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# **Government Efficiency & Accountability Council**

**Wednesday, March 5, 2008  
10:15 AM – 11:00 AM  
Morris Hall (17 HOB)**

**Marco Rubio  
Speaker**

**Frank Attkisson  
Chair**



# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

### Government Efficiency & Accountability Council

**Start Date and Time:** Wednesday, March 05, 2008 10:15 am

**End Date and Time:** Wednesday, March 05, 2008 11:00 am

**Location:** Morris Hall (17 HOB)

**Duration:** 0.75 hrs

**Consideration of the following bill(s) with proposed council substitute(s):**

PCS for HB 565 -- Insurance

**Consideration of the following proposed council bill(s):**

PCB GEAC 08-15 -- Acquisition of State Lands and State Owned Lands

PCB GEAC 08-17 -- Eliminating the Transfer of Interest in Real Property Form

**NOTICE FINALIZED on 03/03/2008 16:20 by MXE**







HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 565 Insurance
SPONSOR(S): Government Efficiency & Accountability Council
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Government Efficiency & Accountability Council, Reilly, Cooper/Overton.

SUMMARY ANALYSIS

Customer representatives are not insurance agents, but are appointed by a general lines agent or agency to assist in transacting the business of insurance. HB 565 exempts from the customer service licensing exam applicants who have earned an Associate's degree from an accredited college with at least 9 academic hours in property and casualty insurance classes.

In general, insurance agents transact business on behalf of an insurer and must be licensed by the Department of Financial Services (the Department) and be appointed (i.e., given the authority to transact business on its behalf) by at least one insurer. The bill prohibits insurers, including Citizens Property Insurance Corporation, from requiring insurance agents who are not employees or exclusive independent contractors of the insurer to take specified continuing education (CE) courses as a condition of appointment or continuation of such appointment.

HB 565 authorizes exams for CE correspondence courses to be given without a proctor provided that the student subsequently submits a sworn affidavit that he/she did not receive any outside assistance while taking the examination. Further, the duties of the continuing education advisory board are expanded to require the board to advise on issues related to insurance agent appointments based upon appointees meeting continuing education requirements.

The bill also establishes a new license for "unaffiliated insurance consultants" and waives the appointment requirement as to such persons.

The bill is effective June 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Licensure of Insurance Agents in Florida**

In general, insurance agents transact business on behalf of an insurer and must be licensed by the Department of Financial Services (the Department) and be appointed (i.e., given the authority by an insurer to transact business on its behalf) by at least one insurer.<sup>1</sup> Requirements for insurance agents vary by license and line of authority, among other factors. Agent is defined to mean general lines agent, life agent, health agent, or title agent, or all such agents, as indicated by context, but does not include a customer representative.<sup>2</sup> Customer representatives are appointed by a general lines agent or agency to assist in transacting the business of insurance from the office of that agent or agency. HB 565 adds to the list of persons exempt from the customer service licensing exam applicants who have earned an Associate's degree from an accredited college or university with a minimum of 9 hours in property and casualty insurance curriculum.

As previously noted, insurance agents must be licensed and appointed by at least one insurer.<sup>3</sup> The appointment requirement extends to agents who work strictly as independent insurance consultants to assess clients' insurance needs, e.g., a risk manager hired by a public entity. Agents who serve as independent consultants do not sell insurance, do not recommend insurers from which coverage can be purchased, and are paid by their clients and not by any insurer, either directly or indirectly. The insurer does not receive a benefit from appointing the agent, as the agent will not write any business for the insurer. HB 565 creates a new license for "unaffiliated insurance consultants," who are authorized to transact insurance within the scope of their license without being appointed by an insurer.

"Unaffiliated insurance consultant" is defined as a person who is not affiliated with any insurer and chooses to practice as an independent insurance consultant providing objective advice to the buyers of insurance and who:

- Is a licensed agent for the type of insurance for which the agent transacts the business of insurance;
- Is not appointed by any insurer or other authorized appointing authority;
- Does not sell or service insurance on behalf of any insurer, insurance agent or insurance agency, in connection with the sale or service of insurance on behalf of an insurer or by the insurance agent or insurance agency;
- Does not receive any commission or any form of compensation from any insurer, insurance agent or insurance agency, in connection with the sale or servicing of insurance on behalf of an insurer or by the insurance agent or insurance agency; and

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<sup>1</sup> Insurance agents are regulated under ch. 626, F.S.

<sup>2</sup> Section 626.015(4), F.S.

<sup>3</sup> Section 626.112



- Provides the Department with evidence that the agent:
  - Has been licensed for at least 2 years in the type of insurance he or she will transact;
  - Satisfies specified insurance education requirements or is a member of the Florida Bar;
  - Holds certain insurance designations; or
  - Meets any other requirements established by the Department to qualify as an unaffiliated insurance agent.

Applicants must submit to the Department a signed, sworn statement that the agent meets the statutory definition of unaffiliated insurance consultant and pay \$120 for each license for which the agent seeks to qualify as an unaffiliated insurance agent. Every two years thereafter, the agent must apply for continuation of such qualification and pay all applicable fees.

Unaffiliated insurance consultants cannot hold themselves out as acting as an agent for an insurer or as replacing the need for an appointed agent in the placement or sale of insurance and cannot act as a countersigning agent for an insurer.

### **Continuing Education Requirements**

Section 626.2815, F.S., establishes the requirements and standards for continuing education (CE) courses for persons licensed to solicit or sell insurance in Florida for all lines of insurance for which an examination is required for licensing. Generally, persons to whom this section applies who have been licensed for less than 6 years must complete 24 CE hours every 2 years, 3 hours of which must be on the topic of ethics. The number of required CE hours decreases for licensees with 6 or more years of experience.

Pursuant to Rule 69B-228.080, F.A.C., all CE courses must be submitted to and approved by the Department. In addition to Department-approved CE courses, insurers generally require agents, as a condition of appointment or continuation of appointment, to take training classes on the insurer's procedures and processing requirements. These training classes are not of general application and consumer benefit and are thus not eligible course topics for approved CE classes as per Department rule.

Citizens Property Insurance Corporation (Citizens) has created an "Agent Certification Program" (the Program), which has been approved by the Department as a CE course for 1 CE credit. The Program includes four modules – Agent/Agency Compliance; Personal Residential; Commercial Residential; and Commercial Nonresidential. The classroom version of the Program covers all four modules in a 3 ½ hour session, does not provide for tests, and costs \$30. The online version of the Program requires successful completion of a test at the end of each module for each line of business for which an agent seeks appointment or renewal of appointment and costs \$15. Citizens requires agents seeking a new appointment (effective February 15, 2008) or renewal of appointment (beginning in May 2008) either to attend the 3 ½ hour classroom Program or to successfully complete the test for each module for each line of business for which the agent seeks appointment or renewal of appointment. Agents are required to complete the Program every 2 years. Citizens states that the Program was created to improve upon the level of service offered to Citizens' customers.<sup>4</sup>

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<sup>4</sup> Telephone conversation with Christine Turner, Director of Communication & Legislative Affairs, Citizens Property Insurance Corporation.

HB 565 prohibits any appointing entity, including all residual markets (i.e., Citizens), from requiring agents who are not employees or exclusive independent contractors of the appointing insurer to take any CE course that is not of the agent's choosing. The bill, however, does not bar an insurer from offering a CE course or from declining to appoint or continue the appointment of an agent who does not take a training class required by the insurer that deals solely with the insurer's internal procedures or subjects substantially unique to the appointing insurer.

The bill also authorizes examinations for CE correspondence courses to be given without a proctor provided that the student submits a signed, sworn affidavit that he/she did not receive any outside assistance while taking the examination. Students who are employees of an agency or corporate entity must also have their supervisor or manager/ owner of the agency or corporate entity sign the sworn affidavit. Students who are self-employed, sole proprietors, or partners, or if the examination is administered online must also have the affidavit signed by a disinterested third party. The affidavit must be received by the approved CE provider prior to reporting CE credits to the Department.

Further, the responsibilities of the continuing education advisory board (the Board) are expanded. The Board, while currently not active, is comprised of 11 members appointed by the Chief Financial Officer for terms of 4 years. The Board is responsible for advising the Department in determining standards by which courses may be evaluated and categorized for CE purposes. The bill requires the Board also to advise the Department on issues related to appointments based upon appointees meeting CE requirements.

#### C. SECTION DIRECTORY:

Section 1. Amends 626.221, F.S., to add an exemption from the customer service licensing exam.

Section 2. Amends 626.2815, F.S., to prohibit Citizens and other state insurers from requiring agents to take specified CE courses as a condition of appointment or continued appointment.

Section 3. Amends 626.311, F.S., to create a new license for unaffiliated insurance consultants.

Section 4. Amends 626.381, F.S., to prohibit insurers from requiring agents to take specified CE courses as a condition of appointment or continued appointment.

Section 5. Provides an effective date of June 1, 2008.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The \$120 fee for licensure as an independent insurance consultant will have a positive fiscal impact on the Insurance Regulatory Trust Fund. It is unknown how many agents will apply for the license; however, the Specialty Agents Association estimates that only a small percentage of agents will likely qualify for this license.

2. Expenditures:

The Department of Financial Services estimates a non-recurring expense for OPS/Contracted Services of \$118,000 to program computers to accept the additional exemption from the customer representative examination created by the bill and to process requests for the new designation of unaffiliated insurance consultant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agents requesting the designation of unaffiliated insurance consultant will be required to pay \$120 for each license for which they seek the designation.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that municipalities or counties 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Association of Insurance Agents (FAIA) has expressed concern that permitting an appointing entity to require agents (who are not employees or exclusive independent contractors of the appointing entity) to take specified CE courses, including those developed by the appointing entity, may lead to the CE market ultimately being monopolized by a small number of insurers, and agents being compelled to attend programs that are not solely about the appointing entity's procedures. Citizens has stated that its "Agent Certification Program" is designed to improve the level of service provided to Citizens' customers.

The provisions of the bill barring appointing insurers from requiring agents, other than their own employees or exclusive independent contractors, to take specified CE courses may create

detection and enforcement challenges between the Department (which oversees the licensure of agents) and the Office of Insurance Regulation (which regulates insurers).

D. STATEMENT OF THE SPONSOR

None.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

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1                                   A bill to be entitled  
 2           An act relating to insurance; amending s. 626.221, F.S.;  
 3           expanding list of applicants eligible for exemption from  
 4           certain examination requirements; amending s. 626.2815,  
 5           F.S.; revising certain continuing education applicability  
 6           requirements; prohibiting certain entities from imposing  
 7           certain continuing education requirements; providing  
 8           exceptions and limitations; providing an exception to  
 9           certain examination monitoring requirements; providing  
 10          exception requirements; revising duties of a continuing  
 11          education advisory board; amending s. 626.311, F.S.;  
 12          authorizing agents qualifying as unaffiliated insurance  
 13          consultants to transact insurance business within the  
 14          scope of the agent's license; providing a definition;  
 15          providing requirements for qualifying or continuing to  
 16          qualify as an unaffiliated insurance consultant;  
 17          specifying prohibited activities for unaffiliated  
 18          insurance consultants; amending s. 626.381, F.S.;  
 19          authorizing appointing entities to impose certain training  
 20          program requirements; providing a limitation; limiting  
 21          appointment authority of appointing entities to persons  
 22          meeting continuing education requirements; prohibiting  
 23          appointments contingent upon certain continuing education  
 24          course attendance; providing an effective date.

25  
 26   Be It Enacted by the Legislature of the State of Florida:  
 27

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28 Section 1. Paragraph (j) of subsection (2) of section  
 29 626.221, Florida Statutes, is amended to read:

30 626.221 Examination requirement; exemptions.--

31 (2) However, no such examination shall be necessary in any  
 32 of the following cases:

33 (j) An applicant for license as a customer representative  
 34 who has earned the designation of Accredited Advisor in  
 35 Insurance (AAI) from the Insurance Institute of America, the  
 36 designation of Certified Insurance Counselor (CIC) from the  
 37 Society of Certified Insurance Service Counselors, the  
 38 designation of Accredited Customer Service Representative (ACSR)  
 39 from the Independent Insurance Agents of America, the  
 40 designation of Certified Professional Service Representative  
 41 (CPSR) from the National Foundation for Certified Professional  
 42 Service Representatives, the designation of Certified Insurance  
 43 Service Representative (CISR) from the Society of Certified  
 44 Insurance Service Representatives. Also, an applicant for  
 45 license as a customer representative who has earned an Associate  
 46 of Arts degree, Associate of Science degree, or Associate of  
 47 Applied Science degree in insurance from an accredited college  
 48 or university with at least 9 academic hours of property and  
 49 casualty insurance curriculum, or has earned the designation of  
 50 Certified Customer Service Representative (CCSR) from the  
 51 Florida Association of Insurance Agents, or the designation of  
 52 Registered Customer Service Representative (RCSR) from a  
 53 regionally accredited postsecondary institution in this state,  
 54 or the designation of Professional Customer Service  
 55 Representative (PCSR) from the Professional Career Institute,

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56 whose curriculum has been approved by the department and whose  
 57 curriculum includes comprehensive analysis of basic property and  
 58 casualty lines of insurance and testing at least equal to that  
 59 of standard department testing for the customer representative  
 60 license. The department shall adopt rules establishing standards  
 61 for the approval of curriculum.

62 Section 2. Subsection (2), paragraph (f) of subsection  
 63 (3), paragraph (j) of subsection (4), and paragraph (a) of  
 64 subsection (6) of section 626.2815, Florida Statutes, are  
 65 amended to read:

66 626.2815 Continuing education required; application;  
 67 exceptions; requirements; penalties.--

68 (2) Except as otherwise provided in this section, the  
 69 provisions of this section apply to persons licensed to engage  
 70 in the sale of insurance in this state for all lines of  
 71 insurance for which an examination is required for licensing and  
 72 to any insurer, employer, or appointing entity, including those  
 73 created or existing pursuant to s. 627.351. The provisions of  
 74 this section shall not apply to any person holding a license for  
 75 the sale of any line of insurance for which an examination is  
 76 not required by the laws of this state, nor shall the provisions  
 77 of this section apply to any limited license as the department  
 78 may exempt by rule.

79 (3)

80 (f) Compliance with continuing education requirements is a  
 81 condition precedent to the issuance, continuation,  
 82 reinstatement, or renewal of any appointment subject to this  
 83 section.

84        1. An appointing entity, except those that appoint  
 85        individuals who are employees or exclusive independent  
 86        contractors of the appointing entity, may not require, directly  
 87        or indirectly, as a condition of such appointment or the  
 88        continuation of such appointment, the taking of an approved  
 89        course or program by any appointee or potential appointee that  
 90        is not of the appointee's choosing.

91        2. Any entity created or existing pursuant to s. 627.351  
 92        may require employees to take training of any type relevant to  
 93        their employment but may not require appointees who are not also  
 94        employees to take any approved course or program unless the  
 95        course or program deals solely with the appointing entity's  
 96        internal procedures or products or subjects substantially unique  
 97        to the appointing entity.

98            (4) The following courses may be completed in order to  
 99        meet the continuing education course requirements:

100           (j) Any course, including courses relating to agency  
 101        management or errors and omissions, developed or sponsored by  
 102        any authorized insurer or recognized agents' association or  
 103        insurance trade association or any independent study program of  
 104        instruction, subject to approval by the department, qualifies  
 105        for the equivalency of the number of classroom hours assigned  
 106        thereto by the department. However, unless otherwise provided in  
 107        this section, continuing education hours may not be credited  
 108        toward meeting the requirements of this section unless the  
 109        course is provided by classroom instruction or results in a  
 110        monitored examination. A monitored examination is not required  
 111        for:



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112           1. An independent study program of instruction that is  
 113 presented through interactive, online technology that the  
 114 department determines has sufficient internal testing to  
 115 validate the student's full comprehension of the materials  
 116 presented; or

117           2. An independent study program of instruction presented  
 118 by correspondence for insurance agents and adjusters that  
 119 imposes a final closed book examination that meets the  
 120 requirements of the department's rule for self-study courses.  
 121 The examination may be taken without a proctor provided the  
 122 student presents to the department a sworn affidavit certifying  
 123 that the student did not consult any written materials or  
 124 receive outside assistance of any kind or from any person,  
 125 directly or indirectly, while taking the examination. If the  
 126 student is an employee of an agency or corporate entity, the  
 127 student's supervisor or a manager or owner of the agency or  
 128 corporate entity must also sign the sworn affidavit. If the  
 129 student is self-employed, a sole proprietor, or a partner, or if  
 130 the examination is administered online, the sworn affidavit must  
 131 also be signed by a disinterested third party. The sworn  
 132 affidavit must be received by the approved provider prior to  
 133 reporting continuing education credits to the department.

134           (6) (a) There is created an 11-member continuing education  
 135 advisory board to be appointed by the Chief Financial Officer.  
 136 Appointments shall be for terms of 4 years. The purpose of the  
 137 board is to advise the department in determining standards by  
 138 which courses may be evaluated and categorized as basic,  
 139 intermediate, or advanced, and to advise on issues related to

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140 appointments based upon appointees meeting continuing education  
 141 requirements. The board shall submit recommendations to the  
 142 department of changes needed in such criteria not less  
 143 frequently than every 2 years. The department shall require all  
 144 approved course providers to submit courses for approval to the  
 145 department using the criteria. All materials, brochures, and  
 146 advertisements related to the approved courses must specify the  
 147 level assigned to the course.

148 Section 3. Subsection (7) is added to section 626.311,  
 149 Florida Statutes, to read:

150 626.311 Scope of license.--

151 (7) Subject to the limitations of paragraph (c) and  
 152 notwithstanding any other provisions of this chapter, an agent  
 153 who qualifies as an unaffiliated insurance consultant pursuant  
 154 to paragraphs (a) and (b) shall be authorized to transact  
 155 insurance within the scope of his or her agent's license.

156 (a) For purposes of this subsection, the term  
 157 "unaffiliated insurance consultant" means a person who is not  
 158 affiliated with any insurer and chooses to practice as an  
 159 independent insurance consultant providing objective advice to  
 160 the buyers of insurance and who:

161 1. Is licensed as an agent with respect to the type of  
 162 insurance for which he or she transacts the business of  
 163 insurance.

164 2. Is not appointed by an insurer or other authorized  
 165 appointing authority.

166 3. Does not sell or service insurance on behalf of any  
 167 insurer, or sell or service insurance on behalf of any insurance

168 agent or insurance agency, in connection with the sale or  
 169 service on behalf of an insurer or by the insurance agent or  
 170 insurance agency.

171 4. Does not receive any commission or any other form of  
 172 direct or indirect compensation from any insurer for the sale or  
 173 servicing of insurance on behalf of such insurer, or receive any  
 174 commission or any other form of direct or indirect compensation  
 175 from any insurance agent or insurance agency, in connection with  
 176 the sale or servicing of insurance on behalf of an insurer or by  
 177 the insurance agent or insurance agency.

178 5. Has provided the department with evidence that he or  
 179 she:

180 a. Has been licensed as an agent for a minimum of 2 years  
 181 with respect to the type of insurance for which he or she will  
 182 transact;

183 b. With respect to a general lines agent, holds a  
 184 Chartered Property Casualty Underwriter (CPCU), Associate in  
 185 Risk Management (ARM), Accredited Advisor in Insurance (AAI), or  
 186 Certified Insurance Counselor (CIC) designation;

187 c. With respect to a life or health agent, holds a  
 188 Chartered Life Underwriter (CLU) or Certified Employee Benefit  
 189 Specialist (CEBS) designation;

190 d. Has earned a bachelor's or graduate degree in risk  
 191 management or insurance from an accredited college or  
 192 university;

193 e. Has taught a course in risk management or insurance as  
 194 a professor at an accredited college or university;

195 f. Is a member of The Florida Bar; or

196 g. Meets any other requirements the department may deem  
 197 proper to enable the department to determine the character,  
 198 experience, ability, and other qualifications of the person to  
 199 hold himself or herself out to the public as an unaffiliated  
 200 insurance consultant.

201 (b)1. A person may not initially qualify as an  
 202 unaffiliated insurance consultant:

203 a. Except upon written request for such qualification made  
 204 in a form acceptable to the department under the oath of, and  
 205 signed by, him or her, submitted to and filed with the  
 206 department certifying that he or she meets the definition of an  
 207 unaffiliated insurance consultant pursuant to paragraph (a).

208 b. Except upon payment in advance by such person of all  
 209 applicable fees. For the purposes of this provision, the  
 210 applicable fee shall be twice the amount of the fee that would  
 211 apply to an insurer for an agent's original appointment. If the  
 212 applicant has more than one agent's license, a separate fee  
 213 shall be paid for each license for which the person seeks to  
 214 qualify as an unaffiliated insurance consultant.

215 2. As a condition to continued qualification as an  
 216 unaffiliated insurance consultant, the person shall:

217 a. On a biennial basis submit a request for the  
 218 continuation of such qualification in a form acceptable to the  
 219 department under the oath of, and signed by, him or her,  
 220 submitted to and filed with the department certifying that he or  
 221 she meets the definition of an unaffiliated insurance consultant  
 222 under paragraph (a).

223 b. Shall pay all applicable fees. For the purposes of this  
 224 provision, the applicable fee shall be twice the amount of the  
 225 fee that would apply to an insurer for the continuation of an  
 226 agent's original appointment. If the unaffiliated insurance  
 227 consultant has more than one license, a separate fee shall be  
 228 paid for each license for which the person seeks to continue to  
 229 qualify as an unaffiliated insurance consultant.

230 (c) An unaffiliated insurance consultant may not:

231 1. Hold himself or herself out as acting as the agent for  
 232 an insurer;

233 2. Act as a countersigning agent for an insurer; or

234 3. Hold himself or herself out as replacing the need for  
 235 an appointed agent in the placement or sale of insurance.

236 Section 4. Subsections (6) and (7) of section 626.381,  
 237 Florida Statutes, are renumbered as subsections (8) and (9),  
 238 respectively, and new subsections (6) and (7) are added to that  
 239 section to read:

240 626.381 Renewal, continuation, reinstatement, or  
 241 termination of appointment.--

242 (6) An appointing entity may require any appointee to  
 243 attend training programs exclusively on the internal procedures  
 244 of the appointing entity or exclusively on products  
 245 substantially unique to the appointing entity, in order for the  
 246 appointee to receive a new appointment or maintain an existing  
 247 appointment. However, an appointing entity may not require,  
 248 directly or indirectly, any appointee to attend any training  
 249 programs that are wholly or partially approved for general  
 250 continuing education credit as described in s. 626.2815.

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251        (7) Each appointing entity may appoint only those persons  
 252 who have met the continuing education requirements of the  
 253 license necessary for such appointment as described in s.  
 254 626.2815. However, an appointing entity may not make or allow,  
 255 directly or indirectly, any appointment of any appointee or  
 256 potential appointee to be contingent, in whole or in part, on  
 257 any appointee's attendance at any course that is approved, in  
 258 whole or in part, for continuing education credit pursuant to s.  
 259 626.2815.

260        Section 5. This act shall take effect June 1, 2008.









**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GEAC 08-15 Acquisition of State Lands and State Owned Lands  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council		Barnum 	Cooper 
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

Other than for transportation and water management purposes, acquisitions of lands by the state are generally made by the Board of Trustees of the Internal Improvement Trust Fund utilizing Department of Environmental Protection (DEP) staff. Currently, DEP alone selects the appraisers and review appraisers. PCB GEAC 08-15 amends Florida Statutes governing acquisition of state and state-owned lands for purposes including preservation, conservation, and recreation by clarifying appraisal requirements and assigns agency responsibilities for selection of appraisers. In addition, it provides for consistency between the two governing Florida Statutes.

Specifically, the bill makes the following changes to current statutory law:

- Modifies the \$1 million threshold requiring two appraisals specified in s. 253.025, F.S. to be consistent with the \$500,000 threshold specified in s. 259.041, F.S.
- Specifies that when more than one appraisal is required, Department of Agriculture and Consumer Services will select one of the appraisers.
- Specifies that when a third appraisal is required, Department of Financial Services will select the third appraiser.
- Specifies that when more than one appraisal is required, Department of Financial Services will select the review appraiser.
- Specifies that Department of Agriculture and Consumer Services and Department of Financial Services will make payment to those appraisers each selects using funds made available by Department of Environmental Protection through interagency agreements.
- Clarifies when two appraisals "differ significantly", by defining the parameter.<sup>1</sup>
- Defines the maximum contribution the state may make as part of a joint acquisition.
- Adds s. 259.041(7), F.S. as a statutory requirement which cannot be waived by the Board of Trustees of the Internal Improvement Trust Fund.<sup>2</sup>

PCB GEAC 08-15 provides for an effective date of July 1, 2008.

<sup>1</sup> When two appraised values differ significantly, a third appraisal is required.

<sup>2</sup> s. 259.041(7), F.S. specifies when two or more appraisals are required.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current situation

The Board of Trustees of the Internal Improvement Trust Fund (Board) is comprised of four trustees: the Governor; the Attorney General; the Chief Financial Officer; and, the Commissioner of Agriculture. The Board is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by, or which may inure to the state or any of its agencies, departments, boards, or commissions, with certain exceptions (e.g., lands held for transportation facilities and transportation corridors and canal rights-of-way). The Department of Environmental Protection (DEP) performs staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board.

The primary controlling sections relating to the Board and land acquisition are found in Chapters 253 and 259, F.S. Section 253.025, F.S. governs acquisition of state lands for purposes other than preservation, conservation, and recreation, and s. 259.041, F.S. governs acquisition of state-owned lands for preservation, conservation, and recreation purposes.

There is a disparity between the two controlling sections of statute regarding when two appraisals are required. In accordance with s. 253.025, F.S., two appraisals are required when the estimated value of a parcel to be acquired exceeds \$1 million, while s. 259.041, F.S. specifies that two appraisals are required when the estimated value of the parcel exceeds \$500,000. Neither s. 253.025 nor s. 259.041, F.S. identifies which specific agencies are responsible for selecting appraisers and a review appraiser. Currently, DEP selects the two appraisers and the review appraiser. Those appraisal fees are paid by DEP.

Section 259.041, F.S., referring to appraisals exceeding \$500,000 which differ significantly, indicates a third appraisal is optional. Section 253.025, F.S. is silent regarding required actions when both appraisals exceed \$1 million and differ significantly. While "differ significantly" is not defined in statute, Board of Trustees Rule 18-1, Florida Administrative Code (F.A.C.), referring only to s. 253.025, F.S., mandates a third appraisal be obtained if two appraisals differ significantly. It clarifies that differing significantly means the higher of the two appraised values exceeds 120% of the lower value.

Subsection 259.041(1), F.S. provides the Board the discretion to waive statutory requirements regarding appraisals involving land purchases pursuant to chapter 259, chapter 260, or chapter 375, or substitute other reasonably prudent procedures, provided the public's interest is reasonably protected.

Subsection 259.041(2), F.S. provides the Board rule-making authority regarding acquisition of state-owned lands for preservation, conservation and recreation purposes, however Board of Trustees Rules found in Florida Administrative Code make no reference to s. 259.041, F.S.

Currently, sections 253.025 and 259.041, F.S. do not require the state account for the contributions of other entities when establishing the maximum contribution the state will make towards a joint acquisition. Thus, on September 7, 2005, based upon the recommendation of DEP, the Board approved the Norfolk Southern acquisition.<sup>3</sup> This was a joint acquisition with City of Jacksonville. The appraised value determined by DEP was \$8,400,000. City of Jacksonville's contribution was \$5,116,000. The Board approved a state contribution of \$8,400,000. This resulted in a combined contribution to the seller of \$13,516,000 for land valued by DEP at \$8,400,000.

### Proposed Change

PCB GEAC 08-15 modifies the \$1 million threshold requiring two appraisals specified in s. 253.025, F.S. to be consistent with the \$500,000 threshold specified in s. 259.041, F.S. It defines the circumstances under which two appraisals "differ significantly" by specifying it to mean instances where the higher of the two values exceeds 120% of the lower value. This is consistent with the definition found in F.A.C.<sup>4</sup> Furthermore, it requires a third appraisal be obtained under such circumstances for acquisitions made under ss. 253.025 and 259.041, F.S.

PCB GEAC 08-15 specifies which agencies are responsible for selecting appraisers when two or more appraisals are required. If two appraisals are required, one appraiser shall be selected by the Department of Agriculture and Consumer Services (DOACS). When both appraisals exceed \$500,000 and differ significantly, the Department of Financial Services (DFS) shall select a third appraiser. When the estimated value of a parcel exceeds \$500,000, the review appraiser shall be selected by the DFS. Appraisal fees for those appraisers selected by DOACS and DFS will be paid by those agencies with funds made available by DEP through interagency agreements. These are new assignments for DOACS and DFS. Selection of appraisers and appraisal fee payment by more than one agency with a direct link to the Board avoids any appearance of influence by a single entity. Direct involvement of DFS is consistent with its role as the steward of state funds expenditures.

PCB GEAC 08-15 removes discretionary authority from the Board to waive statutory requirements regarding appraisals involving land purchases, and requires appraisals in accordance with the statutory thresholds.

PCB GEAC 08-15 limits the state's share of a joint purchase offer to the difference between the appraised value, as determined by the state, and the sum of the contributions of the other parties. This will address the issue made evident by the Norfolk Southern acquisition whereby the Board approved a state contribution of an amount equal to the state's appraised value of \$8,400,000 even though other parties were also contributing. The difference between the state's appraised value and the other parties' contribution was \$3,284,000.

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<sup>3</sup> September 7, 2005 Cabinet Meeting transcript, Item No. 7.

<sup>4</sup> Subsection 18-1.006(5) F.A.C.

**C. SECTION DIRECTORY:**

- Section 1. Amends Subsection (6) and (7) of s. 253.025, F.S. by modifying the threshold for requiring two appraisals, specifying agencies responsible for selecting appraisers, and establishing a limit for the state's contribution in a joint acquisition.
- Section 2. Amends Subsection (1), (2), (3), and (7) of s. 259.041, F.S. by further limiting Board of Trustees of the Internal Improvement Trust Fund authority to waive or substitute statutory requirements, specifying agencies responsible for selecting appraisers and establishing a limit for the state's contribution in a joint acquisition.
- Section 3. Provides an effective date of July 1, 2008.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The Auditor General's Department of Environmental Protection Acquisition, Disposition, and Exchange of State Land Operational Audit, Report No. 2005-203, noted redundancies between ss 253.025 and 259.041, F.S. and the need for consistency between the statutes.<sup>5</sup> In addition, it was reported that the Board of Trustees of the Internal Improvement Trust Fund Rule 18-1, Florida Administrative Code "...has not been updated to include the acquisition procedures for preservation, conservation, and recreation lands as outlined in Section 259.041, Florida Statutes."<sup>6</sup>

**D. STATEMENT OF THE SPONSOR**

N/A

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

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<sup>5</sup> Auditor General Report No. 2005-203, Finding No. 1.

<sup>6</sup> Id. at Finding No. 3.



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A bill to be entitled  
 An act relating to acquisition of state and state-owned lands for purposes including preservation, conservation, and recreation; amending s. 253.025, F.S.; providing for appraisal process consistency; clarifying the appraisal requirement to require two appraisals when the estimated value of the parcel exceeds \$500,000; requiring the second appraiser be selected by Department of Agriculture and Consumer Services; requiring a third appraiser be selected by Department of Financial Services under certain circumstances; requiring the review appraiser be selected by Department of Financial Services; limiting the amount paid by the state in joint acquisitions with a local government or other entity apart from the state; amending s. 259.041, F.S.; making conforming changes; providing an effective date.

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

Section 1. Subsections (6) and (7) of Section 253.025, Florida Statutes, are amended to read:

253.025 Acquisition of state lands for purposes other than preservation, conservation, and recreation.--

(6) Prior to negotiations with the parcel owner to purchase land pursuant to this section, title to which will vest in the board of trustees, an appraisal of the parcel shall be required as follows:

28 (a) Each parcel to be acquired shall have at least one  
 29 appraisal. Two appraisals are required when the estimated value  
 30 of the parcel exceeds \$500,000~~\$1 million~~. When two appraisals  
 31 are required, one appraiser shall be selected by the Department  
 32 of Agriculture and Consumer Services. When both appraisals  
 33 exceed \$500,000 and differ significantly, a third appraisal  
 34 shall be obtained, with the Department of Financial Services  
 35 selecting the third appraiser. Two appraisals shall be  
 36 considered to differ significantly if the higher of the two  
 37 values exceeds 120% of the lower value. When the estimated value  
 38 of a parcel exceeds \$500,000, the review appraiser shall be  
 39 selected by the Department of Financial Services. To provide for  
 40 payment by the agency selecting the second and third appraiser  
 41 and review appraiser, as required by this section, Department of  
 42 Environmental Protection shall enter into interagency agreements  
 43 with Department of Agriculture and Consumer Services and  
 44 Department of Financial Services, whereby funds will be  
 45 transferred to those agencies for that purpose upon direction of  
 46 the selecting agency. When a parcel is estimated to be worth  
 47 \$100,000 or less and the director of the Division of State Lands  
 48 finds that the cost of an outside appraisal is not justified, an  
 49 appraisal prepared by the division may be used~~a comparable~~  
 50 ~~sales analysis or other reasonably prudent procedures may be~~  
 51 ~~used by the division to estimate the value of the parcel,~~  
 52 ~~provided the public's interest is reasonably protected.~~ The  
 53 state is not required to appraise the value of lands and  
 54 appurtenances that are being donated to the state.



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55 (b) Appraisal fees shall be paid by the agency proposing  
56 the acquisition. The board of trustees shall approve qualified  
57 fee appraisal organizations. All appraisals used for the  
58 acquisition of lands pursuant to this section shall be prepared  
59 by a member of an approved appraisal organization or by a state-  
60 certified appraiser. The Division of State Lands shall adopt  
61 rules for selecting individuals to perform appraisals pursuant  
62 to this section. Each fee appraiser selected to appraise a  
63 particular parcel shall, prior to contracting with the agency,  
64 submit to that agency an affidavit substantiating that he or she  
65 has no vested or fiduciary interest in such parcel.

66 (c) The board of trustees shall adopt by rule the minimum  
67 criteria, techniques, and methods to be used in the preparation  
68 of appraisal reports. Such rules shall incorporate, to the  
69 extent practicable, generally accepted appraisal standards. Any  
70 appraisal issued for acquisition of lands pursuant to this  
71 section must comply with the rules adopted by the board of  
72 trustees. A certified survey must be made which meets the  
73 minimum requirements for upland parcels established in the  
74 Minimum Technical Standards for Land Surveying in Florida  
75 published by the Department of Business and Professional  
76 Regulation and which accurately portrays, to the greatest extent  
77 practicable, the condition of the parcel as it currently exists.  
78 The requirement for a certified survey may, in part or in whole,  
79 be waived by the board of trustees any time prior to submitting  
80 the agreement for purchase to the Division of State Lands. When  
81 an existing boundary map and description of a parcel are  
82 determined by the division to be sufficient for appraisal

83 | purposes, the division director may temporarily waive the  
 84 | requirement for a survey until any time prior to conveyance of  
 85 | title to the parcel. The fee appraiser and the review appraiser  
 86 | ~~for the agency~~ shall not act in any way that may be construed as  
 87 | negotiating with the property owner.

88 | (d) Appraisal reports are confidential and exempt from the  
 89 | provisions of s. 119.07(1), for use by the agency and the board  
 90 | of trustees, until an option contract is executed or, if no  
 91 | option contract is executed, until 2 weeks before a contract or  
 92 | agreement for purchase is considered for approval by the board  
 93 | of trustees. However, the Division of State Lands may disclose  
 94 | appraisal information to public agencies or nonprofit  
 95 | organizations that agree to maintain the confidentiality of the  
 96 | reports or information when joint acquisition of property is  
 97 | contemplated, or when a public agency or nonprofit organization  
 98 | enters into a written agreement with the division to purchase  
 99 | and hold property for subsequent resale to the division. In  
 100 | addition, the division may use, as its own, appraisals obtained  
 101 | by a public agency or nonprofit organization, provided the  
 102 | appraiser is selected from the division's list of appraisers and  
 103 | the appraisal is reviewed and approved by the division. For the  
 104 | purposes of this paragraph, "nonprofit organization" means an  
 105 | organization whose purpose is the preservation of natural  
 106 | resources, and which is exempt from federal income tax under s.  
 107 | 501(c)(3) of the Internal Revenue Code. The agency may release  
 108 | an appraisal report when the passage of time has rendered the  
 109 | conclusions of value in the report invalid.

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110 (e) Prior to acceptance of an appraisal, the agency shall  
111 submit a copy of such report to the Division of State Lands. The  
112 division shall review such report for compliance with the rules  
113 of the board of trustees. With respect to proposed purchases in  
114 excess of \$250,000, this review shall include a general field  
115 inspection of the subject property by the review appraiser. The  
116 review appraiser may reject an appraisal report following a desk  
117 review, but is prohibited from approving an appraisal report in  
118 excess of \$250,000 without a field review. Any questions of  
119 applicability of laws affecting an appraisal shall be addressed  
120 by the legal office of the agency.

121 (f) The appraisal report shall be accompanied by the sales  
122 history of the parcel for at least the prior 5 years. Such sales  
123 history shall include all parties and considerations with the  
124 amount of consideration verified, if possible. If a sales  
125 history would not be useful, or its cost prohibitive compared to  
126 the value of a parcel, the sales history may be waived by the  
127 Secretary of Environmental Protection or the director of the  
128 Division of State Lands. The department shall adopt a rule  
129 specifying guidelines for waiver of a sales history.

130 (g) The board of trustees may consider an appraisal  
131 acquired by a seller, or any part thereof, in negotiating to  
132 purchase a parcel, but such appraisal may not be used in lieu of  
133 an appraisal required by this subsection or to determine the  
134 maximum offer allowed by law.

135 (7) (a) When the owner is represented by an agent or  
136 broker, negotiations may not be initiated or continued until a  
137 written statement verifying such agent's or broker's legal or

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138 fiduciary relationship with the owner is on file with the  
139 agency.

140 (b) The board of trustees or any state agency may contract  
141 for real estate acquisition services, including, but not limited  
142 to, contracts for real estate commission fees.

143 (c) Upon the initiation of negotiations, the state agency  
144 shall inform the owner in writing that all agreements for  
145 purchase are subject to approval by the board of trustees.

146 (d) All offers or counteroffers shall be documented in  
147 writing and shall be confidential and exempt from the provisions  
148 of s. 119.07(1) until an option contract is executed, or if no  
149 option contract is executed, until 2 weeks before a contract or  
150 agreement for purchase is considered for approval by the board  
151 of trustees. The agency shall maintain complete and accurate  
152 records of all offers and counteroffers for all projects.

153 (e)1. The board of trustees shall adopt by rule the method  
154 for determining the value of parcels sought to be acquired by  
155 state agencies pursuant to this section. No offer by a state  
156 agency, except an offer by an agency acquiring lands pursuant to  
157 s. 259.041, may exceed the value for that parcel as determined  
158 pursuant to the highest approved appraisal or the value  
159 determined pursuant to the rules of the board of trustees,  
160 whichever value is less.

161 2. In the case of a joint acquisition by a state agency  
162 and a local government or other entity apart from the state, the  
163 joint purchase price may not exceed ~~150 percent of~~ the value for  
164 a parcel as determined in accordance with the limits prescribed  
165 in subparagraph 1. The state agency share of a joint purchase

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166 offer shall ~~may not~~ exceed the difference between the appraised  
167 value, as determined by the state, and the sum of the  
168 contributions of the other parties ~~what the agency may offer~~  
169 ~~singly as prescribed by subparagraph 1.~~

170 3. The provisions of this paragraph do not apply to the  
171 acquisition of historically unique or significant property as  
172 determined by the Division of Historical Resources of the  
173 Department of State.

174 (f) When making an offer to a landowner, a state agency  
175 shall consider the desirability of a single cash payment in  
176 relation to the maximum offer allowed by law.

177 (g) The state shall have the authority to reimburse the  
178 owner for the cost of the survey when deemed appropriate. The  
179 reimbursement shall not be considered a part of the purchase  
180 price.

181 (h) A final offer shall be in the form of an option  
182 contract or agreement for purchase and shall be signed and  
183 attested to by the owner and the representative of the agency.  
184 Before the agency executes the option contract or agreement for  
185 purchase, the contract or agreement shall be reviewed for form  
186 and legality by legal staff of the agency. Before the agency  
187 signs the agreement for purchase or exercises the option  
188 contract, the provisions of s. 286.23 shall be complied with.  
189 Within 10 days after the signing of the agreement for purchase,  
190 the state agency shall furnish the Division of State Lands with  
191 the original of the agreement for purchase along with copies of  
192 the disclosure notice, evidence of marketability, the accepted  
193 appraisal report, the fee appraiser's affidavit, a statement

194 that the inventory of existing state-owned lands was examined  
 195 and contained no available suitable land in the area, and a  
 196 statement outlining the public purpose for which the acquisition  
 197 is being made and the statutory authority therefor.

198 (i) Within 45 days of receipt by the Division of State  
 199 Lands of the agreement for purchase and the required  
 200 documentation, the board of trustees or, when the purchase price  
 201 does not exceed \$100,000, its designee shall either reject or  
 202 approve the agreement. An approved agreement for purchase is  
 203 binding on both parties. Any agreement which has been  
 204 disapproved shall be returned to the agency, along with a  
 205 statement as to the deficiencies of the agreement or the  
 206 supporting documentation. An agreement for purchase which has  
 207 been disapproved by the board of trustees may be resubmitted  
 208 when such deficiencies have been corrected.

209 Section 2. Subsections (1), (2), (3) and (7) of section  
 210 259.041, Florida Statutes, are amended to read:

211 259.041 Acquisition of state-owned lands for preservation,  
 212 conservation, and recreation purposes.--

213 (1) Neither the Board of Trustees of the Internal  
 214 Improvement Trust Fund nor its duly authorized agent shall  
 215 commit the state, through any instrument of negotiated contract  
 216 or agreement for purchase, to the purchase of lands with or  
 217 without appurtenances unless the provisions of this section have  
 218 been fully complied with. Except for the requirements of  
 219 subsections (3), (7), (14), and (15), the board of trustees may  
 220 waive any requirements of this section, may waive any rules  
 221 adopted pursuant to this section, notwithstanding chapter 120,

222 or may substitute other reasonably prudent procedures, provided  
 223 the public's interest is reasonably protected. The title to  
 224 lands acquired pursuant to this section shall vest in the board  
 225 of trustees as provided in s. 253.03(1), unless otherwise  
 226 provided by law, and all such titled lands shall be administered  
 227 pursuant to the provisions of s. 253.03.

228 (2) The board of trustees has authority to adopt rules  
 229 pursuant to ss. 120.536(1) and 120.54 to implement the  
 230 provisions of this section, including rules governing the terms  
 231 and conditions of land purchases. Such rules shall address with  
 232 specificity, but not be limited to:

233 (a) The procedures to be followed in the acquisition  
 234 process, including selection of appraisers, surveyors, title  
 235 agents and closing agents, and the content of appraisal reports.

236 (b) The determination of the value of parcels which the  
 237 state has an interest to acquire.

238 (c) Special requirements when multiple landowners are  
 239 involved in an acquisition.

240 (d) Requirements for obtaining written option agreements  
 241 so that the interests of the state are fully protected.

242 (e) Special requirements when multiple purchasers are  
 243 involved in an acquisition.

244 (3) No agreement to acquire real property for the purposes  
 245 described in this chapter, chapter 260, or chapter 375, title to  
 246 which will vest in the board of trustees, may bind the state  
 247 unless and until the agreement has been reviewed and approved by  
 248 the Department of Environmental Protection as complying with the  
 249 requirements of this section and any rules adopted pursuant to

250 | this section. When the state is a party to a joint acquisition  
 251 | in which another entity is contributing to the agreed contract  
 252 | price, the state contribution shall not exceed the difference  
 253 | between the appraised value, as determined by the state, and the  
 254 | sum of the contributions of the other parties. Where any of the  
 255 | following conditions exist, the agreement shall be submitted to  
 256 | and approved by the board of trustees:

257 |       (a) The purchase price agreed to by the seller exceeds the  
 258 | value as established pursuant to the rules of the board of  
 259 | trustees;

260 |       (b) The contract price agreed to by the seller and  
 261 | acquiring agency exceeds \$1 million;

262 |       (c) The acquisition is the initial purchase in a project;  
 263 | or

264 |       (d) Other conditions that the board of trustees may adopt  
 265 | by rule. Such conditions may include, but not be limited to,  
 266 | projects where title to the property being acquired is  
 267 | considered nonmarketable or is encumbered in such a way as to  
 268 | significantly affect its management.

269 |  
 270 | Where approval of the board of trustees is required pursuant to  
 271 | this subsection, the acquiring agency must provide a  
 272 | justification as to why it is in the public's interest to  
 273 | acquire the parcel or project. Approval of the board of trustees  
 274 | also is required for projects the department recommends  
 275 | acquiring pursuant to subsections (14) and (15). Review and  
 276 | approval of agreements for acquisitions for Florida Greenways  
 277 | and Trails Program properties pursuant to chapter 260 may be



278 waived by the department in any contract with nonprofit  
 279 corporations that have agreed to assist the department with this  
 280 program.

281 (7) Prior to approval by the board of trustees or, when  
 282 applicable, the Department of Environmental Protection, of any  
 283 agreement to purchase land pursuant to this chapter, chapter  
 284 260, or chapter 375, and prior to negotiations with the parcel  
 285 owner to purchase any other land, title to which will vest in  
 286 the board of trustees, an appraisal of the parcel shall be  
 287 required as follows:

288 (a) The board of trustees shall adopt by rule the method  
 289 for determining the value of parcels sought to be acquired by  
 290 state agencies pursuant to this section.

291 (b) Each parcel to be acquired shall have at least one  
 292 appraisal. Two appraisals are required when the estimated value  
 293 of the parcel exceeds \$500,000. When two appraisals are  
 294 required, one appraiser shall be selected by the Department of  
 295 Agriculture and Consumer Services. ~~However, w~~When both  
 296 appraisals exceed \$500,000 and differ significantly, a third  
 297 appraisal shall ~~may~~ be obtained, with the Department of  
 298 Financial Services selecting the third appraiser. Two appraisals  
 299 shall be considered to differ significantly if the higher of the  
 300 two values exceeds 120% of the lower value. When the estimated  
 301 value of the parcel exceeds \$500,000, the review appraiser shall  
 302 be selected by the Department of Financial Services. To provide  
 303 for payment by the agency selecting the second and third  
 304 appraiser and review appraiser, as required by this section,  
 305 Department of Environmental Protection shall enter into

306 interagency agreements with Department of Agriculture and  
 307 Consumer Services and Department of Financial Services, whereby  
 308 funds will be transferred to those agencies for that purpose  
 309 upon direction of the selecting agency. When a parcel is  
 310 estimated to be worth \$100,000 or less and the director of the  
 311 Division of State Lands finds that the cost of obtaining an  
 312 outside appraisal is not justified, an appraisal prepared by the  
 313 division may be used. The state is not required to appraise the  
 314 value of lands and appurtenances that are being donated to the  
 315 state.

316 (c) Appraisal fees and associated costs shall be paid by  
 317 the agency proposing the acquisition. The board of trustees  
 318 shall approve qualified fee appraisal organizations. All  
 319 appraisals used for the acquisition of lands pursuant to this  
 320 section shall be prepared by a member of an approved appraisal  
 321 organization or by a state-certified appraiser who meets the  
 322 standards and criteria established in rule by the board of  
 323 trustees. Each fee appraiser selected to appraise a particular  
 324 parcel shall, prior to contracting with the agency or a  
 325 participant in a multiparty agreement, submit to that agency or  
 326 participant an affidavit substantiating that he or she has no  
 327 vested or fiduciary interest in such parcel.

328 (d) The fee appraiser and the review appraiser ~~for the~~  
 329 ~~agency~~ shall not act in any way that may be construed as  
 330 negotiating with the property owner.

331 (e) Generally, appraisal reports are confidential and  
 332 exempt from the provisions of s. 119.07(1), for use by the  
 333 agency and the board of trustees, until an option contract is

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334 executed or, if no option contract is executed, until 2 weeks  
335 before a contract or agreement for purchase is considered for  
336 approval by the board of trustees. However, the department has  
337 the authority, at its discretion, to disclose appraisal reports  
338 to private landowners during negotiations for acquisitions using  
339 alternatives to fee simple techniques, if the department  
340 determines that disclosure of such reports will bring the  
341 proposed acquisition to closure. The Division of State Lands may  
342 also disclose appraisal information to public agencies or  
343 nonprofit organizations that agree to maintain the  
344 confidentiality of the reports or information when joint  
345 acquisition of property is contemplated, or when a public agency  
346 or nonprofit organization enters into a written multiparty  
347 agreement with the division to purchase and hold property for  
348 subsequent resale to the division. In addition, the division may  
349 use, as its own, appraisals obtained by a public agency or  
350 nonprofit organization, provided the appraiser is selected from  
351 the division's list of appraisers and the appraisal is reviewed  
352 and approved by the division. For the purposes of this chapter,  
353 "nonprofit organization" means an organization whose purposes  
354 include the preservation of natural resources, and which is  
355 exempt from federal income tax under s. 501(c)(3) of the  
356 Internal Revenue Code. The agency may release an appraisal  
357 report when the passage of time has rendered the conclusions of  
358 value in the report invalid or when the acquiring agency has  
359 terminated negotiations.

360 (f) The Division of State Lands may use, as its own,  
361 appraisals obtained by a public agency or nonprofit

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362 organization, provided that the appraiser is selected from the  
363 division's list of appraisers and the appraisal is reviewed and  
364 approved by the division. For the purposes of this chapter, the  
365 term "nonprofit organization" means an organization whose  
366 purposes include the preservation of natural resources and which  
367 is exempt from federal income tax under s. 501(c)(3) of the  
368 Internal Revenue Code.

369

370 Notwithstanding the provisions of this subsection, on behalf of  
371 the board and before the appraisal of parcels approved for  
372 purchase under this chapter, the Secretary of Environmental  
373 Protection or the director of the Division of State Lands may  
374 enter into option contracts to buy such parcels. Any such option  
375 contract shall state that the final purchase price is subject to  
376 approval by the board or, when applicable, the secretary and  
377 that the final purchase price may not exceed the maximum offer  
378 allowed by law. The consideration for such an option may not  
379 exceed \$1,000 or 0.01 percent of the estimate by the department  
380 of the value of the parcel, whichever amount is greater.



381 Section 3. This act shall take effect July 1, 2008.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GEAC 08-17 Eliminating the Transfer of Interest in Real Property Form  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council		Fox 	Cooper 
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

In 1986, the Legislature created s. 201.022, F.S., to require sellers, buyers, or agents to file a return containing certain information when submitting a deed to county clerks to transfer interest in real property. To carry out the law, the Department of Revenue (department) developed the Return for Transfers of Interest in Real Property Form (DR-219). The form was created to include information relating to transactions that may not have been, at that time, readily available from public sources, including the sale price of the property, the date of the sale, the type of property, whether the sale included any tangible personal property, if mineral rights were involved, and whether the sale was due to foreclosure. In 1992, the Legislature amended the law to allow county clerks to retain 1.0 percent of the documentary stamp tax collections pertaining to the deed proportion on each property to cover the cost of processing the forms.

State and local officials expected to use the DR-219 information to collect accurate and timely information on property transfers. However, since the form was created over 20 years ago, there have been concerns by the department regarding its usefulness. In particular, the department has determined that the information on the DR-219 is frequently incomplete, inaccurate, or illegible, making the information unreliable. Other than the DR-219, there are currently other and more reliable resources that are available for the county appraisers to use. For example, the property tax appraisers can use a copy of the deed with the affixed documentary stamps to compute and estimate sales price. In addition, the appraiser can contact the buyer or seller directly to gather details on the sale, and can also use Multiple Listing Services.

The bill repeals s. 201.022, F.S., which eliminates the DR-219 and the 1.0 percent commission retained by the County Clerks from the deeds proportion of the documentary stamp tax collections.

The Revenue Estimating Conference, on February 8, 2008, determined an increase in state revenues of approximately \$11.5 million during fiscal year 2008-2009 by eliminating the DR-219 effective July 1, 2008 (revenue that is currently retained by the County Clerks of Court as a commission for processing the DR-219 based on the 1.0 percent of documentary stamp tax revenue pertaining to the deeds proportion). Also, there will be a positive recurring impact to the General Revenue Fund in the amount of \$35,000 due to reduced expenditures by the department for printing, postage, and storage of the form.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – Citizens of Florida will benefit by the elimination of a form that has been determined to be duplicative and unnecessary. Each year approximately 1.7 million DR-219s are submitted by closing agents, or in some cases, the county clerks.

Ensure Lower Taxes – The bill eliminates the 1.0 percent commission from documentary stamp tax revenue pertaining to the deeds proportion. Consequently, there will be a positive impact on the General Revenue Fund.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

In 1986, the Legislature created s. 201.022, F.S., to require sellers, buyers, or agents to file a return containing certain information when submitting a deed to county clerks to transfer interest in real property. To carry out the law, the Department of Revenue (department) developed the Return for Transfers of Interest in Real Property Form (DR-219). The form was created to include information relating to transactions that may not have been, at that time, readily available from public sources, including the sale price of the property, the date of the sale, the type of property, whether the sale included any tangible personal property, if mineral rights were involved, and whether the sale was due to foreclosure.

In 1992, the Legislature amended the law to allow county clerks to retain 1.0 percent of the documentary stamp tax revenue pertaining to the deeds proportion on each property to cover the cost of processing the forms.

The information obtained from the DR-219 form was originally intended to be used for several purposes: for state and local officials to accurately collect information on real property transfers and for department and county officials to verify that appropriate documentary stamp taxes have been paid. It also was intended to be used to create an independent database of sales information to help ascertain if the county property appraisers were appropriately establishing market value for property tax purposes.

However, the information on the DR-219 is frequently incomplete, inaccurate, or illegible, therefore making it unreliable. According to the Office of Program Policy Analysis and Government Accountability (OPPAGA), the quality of this information is further degraded by data entry errors by closing agents, the Clerk of Court staff, and the department staff as it is transferred from paper forms to the electronic database.

A May 2007 survey conducted by the Property Tax Administration Program within the Department of Revenue, found that 90 percent of Property Appraisers determined that the DR-219 data is insufficient, incomplete or too inaccurate to provide a reliable and credible source of information on real property transactions.<sup>1</sup>

There are other reasons that the DR-219 form has not met its original intent, such as no uniform parcel number systems throughout the State of Florida creating further data entry problems. Moreover, the forms are not often submitted timely and are sometimes received by the department months after the deed has been recorded. In many instances, the DR-219 form may never be submitted. If this is the case, the only penalty authorized by law is a \$25 fine to be paid by the seller, buyer, or buyer's agent.<sup>2</sup>

<sup>1</sup> Department of Revenue – Property Tax Appraisers – DR-219 Survey – May, 2007

<sup>2</sup> Section 201.022(2), F.S.



Other than the DR-219 form, there are currently other and more reliable resources that the county property appraisers are able to use. For example, property appraisers use a copy of the deed with the affixed documentary stamps to compute an estimated sales price. They may also contact the buyer or seller directly to gather details such as whether the sale included the transfer of personal property. Information from state-level databases such as Sunbiz (the Florida Division of Corporations website) is also helpful to the property appraisers. Another option for obtaining much of the information included on the DR-219 is to use services such as the Multiple Listing Service.

Currently, when the forms are submitted to the clerks, they are then forwarded to the property appraisers and to the department. As of July 1, 2007, the department stopped processing the forms due to their lack of complete and accurate information. The department also determined that the form does not effectively serve as an independent source of reliable information for its analysis of county property tax roles. Another reason the department stopped processing the form is that it is not the best source of information for identifying underpayment of documentary stamp taxes. Currently, the forms are not being inputted by the department nor are they being imaged. The department estimates that there are approximately 1.7 million forms that are submitted on an annual basis and are being stored in approximately 900-1000 boxes.<sup>3</sup>

### Effect of Proposed Changes

The bill eliminates the DR-219 form. Property appraisers will not have the specific information that they would have received from the DR-219. Even though the form is being eliminated, other online and data sources are already being utilized and available for the county clerks and appraisers. For example, property appraisers use a copy of the deed with the affixed documentary stamps to compute an estimated sales price. The copies of the deeds are available online and therefore easy to access. They may also contact the buyer or seller directly to gather details such as whether the sale included the transfer of personal property. Information from state-level databases such as Sunbiz is also helpful to the property appraisers. Another option for obtaining much of the information included on the DR-219 is to use services such as the Multiple Listing Service.

The county clerks will not be compensated the 1.0 percent of documentary stamp tax revenue pertaining to the deeds proportion that they receive when processing the forms. Officials with the Florida Association of Court Clerks and Comptrollers report that this loss of revenue to their individual counties and offices would be insignificant.<sup>4</sup>

The Department of Revenue will have a reduced workload by not having to receive and store the forms.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) published a research memorandum on February 15, 2008 regarding the elimination of the DR-219 form. They concluded their report with this statement:

“Overall... the state’s cost to process the DR-219 form (\$16 million in Fiscal Year 2006-2007), far outweigh the limited benefit gained by the county property appraisers. When the form is complete and accurate, property appraisers find it very useful; however, more often, the form is incomplete, inaccurate or otherwise illegible. The Department of Revenue has stopped using the form and representatives of the county clerks and property appraisers report that elimination of the form is reasonable given its lack of reliable information”<sup>5</sup>

## C. SECTION DIRECTORY:

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<sup>3</sup> Correspondence by Department of Revenue - received by email February 20, 2008 on file with the Government Efficiency & Accountability Council

<sup>4</sup> OPPAGA Research Memorandum – February 15, 2008 on file with the Government Efficiency & Accountability Council

<sup>5</sup> OPPAGA Research Memorandum – February 15, 2008 on file with the Government Efficiency & Accountability Council

Section 1 repeals s.201.022, F.S., relating to consideration for realty; filing of return condition precedent to recordation; penalty; compensation of clerks; failure to file does not impair validity.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference, on February 8, 2008, determined an increase in state revenues of approximately \$11.5 million during Fiscal Year 2008-2009 by eliminating the DR-219 effective July 1, 2008 (revenue that is currently retained by the County Clerks of Court as a commission for processing the DR-219 based on 1.0 percent of documentary stamp tax revenue pertaining to the deeds proportion).

Increase in state revenues are as follows:

	FY 2008-09	FY2009-10	FY 2010-11
General Revenue	\$10.7 million	\$12.6 million	\$15.2 million
State Trust Funds	<u>\$.8 million</u>	<u>\$.5 million</u>	<u>\$.7 million</u>
Total	\$11.5 million	\$13.1 million	\$15.9 million

#### 2. Expenditures:

There will be a positive recurring fiscal impact to the General Revenue Fund of \$35,000 due to reduced expenditures by the department for printing, postage, and storage of the DR-219.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

By repealing s. 201.022, F.S., County Clerks will no longer retain the 1.0 percent of the deeds proportion of documentary stamp tax collections as a commission for processing the DR-219. The Revenue Estimating Conference, on February 8, 2008, determined the amount to be approximately \$11.5 million for Fiscal Year 2008-2009, which allowances vary by county.

#### 2. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

### D. FISCAL COMMENTS:

The department stopped processing and imaging the DR-219 as of July 1, 2007. During Special Session 2007C, the department's General Revenue budget was reduced by \$140,000 in the General Tax Administration Program.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES



PCB GEAC 08-17

ORIGINAL

YEAR

1 A bill to be entitled  
2 An act relating to eliminating the Transfer of Interest In  
3 Real Property Form; repealing s. 201.022(1) , (2) , (3)  
4 and (4) ., F.S., relating to consideration for realty;  
5 filing of return condition precedent to recordation;  
6 penalty; compensation of clerks; failure to file does not  
7 impair validity; providing an effective date.

8  
9 Be It Enacted by the Legislature of the State of Florida:

10  
11 Section 1. Section 201.022, Florida Statutes, is repealed.

12 Section 2. This act shall take effect June 1, 2008.

