section:

(e) A proceeding is "substantially justified" if it had a reasonable basis in law and fact at the time it was initiated by a state agency. A proceeding is not substantially justified when the agency action involves identical or substantially similar facts and circumstances and the specified law, rule, or order on which the party substantially affected by the agency action petitioned for a declaratory statement under s. 120.565, and:

Amendment No. 1

1. The agency action contradicts a declaratory statement issued under s. 120.565 to the substantially affected party; or

2. The agency denied the petition under s. 120.565 before initiating the agency action against the substantially affected party.

T I T L E A M E N D M E N T

Remove lines 3-9 and insert:

s. 57.111, F.S.; providing conditions under which a proceeding is not substantially justified for purposes of an award under the Florida Equal Access to Justice Act; amending s. 120.55, F.S.; providing for

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Adkins offered the following:

Amendment

Remove lines 771-781 and insert:

(7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For purposes of this chapter, s. 57.105(5), and s. 57.111, in addition to an award of reasonable attorney fees and reasonable costs, the prevailing party shall also recover reasonable attorney fees and reasonable costs incurred in litigating entitlement to, and the determination or quantification of, reasonable attorney fees and reasonable costs for the underlying matter. Reasonable attorney fees and reasonable costs awarded for litigating entitlement to, and the determination or quantification of, reasonable attorney fees and reasonable costs for the underlying matter are not subject to the limitations on amounts provided in this chapter or s. 57.111.

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Adkins offered the following:

Amendment (with title amendment)

Remove lines 835-879 and insert:

Section 1. Section 120.695, Florida Statutes, is amended to read:

120.695 Notice of noncompliance.—

(1) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules. It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to

assume that the violator was unaware of the rule or unclear as to how to comply with it.

(2)(a) Each agency shall issue a notice of noncompliance as a first response to a minor violation of a rule. A "notice of noncompliance" is a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule. A rule is agency action that regulates a business, occupation, or profession, or regulates a person operating a business, occupation, or profession, and that, if not complied with, may result in a disciplinary penalty.

(b) Each agency shall review all of its rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken against a person or business subject to regulation. A violation of a rule is a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. ~~If an agency under the direction of a cabinet officer mails to each licensee a notice of the designated rules at the time of licensure and at least annually thereafter, the provisions of paragraph (a) may be exercised at the discretion of the agency. Such notice shall~~

~~include a subject-matter index of the rules and information on how the rules may be obtained.~~

(c) DESIGNATION OF MINOR VIOLATION RULES. ~~The agency's review and designation must be completed by December 1, 1995;~~

1. No later than June 30, 2014, and after such date within three months of any request of the rules ombudsman, each agency shall review ~~under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet by January 1, 1996, on which of~~ its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation under paragraph (b), consistent with the legislative intent stated in subsection (1). For each agency failing to timely complete the review and file the certification as required by this section the rules ombudsman shall promptly report such failure to the Governor, the President of the Senate, the Speaker of the House of Representatives and the committee.

2. Beginning on July 1, 2014, each agency shall:

a. Publish all rules of that agency designated as rules the violation of which would be a minor violation, either as a complete list on the agency's internet webpage or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule.

b. Ensure that all investigative and enforcement personnel are knowledgeable of the agency's designations under this section.

c. For each rule filed for adoption the agency head shall certify whether any part of the rule is designated as one the violation of which would be a minor violation and shall update the listing required by subparagraph 2.a.

(d) The Governor or the Governor and Cabinet, as appropriate ~~pursuant to paragraph (c)~~, may evaluate the review and designation effects of each agency subject to the direction and supervision of such authority and may direct ~~apply~~ a different designation than that applied by such ~~the~~ agency.

(e) Notwithstanding s. 120.52(1)(a), this section does not apply to:

1. The Department of Corrections;

2. Educational units;

3. The regulation of law enforcement personnel; or

4. The regulation of teachers.

(f) Designation pursuant to this section is not subject to challenge under this chapter.

T I T L E A M E N D M E N T

Remove line 49 and insert:

designation of minor violations; requiring agency review and certification of minor violation rules by time certain; providing sanction for failure to provide certification; requiring minor violation certification for all rules adopted after July 1, 2014; requiring public notice; providing certain exclusions; amending ss.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1247 Public Model for Hurricane Loss Projections
SPONSOR(S): Insurance & Banking Subcommittee; Nuñez
TIED BILLS: **IDEN./SIM. BILLS:** SB 1248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee		Keith AK	Topp BDT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

After Hurricane Andrew in 1992, insurance companies began using privately developed catastrophe loss models to estimate expected losses. Catastrophe models are complex computer simulations that property insurers worldwide use to project potential losses from natural catastrophes, such as hurricanes, earthquakes, and tornados.

The 2000 Legislature authorized the creation of a public hurricane loss projection model (public model) and the Office of Insurance Regulation (OIR) contracted with Florida International University (FIU) to develop the model in 2001. In March 2006 the public model was activated and in August 2007 it was first found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

The public model was built to assess hurricane risk and predict annual expected insured residential losses in Florida for an insurance company, zip code, county, or for the entire state. The OIR uses the public model as an independent tool to facilitate its review of the reasonableness of property insurance rates proposed by insurers. Without the public model, the OIR's basis for rate determinations would be each insurer's own selected private model and corresponding loss data and the OIR would not have a way to corroborate the accuracy of this data.

The FIU is the lead institution for developing and operating the public model, but it collaborates with several other public and private Florida universities and the U.S. National Oceanic and Atmospheric Administration. In Fiscal Year 2012-13, the General Appropriations Act provided OIR with funding of $588,639 for the public model. State funding is used to maintain and update the model so that it can maintain its acceptability for use in property insurance rate setting.

The bill requires the OIR to contract with the FIU for enhancements to the public model, subject to an appropriation. The amount of the appropriation is not specified by the bill. The appropriated funds are to be used to enhance the public model so that it can assess risks and predict losses from both wind and flood associated with a hurricane. The model currently does not have the capability of assessing and predicting flood damage.

The bill has no fiscal impact on local government or the private sector. The fiscal impact on state government is unknown as the bill is contingent upon an unspecified appropriation.

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

After Hurricane Andrew in 1992, insurance companies began using privately developed catastrophe loss models to estimate expected losses. Catastrophe models are complex computer simulations that property insurers worldwide use to project potential losses from natural catastrophes, such as hurricanes, earthquakes, and tornados.[1]

The 2000 Legislature authorized the creation of a public hurricane loss projection model (public model) and the Office of Insurance Regulation (OIR) contracted with Florida International University (FIU) to develop the model in 2001.[2] In March 2006 the public model was activated and in August 2007 it was first found acceptable by the Florida Commission on Hurricane Loss Projection Methodology (Commission).[3] Any hurricane model must be found acceptable by the Commission in order for a property insurer to use the model to develop property insurance rates.[4] The public model was last found acceptable in 2011.[5]

The public model was built to assess hurricane risk and predict annual expected insured residential losses in Florida for an insurance company, zip code, county, or for the entire state. The OIR uses the public model as an independent tool to facilitate its review of the reasonableness of property insurance rates proposed by insurers. Without the public model, the OIR's basis for rate determinations would be each insurer's own selected private model and corresponding loss data and the OIR would not have a way to corroborate the accuracy of this data.

The OIR holds the copyright for the public model, which means that it has exclusive rights to the model but can authorize others to use it. In addition to the OIR, users of the public model include Citizens Property Insurance Corporation, the FHCF, and some private insurers.[6] The OIR does not pay a fee for use of the public model, but private insurers do.[7] The amount of the fee is provided in current law and is the actual reasonable costs of the public model operation and maintenance.

The FIU is the lead institution for developing and operating the public model, but it collaborates with several other public and private Florida universities (including Florida State University, the Florida Institute of Technology, the University of Florida, and the University of Miami) and the U.S. National Oceanic and Atmospheric Administration. In Fiscal Year 2012-13, the General Appropriations Act provided OIR with funding of $588,639[8] for the public model. Funding is primarily used to maintain and update the model so that it can maintain its acceptability for use in property insurance rate setting.

The bill requires the OIR to contract with the FIU for enhancements to the public model, subject to an appropriation. The amount of the appropriation is not specified by the bill. The appropriated funds are to be used to enhance the public model so that it can assess risks and predict losses from both wind and flood associated with a hurricane. The model currently does not have the capability of assessing and predicting flood damage.

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[1] There are 4 private companies in Florida that have been approved to offer hurricane loss projection models. These include: AIR Worldwide, Applied Research Associates, EQECAT, and Risk Management Solutions.

[2] Summary information on the Florida Public Hurricane Loss Projection Model obtained from Office of Program Policy Analysis and Government Accountability. Report No. 11-25: *Steps Could Be Taken to Reduce the Public Hurricane Loss Projection Model's Reliance on State Funding* (December 2011). Available at: http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1125rpt.pdf.

[3] The Florida Commission on Hurricane Loss Projection Methodology is an independent body of experts created by the Legislature in 1995 for the purpose of developing standards and reviewing hurricane loss models used in the development of residential property insurance rates and the calculation of probable maximum loss levels.

[4] s. 627.0628(3), F.S.

[5] This acceptance expires on September 1, 2013.

[6] See note 2.

[7] s. 627.06281(3)(b), F.S.

[8] Chapter 2012-118, L.O.F.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law requiring the OIR to contract with the FIU to enhance the public model, subject to an appropriation during the fiscal year 2013-2014.

Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill is contingent upon an unspecified appropriation, thus the fiscal impact on state government is unknown at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2013, the Insurance & Banking Subcommittee considered the bill, adopted a strike all amendment, and reported the bill favorably with a committee substitute. The amendment removed all the provisions of the bill and added a new provision. The new provision, which is contingent on an appropriation, requires the OIR to contract with the FIU to enhance the public hurricane model to predict and assess windstorm and flood damage.

The staff analysis was updated to reflect the committee substitute.

A bill to be entitled

An act relating to the public model for hurricane loss projections; requiring the Office of Insurance Regulation to contract with Florida International University, subject to appropriation, to enhance the capability of the model to predict and assess certain hurricane damage; providing an effective date.

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

Section 1. Subject to appropriation in fiscal year 2013-2014, the Office of Insurance Regulation shall contract with Florida International University to enhance the capability of the public model for hurricane loss projections to predict and assess both windstorm and flood damage resulting from hurricanes.

Section 2. This act shall take effect July 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Nuñez offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. The Office of Insurance Regulation shall contract with Florida International University to enhance the capability of the public model for hurricane loss projection to predict and assess both windstorm and flood damage resulting from hurricanes.

Section 2. The sum of $250,000 in nonrecurring funds from the Insurance Regulatory Trust Fund is appropriated to the Office of Insurance Regulation for implementing this act.

Section 3. This act shall take effect July 1, 2013.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

Amendment No. 1

An act relating to the public model for hurricane loss projections; requiring the Office of Insurance Regulation to contract with Florida International University to enhance the capability of the model to predict and assess certain hurricane damage; providing an appropriation; providing an effective date