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# **Government Efficiency & Accountability Council**

**Tuesday, April 1, 2008  
10:15 AM – 12:15 PM  
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:** Tuesday, April 01, 2008 10:15 am  
**End Date and Time:** Tuesday, April 01, 2008 12:15 pm  
**Location:** Morris Hall (17 HOB)  
**Duration:** 2.00 hrs

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

PCB GEAC 08-07 -- OGSR Victim of Child Abuse or a Sex Offense  
PCB GEAC 08-16 -- Retirement  
PCB GEAC 08-22 -- Small Business Regulatory Relief Act  
PCB GEAC 08-24 -- Transparency in Local Government Spending  
PCB GEAC 08-30 -- Local Government Investment Pool  
PCB GEAC 08-31 -- Local Government Investment Pool Trust Fund  
PCB GEAC 08-32 -- Local Government Investment Pool Implementation

**NOTICE FINALIZED on 03/28/2008 16:21 by MXE**









HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GEAC 08-07 OGSR Victim of Child Abuse or a Sex Offense
SPONSOR(S): Government Efficiency & Accountability Council
TIED BILLS: IDEN./SIM. BILLS: CS/SB 1618

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Government Efficiency & Accountability Council, [blank], Williamson/Dykes, Cooper. Rows 2-6: 1), 2), 3), 4), 5) with blank cells.

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses, regardless of whether it identifies the victim. Prior to this act, the law provided a public record exemption for information revealing the identity of a victim of sexual battery, a lewd or lascivious offense, or child abuse.

The bill reenacts and expands the public record exemption to include a photograph, videotape, or image of any part of the body of the victim of crimes such as sex trafficking and child pornography. As such, the repeal date is extended to October 2, 2013, and a public necessity statement is included. The bill authorizes release of the confidential and exempt information under limited circumstances. It also clarifies that the confidential and exempt status of the criminal intelligence information and the criminal investigative information must be maintained in court records and court proceedings. Finally, the bill reorganizes the exemption and makes conforming changes.

The bill requires a two-thirds vote of the members present and voting for passage.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

Maintain public security – The bill creates an additional protection from exploitation for victims of sex crimes.

### B. EFFECT OF PROPOSED CHANGES:

#### **BACKGROUND**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created,<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Public Record Exemption under Review

Current law provides a public record exemption for any criminal intelligence information<sup>4</sup> or criminal investigative information<sup>5</sup> that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses,<sup>6</sup> regardless of whether it identifies the victim.<sup>7</sup> Prior to this act, the law

<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Section 119.011(3)(a), F.S., defines "criminal intelligence information" to mean "information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity."

<sup>5</sup> Section 119.011(3)(b), F. S., defines "criminal investigative information" to mean "information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance."

<sup>6</sup> The exemption specifies sexual offenses prohibited under chapter 794, chapter 800, or chapter 827, F.S.

<sup>7</sup> Section 119.071(2)(h)2., F.S.

provided a public record exemption for information revealing the identity of a victim of sexual battery, a lewd or lascivious offense, or child abuse.<sup>8</sup> Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2008, unless reenacted by the Legislature.<sup>9</sup>

The possible catalyst for the Legislature's decision to expand the existing protection to such victims was the case of *Weeks v. Golden*.<sup>10</sup> In 1997, James Weeks, an inmate in the Florida correctional system, made three public records requests for documents relating to his sexual battery prosecution. When his requests went unanswered, he filed a petition to compel the state attorney to provide him with the documents requested, which included "close-up shots of the victim's genital area." The First District Court of Appeal eventually determined that because these photographs did not identify the victim, the public was entitled to access these photos, stating "[i]f the legislature had intended to exempt all photographs of victims of sexual offenses, it could have easily said so" in statute.<sup>11</sup>

### Other Relevant Public Record Exemptions

Current law provides other public record exemptions that are relevant to the exemption under review.

All court records, including witness testimonies, revealing the photograph, name, or address of the victim of an alleged offense described in chapter 794 or chapter 800, F.S., or act of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, F.S., are confidential and exempt if the state or the victim demonstrates a need for confidentiality.<sup>12</sup> If the court declares that all court records or other information that reveal the identity of the victim are confidential and exempt, the defendant charged may apply for an order of disclosure for preparing a defense. The defendant, however, is prohibited from disclosing the victim's identity to anyone other than his or her defense team.<sup>13</sup>

In addition, information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense is exempt from public record requirements as provided in s. 119.071(2)(h), F.S.<sup>14</sup>

### 2007 Interim Study

In 2007, the Division of Statutory Revision of the Office of Legislative Services certified for repeal the public record exemption for photographs, videotapes, or images of victims of certain sexual offenses. As such, Committee staff reviewed the exemption during the interim and it was determined that the exemption protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety.<sup>15</sup>

### **EFFECT OF BILL**

The bill reenacts and expands the public record exemption to include a photograph, videotape, or

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<sup>8</sup> Section 119.071(2)(h)1., F.S.

<sup>9</sup> Section 2., chapter 2003-157, L.O.F.

<sup>10</sup> See Staff Analysis of CS/HB 453, Florida House of Representatives (March 27, 2003).

<sup>11</sup> *Weeks v. Golden*, 798 So.2d 848 (Fla. 1st DCA 2001).

<sup>12</sup> The state or victim must demonstrate to the court that the: identity of the victim is not already known in the community; victim has not voluntarily called public attention to the offense; identity of the victim has not otherwise become a reasonable subject of public concern; disclosure of the victim's identity would be offensive to a reasonable person; and disclosure of the victim's identity would: endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim; endanger the victim because of the likelihood of retaliation, harassment, or intimidation; cause severe emotional or mental harm to the victim; make the victim unwilling to testify as a witness; or be inappropriate for other good cause shown. Section 92.56(1), F.S.

<sup>13</sup> Section 92.56(2), F.S.

<sup>14</sup> Section 119.0714(1)(h), F.S.

<sup>15</sup> See the Committee on State Affairs interim project report entitled "Open Government Sunset Reviews," January 2008, at pages 7 – 10 (on file with the Committee on State Affairs).

image of any part of the body of the victim of a sexual offense under chapter 796, F.S., such as sex trafficking, or the victim of a sexual offense under chapter 847, F.S., such as child pornography. As such, the repeal date is extended to October 2, 2013, and a public necessity statement is included.

The bill also authorizes release of the confidential and exempt criminal investigative information and criminal intelligence information by a law enforcement agency:

- In the furtherance of its duties and responsibilities.
- For print, publication, or broadcast if the law enforcement agency determines that release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to information needed to identify or locate the victim. It should not include the nature of the sexual offense committed against the missing or endangered person.

The bill amends s. 92.56, F.S., relating to court records, to provide that the confidential and exempt status of the criminal investigative information and the criminal intelligence information must be maintained in court records and in court proceedings. If a petition for access to such confidential and exempt information is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt status must be maintained by the court if the state or the victim demonstrates that the criteria currently provided in s. 92.56, F.S.,<sup>16</sup> are met.

Further, the bill amends s. 92.56, F.S., to provide that a defendant charged with child abuse or any specified sexual offenses under that statute may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order under that statute. Such identifying information concerning the victim may be released to the defendant or the defendant's attorney in order to prepare the defense. The confidential and exempt status of such information may not be construed to prevent the disclosure of the victim's identity to the defendant.

The bill also amends s. 794.03, F.S., which provides a criminal penalty for publishing or broadcasting information identifying the victim of a sexual battery. It creates an exception to the statute for confidential and exempt information disclosed as provided in s. 119.071(2)(h), F.S., or when the court determines that such information is no longer confidential and exempt pursuant to s. 92.56, F.S.

Finally, the bill reorganizes the exemption and makes conforming changes.

#### C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to expand the public record exemption for photographs of victims of sex crimes.

Section 2 provides a public necessity statement.

Section 3 repeals s. 2 of chapter 2003-157, L.O.F., which provides for repeal of the exemption.

Section 4 amends s. 92.56, F.S., to make conforming changes.

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<sup>16</sup> The state or the victim must demonstrate that:

- The identity of the victim is not already known in the community;
- The victim has not voluntarily called public attention to the offense;
- The identity of the victim has not otherwise become a reasonable subject of public concern;
- The disclosure of the victim's identity would be offensive to a reasonable person; and
- The disclosure of the victim's identity would:
  - Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;
  - Endanger the victim because of the likelihood of retaliation, harassment, or intimidation;
  - Cause severe emotional or mental harm to the victim;
  - Make the victim unwilling to testify as a witness; or
  - Be inappropriate for other good cause shown.

Section 5 amends s. 119.0714, F.S., to make conforming changes.

Section 6 amends s. 794.03, F.S., to make conforming changes.

Section 7 provides an effective date of October 1, 2008.

## 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:

See "FISCAL COMMENTS."

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

None.

### D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on law enforcement agencies, because staff responsible for complying with public records requests could require training related to the expansion of the current public record exemption. In addition, law enforcement agencies could incur costs associated with redacting the confidential and exempt criminal investigative information and criminal intelligence information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the law enforcement agency.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**D. STATEMENT OF THE SPONSOR**

Not applicable.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

Not applicable.



PCB GEAC 08-07

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act regarding victims of child abuse or sex  
 4 crimes; amending s. 119.071, F.S.; expanding the exemption  
 5 for certain victim information by making it confidential  
 6 and exempt from public records requirements; expanding the  
 7 exemption to include sexual offenses prohibited under  
 8 chapters 796 and 847, F.S.; creating exceptions to the  
 9 public record exemption; providing for future legislative  
 10 review of the exemption; reorganizing the exemption;  
 11 providing a statement of public necessity; repealing s. 2  
 12 of chapter 2003-157, Laws of Florida, which provides for  
 13 repeal of the exemption; amending s. 92.56, F.S.;  
 14 requiring that the confidential and exempt status of  
 15 certain victim information made confidential and exempt  
 16 pursuant to s. 119.071(2)(h), F.S., be maintained in court  
 17 records and court proceedings; providing for a petition  
 18 for access at the trial court; providing specified  
 19 criteria for maintaining the confidential and exempt  
 20 status of such information upon the filing of a petition;  
 21 permitting a defendant charged with specified offenses to  
 22 apply for an order of disclosure to prepare a defense;  
 23 amending s. 119.0714, F.S.; conforming the provisions to  
 24 changes made in s. 119.071(2)(h), F.S.; amending s.  
 25 794.03, F.S.; conforming the provisions to changes made in  
 26 s. 119.071(2)(h), F.S.; providing an effective date.

27  
 28 Be It Enacted by the Legislature of the State of Florida:

PCB GEAC 08-07

ORIGINAL

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Section 1. Paragraph (h) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.--

(2) AGENCY INVESTIGATIONS.--

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. ~~Any criminal intelligence information or criminal investigative information, including the photograph, name, address, or other fact, or information which reveals the identity of the victim of the crime of sexual battery as defined in chapter 794; the identity of the victim of a lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age, as defined in chapter 800; or the identity of the victim of the crime of child abuse as defined by chapter 827. and~~

b. ~~Any criminal intelligence information or criminal investigative information or other criminal record, including those portions of court records and court proceedings, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chapter 794, chapter 796, chapter 800, or chapter 827, or chapter 847 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

PCB GEAC 08-07

ORIGINAL

YEAR

56 c.2. ~~In addition to subparagraph 1., any criminal~~  
 57 ~~intelligence information or criminal investigative information~~  
 58 ~~that is~~ A photograph, videotape, or image of any part of the  
 59 body of the victim of a sexual offense prohibited under chapter  
 60 794, chapter 796, chapter 800, ~~or~~ chapter 827, or chapter 847,  
 61 regardless of whether the photograph, videotape, or image  
 62 identifies the victim, ~~is confidential and exempt from s.~~  
 63 ~~119.07(1) and s. 24(a), Art. I of the State Constitution.~~

64 2. Criminal investigative information and criminal  
 65 intelligence information made confidential and exempt under this  
 66 paragraph may be disclosed by a law enforcement agency:

67 a. In the furtherance of its official duties and  
 68 responsibilities.

69 b. For print, publication, or broadcast if the law  
 70 enforcement agency determines that such release would assist in  
 71 locating or identifying a person that such agency believes to be  
 72 missing or endangered. The information provided should be  
 73 limited to that needed to identify or locate the victim and not  
 74 include the sexual nature of the offense committed against the  
 75 person.

76 3. This exemption applies to such confidential and exempt  
 77 ~~photographs, videotapes, or images held as~~ criminal intelligence  
 78 information or criminal investigative information held by a law  
 79 enforcement agency before, on, or after the effective date of  
 80 the exemption.

81 4. This paragraph is subject to the Open Government Sunset  
 82 Review Act in accordance with s. 119.15, and shall stand

PCB GEAC 08-07

ORIGINAL

YEAR

83 | repealed on October 2, 2013, unless reviewed and saved from  
 84 | repeal through reenactment by the Legislature.

85 |       Section 2. The Legislature finds that it is a public  
 86 | necessity to make confidential and exempt from public records  
 87 | requirements certain criminal intelligence information or  
 88 | criminal investigative information that reveals the identity of  
 89 | a victim of the crime of child abuse or of any sexual offense.  
 90 | The Legislature also finds that it is a public necessity to make  
 91 | confidential and exempt from public records requirements a  
 92 | photograph, videotape, or image of any part of the body of a  
 93 | victim of a sexual offense regardless of whether the photograph,  
 94 | videotape, or image identifies the victim. The Legislature finds  
 95 | that it is important to strengthen the protections afforded  
 96 | victims of sexual offenses or child abuse in order to ensure  
 97 | their privacy and to prevent revictimization by making such  
 98 | information confidential and exempt. The identity of victims of  
 99 | child abuse or sexual offenses is information of a sensitive  
 100 | personal nature. As such, this exemption serves to minimize the  
 101 | trauma to victims because the release of such information would  
 102 | compound the tragedy already visited upon their lives and would  
 103 | be defamatory to or cause unwarranted damage to the good name or  
 104 | reputation of the victims. Protecting the release of identifying  
 105 | information of such victims protects them from further  
 106 | embarrassment, harassment, or injury. The Legislature further  
 107 | finds that it is a public necessity that criminal intelligence  
 108 | information or criminal investigative information that is a  
 109 | photograph, videotape, or image of any part of the body of a  
 110 | victim of a sexual offense prohibited under chapter 794, chapter

PCB GEAC 08-07

ORIGINAL

YEAR

111 | 800, chapter 827, or chapter 847, Florida Statutes, be made  
 112 | confidential and exempt from public records requirements. The  
 113 | Legislature finds that such photographs, videotapes, or images  
 114 | often depict the victim in a graphic and disturbing fashion,  
 115 | frequently nude, bruised, or bloodied. Such highly sensitive  
 116 | photographs, videotapes, or images of a victim of a sexual  
 117 | offense, if viewed, copied, or publicized, could result in  
 118 | trauma, sorrow, humiliation, or emotional injury to the victim  
 119 | and the victim's family.

120 |       Section 3. Section 2 of chapter 2003-157, Laws of Florida,  
 121 | is repealed.

122 |       Section 4. Section 92.56, Florida Statutes, is amended to  
 123 | read:

124 |       92.56 Judicial proceedings and court records involving  
 125 | sexual offenses.--

126 |       (1)(a) The confidential and exempt status of criminal  
 127 | intelligence information or criminal investigative information  
 128 | made confidential and exempt pursuant to s. 119.071(2)(h) must  
 129 | be maintained in court records pursuant to s. 119.0714(1)(h) and  
 130 | in court proceedings, including testimony from witnesses.

131 |       (b) If a petition for access to such confidential and  
 132 | exempt records is filed with the trial court having jurisdiction  
 133 | over the alleged offense, the confidential and exempt status of  
 134 | such information shall be maintained by the court if the state  
 135 | or the victim demonstrates that: ~~All court records, including~~  
 136 | ~~testimony from witnesses, that reveal the photograph, name, or~~  
 137 | ~~address of the victim of an alleged offense described in chapter~~  
 138 | ~~794 or chapter 800, or act of child abuse, aggravated child~~

PCB GEAC 08-07

ORIGINAL

YEAR

139 | ~~abuse, or sexual performance by a child as described in chapter~~  
 140 | ~~827, are confidential and exempt from the provisions of s.~~  
 141 | ~~24(a), Art. I of the State Constitution and may not be made~~  
 142 | ~~public if, upon a showing to the trial court with jurisdiction~~  
 143 | ~~over the alleged offense, the state or the victim demonstrates~~  
 144 | ~~that:~~

145 |     ~~1.(a)~~ 1.(a) The identity of the victim is not already known in  
 146 | the community;

147 |     ~~2.(b)~~ 2.(b) The victim has not voluntarily called public  
 148 | attention to the offense;

149 |     ~~3.(c)~~ 3.(c) The identity of the victim has not otherwise become  
 150 | a reasonable subject of public concern;

151 |     ~~4.(d)~~ 4.(d) The disclosure of the victim's identity would be  
 152 | offensive to a reasonable person; and

153 |     ~~5.(e)~~ 5.(e) The disclosure of the victim's identity would:

154 |         ~~a.1-~~ a.1- Endanger the victim because the assailant has not  
 155 | been apprehended and is not otherwise known to the victim;

156 |         ~~b.2-~~ b.2- Endanger the victim because of the likelihood of  
 157 | retaliation, harassment, or intimidation;

158 |         ~~c.3-~~ c.3- Cause severe emotional or mental harm to the victim;

159 |         ~~d.4-~~ d.4- Make the victim unwilling to testify as a witness; or

160 |         ~~e.5-~~ e.5- Be inappropriate for other good cause shown.

161 |     (2) A ~~If the court, pursuant to subsection (1), declares~~  
 162 | ~~that all court records or other information that reveals the~~  
 163 | ~~photograph, name, or address of the victim are confidential and~~  
 164 | ~~exempt from s. 24(a), Art. I of the State Constitution, the~~  
 165 | defendant charged with a ~~the~~ crime described in chapter 794 or  
 166 | chapter 800, or with child abuse, aggravated child abuse, or

PCB GEAC 08-07

ORIGINAL

YEAR

167 | sexual performance by a child as described in chapter 827, may  
 168 | apply to the trial court for an order of disclosure of  
 169 | information in court records held confidential and exempt  
 170 | pursuant to s. 119.0714(1)(h) or maintained as confidential and  
 171 | exempt pursuant to court order under this section. Such  
 172 | identifying information concerning the victim may be released to  
 173 | the defendant or his or her attorney in order to prepare the  
 174 | defense. The confidential and exempt status of this information  
 175 | ~~This paragraph~~ may not be construed to prevent the disclosure of  
 176 | the victim's identity to the defendant; however, the defendant  
 177 | may not disclose the victim's identity to any person other than  
 178 | the defendant's attorney or any other person directly involved  
 179 | in the preparation of the defense. A willful and knowing  
 180 | disclosure of the identity of the victim to any other person by  
 181 | the defendant constitutes contempt.

182 |         (3) The state may use a pseudonym instead of the victim's  
 183 | name to designate the victim of a crime described in chapter 794  
 184 | or chapter 800, or of child abuse, aggravated child abuse, or  
 185 | sexual performance by a child as described in chapter 827, in  
 186 | all court records and records of court proceedings.

187 |         (4) The protection of this section may be waived by the  
 188 | victim of the alleged offense in a writing filed with the court,  
 189 | in which the victim consents to the use or release of  
 190 | identifying information during court proceedings and in the  
 191 | records of court proceedings.

192 |         (5) This section does not prohibit the publication or  
 193 | broadcast of the substance of trial testimony in a prosecution  
 194 | for an offense described in chapter 794 or chapter 800, or a

PCB GEAC 08-07

ORIGINAL

YEAR

195 | crime of child abuse, aggravated child abuse, or sexual  
 196 | performance by a child, as described in chapter 827, but the  
 197 | publication or broadcast may not include an identifying  
 198 | photograph, an identifiable voice, or the name or address of the  
 199 | victim, unless the victim has consented in writing to the  
 200 | publication and filed such consent with the court or unless the  
 201 | court has declared such records not confidential and exempt as  
 202 | provided for in subsection (1).

203 |         (6) A willful and knowing violation of this section or a  
 204 | willful and knowing failure to obey any court order issued under  
 205 | this section constitutes contempt.

206 |         Section 5. Paragraph (h) of subsection (1) of section  
 207 | 119.0714, Florida Statutes, is amended to read:

208 |         119.0714 Court files; court records; official records.--

209 |         (1) COURT FILES.--Nothing in this chapter shall be  
 210 | construed to exempt from s. 119.07(1) a public record that was  
 211 | made a part of a court file and that is not specifically closed  
 212 | by order of court, except:

213 |         (h) Criminal intelligence information or criminal  
 214 | investigative information that is confidential and exempt  
 215 | ~~information or records that may reveal the identity of a person~~  
 216 | ~~who is a victim of a sexual offense~~ as provided in s.  
 217 | 119.071(2)(h).

218 |         Section 6. Section 794.03, Florida Statutes, is amended to  
 219 | read:

220 |         794.03 Unlawful to publish or broadcast information  
 221 | identifying sexual offense victim.--No person shall print,  
 222 | publish, or broadcast, or cause or allow to be printed,



PCB GEAC 08-07

ORIGINAL

YEAR

223 | published, or broadcast, in any instrument of mass communication  
 224 | the name, address, or other identifying fact or information of  
 225 | the victim of any sexual offense within this chapter, except as  
 226 | provided in s. 119.071(2)(h) or unless the court determines that  
 227 | such information is no longer confidential and exempt pursuant  
 228 | to s. 92.56. ~~Such identifying information is confidential and~~  
 229 | ~~exempt from the provisions of s. 119.07(1).~~ An offense under  
 230 | this section shall constitute a misdemeanor of the second  
 231 | degree, punishable as provided in s. 775.082 or s. 775.083.

232 |           Section 7. This act shall take effect October 1, 2008.







HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GEAC 08-16 Retirement
SPONSOR(S): Government Efficiency & Accountability Council
TIED BILLS: IDEN./SIM. BILLS: SB 2848

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Government Efficiency & Accountability Council, Camara/Dykes, Cooper. Rows 2-5 are empty.

SUMMARY ANALYSIS

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

This bill makes several changes to Chapter 121, F.S, including the deletion of inconsistencies and obsolete provisions, consolidation of repetitive language, and other clarifying changes. It reopens the enrollment period between July 1, 2008 and December 31, 2008, to allow municipalities and special districts to designate all its elected positions for inclusion in the Elected Officers' Class. This bill also lifts certain limitations for retirees reemployed by the Florida School for the Deaf and the Blind in certain noncontractual positions, as well as allows retirees to be reemployed as classroom teachers on an annual contractual basis by the Florida School for the Deaf and the Blind.

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

# 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:

#### FLORIDA RETIREMENT SYSTEM

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

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

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over: 680,000 active members,<sup>3</sup> 264,000 retirees and surviving beneficiaries,<sup>4</sup> and 31,000 Deferred Retirement Option Program participants.<sup>5</sup> Members of the FRS belong to one of five membership classes:

1. Regular Class <sup>6</sup>	588,204 members	86.46% of membership
2. Special Risk Class <sup>7</sup>	74,224 members	10.91% of membership
3. Special Risk Administrative Support Class <sup>8</sup>	74 members	0.01% of membership
4. Elected Officers' Class <sup>9</sup>	2,078 members	0.31% of membership
5. Senior Management Service Class <sup>10</sup>	7,562 members	1.11% of membership <sup>11</sup>

Each class is funded separately through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, F.S.<sup>12</sup>

#### NORMAL RETIREMENT DATE

##### Present Situation

A member's retirement date is reached based upon attaining 30 years of service before age 62 for all classes, except the Special Risk Class, which is 25 years of service before age 55. Otherwise, if

<sup>1</sup> Section 121.025, F.S.

<sup>2</sup> Department of Management Services, Division of Retirement: Florida Retirement System Annual Report, July 1, 2006 – June 30, 2007 at 91 (on file with the Committee on State Affairs) [hereafter referred to as FRS Annual Report].

<sup>3</sup> *Id.* at 43.

<sup>4</sup> *Id.* at 52.

<sup>5</sup> *Id.* at 49.

<sup>6</sup> Section 121.021(12), F.S.

<sup>7</sup> Section 121.0515, F.S.

<sup>8</sup> Section 121.0515(7), F.S.

<sup>9</sup> Section 121.052, F.S.

<sup>10</sup> Section 121.055, F.S.

<sup>11</sup> FRS Annual Report at 43.

<sup>12</sup> *See, e.g.*, s. 121.055(3)(a)1., F.S.

vested, the member reaches normal retirement upon attaining age 62 or 55 for all classes, depending upon class of membership.<sup>13</sup>

#### Proposed Changes

This bill amends the definition of "normal retirement date" to clarify that normal retirement date based upon age is attained on the first day of the month on which the member reaches normal retirement age. When basing normal retirement date on years of service, it is attained on the first day of the month following the month in which the member completes 30 years of service or 25 years of service for special risk members.

#### **FRS INFORMATION DISSEMINATION**

This bill establishes a requirement that any promotional materials or advertisements that refer to the FRS, either directly or indirectly, contain a disclaimer that the information is not approved nor endorsed by the FRS, unless prior written approval is received from DMS or the State Board of Administration (SBA).

This bill amends the definition of "employer" to clarify that any employers who participate in the FRS are not agents of either the SBA, DMS, or the Division of Retirement. Neither the SBA, DMS, nor the Division are responsible for the dissemination of erroneous information by representatives of FRS employers.

Moreover, this bill adds definitions for "state board" and "board" to mean the State Board of Administration, and "trustees" to mean the Trustees of the SBA.

#### **QUALIFIED PAST SERVICE**

##### Present Situation

"Past service" of any FRS member is defined as "the number of years and complete months and any fractional part of a month, recognized and credited by an employer and approved by the administrator, during which the member was in the active employ of an employer prior to his or her date of participation [in the FRS]."<sup>14</sup>

##### Proposed Changes

The bill amends the definition of "past service" to limit past service covered by the FRS to public employment. Moreover, it clarifies that participation in the FRS by an employer due to a transfer, merger, or consolidation of function must occur between two public governmental employing entities. The bill allows the former or current employer to pay for the employee's past service cost, unless otherwise prohibited.

The bill clarifies that such public entities and their employees who are under a leasing agreement with a co-employer relationship are ineligible to participate in the FRS. It amends the definition of "employee" to reflect this change.

The bill defines "co-employer service" as "employment in a single position simultaneously covered and reported by both a public employer and a private employer."

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<sup>13</sup> Section 121.021(29), F.S.

<sup>14</sup> Section 121.021(18), F.S.

## SERVICE CREDIT PURCHASE

### Present Situation

Members may purchase up to five years of credit in the FRS for certain out-of-state service<sup>15</sup> and in-state service<sup>16</sup> performed prior to membership in the FRS. The position under which the credit is claimed must have been covered by a retirement or pension plan provided by the employer, and the member must have completed a minimum of six years of creditable service in the FRS for eligibility to purchase such credit. Such credit is credited as service in the Regular Class.<sup>17</sup> The employer may pay all or a portion of the cost of this service credit.<sup>18</sup>

Additionally, persons who become members of the FRS through the transfer, merger, consolidation, or assumption of functions and activities of their governmental employers are entitled to receive past-service credit for the time they performed services for, and were employees of, the governmental employing entity prior to its transfer, merger, consolidation, or assumption of functions and activities.<sup>19</sup>

Should an employer not elect to provide past service for the member, the member may purchase it for him or herself.<sup>20</sup> Forms of acceptable payment are cash, personal or cashier's checks, and money orders.<sup>21</sup> These forms of payment also are acceptable for service other than current service, including prior service, military service, leave-of-absence service, out-of-state service, and certain non-FRS in-state service.<sup>22</sup>

### Proposed Changes

This bill adds direct rollovers or transfers of funds from qualified plans, as permitted under the Internal Revenue Code of the United States, as valid forms of employee payment for service other than current service. It clarifies that the former or current employer may pay for the employee's past service cost, unless otherwise prohibited.

This bill clarifies that participation in the FRS by an employer due to a transfer, merger, or consolidation of function must occur between two public governmental agencies. Thus, limiting service covered by the FRS to public service. Such public entities and their employees who are under a leasing agreement with a co-employer relationship are ineligible to participate in the FRS.

Neither out-of-state service, in-state service, nor past service may be purchased if the member has or is eligible to receive any employer-funded contributions or benefits from such service. This bill also requires that the military service claimed under the out-of-state service provisions be from active military service.

## ELECTED OFFICERS CLASS ENROLLMENT PERIOD

### Present Situation

The Legislature created an enrollment period between July 1, 2001 and December 31, 2001, to allow governing bodies of municipalities and special districts to elect, by majority vote, to designate all of its elected positions for inclusion in the Elected Officers' Class. Such an election was irrevocable, and the designation of such positions was effective the first day of the month following receipt by DMS of the ordinance or resolution passed by the governing body.<sup>23</sup>

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<sup>15</sup> Section 121.1115, F.S., lists "out-of-state service" to include any military service, or service in a position of employment with a state, a political subdivision thereof, or the Federal Government.

<sup>16</sup> Section 121.1122, F.S., lists "in-state service" as service in accredited nonpublic schools and colleges, including charter schools and charter technical career centers.

<sup>17</sup> Sections 121.1115(1) and 121.1122, F.S.

<sup>18</sup> Section 121.1115(2), F.S.

<sup>19</sup> Section 121.081(1)(f), F.S.

<sup>20</sup> Section 121.081(1)(c), F.S.

<sup>21</sup> Section 121.071(6), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 121.052(3)(e), F.S.



### Proposed Changes

This bill reopens the enrollment period between July 1, 2008 and December 31, 2008, to allow municipalities and special districts to designate all of its elected positions for inclusion in the Elected Officers' Class pursuant to the aforementioned criteria.

### **REEMPLOYMENT AFTER RETIREMENT**

#### Present Situation

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

- The member did not retire under the disability retirement provisions; and
- For the first 12 months immediately after retirement, the employer not be one that participates in a state-administered retirement plan. After 12 months from the date of retirement, a retiree may be both employed by an employing entity that participates in the FRS, and receive retirement benefits.<sup>24</sup>

Retired members reemployed by an FRS employer after one month of retirement must give timely notice of this fact to the Division of Retirement so their retirement benefits may be suspended for the balance of the remaining 11-month limitation period. Any retiree who is reemployed within one calendar month after retirement voids his or her application for retirement.<sup>25</sup> A strict interpretation of current law would require that person's retirement benefit payments to be suspended during the rest of that 11-month period, even if that person worked only a few days or weeks, for example, as a poll worker for the Supervisor of Elections.

#### Proposed Changes

This bill clarifies that suspension of benefits for reemployment during months two through 12, after retirement, affects only the months actually employed during that limitation period.

### **REEMPLOYMENT AFTER RETIREMENT**

#### Present Situation

The Board of Trustees of the Florida School for the Deaf and the Blind may reemploy a retired member as a substitute teacher, substitute residential instructor, or substitute nurse on a noncontractual basis after he or she has been retired for one calendar month, but for no more than 780 hours during the first 12 months of retirement. The Division of Retirement must be given timely notice that hours of employment are expected to exceed 780 hours during the first 12 months of retirement so that benefits may be suspended after such time. Any retirement benefits paid to a member whose employment exceeds 780 hours during the 12 months subsequent to retirement must be reimbursed to the FRS by the member.<sup>26</sup>

#### Proposed Changes

This bill lifts the 780-hour limitation on retirees reemployed by the Florida School for the Deaf and the Blind as substitute teachers, substitute residential instructors, or substitute nurses, allowing them to both collect a retirement benefit and be reemployed without limitation, except for the requirement that they be retired for one calendar month. The Florida School for the Deaf and the Blind may reemploy retired members as instructional personnel<sup>27</sup> who are classroom teachers<sup>28</sup> on an annual contractual basis.

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<sup>24</sup> Section 121.091(9), F.S. (2006).

<sup>25</sup> *Id.*

<sup>26</sup> Section 121.091(9)(b)6., F.S.

<sup>27</sup> Section 1012.01(2), F.S., defines "instructional personnel" as "any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students."

## DEFERRED RETIREMENT OPTION PROGRAM

### Present Situation

In 1997, the Florida Legislature created a retirement option for FRS members called the Deferred Retirement Option Program (DROP).<sup>29</sup> DROP allows a member of the FRS, who has reached normal retirement date, to defer the receipt of retirement benefits while continuing employment with their FRS-participating employer.<sup>30</sup> The deferred monthly benefits accrue on behalf of the member, plus interest compounded monthly, for the period of DROP participation. After completing the DROP period and terminating employment, the member not only receives the total of the DROP benefits, but also the previously determined normal retirement benefit.<sup>31</sup>

Eligible members may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months. Certain instructional personnel, however, may elect to participate in DROP for up to 96 months, 36 months longer than normally allowed, if authorization is obtained. Upon deciding to participate in DROP, members must submit certain forms required by the Division of Retirement.<sup>32</sup>

### Proposed Changes

This bill removes repetitive language and consolidates certain reemployment and timeframe provisions relating to DROP. It clarifies that a person's receipt of the first DROP payment nullifies any subsequent cancellation of participation, and clarifies that DROP benefits will be suspended for any person who violates the reemployment provisions.

## DIRECT PAYMENT OF BENEFITS TO ALTERNATE PAYEES

### Present Situation

Section 61.1301, F.S., addresses orders of income deduction for alimony or child support. For purposes of this section, retirement benefits are included in the definition of "income."<sup>33</sup> Currently, there is no statutory authority allowing the Division of Retirement to make payments directly to an alternate payee pursuant to a qualified domestic relations order (QDRO).<sup>34</sup>

### Proposed Changes

This bill grants the Division specific authority to deduct payments from a member's benefit and make such payments directly to an alternate payee pursuant to a QDRO.

## FRS MEMBER ANNUAL STATEMENTS

### Present Situation

DMS provides each active member of the FRS with five or more years of creditable service an annual statement of benefits with information about the member's retirement account.<sup>35</sup>

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<sup>28</sup> Section 1012.01(2)(a), F.S., defines "classroom teacher" as "members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers."

<sup>29</sup> Ch. 97-180, L.O.F., s. 8.

<sup>30</sup> Section 121.091(13), F.S. (For most members of the FRS, the election to participate in DROP must be made within 12 months immediately following the date on which the member first reaches normal retirement date.)

<sup>31</sup> *Id.*

<sup>32</sup> Section 121.091(13)(b), F.S.

<sup>33</sup> Section 61.046(8), F.S.

<sup>34</sup> 26 U.S.C. s. 414(p)(A) defines "qualified domestic relations order," in part, as a "domestic relations order which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan..."

<sup>35</sup> Section 121.136, F.S.

### Proposed Changes

This bill requires that the member annual statement contain information related to member benefits, including the member's accrued service credit.

## **STATE RETIREMENT COMMISSION**

### Present Situation

The State Retirement Commission was established to allow members to appeal any written adverse decisions by the plan administrator concerning applications for disability retirement, reexamination of retired members receiving disability benefits, applications for special risk membership, and reexamination of special risk members.<sup>36</sup> In cases involving disability retirement, the member must present competent medical evidence, and may require vocational evidence before being awarded disability retirement benefits by the commission.<sup>37</sup>

The Florida Retirement Commission is composed of five members;<sup>38</sup> however, current law provides that a quorum is two members.<sup>39</sup>

### Proposed Changes

This bill changes the quorum requirement from two to three members present.

This bill also clarifies that the competent medical evidence presented by the member in a disability retirement case be "substantial" and that such medical evidence meet the requirements of s.

121.091(4)(c)2. and 3., F.S., which sets forth the following criteria:

- The member's medical condition occurred or became symptomatic during the time the member was employed in an employee/employer relationship with his or her employer;
- The member was totally and permanently disabled at the time he or she terminated covered employment;
- The member has not been employed with any other employer after such termination; and
- In the case of an in-line-of-duty disability application, in addition to the above requirements, it must be documented by competent medical evidence that the disability was caused by a job-related illness or accident that occurred while the member was in an employee/employer relationship with his or her employer.

## **REPEAL OF OBSOLETE, REPETITIOUS AND CONFLICTING PROVISIONS**

Any retiree of a state-administered retirement system employed in a regularly established position with a covered employer is enrolled as a compulsory member of the Regular Class of the FRS and is considered a renewed member.<sup>40</sup> This conflicts with s. 1012.33, F.S., which prohibits renewed membership in district school boards. This bill deletes the renewed membership prohibition in s. 1012.33, F.S., to resolve the aforementioned statutory conflict.

This bill repeals ss. 121.093 and 121.094, F.S., and relocates those provisions under the appropriate section in statute.

This bill repeals s. 121.45, F.S., containing obsolete provisions relating to the study of interstate portability of retirement benefits.

## **C. SECTION DIRECTORY:**

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

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<sup>36</sup> Section 121.23, F.S.

<sup>37</sup> Section 121.23(2)(a), F.S.

<sup>38</sup> Section 121.22(1), F.S.

<sup>39</sup> Section 121.24(1), F.S.

<sup>40</sup> Section 121.122, F.S.

Section 2 amends s. 121.031, F.S., to require promotional materials that refer to the FRS to include a disclaimer unless approval is obtained.

Section 3 amends s. 121.051, F.S., to revise provisions relating to participation in the FRS and to exclude participation of entities under a lease agreement.

Section 4 amends s. 121.052, F.S., to reopen the enrollment period under which a local government may elect to designate its elected positions for inclusion in the Elected Officers' Class.

Section 5 amends s. 121.071, F.S., to revise provisions relating to receiving credit for past or prior service.

Section 6 amends s. 121.081, F.S., to revise provisions relating to receiving credit for past or prior service.

Section 7 amends s. 121.091, F.S., to revise provisions relating to retirement benefits related to reemployment and DROP.

Section 8 amends s. 121.1115, F.S., to revise provisions relating to receiving retirement credit for out-of-state service.

Section 9 amends s. 121.1122, F.S., to revise provisions relating to receiving retirement credit for in-state service.

Section 10 amends s. 121.136, F.S., to revise provisions related to the annual statement of benefits.

Section 11 amends s. 121.23, F.S., to require the State Retirement Commission to use the same standard of proof used by the Secretary of DMS before approving a disability retirement benefit.

Section 12 amends s. 121.24, F.S., to require a quorum of three members for all appeal hearings held by the State Retirement Commission.

Section 13 amends s. 1012.33, F.S., to delete the provision preventing persons who have retired from the public school system from renewing membership in the FRS upon reemployment.

Section 14 repeals ss. 121.093 and 121.094, F.S., relating to reemployment after retirement, and repeals s. 121.45, F.S., relating to interstate portability compacts.

Section 15 provides an effective date of July 1, 2008.

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

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

#### **1. Revenues:**

This bill does not create, modify, amend, or eliminate a state revenue source.

#### **2. Expenditures:**

This bill does not create, modify, amend, or eliminate state expenditures.

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

#### **1. Revenues:**

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Article X, s. 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.<sup>41</sup>

This bill does not provide any increase in benefits to members, therefore this bill appears to satisfy the requirements of Article X, s. 14 of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Not applicable.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

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<sup>41</sup> Part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of Article X, s. 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees that is funded in whole or in part by public funds.



PCB GEAC 08-16

ORIGINAL

YEAR

1                                   A bill to be entitled  
 2           An act relating to the Florida Retirement System; amending  
 3           s. 121.021, F.S.; redefining the terms "employer,"  
 4           "officer or employee," "past service," "normal retirement  
 5           date," "regularly established position," and temporary  
 6           position"; amending s. 121.031, F.S.; requiring  
 7           promotional materials that refer to the Florida Retirement  
 8           System to include a disclaimer unless approval is obtained  
 9           from the Department of Management Services; amending s.  
 10          121.051, F.S.; conforming a cross-reference; revising  
 11          provisions relating to participation in the system;  
 12          excluding the participation of entities under a lease  
 13          agreement; amending s. 121.052, F.S.; allowing local  
 14          government elected officials the opportunity to join the  
 15          FRS; amending s. 121.071, F.S.; expanding the mechanisms  
 16          for employees to pay contributions to the system; amending  
 17          s. 121.081, F.S.; revising provisions relating to  
 18          receiving credit for past or prior service; prohibiting a  
 19          member from receiving credit for service covered and  
 20          reported by both a public employer and a private employer;  
 21          amending s. 121.091, F.S.; revising provisions relating to  
 22          retirement benefits; deleting a restriction on the  
 23          reemployment of certain personnel by the Florida School  
 24          for the Deaf and the Blind; extending the period of time  
 25          that instructional personnel employed by a developmental  
 26          research school may participate in the Deferred Retirement  
 27          Option Program; clarifying that DROP participation cannot  
 28          be cancelled; providing for the suspension of DROP

PCB GEAC 08-16

ORIGINAL

YEAR

29 | benefits to a participant who is reemployed; deleting  
 30 | obsolete provisions; authorizing the Division of  
 31 | Retirement to issue benefits pursuant to a qualified  
 32 | domestic relations order directly to the alternate payee;  
 33 | amending s. 121.1115, F.S.; revising provisions relating  
 34 | to receiving retirement credit for out-of-state service;  
 35 | providing that a member is not eligible for and may not  
 36 | receive a benefit based on that service; amending s.  
 37 | 121.1122, F.S.; revising provisions relating to receiving  
 38 | retirement credit for in-state service; providing that a  
 39 | member may not be eligible for or receiving a benefit  
 40 | based on service; amending s. 121.136, F.S.; revising  
 41 | provisions relating to the annual statement of benefits  
 42 | provided to certain active members of the Florida  
 43 | Retirement System; amending s. 121.23, F.S.; requiring the  
 44 | State Retirement Commission to use the same standard of  
 45 | proof used by the Secretary of Management Services before  
 46 | approving a disability retirement benefit; amending s.  
 47 | 121.24, F.S.; requiring a quorum of three members for all  
 48 | appeal hearings held by the State Retirement Commission;  
 49 | amending s. 1012.33, F.S.; deleting the provision  
 50 | preventing persons who have retired from the public school  
 51 | system from renewing membership in the Florida Retirement  
 52 | System upon reemployment by the school system; repealing  
 53 | s. 121.093, F.S., relating to instructional personnel  
 54 | reemployment after retirement from the developmental  
 55 | research school or the Florida School for the Deaf and the  
 56 | Blind; repealing s. 121.094, F.S., relating to



PCB GEAC 08-16

ORIGINAL

YEAR

57 | instructional personnel reemployment after retirement from  
 58 | a charter school; repealing s. 121.45, F.S., relating to  
 59 | interstate compacts relating to pension portability;  
 60 | providing an effective date.

61 |

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

63 |

64 | Section 1. Subsections (10), (11), (18), (29), (52), and  
 65 | (53) of section 121.021, Florida Statutes, are amended, and  
 66 | subsections (63) and (64) are created, to read:

67 | 121.021 Definitions.--The following words and phrases as  
 68 | used in this chapter have the respective meanings set forth  
 69 | unless a different meaning is plainly required by the context:

70 | (10) "Employer" means any agency, branch, department,  
 71 | institution, university, institution of higher education, or  
 72 | board of the state, or any county agency, branch, department,  
 73 | board, district school board, or special district of the state,  
 74 | or any city of the state which participates in the system for  
 75 | the benefit of certain of its employees, or a charter school or  
 76 | charter technical career center that participates as provided in  
 77 | s. 121.051(2)(d). Employers are not agents of the state board,  
 78 | department, or the Division of Retirement, and the state board,  
 79 | department, and division are not responsible for erroneous  
 80 | information provided by representatives of employers.

81 | (11) "Officer or employee" means any person receiving  
 82 | salary payments for work performed in a regularly established  
 83 | position and, if employed by a city, a metropolitan planning  
 84 | organization, or a special district, employed in a covered

PCB GEAC 08-16

ORIGINAL

YEAR

85 | group. The term does not apply to state employees covered by a  
 86 | leasing agreement under s. 110.191, other public employees  
 87 | covered by a leasing agreement, or to a co-employer  
 88 | relationship.

89 | (18) "Past service" of any member, as provided in s.  
 90 | 121.081(1), means the number of years and complete months and  
 91 | any fractional part of a month, recognized and credited by an  
 92 | employer and approved by the administrator, during which the  
 93 | member was in the active employ of a governmental an employer  
 94 | and for which the employee is not entitled to a benefit prior to  
 95 | his or her date of participation.

96 | (29) "Normal retirement date" means the ~~first day of any~~  
 97 | ~~month following the~~ date a member attains normal retirement age  
 98 | and is vested, which is determined as follows ~~one of the~~  
 99 | ~~following statuses:~~

100 | (a) If a Regular Class member, ~~the member:~~

101 | 1. The first day of the month the member completes 6 or  
 102 | more years of creditable service and attains age 62; or

103 | 2. The first day of the month following the date the  
 104 | member completes 30 years of creditable service, regardless of  
 105 | age, which may include a maximum of 4 years of military service  
 106 | credit as long as such credit is not claimed under any other  
 107 | system.

108 | (b) If a Special Risk Class member, ~~the member:~~

109 | 1. The first day of the month the member completes 6 or  
 110 | more years of creditable service in the Special Risk Class and  
 111 | attains age 55;

PCB GEAC 08-16

ORIGINAL

YEAR

112           2. The first day of the month following the date the  
 113 member completes 25 years of creditable service in the Special  
 114 Risk Class, regardless of age; or

115           3. The first day of the month following the date the  
 116 member completes 25 years of creditable service and attains age  
 117 52, which service may include a maximum of 4 years of military  
 118 service credit as long as such credit is not claimed under any  
 119 other system and the remaining years are in the Special Risk  
 120 Class.

121           (c) If a Senior Management Service Class member, ~~the~~  
 122 ~~member~~:

123           1. The first day of the month the member completes 6 years  
 124 of creditable service in the Senior Management Service Class and  
 125 attains age 62; or

126           2. The first day of the month following the date the  
 127 member completes 30 years of any creditable service, regardless  
 128 of age, which may include a maximum of 4 years of military  
 129 service credit as long as such credit is not claimed under any  
 130 other system.

131           (d) If an Elected Officers' Class member, ~~the member~~:

132           1. The first day of the month the member completes 6 years  
 133 of creditable service in the Elected Officers' Class and attains  
 134 age 62; or

135           2. The first day of the month following the date the  
 136 member completes 30 years of any creditable service, regardless  
 137 of age, which may include a maximum of 4 years of military  
 138 service credit as long as such credit is not claimed under any  
 139 other system.

PCB GEAC 08-16

ORIGINAL

YEAR

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"Normal retirement age" is attained on the "normal retirement date."

(52) "Regularly established position" is defined as follows:

(a) With respect to employment for ~~In~~ a state employer agency, the term means a position that ~~which~~ is authorized and established pursuant to law and is compensated from a salaries appropriation pursuant to s. 216.011(1)(dd), or an established position which is authorized pursuant to s. 216.262(1)(a) and (b) and is compensated from a salaries account as provided by rule.

(b) With respect to employment for ~~In~~ a local agency (district school board, county agency, community college, city, metropolitan planning organization, or special district), the term means a regularly established position that ~~which~~ will be in existence for a period beyond 6 consecutive months, except as provided by rule.

(53) "Temporary position" is defined as follows:

(a) With respect to employment for ~~In~~ a state employer agency, the term means an employment position that ~~which~~ is compensated from an other personal services (OPS) account, as provided for in s. 216.011(1)(dd).

(b) With respect to employment for ~~In~~ a local employer agency, the term means an employment position that ~~which~~ will exist for less than 6 consecutive months, or other employment position as determined by rule of the division, regardless of whether it will exist for 6 consecutive months or longer.

PCB GEAC 08-16

ORIGINAL

YEAR

168           (63) "State board" or "board" means the State Board of  
 169 Administration.

170           (64) "Trustees" means Trustees of the State Board of  
 171 Administration.

172           Section 2. Subsection (6) is added to section 121.031,  
 173 Florida Statutes, to read:

174           121.031 Administration of system; appropriation; oaths;  
 175 actuarial studies; public records.--

176           (6) Unless prior written approval is obtained from the  
 177 department or state board, any promotional materials or  
 178 advertisements that, directly or indirectly, refer to the  
 179 Florida Retirement System or the FRS, must contain a disclaimer  
 180 that the information is not approved or endorsed by the Florida  
 181 Retirement System.

182           Section 3. Paragraph (a) of subsection (1) and paragraph  
 183 (f) of subsection (2) of section 121.051, Florida Statutes, are  
 184 amended to read:

185           121.051 Participation in the system.--

186           (1) COMPULSORY PARTICIPATION.--

187           (a) The provisions of this law are ~~shall be~~ compulsory as  
 188 to all officers and employees, except elected officers who meet  
 189 the requirements of s. 121.052(3), who are employed on or after  
 190 December 1, 1970, by ~~of~~ an employer other than those referred to  
 191 in paragraph (2)(b), and each officer or employee, as a  
 192 condition of employment, shall become a member of the system as  
 193 of his or her date of employment, except that a person who is  
 194 retired from any state retirement system and is reemployed on or  
 195 after December 1, 1970, may ~~shall not be permitted to~~ renew his

PCB GEAC 08-16

ORIGINAL

YEAR

196 or her membership in any state retirement system except as  
 197 provided in s. 121.091(4)(h) for a person who recovers from  
 198 disability, and as provided in s. 121.091(9)(b)10. ~~s.~~  
 199 ~~121.091(9)(b)8.~~ for a person who is elected to public office,  
 200 and, effective July 1, 1991, as provided in s. 121.122 for all  
 201 other retirees. Officers and employees of the University  
 202 Athletic Association, Inc., a nonprofit association connected  
 203 with the University of Florida, employed on and after July 1,  
 204 1979, may ~~shall~~ not participate in any state-supported  
 205 retirement system. Any person appointed on or after July 1,  
 206 1989, to a faculty position in a college at the J. Hillis Miller  
 207 Health Center at the University of Florida or the Medical Center  
 208 at the University of South Florida which has a faculty practice  
 209 plan adopted ~~provided~~ by rule may ~~adopted~~ by the Board of  
 210 Regents ~~shall~~ not participate in the Florida Retirement System.  
 211 A faculty member so appointed shall participate in the optional  
 212 retirement program on the basis of his or her state-funded  
 213 compensation, notwithstanding the provisions of s. 121.35(2)(a).

214 (2) OPTIONAL PARTICIPATION.--

215 (f)1. If ~~Whenever~~ an employer that participates in the  
 216 Florida Retirement System undertakes the transfer, merger, or  
 217 consolidation of governmental services or assumes the functions  
 218 and activities of an employing governmental entity that was not  
 219 an employer under the system, the employer must notify the  
 220 department at least 60 days prior to such action and ~~shall~~  
 221 provide documentation as required by the department. The  
 222 transfer, merger, or consolidation of governmental services or  
 223 assumption of governmental functions and activities must occur

PCB GEAC 08-16

ORIGINAL

YEAR

224 between public employers. The current or former employer may pay  
 225 the employees' past service cost unless prohibited under this  
 226 chapter. This paragraph does not apply to the transfer, merger,  
 227 or consolidation of governmental services or assumption of  
 228 functions and activities of a public entity under a leasing  
 229 agreement having a co-employer relationship. Employers and  
 230 employees of a public governmental employer whose service is  
 231 covered by a leasing agreement under s. 110.191 or other leasing  
 232 agreement, or a co-employer relationship are not eligible to  
 233 participate in the Florida Retirement System.

234 2. If ~~When~~ the agency to which a member's employing unit  
 235 is transferred, merged, or consolidated does not participate in  
 236 the Florida Retirement System, a member may ~~shall~~ elect in  
 237 writing to remain in the Florida Retirement System or to  
 238 transfer to the local retirement system operated by the ~~such~~  
 239 agency. If such agency does not participate in a local  
 240 retirement system, the member shall continue membership in the  
 241 Florida Retirement System. In either case, ~~the~~ membership  
 242 continues ~~shall continue~~ for as long as the member is employed  
 243 by the agency to which his or her unit was transferred, merged,  
 244 or consolidated.

245 Section 4. Paragraphs (d) and (e) of subsection (3) of  
 246 section 121.052, Florida Statutes, are amended to read:

247 121.052 Membership class of elected officers.--

248 (3) PARTICIPATION AND WITHDRAWAL, GENERALLY.--Effective  
 249 July 1, 1990, participation in the Elected Officers' Class shall  
 250 be compulsory for elected officers listed in paragraphs (2)(a)-  
 251 (d) and (f) assuming office on or after said date, unless the

PCB GEAC 08-16

ORIGINAL

YEAR

252 | elected officer elects membership in another class or withdraws  
 253 | from the Florida Retirement System as provided in paragraphs  
 254 | (3) (a) - (d):

255 |       (d)1. Any elected officer may elect to withdraw from  
 256 | participating in the Florida Retirement System in any manner  
 257 | whatsoever. Upon assuming office, the member shall have a period  
 258 | of 6 months to notify the administrator of his or her decision  
 259 | to withdraw from the Florida Retirement System altogether. Such  
 260 | election shall be made in writing and a copy shall be filed with  
 261 | the employer.

262 |       2. Upon receipt of a request from an elected officer to  
 263 | withdraw from the Florida Retirement System pursuant to  
 264 | subparagraph 1., the administrator shall refund all moneys  
 265 | contributed by the elected officer to the system during the  
 266 | period of participation in the system, unless the elected  
 267 | officer has a vested right under the Florida Retirement System,  
 268 | in which case he or she shall not receive a refund of  
 269 | contributions.

270 |       3. Any elected officer who has withdrawn from the Florida  
 271 | Retirement System pursuant to this paragraph shall be permitted  
 272 | to rejoin the Elected Officers' Class upon written request to  
 273 | the administrator.

274 |       a. Credit for prior service based on the period for which  
 275 | refunds were received pursuant to subparagraph 2. shall be  
 276 | received by an elected officer who rejoins the system upon  
 277 | payment to the System Trust Fund of an amount equal to the  
 278 | contributions refunded to the elected officer pursuant to  
 279 | subparagraph 2., plus 4 percent interest compounded annually



PCB GEAC 08-16

ORIGINAL

YEAR

280 from the date of refund until July 1, 1975, and 6.5 percent  
 281 interest, compounded annually thereafter until the date of  
 282 payment.

283         b. Credit for prior service based on the period during  
 284 which the elected officer had withdrawn from the system, and for  
 285 which no contributions were made, shall be received by the  
 286 elected officer upon payment to the System Trust Fund of an  
 287 amount equal to the contributions required, under the  
 288 contribution rate in effect during the period of withdrawal for  
 289 which credit is being purchased, plus 6.5 percent interest,  
 290 compounded annually until the date of payment. The payment of  
 291 the total of such amount shall be made by the employer and the  
 292 elected officer in the relative proportions provided by law for  
 293 contributions during the period of withdrawal.

294  
 295 Failure to timely withdraw from the Elected Officers' Class  
 296 shall constitute an election to maintain membership in the  
 297 Elected Officers' Class.

298         (e) Effective July 1, 2008 ~~2001~~, the governing body of a  
 299 municipality or special district may, by majority vote, elect to  
 300 designate all its elected positions for inclusion in the Elected  
 301 Officers' Class. Such election shall be made between July 1,  
 302 2008 ~~2001~~, and December 31, 2008 ~~2001~~, and shall be irrevocable.  
 303 The designation of such positions shall be effective the first  
 304 day of the month following receipt by the department of the  
 305 ordinance or resolution passed by the governing body.

306         Section 5. Paragraph (a) of subsection (6) of section  
 307 121.071, Florida Statutes, is amended to read:

PCB GEAC 08-16

ORIGINAL

YEAR

308 121.071 Contributions.--Contributions to the system shall  
 309 be made as follows:

310 (6) (a) Required employee contributions for all service  
 311 other than current service, including, but not limited to, prior  
 312 service, past service, military service, leave-of-absence  
 313 service, out-of-state service, and certain non-Florida  
 314 Retirement System in-state service, shall be paid by cash,  
 315 personal check, cashier's check, ~~or~~ money order, or a direct  
 316 rollover or transfer from a qualified plan as provided under the  
 317 Internal Revenue Code. The payment must ~~only;~~ ~~shall~~ be  
 318 accompanied by a statement identifying the service for which  
 319 payment is made, + and shall be made in a lump sum for the total  
 320 amount due or in annual payments of not less than \$100, except  
 321 for the final payment if less than \$100, unless another method  
 322 of payment is authorized by law or rule.

323 Section 6. Paragraphs (f) and (h) of subsection (1) of  
 324 section 121.081, Florida Statutes, are amended to read:

325 121.081 Past service; prior service;  
 326 contributions.--Conditions under which past service or prior  
 327 service may be claimed and credited are:

328 (1)

329 (f) If ~~When~~ any person, ~~either prior to this act or~~  
 330 ~~hereafter,~~ becomes entitled to and participates ~~does participate~~  
 331 in one of the retirement systems under ~~consolidated within or~~  
 332 ~~created by~~ this chapter through the consolidation or merger of  
 333 governments or the transfer of functions between units of  
 334 government, ~~either~~ at the state or local level or between state  
 335 and local units, or through the assumption of functions or

PCB GEAC 08-16

ORIGINAL

YEAR

336 activities by a state or local unit from an employing  
 337 governmental entity that ~~which~~ was not an employer under the  
 338 system, and such person becomes a member of the Florida  
 339 Retirement System, such person is ~~shall be~~ entitled to receive  
 340 past-service credit ~~as defined in s. 121.021(18)~~ for the time  
 341 the ~~such~~ person performed services for, and was an employee of,  
 342 such state or local unit or other governmental employing entity  
 343 prior to the transfer, merger, consolidation, or assumption of  
 344 functions and activities. Past-service credit allowed by this  
 345 paragraph is ~~shall~~ also be available to any person who becomes a  
 346 member of an existing system, ~~as defined in s. 121.021(2)~~, prior  
 347 to December 1, 1970, through the transfer, merger,  
 348 consolidation, or assumption of functions and activities set  
 349 forth in this paragraph and who subsequently becomes a member of  
 350 the Florida Retirement System. However, credit for the past  
 351 service may not be granted until contributions are made in the  
 352 manner provided in this subsection. If a person rejected Florida  
 353 Retirement System membership at the time of the transfer,  
 354 merger, ~~or~~ consolidation, or assumption the required  
 355 contributions shall be at total actuarial cost as specified in  
 356 paragraph (e). Such contributions or accrued interest may not be  
 357 paid from any public ~~state~~ funds.

358 (h) The following provisions apply to the purchase of past  
 359 service:

360 1. Notwithstanding any of the provisions of this  
 361 subsection, past-service credit may not be purchased under this  
 362 chapter for any service that is used to obtain a pension or  
 363 benefit from a ~~any~~ local retirement system. Eligibility to

PCB GEAC 08-16

ORIGINAL

YEAR

364 receive or the receipt of contributions to a retirement plan  
 365 made by the employer on behalf of the employee is considered a  
 366 benefit.

367 2. A member may not receive past service credit under  
 368 paragraphs (a), (b), (e), or (f) for any leaves of absence  
 369 without pay, except that credit for active military service  
 370 leaves of absence may be claimed under paragraphs (a), (b), and  
 371 (f), in accordance with s. 121.111(1).

372 3. A member may not receive past service credit for co-  
 373 employer service. Co-employer service or co-employer  
 374 relationship is employment in a single position simultaneously  
 375 covered and reported by both a public employer and a private  
 376 employer.

377 4.3. If a member does not want ~~desire~~ to receive credit  
 378 for all of his or her past service, the period the member claims  
 379 must be the most recent past service prior to his or her  
 380 participation in the Florida Retirement System.

381 5.4. The cost of past service purchased by an employing  
 382 agency for its employees may be amortized over the ~~such~~ period  
 383 of time ~~as is~~ provided in the agreement, but not to exceed 15  
 384 years, calculated in accordance with rule 60S-1.007(5)(f),  
 385 Florida Administrative Code.

386 6.5. The retirement account of each member for whom past  
 387 service is being provided by his or her employer shall be  
 388 credited with all past service the employer agrees to purchase  
 389 as soon as the agreement between the employer and the department  
 390 is executed. ~~Pursuant thereto:~~

PCB GEAC 08-16

ORIGINAL

YEAR

391 a. Each ~~such~~ member's account shall also be posted with  
 392 the total contribution his or her employer agrees to make on ~~in~~  
 393 the member's behalf for past service earned prior to October 1,  
 394 1975, excluding those contributions representing the employer's  
 395 matching share and the compound interest calculation on the  
 396 total contribution. However, a portion of any contributions paid  
 397 by an employer for past service credit earned on and after  
 398 October 1, 1975, may not be posted to the a member's account.

399 b. A refund of contributions payable after an employer has  
 400 made a written agreement to purchase past service for employees  
 401 of the covered group includes ~~shall include~~ contributions for  
 402 past service which are posted to a member's account. However,  
 403 contributions for past service earned on and after October 1,  
 404 1975, are not refundable.

405 Section 7. Paragraph (b) of subsection (9), paragraphs  
 406 (a), (b), and (c) of subsection (13), and paragraphs (b) through  
 407 (f) of subsection (14) of section 121.091, Florida Statutes, are  
 408 amended to read:

409 121.091 Benefits payable under the system.--Benefits may  
 410 not be paid under this section unless the member has terminated  
 411 employment as provided in s. 121.021(39)(a) or begun  
 412 participation in the Deferred Retirement Option Program as  
 413 provided in subsection (13), and a proper application has been  
 414 filed in the manner prescribed by the department. The department  
 415 may cancel an application for retirement benefits when the  
 416 member or beneficiary fails to timely provide the information  
 417 and documents required by this chapter and the department's  
 418 rules. The department shall adopt rules establishing procedures

PCB GEAC 08-16

ORIGINAL

YEAR

419 | for application for retirement benefits and for the cancellation  
 420 | of such application when the required information or documents  
 421 | are not received.

422 | (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.--

423 | (b)1. Any person who is retired under this chapter, except  
 424 | under the disability retirement provisions of subsection (4),  
 425 | may be reemployed by any private or public employer after  
 426 | retirement and receive retirement benefits and compensation from  
 427 | the his or her employer without limitation ~~any limitations~~,  
 428 | except that the a person may not receive ~~both~~ a salary from  
 429 | reemployment with any agency participating in the Florida  
 430 | Retirement System and retirement benefits under this chapter for  
 431 | ~~a period of~~ 12 months immediately after ~~subsequent to~~ the date  
 432 | of retirement. However, a DROP participant may ~~shall~~ continue  
 433 | employment and receive a salary during the period of  
 434 | participation in DROP ~~the Deferred Retirement Option Program~~, as  
 435 | provided in subsection (13).

436 | 2. Any person to whom the limitation in subparagraph 1.  
 437 | applies who ~~violates such reemployment limitation and who is~~  
 438 | reemployed with any agency participating in the Florida  
 439 | Retirement System after he or she has been retired for 1  
 440 | calendar month but before completion of the 12-month limitation  
 441 | period must ~~shall~~ give timely notice of this fact in writing to  
 442 | the employer and to the Division of Retirement and shall have  
 443 | his or her retirement benefits suspended while employed during  
 444 | ~~for~~ the balance of the 12-month limitation period unless the  
 445 | person exceeds the 780-hour limitation in subparagraph 4.,  
 446 | subparagraph 5., or subparagraph 12. Any person employed in

PCB GEAC 08-16

ORIGINAL

YEAR

447 violation of this paragraph and any employing agency that ~~which~~  
 448 knowingly employs or appoints such person without notifying the  
 449 division ~~of Retirement~~ to suspend retirement benefits are ~~shall~~  
 450 ~~be~~ jointly and severally liable for ~~reimbursement to the~~  
 451 ~~retirement trust fund of~~ any benefits paid during the  
 452 reemployment limitation period. To avoid liability, the ~~such~~  
 453 employing agency must ~~shall~~ have a written statement from the  
 454 retiree that he or she is not retired from a state-administered  
 455 retirement system. Any retirement benefits received while  
 456 reemployed during this reemployment limitation period must ~~shall~~  
 457 be repaid to the Florida Retirement System Trust Fund, and  
 458 retirement benefits ~~shall~~ remain suspended until such repayment  
 459 has been made. Benefits suspended beyond the reemployment  
 460 limitation shall apply toward repayment of benefits received in  
 461 violation of the reemployment limitation.

462 3. A district school board may reemploy a retired member  
 463 as a substitute or hourly teacher, education paraprofessional,  
 464 transportation assistant, bus driver, or food service worker on  
 465 a noncontractual basis after he or she has been retired for 1  
 466 calendar month, in accordance with s. 121.021(39). A district  
 467 school board may reemploy a retired member as instructional  
 468 personnel, as defined in s. 1012.01(2)(a), on an annual  
 469 contractual basis after he or she has been retired for 1  
 470 calendar month, in accordance with s. 121.021(39). Any other  
 471 retired member who is reemployed within 1 calendar month after  
 472 retirement voids ~~shall void~~ his or her application for  
 473 retirement benefits. District school boards reemploying such  
 474 teachers, education paraprofessionals, transportation

PCB GEAC 08-16

ORIGINAL

YEAR

475 assistants, bus drivers, or food service workers are subject to  
 476 the retirement contribution required by subparagraph 9. 7.

477 4. A community college board of trustees may reemploy a  
 478 retired member as an adjunct instructor, ~~that is, an instructor~~  
 479 ~~who is noncontractual and part-time,~~ or as a participant in a  
 480 phased retirement program within the Florida Community College  
 481 System, after he or she has been retired for 1 calendar month,  
 482 in accordance with s. 121.021(39). Any retired member who is  
 483 reemployed within 1 calendar month after retirement voids shall  
 484 ~~void~~ his or her application for retirement benefits. Boards of  
 485 trustees reemploying such instructors are subject to the  
 486 retirement contribution required in subparagraph 7. A retired  
 487 member may be reemployed as an adjunct instructor for no more  
 488 than 780 hours during the first 12 months of retirement. Any  
 489 retired member reemployed for more than 780 hours during the  
 490 first 12 months of retirement must shall give timely notice in  
 491 writing to the employer and to the Division of Retirement of the  
 492 date he or she will exceed the limitation. The division shall  
 493 suspend his or her retirement benefits for the remainder of the  
 494 first 12 months of retirement. Any person employed in violation  
 495 of this subparagraph and any employing agency that which  
 496 knowingly employs or appoints such person without notifying the  
 497 division ~~of Retirement~~ to suspend retirement benefits are shall  
 498 ~~be~~ jointly and severally liable for ~~reimbursement to the~~  
 499 ~~retirement trust fund of~~ any benefits paid during the  
 500 reemployment limitation period. To avoid liability, the such  
 501 employing agency must shall have a written statement from the  
 502 retiree that he or she is not retired from a state-administered



PCB GEAC 08-16

ORIGINAL

YEAR

503 retirement system. Any retirement benefits received by a retired  
 504 member while reemployed in excess of 780 hours during the first  
 505 12 months of retirement must ~~shall~~ be repaid to the Florida  
 506 Retirement System Trust Fund, and retirement benefits ~~shall~~  
 507 remain suspended until repayment is made. Benefits suspended  
 508 beyond the end of the retired member's first 12 months of  
 509 retirement shall apply toward repayment of benefits received in  
 510 violation of the 780-hour reemployment limitation.

511 5. The State University System may reemploy a retired  
 512 member as an adjunct faculty member or as a participant in a  
 513 phased retirement program within the State University System  
 514 after the retired member has been retired for 1 calendar month,  
 515 in accordance with s. 121.021(39). Any retired member who is  
 516 reemployed within 1 calendar month after retirement ~~shall void~~  
 517 voids his or her application for retirement benefits. The State  
 518 University System is subject to the retired contribution  
 519 required in subparagraph 9.-7., as appropriate. A retired member  
 520 may be reemployed as an adjunct faculty member or a participant  
 521 in a phased retirement program for no more than 780 hours during  
 522 the first 12 months of his or her retirement. Any retired member  
 523 reemployed for more than 780 hours during the first 12 months of  
 524 retirement must ~~shall~~ give timely notice in writing to the  
 525 employer and to the Division of Retirement of the date he or she  
 526 will exceed the limitation. The division shall suspend his or  
 527 her retirement benefits for the remainder of the first 12 months  
 528 of retirement. Any person employed in violation of this  
 529 subparagraph and any employing agency that ~~which~~ knowingly  
 530 employs or appoints such person without notifying the division

PCB GEAC 08-16

ORIGINAL

YEAR

531 ~~of Retirement~~ to suspend retirement benefits are ~~shall be~~  
 532 jointly and severally liable for ~~reimbursement to the retirement~~  
 533 ~~trust fund of~~ any benefits paid during the reemployment  
 534 limitation period. To avoid liability, such employing agency  
 535 must ~~shall~~ have a written statement from the retiree that he or  
 536 she is not retired from a state-administered retirement system.  
 537 Any retirement benefits received by a retired member while  
 538 reemployed in excess of 780 hours during the first 12 months of  
 539 retirement must ~~shall~~ be repaid to the Florida Retirement System  
 540 Trust Fund, and retirement benefits ~~shall~~ remain suspended until  
 541 repayment is made. Benefits suspended beyond the end of the  
 542 retired member's first 12 months of retirement shall apply  
 543 toward repayment of benefits received in violation of the 780-  
 544 hour reemployment limitation.

545 6. The Board of Trustees of the Florida School for the  
 546 Deaf and the Blind may reemploy a retired member as a substitute  
 547 teacher, substitute residential instructor, or substitute nurse  
 548 on a noncontractual basis after he or she has been retired for 1  
 549 calendar month, in accordance with s. 121.021(39). The Board of  
 550 Trustees of the Florida School for the Deaf and the Blind may  
 551 reemploy a retired member as instructional personnel, as defined  
 552 in s. 1012.01(2)(a), on an annual contractual basis after he or  
 553 she has been retired for 1 calendar month, in accordance with s.  
 554 121.021(39). Any retired member who is reemployed within 1  
 555 calendar month after retirement voids ~~shall void~~ his or her  
 556 application for retirement benefits. The Board of Trustees of  
 557 the Florida School for the Deaf and the Blind reemploying such  
 558 teachers, residential instructors, or nurses is subject to the

PCB GEAC 08-16

ORIGINAL

YEAR

559 retirement contribution required by subparagraph 9. 7.  
 560 ~~Reemployment of a retired member as a substitute teacher,~~  
 561 ~~substitute residential instructor, or substitute nurse is~~  
 562 ~~limited to 780 hours during the first 12 months of his or her~~  
 563 ~~retirement. Any retired member reemployed for more than 780~~  
 564 ~~hours during the first 12 months of retirement shall give timely~~  
 565 ~~notice in writing to the employer and to the division of the~~  
 566 ~~date he or she will exceed the limitation. The division shall~~  
 567 ~~suspend his or her retirement benefits for the remainder of the~~  
 568 ~~first 12 months of retirement. Any person employed in violation~~  
 569 ~~of this subparagraph and any employing agency which knowingly~~  
 570 ~~employs or appoints such person without notifying the Division~~  
 571 ~~of Retirement to suspend retirement benefits shall be jointly~~  
 572 ~~and severally liable for reimbursement to the retirement trust~~  
 573 ~~fund of any benefits paid during the reemployment limitation~~  
 574 ~~period. To avoid liability, such employing agency shall have a~~  
 575 ~~written statement from the retiree that he or she is not retired~~  
 576 ~~from a state administered retirement system. Any retirement~~  
 577 ~~benefits received by a retired member while reemployed in excess~~  
 578 ~~of 780 hours during the first 12 months of retirement shall be~~  
 579 ~~repaid to the Retirement System Trust Fund, and his or her~~  
 580 ~~retirement benefits shall remain suspended until payment is~~  
 581 ~~made. Benefits suspended beyond the end of the retired member's~~  
 582 ~~first 12 months of retirement shall apply toward repayment of~~  
 583 ~~benefits received in violation of the 780-hour reemployment~~  
 584 ~~limitation.~~

585 7. A developmental research school may reemploy a retired  
 586 member as a substitute or hourly teacher or an education

PCB GEAC 08-16

ORIGINAL

YEAR

587 paraprofessional as defined in s. 1012.01(2) on a noncontractual  
 588 basis after he or she has been retired for 1 calendar month, in  
 589 accordance with s. 121.021(39). A developmental research school  
 590 may reemploy a retired member as instructional personnel, as  
 591 defined in s. 1012.01(2)(a), on an annual contractual basis  
 592 after he or she has been retired for 1 calendar month, in  
 593 accordance with s. 121.021(39). Any other retired member who is  
 594 reemployed within 1 calendar month after retirement voids his or  
 595 her application for retirement benefits. A developmental  
 596 research school that reemploys retired teachers and education  
 597 paraprofessionals are subject to the retirement contribution  
 598 required by subparagraph 9.

599 8. A charter school may reemploy a retired member as a  
 600 substitute or hourly teacher on a noncontractual basis after he  
 601 or she has been retired for 1 calendar month, in accordance with  
 602 s. 121.021(39). A charter school may reemploy a retired member  
 603 as instructional personnel, as defined in s. 1012.01(2)(a), on  
 604 an annual contractual basis after he or she has been retired for  
 605 1 calendar month, in accordance with s. 121.021(39). Any other  
 606 retired member who is reemployed within 1 calendar month after  
 607 retirement voids his or her application for retirement benefits.  
 608 A charter school that reemploys such teachers is subject to the  
 609 retirement contribution required by subparagraph 9.

610 9.7. The employment by an employer of a any retiree or  
 611 DROP participant of a any state-administered retirement system  
 612 does not affect shall have no effect on the average final  
 613 compensation or years of creditable service of the retiree or  
 614 DROP participant. Prior to July 1, 1991, upon employment of any

PCB GEAC 08-16

ORIGINAL

YEAR

615 person, other than an elected officer as provided in s. 121.053,  
 616 who ~~is has been~~ retired under a any state-administered  
 617 retirement program, the employer shall pay retirement  
 618 contributions in an amount equal to the unfunded actuarial  
 619 liability portion of the employer contribution which would be  
 620 required for regular members of the Florida Retirement System.  
 621 Effective July 1, 1991, contributions shall be made as provided  
 622 in s. 121.122 for retirees who have ~~with~~ renewed membership or,  
 623 as provided in subsection (13), for ~~with respect to~~ DROP  
 624 participants.

625 10.8. Any person who has ~~previously~~ retired and who is  
 626 holding an elective public office or an appointment to an  
 627 elective public office eligible for the Elected Officers' Class  
 628 on or after July 1, 1990, shall be enrolled in the Florida  
 629 Retirement System as provided in s. 121.053(1)(b) or, if holding  
 630 an elective public office that does not qualify for the Elected  
 631 Officers' Class on or after July 1, 1991, shall be enrolled in  
 632 the Florida Retirement System as provided in s. 121.122, and  
 633 shall continue to receive retirement benefits as well as  
 634 compensation for the elected officer's service for as long as he  
 635 or she remains in elective office. However, any retired member  
 636 who served in an elective office prior to July 1, 1990,  
 637 suspended his or her retirement benefit, and had his or her  
 638 Florida Retirement System membership reinstated shall, upon  
 639 retirement from such office, have his or her retirement benefit  
 640 recalculated to include the additional service and compensation  
 641 earned.

PCB GEAC 08-16

ORIGINAL

YEAR

642        11.9. Any person who is holding an elective public office  
 643 which is covered by the Florida Retirement System and who is  
 644 concurrently employed in nonelected covered employment may elect  
 645 to retire while continuing employment in the elective public  
 646 office, if ~~provided that~~ he or she terminates ~~shall be required~~  
 647 ~~to terminate~~ his or her nonelected covered employment. Any  
 648 person who exercises this election shall receive his or her  
 649 retirement benefits in addition to the compensation of the  
 650 elective office without regard to the time limitations otherwise  
 651 provided in this subsection. A ~~No~~ person who seeks to exercise  
 652 the provisions of this subparagraph, as they ~~the same~~ existed  
 653 prior to May 3, 1984, may not ~~shall~~ be deemed to be retired  
 654 under those provisions, unless such person is eligible to retire  
 655 under the provisions of this subparagraph, as amended by chapter  
 656 84-11, Laws of Florida.

657        ~~10. The limitations of this paragraph apply to~~  
 658 ~~reemployment in any capacity with an "employer" as defined in s.~~  
 659 ~~121.021(10), irrespective of the category of funds from which~~  
 660 ~~the person is compensated.~~

661        12.11. An employing agency may reemploy a retired member  
 662 as a firefighter or paramedic after the retired member has been  
 663 retired for 1 calendar month, in accordance with s. 121.021(39).  
 664 Any retired member who is reemployed within 1 calendar month  
 665 after retirement voids ~~shall void~~ his or her application for  
 666 retirement benefits. The employing agency reemploying such  
 667 firefighter or paramedic is subject to the retired contribution  
 668 required in subparagraph 9. 8. Reemployment of a retired  
 669 firefighter or paramedic is limited to no more than 780 hours

PCB GEAC 08-16

ORIGINAL

YEAR

670 | during the first 12 months of his or her retirement. Any retired  
 671 | member reemployed for more than 780 hours during the first 12  
 672 | months of retirement must ~~shall~~ give timely notice in writing to  
 673 | the employer and to the Division of Retirement of the date he or  
 674 | she will exceed the limitation. The division shall suspend his  
 675 | or her retirement benefits for the remainder of the first 12  
 676 | months of retirement. Any person employed in violation of this  
 677 | subparagraph and any employing agency that ~~which~~ knowingly  
 678 | employs or appoints such person without notifying the division  
 679 | ~~of Retirement~~ to suspend retirement benefits shall be jointly  
 680 | and severally liable for ~~reimbursement to the Retirement System~~  
 681 | ~~Trust Fund~~ of any benefits paid during the reemployment  
 682 | limitation period. To avoid liability, such employing agency  
 683 | must ~~shall~~ have a written statement from the retiree that he or  
 684 | she is not retired from a state-administered retirement system.  
 685 | Any retirement benefits received by a retired member while  
 686 | reemployed in excess of 780 hours during the first 12 months of  
 687 | retirement must ~~shall~~ be repaid to the Florida Retirement System  
 688 | Trust Fund, and retirement benefits ~~shall~~ remain suspended until  
 689 | repayment is made. Benefits suspended beyond the end of the  
 690 | retired member's first 12 months of retirement shall apply  
 691 | toward repayment of benefits received in violation of the 780-  
 692 | hour reemployment  
 693 | limitation.

694 |       13. The limitations of this paragraph apply to  
 695 | reemployment in any capacity with an employer irrespective of  
 696 | the category of funds from which the person is compensated.

697 |       14. The reemployment after retirement provisions of this

PCB GEAC 08-16

ORIGINAL

YEAR

698 paragraph apply to DROP participants effective upon termination  
 699 from employment and the end of DROP participation.

700 (13) DEFERRED RETIREMENT OPTION PROGRAM.--In general, and  
 701 subject to the provisions of this section, the Deferred  
 702 Retirement Option Program, hereinafter referred to as the DROP,  
 703 is a program under which an eligible member of the Florida  
 704 Retirement System may elect to participate, deferring receipt of  
 705 retirement benefits while continuing employment with his or her  
 706 Florida Retirement System employer. The deferred monthly  
 707 benefits shall accrue in the System Trust Fund on behalf of the  
 708 participant, plus interest compounded monthly, for the specified  
 709 period of the DROP participation, as provided in paragraph (c).  
 710 Upon termination of employment, the participant shall receive  
 711 the total DROP benefits and begin to receive the previously  
 712 determined normal retirement benefits. Participation in the DROP  
 713 does not guarantee employment for the specified period of DROP.  
 714 Participation in the DROP by an eligible member beyond the  
 715 initial 60-month period as authorized in this subsection shall  
 716 be on an annual contractual basis for all participants.

717 (a) Eligibility of member to participate in ~~the~~ DROP.--All  
 718 active Florida Retirement System members in a regularly  
 719 established position, and all active members of ~~either~~ the  
 720 Teachers' Retirement System established in chapter 238 or the  
 721 State and County Officers' and Employees' Retirement System  
 722 established in chapter 122, ~~which systems~~ are consolidated  
 723 within the Florida Retirement System under s. 121.011, are  
 724 eligible to elect participation in ~~the~~ DROP if ~~provided that:~~



PCB GEAC 08-16

ORIGINAL

YEAR

725 | 1. The member is not a renewed member ~~of the Florida~~  
 726 | ~~Retirement System~~ under s. 121.122, or a member of the State  
 727 | Community College System Optional Retirement Program under s.  
 728 | 121.051, the Senior Management Service Optional Annuity Program  
 729 | under s. 121.055, or the optional retirement program for the  
 730 | State University System under s. 121.35.

731 | 2. Except as provided in subparagraph 6., election to  
 732 | participate is made within 12 months immediately following the  
 733 | date on which the member first reaches normal retirement date,  
 734 | or, for a member who reaches normal retirement date ~~based on~~  
 735 | ~~service~~ before he or she reaches age 62, or age 55 for Special  
 736 | Risk Class members, election to participate may be deferred to  
 737 | the 12 months immediately following the date the member attains  
 738 | 57, or age 52 for Special Risk Class members. ~~For a member who~~  
 739 | ~~first reached normal retirement date or the deferred eligibility~~  
 740 | ~~date described above prior to the effective date of this~~  
 741 | ~~section, election to participate shall be made within 12 months~~  
 742 | ~~after the effective date of this section.~~ A member who fails to  
 743 | make an election within the ~~such~~ 12-month limitation period  
 744 | forfeits ~~shall forfeit~~ all rights to participate in the DROP.  
 745 | The member shall advise his or her employer and the division in  
 746 | writing of the date ~~on which the DROP begins~~ shall begin. The  
 747 | ~~Such~~ beginning date may be subsequent to the 12-month election  
 748 | period, but must be within the original 60-month participation  
 749 | ~~or, with respect to members who are instructional personnel~~  
 750 | ~~employed by the Florida School for the Deaf and the Blind and~~  
 751 | ~~who have received authorization by the Board of Trustees of the~~  
 752 | ~~Florida School for the Deaf and the Blind to participate in the~~

PCB GEAC 08-16

ORIGINAL

YEAR

753 ~~DROP beyond 60 months, or who are instructional personnel as~~  
 754 ~~defined in s. 1012.01(2)(a)-(d) in grades K-12 and who have~~  
 755 ~~received authorization by the district school superintendent to~~  
 756 ~~participate in the DROP beyond 60 months, the 96-month~~  
 757 ~~limitation period as provided in subparagraph (b)1. When~~  
 758 ~~establishing eligibility of the member to participate in the~~  
 759 ~~DROP for the 60-month or, with respect to members who are~~  
 760 ~~instructional personnel employed by the Florida School for the~~  
 761 ~~Deaf and the Blind and who have received authorization by the~~  
 762 ~~Board of Trustees of the Florida School for the Deaf and the~~  
 763 ~~Blind to participate in the DROP beyond 60 months, or who are~~  
 764 ~~instructional personnel as defined in s. 1012.01(2)(a)-(d) in~~  
 765 ~~grades K-12 and who have received authorization by the district~~  
 766 ~~school superintendent to participate in the DROP beyond 60~~  
 767 ~~months, the 96-month maximum participation period, the member~~  
 768 may elect to include or exclude any optional service credit  
 769 purchased by the member from the total service used to establish  
 770 the normal retirement date. A member who has ~~with~~ dual normal  
 771 retirement dates is ~~shall be~~ eligible to elect to participate in  
 772 DROP within 12 months after attaining normal retirement date in  
 773 either class.

774 3. The employer of a member electing to participate in the  
 775 DROP, or employers if dually employed, shall acknowledge in  
 776 writing to the division the date the member's participation in  
 777 the DROP begins and the date the member's employment and DROP  
 778 participation will terminate.

779 4. Simultaneous employment of a participant by additional  
 780 Florida Retirement System employers subsequent to the

PCB GEAC 08-16

ORIGINAL

YEAR

781 commencement of participation in the DROP is ~~shall be~~  
 782 permissible if ~~provided~~ such employers acknowledge in writing a  
 783 DROP termination date no later than the participant's existing  
 784 termination date or the maximum participation ~~60-month~~  
 785 ~~limitation~~ period as provided in subparagraph (b)1.

786 5. A DROP participant may change employers while  
 787 participating in the DROP, subject to the following:

788 a. A change of employment must take place without a break  
 789 in service so that the member receives salary for each month of  
 790 continuous DROP participation. If a member receives no salary  
 791 during a month, DROP participation shall cease unless the  
 792 employer verifies a continuation of the employment relationship  
 793 for such participant pursuant to s. 121.021(39)(b).

794 b. Such participant and new employer shall notify the  
 795 division of the identity of the new employer on forms required  
 796 by the division ~~as to the identity of the new employer.~~

797 c. The new employer shall acknowledge, in writing, the  
 798 participant's DROP termination date, which may be extended but  
 799 not beyond the maximum participation ~~original 60-month or, with~~  
 800 ~~respect to members who are instructional personnel employed by~~  
 801 ~~the Florida School for the Deaf and the Blind and who have~~  
 802 ~~received authorization by the Board of Trustees of the Florida~~  
 803 ~~School for the Deaf and the Blind to participate in the DROP~~  
 804 ~~beyond 60 months, or who are instructional personnel as defined~~  
 805 ~~in s. 1012.01(2)(a)-(d) in grades K-12 and who have received~~  
 806 ~~authorization by the district school superintendent to~~  
 807 ~~participate in the DROP beyond 60 months, the 96-month period~~  
 808 provided in subparagraph (b)1., shall acknowledge liability for

PCB GEAC 08-16

ORIGINAL

YEAR

809 any additional retirement contributions and interest required if  
 810 the participant fails to timely terminate employment, and is  
 811 ~~shall be~~ subject to the adjustment required in sub-subparagraph  
 812 (c)5.d.

813 6. Effective July 1, 2001, for instructional personnel as  
 814 defined in s. 1012.01(2), election to participate in ~~the~~ DROP  
 815 may ~~shall~~ be made at any time following the date on which the  
 816 member first reaches normal retirement date. The member shall  
 817 advise his or her employer and the division in writing of the  
 818 date on which DROP begins ~~the Deferred Retirement Option Program~~  
 819 ~~shall begin~~. When establishing eligibility of the member to  
 820 participate in the DROP for the 60-month ~~or, with respect to~~  
 821 ~~members who are instructional personnel employed by the Florida~~  
 822 ~~School for the Deaf and the Blind and who have received~~  
 823 ~~authorization by the Board of Trustees of the Florida School for~~  
 824 ~~the Deaf and the Blind to participate in the DROP beyond 60~~  
 825 ~~months, or who are instructional personnel as defined in s.~~  
 826 ~~1012.01(2)(a)-(d) in grades K-12 and who have received~~  
 827 ~~authorization by the district school superintendent to~~  
 828 ~~participate in the DROP beyond 60 months, the 96-month maximum~~  
 829 participation period, as provided in subparagraph (b)1., the  
 830 member may elect to include or exclude any optional service  
 831 credit purchased by the member from the total service used to  
 832 establish the normal retirement date. A member who has ~~with~~ dual  
 833 normal retirement dates is ~~shall be~~ eligible to elect to  
 834 participate in either class.

835 (b) Participation in ~~the~~ DROP.--

PCB GEAC 08-16

ORIGINAL

YEAR

836 1.a. An eligible member may elect to participate in the  
 837 DROP for a period not to exceed a maximum of 60 calendar months  
 838 ~~or, except as provided in sub-subparagraph b.~~

839 b. ~~with respect to~~ Members who are instructional personnel  
 840 employed by the Florida School for the Deaf and the Blind and  
 841 who are authorized ~~who have received authorization~~ by the Board  
 842 of Trustees of the Florida School for the Deaf and the Blind ~~to~~  
 843 ~~participate in the DROP beyond 60 months,~~ or who are  
 844 instructional personnel as defined in s. 1012.01(2)(a)-(d) in  
 845 grades K-12 and who are authorized ~~who have received~~  
 846 ~~authorization~~ by the district school superintendent ~~to~~  
 847 ~~participate in the DROP beyond 60 calendar months,~~ or who are  
 848 instructional personnel as defined in s. 1012.01(2) employed by  
 849 a developmental research school and who are authorized by the  
 850 school's director, or if the school has no director, by the  
 851 school's principal, to participate in DROP beyond the original  
 852 60-month period, for up to 36 ~~96~~ calendar months immediately  
 853 following the DROP termination date selected for participation  
 854 in sub-subparagraph a. on which the member first reaches his or  
 855 her normal retirement date or the date to which he or she is  
 856 eligible to defer his or her election to participate as provided  
 857 in subparagraph (a)2. However, a member who has reached normal  
 858 retirement date prior to the effective date of the DROP shall be  
 859 eligible to participate in the DROP for a period of time not to  
 860 exceed 60 calendar months or, with respect to members who are  
 861 instructional personnel employed by the Florida School for the  
 862 Deaf and the Blind and who have received authorization by the  
 863 Board of Trustees of the Florida School for the Deaf and the

PCB GEAC 08-16

ORIGINAL

YEAR

864 ~~Blind to participate in the DROP beyond 60 months, or who are~~  
 865 ~~instructional personnel as defined in s. 1012.01(2)(a)-(d) in~~  
 866 ~~grades K-12 and who have received authorization by the district~~  
 867 ~~school superintendent to participate in the DROP beyond 60~~  
 868 ~~calendar months, 96 calendar months immediately following the~~  
 869 ~~effective date of the DROP, except a member of the Special Risk~~  
 870 ~~Class who has reached normal retirement date prior to the~~  
 871 ~~effective date of the DROP and whose total accrued value exceeds~~  
 872 ~~75 percent of average final compensation as of his or her~~  
 873 ~~effective date of retirement shall be eligible to participate in~~  
 874 ~~the DROP for no more than 36 calendar months immediately~~  
 875 ~~following the effective date of the DROP.~~

- 876       2. Upon deciding to participate in ~~the~~ DROP, the member  
 877 shall submit, on forms required by the division:
- 878       a. A written election to participate in ~~the~~ DROP;
  - 879       b. Selection of ~~the~~ DROP participation and termination  
 880 dates, which satisfy the limitations stated in paragraph (a) and  
 881 subparagraph 1. ~~The Such~~ termination date must ~~shall~~ be in a  
 882 binding letter of resignation to ~~with~~ the employer, establishing  
 883 a deferred termination date. The member may change the  
 884 termination date within the limitations of subparagraph 1., but  
 885 only with the written approval of the ~~his or her~~ employer;
  - 886       c. A properly completed DROP application for service  
 887 retirement as provided in this section; and
  - 888       d. Any other information required by the division.

889       3. The DROP participant is ~~shall be~~ a retiree under the  
 890 Florida Retirement System for all purposes, except for paragraph  
 891 (5)(f) and subsection (9) and ss. 112.3173, 112.363, 121.053,

PCB GEAC 08-16

ORIGINAL

YEAR

892 and 121.122. DROP participation is final and cannot be cancelled  
 893 by the participant after the first payment is credited during  
 894 the DROP participation period. However, participation in ~~the~~  
 895 DROP does not alter the participant's employment status and the  
 896 member is such employee shall not be deemed retired from  
 897 employment until his or her deferred resignation is effective  
 898 and termination occurs as provided in s. 121.021(39).

899 4. Elected officers are ~~shall be~~ eligible to participate  
 900 in the DROP subject to the following:

901 a. An elected officer who reaches normal retirement date  
 902 during a term of office may defer the election to participate in  
 903 ~~the~~ DROP until the next succeeding term in that office. An Such  
 904 elected officer who exercises this option may participate in ~~the~~  
 905 DROP for up to 60 calendar months or a period of no longer than  
 906 the such succeeding term of office, whichever is less.

907 b. An elected or a nonelected participant may run for a  
 908 term of office while participating in DROP and, if elected,  
 909 extend the DROP termination date accordingly, except, however,  
 910 if such additional term of office exceeds the 60-month  
 911 limitation established in subparagraph 1., and the officer does  
 912 not resign from office within such 60-month limitation, the  
 913 retirement and the participant's DROP is ~~shall be~~ null and void  
 914 as provided in sub-subparagraph (c)5.d.

915 c. An elected officer who is dually employed and elects to  
 916 participate in DROP must ~~shall be required to~~ satisfy the  
 917 definition of termination within the 60-month or maximum  
 918 participation, ~~with respect to members who are instructional~~  
 919 ~~personnel employed by the Florida School for the Deaf and the~~

PCB GEAC 08-16

ORIGINAL

YEAR

920 ~~Blind and who have received authorization by the Board of~~  
 921 ~~Trustees of the Florida School for the Deaf and the Blind to~~  
 922 ~~participate in the DROP beyond 60 months, or who are~~  
 923 ~~instructional personnel as defined in s. 1012.01(2)(a)-(d) in~~  
 924 ~~grades K-12 and who have received authorization by the district~~  
 925 ~~school superintendent to participate in the DROP beyond 60~~  
 926 ~~months, the 96-month limitation period as provided in~~  
 927 ~~subparagraph 1. for the nonelected position and may continue~~  
 928 ~~employment as an elected officer as provided in s. 121.053. The~~  
 929 ~~elected officer shall ~~will~~ be enrolled as a renewed member in~~  
 930 ~~the Elected Officers' Class or the Regular Class, as provided in~~  
 931 ~~ss. 121.053 and 121.122, on the first day of the month after~~  
 932 ~~termination of employment in the nonelected position and~~  
 933 ~~termination of DROP. Distribution of ~~the~~ DROP benefits shall be~~  
 934 ~~made as provided in paragraph (c).~~

935 (c) Benefits payable under ~~the~~ DROP.--

936 1. Effective on ~~with~~ the date of DROP participation, the  
 937 member's initial normal monthly benefit, including creditable  
 938 service, optional form of payment, and average final  
 939 compensation, and the effective date of retirement are ~~shall be~~  
 940 fixed. The beneficiary established under the Florida Retirement  
 941 System shall be the beneficiary eligible to receive any DROP  
 942 benefits payable if the DROP participant dies prior to the  
 943 completion of the period of DROP participation. If ~~In the event~~  
 944 a joint annuitant predeceases the member, the member may name a  
 945 beneficiary to receive accumulated DROP benefits payable. The  
 946 ~~Such~~ retirement benefit, the annual cost of living adjustments  
 947 provided in s. 121.101, and interest shall accrue monthly in the



PCB GEAC 08-16

ORIGINAL

YEAR

948 Florida Retirement System Trust Fund. The ~~Such~~ interest shall  
 949 accrue at an effective annual rate of 6.5 percent compounded  
 950 monthly, on the prior month's accumulated ending balance, up to  
 951 the month of termination or death.

952 2. Each employee who elects to participate in ~~the~~ DROP may  
 953 ~~shall be allowed to~~ elect to receive a lump-sum payment for  
 954 accrued annual leave earned in accordance with agency policy  
 955 upon beginning participation in ~~the~~ DROP. The ~~Such~~ accumulated  
 956 leave payment certified to the division upon commencement of  
 957 DROP shall be included in the calculation of the member's  
 958 average final compensation. The employee electing the ~~such~~ lump-  
 959 sum payment is upon beginning participation in DROP will not be  
 960 eligible to receive a second lump-sum payment upon termination,  
 961 except to the extent the employee has earned additional annual  
 962 leave which, combined with the original payment, does not exceed  
 963 the maximum lump-sum payment allowed by the employing agency's  
 964 policy or rules. An ~~Such~~ early lump-sum payment shall be based  
 965 on the hourly wage of the employee at the time he or she begins  
 966 participation in ~~the~~ DROP. If the member elects to wait and  
 967 receive a ~~such~~ lump-sum payment upon termination of DROP and  
 968 termination of employment with the employer, any accumulated  
 969 leave payment made at that time may not ~~cannot~~ be included in  
 970 the member's retirement benefit, which was determined and fixed  
 971 by law when the employee elected to participate in ~~the~~ DROP.

972 3. The effective date of DROP participation and the  
 973 effective date of retirement of a DROP participant shall be the  
 974 first day of the month selected by the member to begin  
 975 participation in the DROP, provided such date is properly

PCB GEAC 08-16

ORIGINAL

YEAR

976 established, with the written confirmation of the employer, and  
977 the approval of the division, on forms required by the division.

978 4. Normal retirement benefits and any interest ~~thereon~~  
979 shall continue to accrue in ~~the~~ DROP until the established  
980 termination date of ~~the~~ DROP, or until the participant  
981 terminates employment or dies prior to such date. Although  
982 individual DROP accounts shall not be established, a separate  
983 accounting of each participant's accrued benefits under ~~the~~ DROP  
984 shall be calculated and provided to participants.

985 5. At the conclusion of the participant's DROP, the  
986 division shall distribute the participant's total accumulated  
987 DROP benefits, subject to the following provisions:

988 a. The division shall receive verification by the  
989 participant's employer or employers that the ~~such~~ participant  
990 has terminated employment as provided in s. 121.021(39)(b).

991 b. The terminated DROP participant or, if deceased, the  
992 ~~such~~ participant's named beneficiary, shall elect on forms  
993 provided by the division to receive payment of ~~the~~ DROP benefits  
994 in accordance with one of the options listed below. If ~~For~~ a  
995 participant or beneficiary ~~who~~ fails to elect a method of  
996 payment within 60 days of termination of ~~the~~ DROP, the division  
997 shall ~~will~~ pay a lump sum as provided in sub-sub-subparagraph  
998 (I).

999 (I) Lump sum.--All accrued DROP benefits, plus interest,  
1000 less withholding taxes remitted to the Internal Revenue Service,  
1001 shall be paid to the DROP participant or surviving beneficiary.

1002 (II) Direct rollover.--All accrued DROP benefits, plus  
1003 interest, shall be paid from ~~the~~ DROP directly to the custodian

PCB GEAC 08-16

ORIGINAL

YEAR

1004 of an eligible retirement plan as defined in s. 402(c)(8)(B) of  
 1005 the Internal Revenue Code. However, in the case of an eligible  
 1006 rollover distribution to the surviving spouse of a deceased  
 1007 participant, an eligible retirement plan is an individual  
 1008 retirement account or an individual retirement annuity as  
 1009 described in s. 402(c)(9) of the Internal Revenue Code.

1010 (III) Partial lump sum.--A portion of the accrued DROP  
 1011 benefits shall be paid to the DROP participant or surviving  
 1012 spouse, less withholding taxes remitted to the Internal Revenue  
 1013 Service, and the remaining DROP benefits shall be transferred  
 1014 directly to the custodian of an eligible retirement plan as  
 1015 defined in s. 402(c)(8)(B) of the Internal Revenue Code.  
 1016 However, in the case of an eligible rollover distribution to the  
 1017 surviving spouse of a deceased participant, an eligible  
 1018 retirement plan is an individual retirement account or an  
 1019 individual retirement annuity as described in s. 402(c)(9) of  
 1020 the Internal Revenue Code. The proportions shall be specified by  
 1021 the DROP participant or surviving beneficiary.

1022 c. The form of payment selected by the DROP participant or  
 1023 surviving beneficiary must comply ~~complies~~ with the minimum  
 1024 distribution requirements of the Internal Revenue Code.

1025 d. A DROP participant who fails to terminate employment as  
 1026 defined in s. 121.021(39)(b) shall be deemed as not ~~to be~~  
 1027 retired, and the DROP election is ~~shall be~~ null and void.  
 1028 Florida Retirement System membership shall be reestablished  
 1029 retroactively to the date of the commencement of ~~the~~ DROP, and  
 1030 each employer with whom the participant continues employment  
 1031 must ~~shall be required to~~ pay to the Florida Retirement System

PCB GEAC 08-16

ORIGINAL

YEAR

1032 Trust Fund the difference between the DROP contributions paid in  
 1033 paragraph (i) and the contributions required for the applicable  
 1034 Florida Retirement System class of membership during the period  
 1035 the member participated in the DROP, plus 6.5 percent interest  
 1036 compounded annually.

1037 6. The retirement benefits of any DROP participant who  
 1038 meets the definition of termination, as provided in s.  
 1039 121.021(39)(b), but is in violation of the reemployment  
 1040 provisions as provided in subsection (9), shall be suspended  
 1041 during those months in which the member is in violation. Any  
 1042 member employed in violation of this subparagraph and any  
 1043 employing agency that knowingly employs or appoints such member  
 1044 without notifying the Division of Retirement to suspend  
 1045 retirement benefits are jointly and severally liable for any  
 1046 benefits paid during the reemployment limitation period. To  
 1047 avoid liability, the employing agency must have a written  
 1048 statement from the retiree that he or she is not retired from a  
 1049 state-administered retirement system. Any retirement benefits  
 1050 received by a retired member while employed in violation of the  
 1051 reemployment limitations during the first 12 months of  
 1052 retirement must be repaid to the Florida Retirement System Trust  
 1053 Fund, and his or her retirement benefits shall remain suspended  
 1054 until payment is made. Benefits suspended beyond the end of the  
 1055 retired member's first 12 months of retirement shall apply  
 1056 toward repayment of benefits received in violation of the  
 1057 reemployment limitations.

1058 7.6. The accrued benefits of any DROP participant, and any  
 1059 contributions accumulated under the such program, are shall not

PCB GEAC 08-16

ORIGINAL

YEAR

1060 ~~be~~ subject to assignment, execution, attachment, or to any legal  
 1061 process whatsoever, except for qualified domestic relations  
 1062 orders by a court of competent jurisdiction, income deduction  
 1063 orders as provided in s. 61.1301, and federal income tax levies.

1064 8.7. DROP participants are ~~shall~~ not ~~be~~ eligible for  
 1065 disability retirement benefits as provided in subsection (4).

1066 (14) PAYMENT OF BENEFITS.--This subsection applies to the  
 1067 payment of benefits to a payee (retiree or beneficiary) under  
 1068 the Florida Retirement System:

1069 (b) Subject to approval by the division in accordance with  
 1070 rule 60S-4.015, Florida Administrative Code, a payee receiving  
 1071 retirement benefits under the ~~Florida Retirement~~ system may also  
 1072 have the following payments deducted from his or her monthly  
 1073 benefit:

1074 1. Premiums for life and health-related insurance policies  
 1075 from approved companies.

1076 2. Life insurance premiums for the State Group Life  
 1077 Insurance Plan, if authorized in writing by the payee and by the  
 1078 department ~~of Management Services~~.

1079 3. Repayment of overpayments from the Florida Retirement  
 1080 System Trust Fund, the State Employees' Health Insurance Trust  
 1081 Fund, or the State Employees' Life Insurance Trust Fund, upon  
 1082 notification of the payee.

1083 4. Payments to an alternate payee for alimony or, child  
 1084 support pursuant to an income deduction order under s. 61.1301,  
 1085 or division of marital assets pursuant to a qualified domestic  
 1086 relations order under s. 222.21 ~~or an income deduction order~~  
 1087 ~~under s. 61.1301.~~

PCB GEAC 08-16

ORIGINAL

YEAR

1088           5. Payments to the Internal Revenue Service for federal  
1089 income tax levies, upon notification of the division by the  
1090 Internal Revenue Service.

1091           (c) A payee must ~~shall~~ notify the division of any change  
1092 in his or her address. The division may suspend benefit payments  
1093 to a payee if correspondence sent to the payee's mailing address  
1094 is returned due to an incorrect address. Benefit payments shall  
1095 be resumed upon notification to the division of the payee's new  
1096 address.

1097           (d) A payee whose retirement benefits are reduced by the  
1098 application of maximum benefit limits under s. 415(b) of the  
1099 Internal Revenue Code, as specified in s. 121.30(5), shall have  
1100 the portion of his or her calculated benefit in the Florida  
1101 Retirement System defined benefit plan which exceeds such  
1102 federal limitation paid through the Florida Retirement System  
1103 Preservation of Benefits Plan, as provided in s. 121.1001.

1104           (e). The Division of Retirement may issue retirement  
1105 benefits payable for division of marital assets pursuant to a  
1106 qualified domestic relations order directly to the alternate  
1107 payee, any court order to the contrary notwithstanding, in order  
1108 to meet Internal Revenue Code requirements.

1109           ~~(f)-(e)~~ A ~~No~~ benefit may not be reduced for the purpose of  
1110 preserving the member's eligibility for a federal program.

1111           ~~(g)-(f)~~ The division shall adopt rules establishing  
1112 procedures for determining that ~~the~~ persons to whom benefits are  
1113 being paid are still living. The division shall suspend the  
1114 benefits being paid to any payee if ~~when~~ it is unable to contact  
1115 such payee and to confirm that he or she is still living.

PCB GEAC 08-16

ORIGINAL

YEAR

1116           Section 8.   Section 121.1115, Florida Statutes, is amended  
1117 to read:

1118           121.1115   Purchase of retirement credit for out-of-state or  
1119 ~~and~~ federal service.--Effective January 1, 1995, A member ~~of the~~  
1120 ~~Florida Retirement System~~ may purchase creditable service for  
1121 periods of public employment in another state and receive  
1122 creditable service for such periods of employment. Service with  
1123 the Federal Government, including any active military service,  
1124 may be claimed. Upon completion of each year of service earned  
1125 under the Florida Retirement System, a member may purchase up to  
1126 1 year of retirement credit for his or her out-of-state service,  
1127 subject to the following provisions:

1128           (1)   LIMITATIONS AND CONDITIONS.--To receive credit for the  
1129 out-of-state service:

1130           (a)   The out-of-state service ~~being claimed~~ must have been:

1131           1.   Performed in a position of employment with the state or  
1132 a political subdivision thereof or with the Federal Government;

1133           2.   Covered by a retirement or pension plan provided by the  
1134 state or political subdivision, or by the Federal Government, as  
1135 appropriate; and

1136           3.   Performed prior to a period of membership in the  
1137 Florida Retirement System.

1138           (b)   The member must have completed a minimum of 6 years of  
1139 creditable service under the Florida Retirement System,  
1140 excluding out-of-state service and in-state service claimed and  
1141 purchased under s. 121.1122.

PCB GEAC 08-16

ORIGINAL

YEAR

1142 (c) Not more than 5 years of creditable service may be  
 1143 claimed for creditable service aggregated under the provisions  
 1144 of this section and s. 121.1122.

1145 (d) The out-of-state service credit ~~claimed under this~~  
 1146 ~~section~~ shall be credited only as service in the Regular Class  
 1147 ~~of membership~~, and any benefit or pension based thereon is ~~shall~~  
 1148 ~~be~~ subject to the limitations and restrictions of s. 112.65.

1149 (e) The member is not eligible for and may not receive a  
 1150 pension or benefit from a retirement or pension plan based on or  
 1151 including the out-of-state service. Eligibility for or the  
 1152 receipt of contributions to a retirement plan made by the  
 1153 employer on behalf of the employee is considered a benefit.

1154 (f) ~~(e)~~ To receive A member shall be eligible to receive  
 1155 service credit for out-of-state service performed after leaving  
 1156 the Florida Retirement System, the member must complete only  
 1157 ~~upon return to membership and completion of~~ at least 1 year of  
 1158 creditable service in the Florida Retirement System following  
 1159 the out-of-state service.

1160 (2) COST.--For each year claimed, the member must pay into  
 1161 the Florida Retirement System Trust Fund an amount equal to 20  
 1162 percent of the member's annual compensation for the first full  
 1163 work year of creditable service earned under the Florida  
 1164 Retirement System, but not less than \$12,000, plus interest at  
 1165 6.5 percent compounded annually from the date of first annual  
 1166 salary earned until full payment is made. The employer may pay  
 1167 all or a portion of the cost of this service credit.

1168 Section 9. Subsection (2) of section 121.1122, Florida  
 1169 Statutes, is amended to read:



PCB GEAC 08-16

ORIGINAL

YEAR

1170 121.1122 Purchase of retirement credit for in-state public  
 1171 service and in-state service in accredited nonpublic schools and  
 1172 colleges, including charter schools and charter technical career  
 1173 centers.--Effective January 1, 1998, a member of the Florida  
 1174 Retirement System may purchase creditable service for periods of  
 1175 certain public or nonpublic employment performed in this state,  
 1176 as provided in this section.

1177 (2) LIMITATIONS AND CONDITIONS.--

1178 (a) A member is not eligible to receive credit for in-  
 1179 state service under this section until he or she has completed 6  
 1180 years of creditable service under the Florida Retirement System,  
 1181 excluding service purchased under this section and out-of-state  
 1182 service claimed and purchased under s. 121.1115.

1183 (b) A member may not purchase and receive credit for more  
 1184 than 5 years of creditable service aggregated under ~~the~~  
 1185 ~~provisions of~~ this section and s. 121.1115.

1186 (c) Service credit claimed under this section shall be  
 1187 credited only as service in the Regular Class ~~of membership~~ and  
 1188 is ~~shall be~~ subject to ~~the provisions of~~ s. 112.65.

1189 (d) Service credit may not be purchased under this section  
 1190 if the member is eligible to receive or is receiving a pension  
 1191 or benefit from a retirement or pension plan based on or  
 1192 including the service. Eligibility for or the receipt of  
 1193 contributions to a retirement plan made by the employer on  
 1194 behalf of the employee is considered a benefit.

1195 (e) ~~(d)~~ A member is ~~shall be~~ eligible to receive service  
 1196 credit for in-state service performed after leaving the Florida  
 1197 Retirement System only after ~~upon returning to membership and~~

PCB GEAC 08-16

ORIGINAL

YEAR

1198 completing at least 1 year of creditable service in the Florida  
 1199 Retirement System following the in-state service.

1200 (f)~~(e)~~ The service claimed must have been service covered  
 1201 by a retirement or pension plan provided by the employer.

1202 Section 10. Section 121.136, Florida Statutes, is amended  
 1203 to read:

1204 121.136 Annual benefit statement to members.--~~Beginning~~  
 1205 ~~January 1, 1993, and~~ Each January thereafter, the department  
 1206 shall provide each active member of the Florida Retirement  
 1207 System with 5 or more years of creditable service an annual  
 1208 statement of benefits which provides. ~~Such statement should~~  
 1209 ~~provide~~ the member with basic data about the member's retirement  
 1210 account. At a minimum ~~Minimally~~, it must ~~shall~~ include the  
 1211 member's retirement plan, accrued service credit ~~the amount of~~  
 1212 ~~funds on deposit in the retirement account~~, and an estimate of  
 1213 retirement benefits.

1214 Section 11. Paragraph (a) of subsection (2) of section  
 1215 121.23, Florida Statutes, is amended to read:

1216 121.23 Disability retirement and special risk membership  
 1217 applications; Retirement Commission; powers and duties; judicial  
 1218 review.--The provisions of this section apply to all proceedings  
 1219 in which the administrator has made a written final decision on  
 1220 the merits respecting applications for disability retirement,  
 1221 reexamination of retired members receiving disability benefits,  
 1222 applications for special risk membership, and reexamination of  
 1223 special risk members in the Florida Retirement System. The  
 1224 jurisdiction of the State Retirement Commission under this

PCB GEAC 08-16

ORIGINAL

YEAR

1225 section shall be limited to written final decisions of the  
 1226 administrator on the merits.

1227 (2) A member shall be entitled to a hearing before the  
 1228 State Retirement Commission pursuant to ss. 120.569 and  
 1229 120.57(1) on the merits of any written adverse decision of the  
 1230 administrator, if he or she files with the commission a written  
 1231 request for such hearing within 21 days after receipt of such  
 1232 written decision from the administrator. For the purpose of such  
 1233 hearings, the commission shall be an "agency head" as defined by  
 1234 s. 120.52.

1235 (a) The commission may ~~shall have the authority to~~ issue  
 1236 orders as a result of the a hearing that are ~~shall be~~ binding on  
 1237 all parties to the dispute and. ~~The commission~~ may order any  
 1238 action that it deems appropriate. Any disability retirement  
 1239 order of the commission ~~issued pursuant to this subsection~~ which  
 1240 sustains the application of the member may include an amount, to  
 1241 be determined by the commission, for reasonable attorney's fees  
 1242 and taxable costs, which shall be calculated in accordance with  
 1243 the statewide uniform guidelines for taxation of costs in civil  
 1244 actions. The amount of the attorney's fee may not exceed 50  
 1245 percent of the initial yearly benefit awarded under s.  
 1246 121.091(4). In cases involving disability retirement, the ~~State~~  
 1247 ~~Retirement~~ commission shall require the member to present  
 1248 substantial competent medical evidence that meets the  
 1249 requirements of s. 121.091(4)(c)2.and 3., and may require  
 1250 vocational evidence before awarding disability retirement  
 1251 benefits.

PCB GEAC 08-16

ORIGINAL

YEAR

1252 Section 12. Paragraph (a) of subsection (1) of section  
 1253 121.24, Florida Statutes, is amended to read:

1254 121.24 Conduct of commission business; legal and other  
 1255 assistance; compensation.--

1256 (1) The commission shall conduct its business within the  
 1257 following guidelines:

1258 (a) For purposes of hearing appeals under s. 121.23, the  
 1259 commission may meet in panels ~~consisting of no not~~ fewer than  
 1260 three members. ~~For the purpose of meeting in these panels, a~~  
 1261 ~~quorum shall be not fewer than two members. For all other~~  
 1262 ~~purposes,~~ A quorum shall consist of three members. The  
 1263 concurring vote of a majority of the members present is ~~shall be~~  
 1264 required to reach a decision, issue orders, and conduct the  
 1265 business of the commission.

1266 Section 13. Subsection (8) of section 1012.33, Florida  
 1267 Statutes, is amended to read:

1268 1012.33 Contracts with instructional staff, supervisors,  
 1269 and school principals.--

1270 (8) Notwithstanding any other provision of law, a retired  
 1271 ~~any member who has retired~~ may interrupt retirement and be  
 1272 reemployed in any public school. A ~~Any~~ member ~~se~~ reemployed by  
 1273 the same district from which he or she retired may be employed  
 1274 on a probationary contractual basis as provided in subsection  
 1275 (1); ~~however, no regular retirement employee shall be eligible~~  
 1276 ~~to renew membership under a retirement system created by chapter~~  
 1277 ~~121 or chapter 238.~~

1278 Section 14. Sections 121.093, 121.094, and 121.45, Florida  
 1279 Statutes, are repealed.

PCB GEAC 08-16

ORIGINAL

YEAR

1280

Section 15. This act shall take effect July 1, 2008.









**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GEAC 08-22 **Small Business Regulatory Relief Act**  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council		Kruse <i>MK</i>	Cooper <i>PK</i>
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

Small businesses are the foundation of Florida's economy. Recent statistics show that there are 1,942,200 small businesses in Florida and more than half of these businesses are operated by sole-proprietors, working full-time without any paid employees. In addition to providing a livelihood for their own families, Florida's small-business owners provide more than half (53 percent) of all wage-and-salary jobs in the state's private sector. In Florida, as in the nation as a whole, small firms lead the way in job creation.

This proposed bill establishes the Small Business Regulatory Relief Act by creating a Small Business Regulatory Review Advisory Council and a Small Business Advocate. The duties of the Council include:

- Providing state agencies with input regarding proposed rules or programs that may adversely affect small business;
- Considering requests from small business owners to review rules or programs adopted by an agency;
- Reviewing rules promulgated by an agency to determine whether a rule places an unnecessary burden on small business and make recommendations to the agency to mitigate the adverse effects; and
- Reviewing agency rules in conjunction with the agency sunset review process.

The duties of the Small Business Advocate include:

- Serving as principal advocate in the state on behalf of small businesses, including, but not limited to, advisory participation in the consideration of all legislation and administrative rules that affect small businesses, and advocacy on state policy and programs related to small businesses on disaster preparedness and recovery including providing technical assistance;
- Representing the views and interests of small businesses before other state agencies whose policies and activities may affect small businesses; and
- Receiving and respond to complaints from small businesses concerning the actions of state agencies and the operative effects of state laws and regulations adversely affecting those businesses. The advocate shall establish an annual process for small businesses to nominate agency rules or programs for reform. The advocate shall publish those nominations online and update the status of agency action.

The bill also amends the Administrative Procedures Act by: requiring state agencies to prepare a statement of estimated regulatory cost if the proposed rule will impact small business; and creating a review process utilizing the Office of Program Policy Analysis & Government Accountability when an agency does not utilize an alternative rule offered by the Council.

The bill does not have a fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Individual Freedom:** The bill has the potential to help small businesses be free of duplicative, outdated, or overly burdensome rules and regulations.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Small Business in Florida**

Small businesses are the foundation of Florida's economy. Recent statistics show that there are 1,942,200 small businesses in Florida and more than half of these businesses are operated by sole-proprietors, working full-time without any paid employees. Among these "employer firms" (businesses providing full-time jobs to people other than the owners):

- Nineteen out of 20 (97 percent) have fewer than 100 employees.
- Four of every five (81 percent) have fewer than 10 employees.
- Nearly two-thirds (64 percent) have fewer than five employees

In addition to providing a livelihood for their own families, Florida's small-business owners provide more than half (53 percent) of all wage-and-salary jobs in the state's private sector. In Florida, as in the nation as a whole, small firms lead the way in job creation.

From 1991 to 1995, firms with fewer than 100 employees accounted for all net new jobs in the state. Florida's smallest firms (those with fewer than 20 employees) expanded their job rolls by 10.4 percent. During that same period, the state's largest private employers (5,000+ employees) cut their job rolls by 1.9 percent.

The services sector--dominated by small firms--provided the greatest number of net new jobs for Florida during the '91-'95 period. Small (fewer than 100 employees) service operations grew by 5.5 percent. Employment remained essentially unchanged (+0.2 percent) among larger service firms during that period. Wholesale and retail trades were the second-most prolific job generators during the period. Small firms in these sectors lengthened their job rolls by 3.3 percent, nearly twice the growth rate of their larger competitors (1.7 percent).

Small manufacturers logged the highest growth rate of any sector, expanding their workforce by 7.6 percent during this period. Meanwhile, larger manufacturers cut their job rolls by 5.0 percent.

Nationally, small businesses make up over 99 percent of all employing businesses and provide about 50 percent of all jobs. Federal reports show that households owning small businesses are more likely to be high income earners and high wealth holders than those that are not business owners. In 2001, these households owning businesses comprised about 12 percent of all households, but earned over 25 percent of total household income and held over 40 percent of household wealth.<sup>1</sup>

##### **Regulatory Review Committee in South Carolina**

South Carolina, and other states, has established in law a process whereby if a small business owner believes that an existing or proposed state agency regulation will adversely affect his or her business, he or she may contact and have his or her concerns made known to the South Carolina Small Business Regulatory Review Committee (SBRRC). The SBRRC consists of eleven South Carolina business

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<sup>1</sup> SBA Office of Advocacy-Small Business Profile: Florida, [www.sba.gov/advo](http://www.sba.gov/advo).

owners and the Chairs of the South Carolina House and Senate Labor, Commerce and Industry Committees.

The SBRRCC reviews new and existing state agency regulations that may adversely impact small businesses and suggests the implementation of more flexible alternatives to ensure regulatory compliance. The SBRRCC has reviewed promulgated agency regulations issued since January 2005. The SBRRCC is chartered to ensure that South Carolina's small business community has a level playing field to compete.<sup>2</sup>

One example of SBRRCC assistance occurred in October of 2006 when the South Carolina Chief Information Officer (CIO) issued policy language stipulating that all vendors working on projects greater than \$1,000,000 were to be qualified with a Level 3 Capability Maturity Model Integration (CMMI) designation. The directive was aimed at enhancing the quality of IT project delivery. One estimate for achieving CMMI Level 3 status was at a cost of \$200,000, and would take over a year or more to accomplish. The SBRRCC chair was notified of this policy by the South Carolina Chamber of Commerce which had a constituent who would be adversely affected by this policy. The SBRRCC chair directed staff to meet with the company and the CIO's office. This simple, but important, step helped open the way for policy changes that recognized the financial and logistical realities of the requirement to obtain the CMMI Level 3 status. The Governor's Office was also involved in the process. As a result of this collaborative process phrases such as "are required to" were changed to "strongly recommend," which allowed state agencies to continue doing business with small businesses. The due date for certification was also extended for another year past the original due date.<sup>3</sup>

### **Existing Regulatory Flexibility Legislation & Administrative Procedures Act (APA)**

The APA refers to the Commercial Development and Capital Improvements Act to define small business. That Act defines small business as an entity employing 200 or less full-time employees and that, together with its affiliates, has a net worth of less than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.<sup>4</sup> This definition includes approximately 97% of firms in the state based on 2002 census. (Under the APA an agency may define "small business" to include businesses employing more than 100 persons if it finds that such definition is necessary to adapt a rule to the needs and problems of small businesses.<sup>5</sup>

### Economic Impact Analysis.

Before the adoption, amendment or repeal of a rule, agencies are "encouraged" but not required to consider the impact of the rule on small businesses and when practicable agencies should reduce the disproportionate impacts on small businesses.<sup>6</sup> This provision does not include specific economic elements for the agency to consider, only that agencies may prepare a "statement of estimated regulatory costs" which must include an analysis of the impact on small business.<sup>7</sup>

### Regulatory Flexibility.

When practicable, agencies must tier its rules to reduce disproportionate impacts on small business.<sup>8</sup> Agencies must consider alternative methods for reducing the impact of the proposed rule on small business, i.e. establishing less stringent compliance or reporting requirements; establishing less stringent schedules or deadlines; consolidating or simplifying the rule's compliance or reporting

<sup>2</sup> <http://www.sccommerce.com/RegulatoryReview.html>.

<sup>3</sup> Telephone conversation with Chuck Bundy, Manager-Business Services, South Carolina Department of Commerce, March 19, 2008.

<sup>4</sup> s. 288.703(1), F.S.

<sup>5</sup> s. 120.54(3)(b)(2)(a), F.S.

<sup>6</sup> s. 120.54(3)(b)1. & 2.a., F.S.

<sup>7</sup> s. 120.541(2)(d), F.S.

<sup>8</sup> s. 120.54(3)(b)2.a., F.S.

requirements; establishing performance vs. design standards; or exempting small businesses from the rule.<sup>9</sup>

Periodic Review: Required review by agencies every two years.

Agencies must identify and correct deficiencies; clarify and simplify its rules; delete obsolete or unnecessary rules; delete rules that are redundant of statutes; and seek to improve efficiency, reduce paperwork or decrease costs.<sup>10</sup>

Judicial Review.

A party who is adversely affected by final agency action is entitled to judicial review.<sup>11</sup> Agency action is defined as "the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order."<sup>12</sup> A preliminary, procedural, or intermediate order of the agency or of an administrative law judge is immediately reviewable if review of the final agency decision would not provide adequate remedy.<sup>13</sup>

The court must remand the case to the agency for further proceedings consistent with the court's decision when it finds that the "correctness" of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.<sup>14</sup>

Rules Review.

If the agency determines the proposed action will affect small businesses, it must send written notice to the small business ombudsman of the Office of Tourism, Trade, and Economic Development (OTTED).<sup>15</sup> Agencies must adopt regulatory alternatives offered by the small business ombudsman which are feasible and consistent with the stated objective of the proposed rule and which would reduce the impact on small business.<sup>16</sup> If the agency does not adopt the alternatives offered by the small business ombudsman, it must file a detailed written statement with the Joint Administrative Procedures Committee (JAPC) explaining the reason for failure to adopt such alternatives.<sup>17</sup>

There is also review of each proposed rule by the Joint Administrative Procedures Committee.<sup>18</sup>

Agency Sunset Review.

The Florida Government Accountability Act establishes the agency sunset review process, which determines whether an agency should be abolished, continued, or reorganized. The act establishes a schedule of agency review beginning in 2008. An agency is up for sunset review every 10 years after its initial review.<sup>19</sup> An agency subject to review by the Legislature shall be abolished on June 30 following the date of review, unless the Legislature continues the agency or advisory committee. However, an agency may not be abolished unless the Legislature finds, pursuant to law, that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made for the transfer to a successor agency of all duties and obligations relating to bonds, loans, promissory notes, lease-

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<sup>9</sup> s. 120.54(3)(b)2.a., F.S.

<sup>10</sup> s. 120.74, F.S.

<sup>11</sup> s. 120.68(1), F.S.

<sup>12</sup> s. 120.52(2), F.S.

<sup>13</sup> s. 120.68(1), F.S.

<sup>14</sup> s. 120.68(7)(c), F.S.

<sup>15</sup> s. 120.54(3)(b)2.b.I., F.S.

<sup>16</sup> s. 120.54(3)(b)2.b.II., F.S.

<sup>17</sup> s. 120.54(3)(b)2.b.III., F.S.

<sup>18</sup> (s. 120.545(1), F.S.)

<sup>19</sup> s. 11.905, F.S.

purchase agreements, installment sales contracts, certificates of participation, master equipment financing agreements, or any other form of indebtedness such that security therefor and the rights of bondholders or holders of other indebtedness are not impaired.

If the Legislature does not take action before the date of review to continue the agency or advisory committee, the agency must submit its legislative budget request consistent with the provisions of chapter 216. Such agency shall continue to be subject to annual sunset review by the Legislature until the Legislature enacts legislation relating to the agency's continuation, modification, or termination.<sup>20</sup>

Not later than July 1, 2 years preceding the year in which a state agency and its advisory committees are scheduled to be reviewed, the agency must provide the Legislature with essentially a performance report.<sup>21</sup>

Upon receipt of an agency report, the Joint Legislative Sunset Committee may and the appropriate committee shall conduct a review of the agency and may direct the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the agency and its advisory committees, including an examination of the cost of each agency program, an evaluation of best practices and alternatives that would result in the administration of the agency in a more efficient or effective manner, an examination of the viability of privatization or a different state agency performing the functions, and an evaluation of the cost and consequences of discontinuing the agency.<sup>22</sup>

No later than March 1 of the year in which a state agency or its advisory committees are scheduled to be reviewed, the committee shall and the joint committee may:

(1) Review the information submitted by the agency and the reports of any independent reviews directed by the committee, including those conducted by the Office of Program Policy Analysis and Government Accountability.

(2) Consult with the Legislative Budget Commission, relevant substantive and appropriations committees of the Senate and the House of Representatives, the Governor's Office of Policy and Budgeting, the Auditor General, and the Chief Financial Officer, or their successors, relating to the review of the agency and its advisory committees.

(3) Hold public hearings to consider this information as well as other information and testimony that the committee or joint committee deems necessary.

(4) Present to the President of the Senate and the Speaker of the House of Representatives a report on the agencies and advisory committees scheduled to be reviewed that year by the Legislature. In the report, the committee shall include its specific findings and recommendations regarding the information considered pursuant to s. 11.910, F.S., make recommendations as described in s. 11.911, F.S., and propose legislation as it considers necessary. In the joint committee report, the joint committee shall include its specific findings and recommendations regarding the information considered pursuant to s. 11.910, F.S., and make recommendations.<sup>23</sup>

In its report on a state agency, the joint committee shall:

(a) Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees.

(b) Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

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<sup>20</sup> s. 11.9055, F.S.

<sup>21</sup> s. 11.906, F.S.

<sup>22</sup> s. 11.907, F.S.

<sup>23</sup> s. 11.908, F.S.

The joint committee may access or request information and request assistance of state agencies and officers.<sup>24</sup>

When assistance is requested, a state agency or officer shall assist the joint committee.<sup>25</sup>

## **Effect of Proposed Changes**

### Small Business Regulatory Relief Act & Advisory Council

Section 1 of the bill establishes a short title as the “Small Business Regulatory Relief Act” and provides the findings and purpose for the bill. The bill defines the term “Agency” as an agency as defined in s. 120.52, F.S., which is the definition in the Administrative Procedures Act for an agency. The bill defines the term “rule” as provided in section 120.52, F.S..

The bill also creates the Small Business Regulatory Advisory Council (Council) which is authorized to provide recommendations to state agencies regarding proposed rules that may impact small business; consider requests from small businesses to review an agency’s rules; review rules to determine whether a rule places an unnecessary burden on small businesses; and to make recommendations to the agency to mitigate adverse impacts to small businesses. The bill states that the Council is independent from but attached to the Office of Tourism, Trade, and Economic Development.

Three members are appointed each by the Governor, the President of the Senate, and the Speaker of the House for staggered terms. The bill restricts the Council from interfering with administrative or judicial or to issue subpoenas. The bill requires the Council to provide a report to the Governor and the Legislature that describes the activities and recommendations of the Council.

The bill further provides discretion to the Council to participate in the agency sunset review process according to the sunset review schedule contained in s. 11.905, F.S., by reviewing rules of agencies to determine whether the rules should be continued without change or should be amended or repealed to reduce the impact on small business subject to the requirement that the recommendations of the Council must be feasible and consistent with the stated objectives of the proposed rules. If the Council reviews an agency’s rules, the Council must provide a report to the Joint Legislative Sunset Committee, the Governor, and the Legislature with recommendations and evaluations of these rules and agencies regarding regulatory fairness for small businesses. A component of the report is a rating system entitled the “Small Business Friendliness and Development Scorecard.”

### Small Business Advocate

Section 2 of the bill creates the Office of the Small Business Advocate and provides for the selection of an advocate by OTTED. The Director’s duties include:

- serving as staff for the Small Business Regulatory Advisory Council;
- serving as principal advocate in the state on behalf of small business including participation in the consideration of legislation and administrative rules that affect small business;
- working with public and private agencies and organizations to provide information to small business about state and local programs, including small business finance, and to consult with those in academia with particular expertise;
- issuing a biennial report evaluating the efforts of state agencies, that significantly regulate small businesses, to assist minority and other small business enterprises, and make recommendations where appropriate to assist the development and strengthening of minority and other small business enterprises;

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<sup>24</sup> s. 11.911, F.S.

<sup>25</sup> s. 11.918, F.S.

- creating an annual process for small businesses to nominate agency regulations for amendment or repeal and to post those nominations online and update the status of agency action on those nominations twice yearly;
- coordinate a statewide conference on small business;
- coordinate annual public meetings to educate small businesses on disaster preparedness; and
- submit an annual report to the Governor and the Legislature on the activities and recommendations of the advocate.

#### Joint Legislative Sunset Committee

Section 3 of the bill amends s. 11.908, F.S., to require the Joint Legislative Sunset Committee to consult with the Small Business Regulatory Advisory Council relating to the review of agencies.

Section 4 of the bill amends s. 11.911, F.S., to require the Council's report on agency rules to be included in recommendations by the Joint Legislative Sunset Committee where the Committee recommends continuation or reorganization of an agency.

Section 5 of the bill amends s. 11.919, F.S., to require state agencies to assist the Council upon request.

#### Administrative Procedures Act

Section 6 of the bill amends s. 120.54, F.S., to require agencies to prepare a statement of estimated regulatory cost of a proposed rule as provided in s. 120.541, F.S., if the rule will have an impact on small business. The bill also amends s. 120.54(3), F.S., to require an agency to provide written notification to the Council of any proposed rule that will affect small businesses. Further the bill requires an agency to adopt the regulatory alternatives offered by the Council which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. Current law requires adoption of alternatives offered by OTTED. However, if the agency opts not to adopt all the alternatives offered by the Council, it is required to file a detailed written statement with the JAPC and the Council prior to rule adoption explaining its reasons. The bill also revises section 120.54(3) to allow the Council to request OPPAGA review of an agency's decision to reject the regulatory alternatives. In conducting its review, OPPAGA is required to consider whether the rejected alternatives reduce the impact on small business while meeting the stated objectives of the proposed rule. OPPAGA has 30 days in which to respond to the Council's request and provide its findings to JAPC. The Committee must report OPPAGA's findings to the agency and the agency must respond in writing to JAPC if OPPAGA found that the alternative reduced the impact on small business while meeting the stated objectives of the proposed rule. If the agency still will not adopt the alternative, it must also provide a detailed written statement to JAPC as to why it will not adopt the alternative.

Section 7 of the bill amends section 120.74(1), F.S., which requires agencies to review its rules periodically but at least provide a formal review every two years, by requiring an agency to determine whether its rules should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rule.

Section 8 of the bill creates an effective date of July 1, 2008.

#### C. SECTION DIRECTORY:

Section 1: Provides for the Small Business Regulatory Relief Act, findings and purpose; creates the Small Business Regulatory Advisory Council; provides for council review of agency rules under sunset review process; provides reporting requirements.

Section 2: Provides for the findings and purpose of the Small Business Advocate; creates the office of small business advocate; provides reporting requirements.

Section 3: Amends s. 11.908, F.S., relating to the consulting duties of the Joint Legislative Sunset Committee.

Section 4: Amends s. 11.911, F.S., relating to the recommendations of the Joint Legislative Sunset Committee.

Section 5: Amends s. 11.919, F.S. relating to agency assistance to the Small Business Regulatory Council.

Section 6: Amends s. 120.54, F.S., requiring agencies to prepare a statement of estimated regulatory cost; requiring agencies to notify the Small Business Regulatory Advisory Council of impacts of rules on small business; requiring agencies to consider alternatives proposed by the Small Business Regulatory Advisory Council; establishing a review procedure for alternatives not utilized by agencies.

Section 7: Amends s. 120.74, F.S., relating to periodic agency review of rules and impacts on small business.

Section 8: Creates an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The position of Small Business Advocate can be selected from an existing staff position in the Office of Tourism, Trade, and Economic Development (OTTED).

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

Small businesses will benefit in several ways.

1. A single voice for small business will be created by the bill (Small Business Advocate) to advocate in numerous ways on behalf of small business in front of government and in coordination with the private sector.
2. A council dedicated to reviewing agency rules that may have an impact on small business is created by the bill and the council is authorized to offer alternatives that must be considered by state agencies.
3. Agencies are required to prepare a statement of estimated regulatory cost if the proposed rule will have an impact on small business which will allow small businesses to be informed on how rules may affect their operations.

### 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 cities or counties to spend funds or take an 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:

None.

#### D. STATEMENT OF THE SPONSOR

Not applicable.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES



PCB GEAC 08-22

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to Small Business Regulatory Relief;  
 3 creating s. 11.9006, F.S.; providing a short title;  
 4 providing findings and purpose; providing definitions;  
 5 creating the Small Business Regulatory Advisory Council;  
 6 providing for appointments, membership, and meetings;  
 7 providing for per diem and travel expenses of members;  
 8 providing administrative location for Council; providing  
 9 powers and limitations of Council; providing for  
 10 coordinated review of agency rules by the Council with  
 11 agency sunset review; providing timelines for review;  
 12 providing for the Council to issue a business friendly  
 13 scorecard of agency rules; creating s. 11.9007, F.S.;  
 14 providing findings and purpose; providing definitions;  
 15 providing for selection of small business advocate;  
 16 providing for preferred qualifications of advocate;  
 17 providing duties of advocate; providing for agency  
 18 cooperation with advocate; providing for annual report by  
 19 advocate to Governor and Legislature; amending s. 11.908,  
 20 F.S.; requiring report of Small Business Regulatory  
 21 Advisory Council to be included in recommendations of  
 22 Joint Legislative Sunset Committee;; amending s. 11.919;  
 23 requiring agency assistance to Small Business Regulatory  
 24 Advisory Council; authorizing Council to inspect agency  
 25 documents; amending s. 120.54, F.S.; requiring agency to  
 26 prepare statement of estimated regulatory costs; requiring  
 27 agency notification to Small Business Regulatory Advisory

PCB GEAC 08-22

ORIGINAL

YEAR

28 Council relating to proposed agency action affecting small  
 29 business; requiring agency to adopt regulatory  
 30 alternatives offered by Council under certain  
 31 circumstances; providing for rule filing extension when  
 32 regulatory alternatives offered by Council; providing for  
 33 outside review of regulatory alternatives not adopted by  
 34 agency and for agency response; amending s. 120.74, F.S.;  
 35 requiring biennial rule review by agency to consider  
 36 impact of rules on small business and results to be  
 37 included in report to Legislature; providing an effective  
 38 date.

39  
 40 Be It Enacted by the Legislature of the State of Florida:

41  
 42 Section 1. Section 11.9006, Florida Statutes, is created  
 43 to read:

44 11.9006 Small Business Regulatory Advisory Council.--

45 (1) SHORT TITLE.-- This section may be cited as the "Small  
 46 Business Regulatory Relief Act."

47 (2) FINDINGS AND PURPOSE.--

48 (a) A vibrant and growing small business sector is  
 49 critical to creating jobs in a dynamic economy;

50 (b) At times, small businesses bear a disproportionate  
 51 share of regulatory costs and burdens;

52 (c) Fundamental changes that are needed in the regulatory  
 53 culture of state agencies to make them not only more responsive,  
 54 but responsive in a timelier fashion, to small business should

PCB GEAC 08-22

ORIGINAL

YEAR

55 be made without compromising the statutory missions of the  
 56 agencies;

57 (d) When adopting rules to protect the health, safety and  
 58 economic welfare of the state, agencies should seek to achieve  
 59 statutory goals as effectively and efficiently as possible  
 60 without imposing unnecessary burdens on small businesses;

61 (e) Uniform regulatory reporting requirements can impose  
 62 unnecessary and disproportionately burdensome demands, including  
 63 legal, accounting and consulting costs, upon small businesses  
 64 with limited resources;

65 (f) The failure to recognize differences in the scale and  
 66 resources of regulated businesses can adversely affect  
 67 competition in the marketplace, discourage innovation and  
 68 restrict improvements in productivity;

69 (g) Unnecessary rules create entry barriers in many  
 70 industries and discourage potential entrepreneurs from  
 71 introducing beneficial products and processes;

72 (h) The practice of treating all regulated businesses as  
 73 equivalent may lead to inefficient use of agency resources,  
 74 enforcement problems and, in some cases, to actions inconsistent  
 75 with stated legislative intent of health, safety, environmental,  
 76 economic welfare and other legislation; and

77 (i) Alternative regulatory approaches that do not conflict  
 78 with applicable statutes may be available to minimize the  
 79 significant economic impact of rules on small businesses.

80 (3) DEFINITIONS.--As used in this section:

81 (a) "Agency" means an agency as defined in s. 120.52.;

PCB GEAC 08-22

ORIGINAL

YEAR

82 (b) "Council" means the Small Business Regulatory Advisory  
 83 Council.

84 (c) "Rule" means a rule as defined by s. 120.52.

85 (d) "Small business" means a small business as defined in  
 86 s. 288.703.

87 (4) CREATION OF SMALL BUSINESS REGULATORY ADVISORY  
 88 COUNCIL; MEMBERSHIP; POWERS AND DUTIES.--

89 (a) The "Small Business Regulatory Advisory Council" is  
 90 created. The Council shall consist of nine members who are  
 91 current or former small business owners, three appointed by the  
 92 Governor and three each appointed by the President of the Senate  
 93 and the Speaker of the House of Representatives. The initial  
 94 appointments to the council must be made within sixty days from  
 95 the effective date of this act. The members shall be from  
 96 different geographic regions of the state. Members shall serve  
 97 four-year terms; however in order to establish staggered terms,  
 98 for the initial appointments, each appointing official shall  
 99 appoint one member to a two-year term and two members to a four-  
 100 year term. A member shall not serve more than three consecutive  
 101 terms. Members shall select the chairperson from among the  
 102 members of the Council. The Council shall meet quarterly or upon  
 103 the call of the chairperson. A majority of the members  
 104 constitutes a quorum for the conduct of business. Members of the  
 105 council shall serve without compensation. Members are entitled  
 106 to reimbursement for per diem and travel expenses as provided in  
 107 s. 112.061. The appointing official may remove his or her  
 108 appointee without cause at any time. A member whose term has

PCB GEAC 08-22

ORIGINAL

YEAR

109 expired shall continue to serve on the council until such time  
 110 as a replacement is appointed. Vacancies shall be filled for the  
 111 remainder of the term and by the original appointing official.

112 (b) The Council is independent from but administratively  
 113 attached to the Office of Tourism, Trade, and Economic  
 114 Development, which shall provide staff support to the Council.

115 (c) The Council may:

116 1. Provide agencies with recommendations regarding  
 117 proposed rules or programs that may adversely affect small  
 118 business;

119 2. Consider requests from small business owners to review  
 120 rules or programs adopted by an agency; and

121 3. Review rules promulgated by an agency to determine  
 122 whether a rule places an unnecessary burden on small business  
 123 and make recommendations to the agency to mitigate the adverse  
 124 effects.

125 (d) The Council does not have authority to:

126 1. Initiate or intervene in any administrative or judicial  
 127 proceeding; or

128 2. Issue subpoenas.

129 (e) The Council shall prepare and submit a written annual  
 130 report to the Governor, the President of the Senate, and the  
 131 Speaker of the House of Representatives that describes the  
 132 activities and recommendations of the Council.

133 (5) PERIODIC REVIEW OF RULES.--

134 (a) In coordination with the Sunset Review schedule  
 135 provided in s. 11.905, the Council may review rules of agencies

PCB GEAC 08-22

ORIGINAL

YEAR

136 subject to sunset review to determine whether the rules should  
 137 be continued without change or should be amended or repealed to  
 138 reduce the impact of the rules on small businesses, subject to  
 139 the requirement that the recommendations of the Council must be  
 140 feasible and consistent with the stated objectives of the rules.

141 (b) In reviewing agency rules to reduce the impact on  
 142 small businesses, the Council, in coordination with the agency,  
 143 shall consider the following factors:

- 144 1. Continued need for the rule;  
 145 2. The nature of complaints or comments received from the  
 146 public concerning the rule;  
 147 3. The complexity of the rule;  
 148 4. The extent to which the rule overlaps, duplicates or  
 149 conflicts with other federal, state and local government rules;  
 150 and

151 5. The length of time since the rule has been evaluated or  
 152 the degree to which technology, economic conditions or other  
 153 factors have changed in the topical area affected by the rule.

154 (c) Within six months after the agency report is submitted  
 155 to the Joint Legislative Sunset Committee pursuant to s. 11.907,  
 156 the Council shall provide a report to the Governor, the  
 157 President of the Senate, the Speaker of the House of  
 158 Representatives, and the Joint Legislative Sunset Committee that  
 159 includes recommendations and evaluations of agency rules and  
 160 programs regarding regulatory fairness for small businesses. A  
 161 component of the report shall be a rating system, developed by



PCB GEAC 08-22

ORIGINAL

YEAR

162 the Council, entitled "Small Business Friendliness and  
 163 Development Scorecard."

164 Section 2. Section 11.9007, Florida Statutes, is created  
 165 to read:

166 11.9007 SMALL BUSINESS ADVOCATE.--

167 (1) FINDINGS AND PURPOSE.--

168 (a) The Legislature finds and declares that it is in the  
 169 public interest to aid, counsel, assist, and protect, insofar as  
 170 is possible, the interests of small business concerns in order  
 171 to preserve free competitive enterprise and maintain a healthy  
 172 state economy.

173 (b) The Legislature finds that the state should provide a  
 174 point person to advocate the causes of small business and to  
 175 provide small businesses with the information they need to  
 176 survive in the marketplace.

177 (2) DEFINITIONS.--

178 (a) "Advocate" means the Florida Small Business Advocate  
 179 who is also the Director of the Office of Small Business  
 180 Advocate.

181 (b) "Director" means the Director of the Office of Small  
 182 Business Advocate.

183 (c) "Office" means the Office of Small Business Advocate.

184 (3) The Office of Small Business Advocate is created within  
 185 the Office of Tourism, Trade, and Economic Development and the  
 186 director shall be the Florida Small Business Advocate.

187 (4) DIRECTOR OF THE OFFICE OF SMALL BUSINESS ADVOCATE;  
 188 APPOINTMENT; DUTIES.--

PCB GEAC 08-22

ORIGINAL

YEAR

189        (a) The advocate shall be an employee, and may be the  
 190 director, of the Office of Tourism, Trade, and Economic  
 191 Development. Preferred qualifications for the advocate will  
 192 include at least 5 years' experience in small business,  
 193 extensive knowledge of the issues and challenges of importance  
 194 to small business and actual experience in small business  
 195 advocacy and assistance.

196        (b) The duties and functions of the advocate shall include  
 197 all of the following:

198            1. Act as staff for the Small Business Regulatory Advisory  
 199 Council.

200            2. Serve as principal advocate in the state on behalf of  
 201 small businesses, including, but not limited to, advisory  
 202 participation in the consideration of all legislation and  
 203 administrative rules that affect small businesses, and advocacy  
 204 on state policy and programs related to small businesses on  
 205 disaster preparedness and recovery including providing technical  
 206 assistance.

207            3. Represent the views and interests of small businesses  
 208 before agencies whose policies and activities may affect small  
 209 businesses. Among other activities, the advocate may encourage  
 210 standardized applications and information packages that would  
 211 include all the information needed by each agency that a  
 212 business has to deal with to prevent an applicant from having to  
 213 fill out duplicative information on forms from various agencies.

214            4. Enlist the cooperation and assistance of public and  
 215 private agencies, businesses, and other organizations in

PCB GEAC 08-22

ORIGINAL

YEAR

216 disseminating information about the programs and services  
 217 provided by all levels of government that are of benefit to  
 218 small businesses, and information on how small businesses can  
 219 participate in, or make use of, those programs and services.

220 5. Issue a report every two years evaluating the efforts  
 221 of agencies that significantly regulate small businesses, to  
 222 assist minority and other small business enterprises, and to  
 223 make recommendations that may be appropriate to assist the  
 224 development and strengthening of minority and other small  
 225 business enterprises.

226 6. Consult with experts and authorities in the fields of  
 227 small business investment, venture capital investment, and  
 228 commercial banking and other comparable financial institutions  
 229 involved in the financing of business, and with individuals with  
 230 regulatory, legal, economic, or financial expertise, including  
 231 members of the academic community, and individuals who generally  
 232 represent the public interest.

233 7. Seek the assistance and cooperation of all agencies and  
 234 departments providing services to, or affecting, small business,  
 235 to ensure coordination of state efforts.

236 8. Receive and respond to complaints from small businesses  
 237 concerning the actions of agencies and the operative effects of  
 238 state laws and regulations adversely affecting those businesses.  
 239 The advocate shall establish an annual process for small  
 240 businesses to nominate agency rules or programs for reform. The  
 241 advocate shall publish those nominations online and update the  
 242 status of agency action on the proposed reforms twice yearly.

PCB GEAC 08-22

ORIGINAL

YEAR

243 9. Counsel small businesses on how to resolve questions  
 244 and problems concerning the relationship of small business to  
 245 state government.

246 10. Maintain, publicize, and distribute an annual list of  
 247 persons serving as small business ombudsmen throughout state  
 248 government.

249 11. Coordinate a statewide conference on small business  
 250 with public and private organizations and entities impacting  
 251 small business in the state.

252 12. Coordinate annual public meetings to share best  
 253 practices for small business disaster preparedness. The meetings  
 254 shall be held in consultation with regional and statewide small  
 255 business organizations and shall take place in different  
 256 locations throughout the state.

257 (5) REPORTS AND DOCUMENTS FURNISHED TO SMALL BUSINESS  
 258 ADVOCATE; ANNUAL REPORTS.--

259 (a) Each agency of the state shall furnish to the advocate  
 260 the reports, documents, and information that are public records  
 261 and that the director deems necessary to carry out his or her  
 262 functions under this chapter.

263 (b) The advocate shall prepare and submit a written annual  
 264 report to the Governor, the President of the Senate, and the  
 265 Speaker of the House of Representatives that describes the  
 266 activities and recommendations of the office.

267 Section 3. Subsection (2) of section 11.908, Florida  
 268 Statutes, is amended to read:

PCB GEAC 08-22

ORIGINAL

YEAR

269 11.908 Committee duties.--No later than March 1 of the  
 270 year in which a state agency or its advisory committees are  
 271 scheduled to be reviewed, the committee shall and the joint  
 272 committee may:

273 (2) Consult with the Legislative Budget Commission, the  
 274 Small Business Regulatory Advisory Council, relevant substantive  
 275 and appropriations committees of the Senate and the House of  
 276 Representatives, the Governor's Office of Policy and Budgeting,  
 277 the Auditor General, and the Chief Financial Officer, or their  
 278 successors, relating to the review of the agency and its  
 279 advisory committees.

280 Section 4. Paragraph (a) of subsection (2) of section  
 281 11.911, Florida Statutes, is amended to read:

282 11.911 Committee recommendations.--

283 (2) In its report on a state agency, the joint committee  
 284 shall:

285 (a) Make recommendations on the abolition, continuation,  
 286 or reorganization of each state agency and its advisory  
 287 committees and on the need for the performance of the functions  
 288 of the agency and its advisory committees. If the committee  
 289 recommends continuation or reorganization, the committee shall  
 290 include in its recommendations the report of the Small Business  
 291 Regulatory Advisory Council as provided in s. 11.9006, regarding  
 292 the rules of each agency.

293 Section 5. Section 11.919, Florida Statutes, is amended to  
 294 read:

295 11.919 Assistance of and access to state agencies.--

PCB GEAC 08-22

ORIGINAL

YEAR

296 (1) The committee and the Small Business Regulatory  
 297 Advisory Council may access or request information and request  
 298 the assistance of state agencies and officers. When assistance  
 299 is requested, a state agency or officer shall assist the  
 300 committee and the Small Business Regulatory Advisory Council.

301 Section 6. Paragraph (b) of subsection (3) of section  
 302 120.54, Florida Statutes, is amended to read:

303 120.54 Rulemaking.--

304 (3) ADOPTION PROCEDURES.--

305 (b) Special matters to be considered in rule adoption.--

306 1. Statement of estimated regulatory costs.--Prior to the  
 307 adoption, amendment, or repeal of any rule other than an  
 308 emergency rule, an agency is encouraged to prepare a statement  
 309 of estimated regulatory costs of the proposed rule, as provided  
 310 by s. 120.541. However, an agency shall prepare a statement of  
 311 estimated regulatory costs of the proposed rule, as provided by  
 312 s. 120.541, if the proposed rule will have an impact on small  
 313 business.

314 2. Small businesses, small counties, and small cities.--

315 a. Each agency, before the adoption, amendment, or repeal  
 316 of a rule, shall consider the impact of the rule on small  
 317 businesses as defined by s. 288.703 and the impact of the rule  
 318 on small counties or small cities as defined by s. 120.52.  
 319 Whenever practicable, an agency shall tier its rules to reduce  
 320 disproportionate impacts on small businesses, small counties, or  
 321 small cities to avoid regulating small businesses, small  
 322 counties, or small cities that do not contribute significantly

PCB GEAC 08-22

ORIGINAL

YEAR

323 | to the problem the rule is designed to address. An agency may  
 324 | define "small business" to include businesses employing more  
 325 | than 100 persons, may define "small county" to include those  
 326 | with populations of more than 75,000, and may define "small  
 327 | city" to include those with populations of more than 10,000, if  
 328 | it finds that such a definition is necessary to adapt a rule to  
 329 | the needs and problems of small businesses, small counties, or  
 330 | small cities. The agency shall consider each of the following  
 331 | methods for reducing the impact of the proposed rule on small  
 332 | businesses, small counties, and small cities, or any combination  
 333 | of these entities:

- 334 |       (I) Establishing less stringent compliance or reporting  
 335 | requirements in the rule.
- 336 |       (II) Establishing less stringent schedules or deadlines in  
 337 | the rule for compliance or reporting requirements.
- 338 |       (III) Consolidating or simplifying the rule's compliance  
 339 | or reporting requirements.
- 340 |       (IV) Establishing performance standards or best-management  
 341 | practices to replace design or operational standards in the  
 342 | rule.
- 343 |       (V) Exempting small businesses, small counties, or small  
 344 | cities from any or all requirements of the rule.

345 |       b.(I) If the agency determines that the proposed action  
 346 | will affect small businesses as defined by the agency as  
 347 | provided in sub-subparagraph a., the agency shall send written  
 348 | notice of the rule to the Small Business Regulatory Advisory  
 349 | Council~~small business ombudsman of the Office of Tourism, Trade,~~

PCB GEAC 08-22

ORIGINAL

YEAR

350 ~~and Economic Development~~ not less than 28 days prior to the  
 351 intended action.

352 (II) Each agency shall adopt those regulatory alternatives  
 353 offered by the Small Business Regulatory Advisory Council  
 354 ~~ombudsman~~ and provided to the agency no later than 21 days after  
 355 the Council's ombudsman's receipt of the written notice of the  
 356 rule which it finds are feasible and consistent with the stated  
 357 objectives of the proposed rule and which would reduce the  
 358 impact on small businesses. When regulatory alternatives are  
 359 offered by the Small Business Regulatory Advisory  
 360 Council's ombudsman, the 90-day period for filing the rule in  
 361 subparagraph (e)2. is extended for a period of 21 days.

362 (III) If an agency does not adopt all alternatives offered  
 363 pursuant to this sub-subparagraph, it shall, prior to rule  
 364 adoption or amendment and pursuant to subparagraph (d)1., file a  
 365 detailed written statement with the committee explaining the  
 366 reasons for failure to adopt such alternatives. Within 3 working  
 367 days of the filing of such notice, the agency shall send a copy  
 368 of such notice to the Small Business Regulatory Advisory Council  
 369 ~~ombudsman~~. The Small Business Regulatory Advisory Council may  
 370 request that the Office of Program Policy Analysis and  
 371 Government Accountability determine whether the rejected  
 372 alternatives reduce the impact on small business while meeting  
 373 the stated objectives of the proposed rule. Within 30 days after  
 374 the date of the request, the Office of Program Policy Analysis  
 375 and Government Accountability shall report to the Administrative  
 376 Procedures Committee its findings as to whether an alternative



PCB GEAC 08-22

ORIGINAL

YEAR

377 | reduces the impact on small business while meeting the stated  
 378 | objectives of the proposed rule. The Office of Program Policy  
 379 | Analysis and Government Accountability shall consider the  
 380 | proposed rule, the economic impact statement, the written  
 381 | statement of the agency, the proposed alternatives, and any  
 382 | comment submitted during the comment period on the proposed  
 383 | rule. The Administrative Procedures Committee shall report such  
 384 | findings to the agency and the agency shall respond in writing  
 385 | to the Administrative Procedures Committee if the Office of  
 386 | Program Policy Analysis and Government Accountability found that  
 387 | the alternative reduced the impact on small business while  
 388 | meeting the stated objectives of the proposed rule. If the  
 389 | agency will not adopt the alternative, it must also provide a  
 390 | detailed written statement to the Administrative Procedures  
 391 | Committee as to why it will not adopt the alternative.

392 |       Section 7. Subsection (1) of section 120.74, Florida  
 393 | Statutes, is amended to read:

394 |       120.74 Agency review, revision, and report.--

395 |       (1) Each agency shall review and revise its rules as often  
 396 | as necessary to ensure that its rules are correct and comply  
 397 | with statutory requirements. Additionally, each agency shall  
 398 | perform a formal review of its rules every 2 years. In the  
 399 | review, each agency must:

- 400 |       (a) Identify and correct deficiencies in its rules;
- 401 |       (b) Clarify and simplify its rules;
- 402 |       (c) Delete obsolete or unnecessary rules;
- 403 |       (d) Delete rules that are redundant of statutes;

PCB GEAC 08-22

ORIGINAL

YEAR

404 (e) Seek to improve efficiency, reduce paperwork, or  
 405 decrease costs to government and the private sector; and

406 (f) Contact agencies that have concurrent or overlapping  
 407 jurisdiction to determine whether their rules can be coordinated  
 408 to promote efficiency, reduce paperwork, or decrease costs to  
 409 government and the private sector.

410 (g) Determine whether the rules should be continued  
 411 without change or should be amended or repealed to reduce the  
 412 impact on small business while meeting the stated objectives of  
 413 the proposed rule.

414 (2) Beginning October 1, 1997, and by October 1 of every  
 415 other year thereafter, the head of each agency shall file a  
 416 report with the President of the Senate, the Speaker of the  
 417 House of Representatives, and the committee, with a copy to each  
 418 appropriate standing committee of the Legislature, which  
 419 certifies that the agency has complied with the requirements of  
 420 this subsection. The report must specify any changes made to its  
 421 rules as a result of the review and, when appropriate, recommend  
 422 statutory changes that will promote efficiency, reduce  
 423 paperwork, or decrease costs to government and the private  
 424 sector. The report must specifically address the economic impact  
 425 of the rules on small business. The report must identify the  
 426 types of cases or disputes in which the agency is involved which  
 427 should be conducted under the summary hearing process described  
 428 in s. 120.574.

429 Section 8. This act shall take effect July 1, 2008.







## 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:

##### County Budget Process.

There are several key participants in the county budget process: the Board of County Commissioners; Sheriff; Property Appraiser; Tax Collector; Supervisor of Elections; Clerk; Office of Management and Budget; Stakeholders – Taxpayers; and County Operating Departments.

The components of a county's general fund include:

- Departments of the Board of County Commissioners;
- Elected Officials;
- Article V – State Courts;
- Mandated Programs;
- Agency Funding; and
- Reserves.

Section 129.01, F.S., establishes the budget process for counties. It provides, among other things, that an annual budget must be prepared, approved, adopted, and executed for each fiscal year ending September 30. The budget must be created using sound financial practices and generally accepted accounting principles. The budget controls the levy of taxes and the expenditure of money for all county purposes during the ensuing fiscal year. Each budget must conform to the following general directions and requirements:

- (a) The budget shall be prepared, summarized, and approved by the board of county commissioners of each county.
- (b) The budget must be balanced
- (c) Provision may be made for the following reserves:
  1. A reserve for contingencies may be provided in a sum not to exceed 10 percent of the total of the budget.
  2. A reserve for cash balance to be carried over may be provided for the purpose of paying expenses from October 1 of the ensuing fiscal year until the time when the revenues for that year are expected to be available. This reserve may be not more than 20 percent of the total receipts and balances of the budget.
- (d) An appropriation for "outstanding indebtedness" shall be made to provide for the payment of vouchers which have been incurred in and charged against the budget for the current year or a prior year, but which are expected to be unpaid at the beginning of the ensuing year for which the budget is being prepared.
- (e) Any surplus arising from an excess of the estimated cash balance over the estimated amount of unpaid obligations to be carried over in a fund at the end of the current fiscal year may be transferred to any of the other funds of the county, and the amount so transferred shall be budgeted as a receipt to such other funds; provided, that no such surplus in a fund raised for debt service shall be transferred to another fund, except to a fund raised for the same purposes in the same territory, unless the debt of such territory has been extinguished, in which case it may be transferred to any other fund raised for that territory; provided, further, that no such surplus in a capital outlay reserve fund may be transferred to another fund until such time as the

projects for which such capital outlay reserve fund was raised have been completed and all obligations paid.

Section 129.02, F.S., requires each budget to conform to the following specific directions:

The general fund budget, the county transportation trust fund budget, the budget for county fine and forfeiture, and the capital outlay reserve fund must contain an estimate of receipts by source.<sup>1</sup> A bond interest and sinking fund budget must be made for each county and for each special district included within the county budget having bonds outstanding. The budget must contain an estimate of receipts by source, including any taxes authorized by law to be levied for that purpose, and including any balances brought forward, and an itemized estimate of expenditures and reserves.<sup>2</sup> For each special district included within the county budget, the operating fund budget must contain an estimate of receipts by source and balances and an itemized estimate of expenditures that will need to be incurred to carry on all functions and activities of the special district.<sup>3</sup>

In preparing and adopting a budget, a county has some additional duties described as follows:

Upon receipt of the tentative budgets and completion of any revisions made by the board, the board must prepare a statement summarizing all of the adopted tentative budgets. This summary statement shall show, for each budget and the total of all budgets, the proposed tax millages, the balances, the reserves, and the total of each major classification of receipts and expenditures, classified according to the classification of accounts prescribed by the appropriate state agency. The board shall cause this summary statement to be advertised one time in a newspaper of general circulation published in the county, or by posting at the courthouse door if there is no such newspaper, and the advertisement shall appear adjacent to the advertisement required pursuant to s. 200.065.<sup>4</sup> The tentative budgets, adopted tentative budgets, and final budgets shall be filed in the office of the county auditor as a public record.<sup>5</sup>

#### Municipal Budget Process.

The statutory provisions for the municipal budget process are not as defined as for the county process.<sup>6</sup> Each municipality is required to follow the same fiscal year as counties, beginning October 1 of each year and ending September 30 of the following year. The governing body of each municipality is required to adopt a budget each fiscal year. The budget must be adopted by ordinance or resolution unless otherwise specified in the respective municipality's charter. The amount available from taxation and other sources, including amounts carried over from prior fiscal years, must equal the total appropriations for expenditures and reserves. The budget must regulate expenditures of the municipality.

The governing body of each municipality at any time within a fiscal year or within up to 60 days following the end of the fiscal year may amend a budget for that year as follows:

- (a) Appropriations for expenditures within a fund may be decreased or increased by motion recorded in the minutes, provided that the total of the appropriations of the fund is not changed.

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<sup>1</sup> See statute text for further specifics.

<sup>2</sup> Section 129.02(5), F.S.

<sup>3</sup> Section 129.02(6), F.S.

<sup>4</sup> Section 129.03(3)(b), F.S.

<sup>5</sup> Section 129.03(3)(c), F.S.

<sup>6</sup> Section 166.241, F.S.

- (b) The governing body may establish procedures by which the designated budget officer may authorize certain budget amendments within a department, provided that the total of the appropriations of the department is not changed.
- (c) If a budget amendment is required for a purpose not specifically authorized in paragraph (a) or paragraph (b), the budget amendment must be adopted in the same manner as the original budget unless otherwise specified in the charter of the respective municipality.

### Special District Budget Process.

Section 189.418, F.S., establishes the budget process for special districts which are similar to the municipal budget requirements. The governing body of each special district must adopt a budget by resolution each fiscal year. The total amount available from taxation and other sources, including amounts carried over from prior fiscal years, must equal the total of appropriations for expenditures and reserves. The adopted budget must regulate expenditures of the special district. The proposed budget of a dependent special district shall be presented in accordance with generally accepted accounting principles, contained within the general budget of the local governing authority, and be clearly stated as the budget of the dependent district. However, with the concurrence of the local governing authority, a dependent district may be budgeted separately.

The governing body of each special district at any time within a fiscal year or within up to 60 days following the end of the fiscal year may amend a budget for that year. The budget amendment must be adopted by resolution.

### Budget Preparation Timetable and Important Dates<sup>7</sup>

The Property Appraiser shall deliver to the presiding officer of each Taxing Authority within the county, on June 1, an estimate of the total assessed value of nonexempt property for the current year for budget planning purposes.<sup>8</sup>

The time periods specified below are considered directory and may be shortened provided: The Property Appraiser coordinates the shortening of time periods and gives written notice to all affected taxing authorities; however, no Taxing Authority shall be denied its right to the full time periods allowed.

DAY 1 is JULY 1, or Date of Certification, whichever is LATER

#### DAY

- 1=July 1      The Property Appraiser certifies the taxable value within the jurisdiction of the Taxing Authority on Forms DR-420 and DR-420S, to each Taxing Authority.
- 15=July 15      Within 15 days of certification of value, the county Board of County Commissioner's (BCC) budget officer submits a tentative budget to the board.<sup>9</sup>
- 35=August 4      Within 35 days of certification of value, each Taxing Authority shall advise the Property Appraiser of:
- Prior year millage rate
  - Current year proposed millage rate.
  - Current year rolled-back rate (computed pursuant to s. 200.065, F.S.).
  - The date, time and meeting place of the tentative budget hearing.

#### Hearing Dates With July 1 Certification:

<sup>7</sup> Some items are county specific where noted.

<sup>8</sup> s. 193.085(4), F.S.

<sup>9</sup> s. 129.03(3), F.S.



- No sooner than September 3, and no later than September 18 (Hearings are to be held within 80 days of certification of value, but not earlier than 65 days after certification.)
- Hearings can be held Monday through Friday and have to be held after 5:00 p.m.
- Hearings can be held any time on Saturday.
- Hearings can never be held on Sunday.
- The county commission shall not schedule its hearings on the same day scheduled by a school district.
- No Taxing Authority (except multi-county/water management districts) can hold a hearing on the same day as a school district and county commission.

If a Taxing Authority fails to provide the information required above within 35 days, the Taxing Authority shall be prohibited from levying a millage rate greater than the rolled-back rate for the upcoming year. The rolled-back rate shall be computed by the Property Appraiser and used in preparing the notice of proposed property taxes.<sup>10</sup>

55=August 24 Not later than 55 days after certification of value the Property Appraiser shall mail out the Notice of Proposed Property Taxes (TRIM Notice) pursuant to section 200.069, F.S.

- If a review notice has been issued pursuant to section 193.1142, F.S., the TRIM Notice may not be sent until the Department has approved the assessment roll.

80=September 3/September 18

Within 80 days of certification of value but not earlier than 65 days after certification, the Taxing Authority shall hold a public hearing on the tentative budget and proposed millage rate. This hearing is publicized via the TRIM Notice mailed out by the Property Appraiser.

- At this hearing, the Taxing Authority will amend and adopt the tentative budget, re-compute its proposed millage rate, and publicly announce the percent, if any, by which the re-computed proposed millage exceeds the rolled-back rate.
- Adopt a tentative millage and budget.
- If the millage rate tentatively adopted exceeds the proposed rate (as presented in the TRIM Notice), each taxpayer within the jurisdiction shall be notified of the increase by first class mail, at the expense of the Taxing Authority.

95=September 18/October 3

Within 15 days after the meeting adopting the tentative budget, the Taxing Authority shall advertise its intent to adopt a final millage and budget.

- If a millage rate greater than the rolled-back rate has been tentatively adopted, the advertisement shall be 1/4 page, and headed NOTICE OF PROPOSED TAX INCREASE.<sup>11</sup>
- If the tentative millage rate is equal to or less than the rolled-back rate, the advertisement shall be headed NOTICE OF BUDGET HEARING, with no size requirement.<sup>12</sup>
- In addition to the advertisement publicizing the final hearing, an adjacent notice meeting the budget summary requirements of s. 129.03(3) (b), F.S., shall also be published.<sup>13</sup>
- If the proposed operating budget expenditures for the upcoming year are greater than those for the current year, the following statement shall appear in the Budget Summary advertisement in bold faced type immediately following the heading.<sup>14</sup>

<sup>10</sup> s. 200.065(2) (b), F.S.

<sup>11</sup> (s. 200.065(3) (a), F.S.)

<sup>12</sup> s. 200.065(3) (b), F.S.

<sup>13</sup> s. 200.065(3) (1), F.S.

<sup>14</sup> s. 200.065(3)(l), F.S.

THE PROPOSED OPERATING BUDGET EXPENDITURES OF (name of Taxing Authority) ARE (percent rounded to one decimal place) MORE THAN LAST YEAR'S TOTAL OPERATING EXPENDITURES.

97/100

- A public hearing to adopt a final millage rate and budget shall be held not less than 2 days or more than 5 days after the day that the advertisement is first published.<sup>15</sup>
- The first substantive issue discussed shall be the percentage increase in millage over the rolled-back rate.
  - The adoption of the millage and budget shall be by separate votes with the millage adopted first, budget adopted second.
  - In no event shall the millage rate adopted exceed the millage rate tentatively adopted.
  - Prior to the adoption of the millage-levy resolution or ordinance, the name of the Taxing Authority, the rolled-back rate, the percentage increase over the rolled-back rate, and the millage rate to be levied shall be publicly announced.

**WITHIN 3 DAYS OF FINAL HEARING**

The resolution or ordinance adopting the final millage rate shall be forwarded to the Property Appraiser and the Tax Collector.

- No millage other than approved by referendum may be levied until the resolution or ordinance to levy is approved by the governing board of the Taxing Authority and submitted to the Property Appraiser and the Tax Collector.
- The receipt of the resolution or ordinance by the Property Appraiser shall be considered official notice of the millage rate approved by the Taxing Authority.<sup>16</sup> Prior to the extension of the rolls, the Property Appraiser shall notify each Taxing Authority of the aggregate change in the assessment roll, if any, from the preliminary roll, including but not limited to, those changes which result from actions by the value adjustment board or from correction of errors in the assessment roll.

WITHIN 3 DAYS after receipt of Certification of Final Taxable Value (Form DR-422), Taxing Authority completes and certifies final millage(s) to Property Appraiser.

**WITHIN 30 DAYS OF FINAL HEARING**

No later than 30 days following adoption of its millage and budget ordinances or resolutions, each Taxing Authority shall certify that they have complied with the provisions of Chapter 200, F.S., to the Property Tax Administration Program, Florida Department of Revenue.

Remaining Fund Balances.

The Government Finance Officers Association has published the following:<sup>17</sup>

The adequacy of unreserved fund balance in the general fund should be assessed based upon a government's own specific circumstances. Nevertheless, GFOA recommends, at a minimum, that general-purpose governments, regardless of size, maintain unreserved fund balance in their general fund of no less than five to 15 percent of regular general fund operating revenues, or of no less than one to two months of regular general fund operating expenditures. A government's particular situation may require levels of unreserved fund balance in the general fund significantly in excess of these recommended minimum levels. Furthermore, such measures should be applied within the context of long-term forecasting, thereby avoiding the risk of placing too much

<sup>15</sup> s. 200.065(2), F.S.

<sup>16</sup> s. 200.065(4), F.S.

<sup>17</sup> Excerpts from GFOA

emphasis upon the level of unreserved fund balance in the general fund at any one time.<sup>18</sup>

### Budget Reporting Projects.

The Association of Government Accountants (AGA) has established the Citizen-Centric government financial reporting project. The project is described as follows:

AGA's Citizen-Centric Government Reporting project encourages governments to publish short reports that give citizens a better understanding of their government and inform a more meaningful debate about fiscal priorities, performance results and future challenges.

Citizen-Centric Reporting is driven by the fact that governments exist to serve their citizens. Citizens have the right to understand how their government operates and whether their tax dollars are being spent efficiently and effectively. Governments have the responsibility to provide that information in an easily understandable way.

This initiative encourages governments to publish an annual "state of the government" report that is no more than four pages long. The reports, designed to be visually appealing, provide understandable information to citizens about the performance and financial condition of the government as well as demographics and future challenges that answer the question, "Are we better off today than we were last year?"<sup>19</sup>

### **Effect of Proposed Changes**

PCB 24 requires the same level of budget detail and disclosure to residents in all three local government entities, counties, municipalities, and special districts. The bill defines the terms "fund", "object of expenditure", and "spending entity" the same for all three local government entities. Fund means a fiscal and accounting entity with a self-balancing set of accounts which are recorded and segregated to carry on specific activities or to attain certain objectives in accordance with special regulations, restrictions, or limitations. Object of expenditure means the classification of fund data by character of expenditure, which includes, but is not limited to, personal services, purchased services, debt service, supplies, capital outlay, grants, and transfers. Spending entity, as designated by the county, means any office, unit, department, board, commission, or institution which is responsible for any particular expenditures or receipts.

The bill requires a complete financial plan by fund and by spending entity within each fund for the fiscal year for all three entities. The budget must set out the following:

- All proposed expenditures for administration, operations, maintenance, debt service, and capital projects to be undertaken or executed during the fiscal year;
- Anticipated revenues for the fiscal year;
- Estimated beginning and ending fund balances;
- Disclosure of previous year, current year, and projections of following year's budget;
- Explanatory schedules and revenues by source; and
- Limit unreserved undesignated fund balance to ten percent for securing and maintaining investment grade ratings, meeting seasonal shortfalls in cash flow, and reducing susceptibility

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<sup>18</sup> GFOA Paper: Appropriate Level of Unreserved Fund Balance in the General Fund (2002). Approved by the Committee on Accounting, Auditing and Financial Reporting and the Committee on Governmental Budgeting and Management, January 30, 2002. Approved by the Executive Board, February 15, 2002. Located at <http://www.gfoa.org/downloads/budget-appropriate.pdf> last visited on March 16, 2008.

<sup>19</sup> Association of Government Accountant's website located at <http://www.agacgfm.org/citizen/downloads/CitizenCentricFactSheet.pdf>, last visited March 16, 2008.

to emergency or unanticipated expenditures or revenue shortfalls. Any remaining balance may not be used to increase expenditures within the budget but must be carried forward.

The bill also requires a no-more-than four page written budget message describing the important features of the proposed budget, including the budgetary basis of accounting used and a description of the services to be delivered during the fiscal year. This message must be made available to the residents in the particular local government and must be posted online if the local government already has web capability.

Additionally, the bill requires a municipality or special district to publish a summary budget statement in a newspaper or in a public location if there is no newspaper. Current law already requires counties to follow this procedure. Further, the bill requires the tentative, adopted tentative, final budgets, and summary budget statements of all three local government entities to be posted online if the local government already has web capability.

**C. SECTION DIRECTORY:**

Section 1: Amending s. 129.02, F.S., relating to county budget requisites.

Section 2: Amends s. 129.021, F.S., relating to county officer budget information.

Section 3: amends s. 129.03, F.S., relating to county preparation and adoption of budget.

Section 4: Amends s. 166.241, F.S. relating to municipal budgets.

Section 5: amends s. 189.418, F.S., relating to special district budgets.

Section 6: provides an effective date of October 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:

Local governments will be required to expend an indeterminate nominal amount to produce the not-to-exceed four page budget message. Local governments will also have to expend an indeterminate amount to post budgets online for those local governments with existing web capability.

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

Residents of local governments will have access to an easy to understand and read budget message which will provide greater transparency of how their local government spends their tax dollars.

**D. FISCAL COMMENTS:**

Although local governments will have to expend some indeterminate amount on producing a budget message and posting budgets online if they already have web capability, the cost is expected to be nominal.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The mandate provision appears to apply because the bill requires municipalities to publish the summary statement in newspapers; however, an exemption applies because the incremental cost of publication presents and insignificant fiscal impact.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**D. STATEMENT OF THE SPONSOR**

Not applicable.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**



PCB GEAC 08-24

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to local government budgets; amending s.  
 3 129.02, F.S.; providing definitions; requiring detailed  
 4 budget; providing budget criteria; requiring budget  
 5 message; amending s. 129.021, F.S.; requiring compliance  
 6 by county officers with detailed budget requirement;  
 7 amending s. 129.03, F.S.; requiring notice of increase or  
 8 decrease in budgeted accounts in published summary and  
 9 requiring online availability of summary under certain  
 10 circumstances; requiring online availability of budgets  
 11 under certain circumstances; amending s. 166.241, F.S.;  
 12 providing definitions; requiring online availability of  
 13 budgets under certain circumstances; requiring detailed  
 14 budget of municipalities; providing budget criteria;  
 15 requiring budget message; requiring budget to be filed as  
 16 public record with a designated public office within  
 17 boundaries of municipality; requiring summary statement to  
 18 be published and requiring online availability of summary  
 19 under certain circumstances; amending s. 189.418, F.S.;  
 20 providing definitions; requiring detailed budget of  
 21 special districts; providing budget criteria; requiring  
 22 budget message; requiring budget to be filed as public  
 23 record in designated public office within or near special  
 24 district boundaries; requiring online availability of  
 25 budgets under certain circumstances; requiring summary  
 26 statement to be published and requiring online  
 27 availability of summary under certain circumstances;  
 28 providing an effective date.

PCB GEAC 08-24

ORIGINAL

YEAR

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

Section 1. Section 129.02, Florida Statutes, is amended to read:

129.02 Requisites of budgets.--Each budget shall conform to the following specific directions and requirements:

(1) DEFINITIONS.--As used in this section, the term:

(a) "Fund" means a fiscal and accounting entity with a self-balancing set of accounts which are recorded and segregated to carry on specific activities or to attain certain objectives in accordance with special regulations, restrictions, or limitations.

(b) "Object of expenditure" means the classification of fund data by character of expenditure. "Object of expenditure" includes, but is not limited to, personal services, purchased services, debt service, supplies, capital outlay, grants, and transfers.

(c) "Spending entity," as designated by the county, means any office, unit, department, board, commission, or institution which is responsible for any particular expenditures or receipts.

(2±) (a) General fund budget shall contain an estimate of receipts by source, including any taxes now or hereafter authorized by law to be levied for any countywide purpose, except those countywide purposes provided for in the budgets enumerated below, any tax millage limitation to the contrary notwithstanding, and including any balance brought forward as



PCB GEAC 08-24

ORIGINAL

YEAR

57 provided herein; and an itemized estimate of expenditures that  
 58 will need to be incurred to carry on all functions and  
 59 activities of the county government now or hereafter authorized  
 60 by law, except those functions and activities provided for in  
 61 the budgets enumerated below, and of unpaid vouchers of the  
 62 general fund; also of the reserve for contingencies and of the  
 63 balances, as hereinbefore provided, which should be carried  
 64 forward at the end of the year. Further, the budget shall  
 65 present a complete financial plan by fund and by spending entity  
 66 within each fund for the fiscal year and shall set forth the  
 67 following:

68 1. All proposed expenditures for administration,  
 69 operations, maintenance, debt service, and capital projects  
 70 to be undertaken or executed by any spending entity during  
 71 the fiscal year;

72 2. Estimated beginning and ending fund balances;

73 3. The corresponding actual figures for the prior  
 74 fiscal year, estimated figures projected through the end of  
 75 the current fiscal year, including disclosure of all  
 76 beginning and ending fund balances, consistent with the  
 77 basis of accounting used to prepare the budget, and  
 78 projections for the next fiscal year;

79 4. Explanatory schedules or statements classifying  
 80 the objects of expenditure and the receipts by source; and

81 5. The unreserved undesignated fund balance, of not more  
 82 than ten (10.0%) percent of operating expenses, necessary to  
 83 secure and maintain investment grade credit ratings, meet  
 84 seasonal shortfalls in cash flow, and reduce susceptibility to

PCB GEAC 08-24

ORIGINAL

YEAR

85 emergency or unanticipated expenditures or to revenue  
 86 shortfalls. Any remaining fund balance shall not be used to  
 87 increase expenditures within the budget, but shall be carried  
 88 forward to the next fiscal year in furtherance of the fund.

89 (b) A county shall prepare a written budget message, not  
 90 to exceed four pages, describing the important features of the  
 91 proposed budget. The message shall include an overview of the  
 92 county, a description of the previous fiscal year's performance,  
 93 a review of the current fiscal year's revenues and expenditures,  
 94 and an economic outlook and future challenges or objectives  
 95 description. The message must include within it a statement of  
 96 the budgetary basis of accounting used and a description of the  
 97 services to be delivered during the fiscal year. The County  
 98 shall make the message available to county residents and post  
 99 the message prominently online if the county has web capability.

100 (32) The County Transportation Trust Fund budget shall  
 101 contain an estimate of receipts by source and balances as  
 102 provided herein, and an itemized estimate of expenditures that  
 103 need to be incurred to carry on all work on roads and bridges in  
 104 the county except that provided for in the capital outlay  
 105 reserve fund budget and in district budgets pursuant to this  
 106 chapter, and of unpaid vouchers of the County Transportation  
 107 Trust Fund; also of the reserve for contingencies and the  
 108 balance, as hereinbefore provided, which should be carried  
 109 forward at the end of the year.

110 (43) The budget for the county fine and forfeiture fund  
 111 shall contain an estimate of receipts by source and balances as  
 112 provided herein, and an itemized estimate of expenditures that

PCB GEAC 08-24

ORIGINAL

YEAR

113 need to be incurred to carry on all criminal prosecution, and  
 114 all other law enforcement functions and activities of the county  
 115 now or hereafter authorized by law, and of indebtedness of the  
 116 county fine and forfeiture fund; also of the reserve for  
 117 contingencies and the balance, as hereinbefore provided, which  
 118 should be carried forward at the end of the year.

119       (54) (a) Capital outlay reserve fund budget shall contain  
 120 an estimate of receipts by source, including any taxes  
 121 authorized by law to be levied for that purpose, and including  
 122 any balance brought forward as provided for herein; and an  
 123 itemized estimate of expenditures for capital purposes to give  
 124 effect to general improvement programs. It shall be a plan for  
 125 the expenditure of funds for capital purposes, showing as income  
 126 the revenues, special assessments, borrowings, receipts from  
 127 sale of capital assets, free surpluses, and down payment  
 128 appropriation to be applied to the cost of a capital project or  
 129 projects, expenses of issuance of obligations, engineering,  
 130 supervision, contracts, and any other related expenditures. It  
 131 may contain also an estimate for the reserves as hereinbefore  
 132 provided and for a reserve for future construction and  
 133 improvements. No expenditures or obligations shall be incurred  
 134 for capital purposes except as appropriated in this budget,  
 135 except for the preliminary expense of plans, specifications and  
 136 estimates.

137       (b) Under the provision herein set forth, a separate  
 138 capital budget may be adopted for each special district included  
 139 within the county budget, or a consolidated capital budget may  
 140 be adopted providing for the consolidation of capital projects

PCB GEAC 08-24

ORIGINAL

YEAR

141 of the county and of the special districts included within the  
 142 county budget into one budget, treating borrowed funds and other  
 143 receipts as special revenue earmarked for capital projects as  
 144 separately itemized appropriation for each district special  
 145 project or county project, as the case may be.

146 (c) Any funds in the capital budget not required to meet  
 147 the current construction cost of any project may be invested in  
 148 any securities of the Federal Government or in securities of any  
 149 county of the state pledging the full faith and credit of such  
 150 county or pledging such county's share of the gas tax provided  
 151 for in s. 16 of Art. IX of the Constitution of 1885 as adopted  
 152 by the 1968 revised constitution or in s. 9, Art. XII of said  
 153 revision.

154 (65) A bond interest and sinking fund budget shall be made  
 155 for each county and for each special district included within  
 156 the county budget having bonds outstanding. The budget shall  
 157 contain an estimate of receipts by source, including any taxes  
 158 authorized by law to be levied for that purpose, and including  
 159 any balances brought forward as provided herein; and an itemized  
 160 estimate of expenditures and reserves as follows: The bond  
 161 interest and principal maturities in the year for which the  
 162 budget is made shall be determined and estimates for expenses  
 163 connected with the payments of such bonds and coupons,  
 164 commissions of the tax collector, and of the property appraiser,  
 165 and expenses of refunding operations, if any are contemplated,  
 166 shall be appropriated. A sufficient "cash balance to be carried  
 167 over" may be reserved as set forth hereinbefore. The sinking  
 168 fund requirements provided for in the said reserve may be

PCB GEAC 08-24

ORIGINAL

YEAR

169 carried over either in cash or in securities of the Federal  
 170 Government and of the local governments in Florida, or both.

171 (76) For each special district included within the county  
 172 budget, the operating fund budget shall contain an estimate of  
 173 receipts by source and balances as provided herein, and an  
 174 itemized estimate of expenditures that will need to be incurred  
 175 to carry on all functions and activities of the special district  
 176 as now or hereafter provided by law and of the indebtedness of  
 177 the special district; also of the reserves for contingencies and  
 178 the balances, as hereinbefore provided, which should be carried  
 179 forward at the end of the year.

180 Section 2. Section 129.021, Florida Statutes, is amended  
 181 to read:

182 129.021 County officer budget information.--  
 183 Notwithstanding other provisions of law, the budgets of all  
 184 county officers, as submitted to the board of county  
 185 commissioners, shall be in sufficient detail and contain such  
 186 information as the board of county commissioners may require in  
 187 furtherance of their powers and responsibilities provided in ss.  
 188 125.01(1)(q) and (r) and (6), and 129.01(2)(b), and 129.02(2).

189 Section 3. Paragraph (b) of subsection (3) of section  
 190 129.03, Florida Statutes, is amended to read:

191 129.03 Preparation and adoption of budget.--

192 (3) No later than 15 days after certification of value by  
 193 the property appraiser pursuant to s. 200.065(1), the county  
 194 budget officer, after tentatively ascertaining the proposed  
 195 fiscal policies of the board for the ensuing fiscal year, shall  
 196 prepare and present to the board a tentative budget for the

PCB GEAC 08-24

ORIGINAL

YEAR

197 ensuing fiscal year for each of the funds provided in this  
 198 chapter, including all estimated receipts, taxes to be levied,  
 199 and balances expected to be brought forward and all estimated  
 200 expenditures, reserves, and balances to be carried over at the  
 201 end of the year.

202 (b) Upon receipt of the tentative budgets and  
 203 completion of any revisions made by the board, the board  
 204 shall prepare a statement summarizing all of the adopted  
 205 tentative budgets. This summary statement shall show, for  
 206 each budget ~~and~~ the total of all budgets, the proposed tax  
 207 millages, the balances, the reserves, and the total of each  
 208 major classification of receipts and expenditures,  
 209 classified according to the classification of accounts  
 210 prescribed by the appropriate state agency, and a brief  
 211 explanation of any increase or decrease by account. The  
 212 board shall cause this summary statement to be advertised  
 213 one time in a newspaper of general circulation published in  
 214 the county, or by posting at the courthouse door if there  
 215 is no such newspaper, and the advertisement shall appear  
 216 adjacent to the advertisement required pursuant to s.  
 217 200.065. For those counties that have websites, the county  
 218 shall make the summary statement available online when  
 219 published in the newspaper.

220 (c) The board shall hold public hearings to adopt  
 221 tentative and final budgets pursuant to s. 200.065. The hearings  
 222 shall be primarily for the purpose of hearing requests and  
 223 complaints from the public regarding the budgets and the  
 224 proposed tax levies and for explaining the budget and proposed

PCB GEAC 08-24

ORIGINAL

YEAR

225 or adopted amendments thereto, if any. The tentative budgets,  
 226 adopted tentative budgets, and final budgets shall be filed in  
 227 the office of the county auditor as a public record. For those  
 228 counties that have websites, the tentative budgets, adopted  
 229 tentative budgets, and final budgets shall be made available  
 230 online when filed with the county auditor. Sufficient reference  
 231 in words and figures to identify the particular transactions  
 232 shall be made in the minutes of the board to record its actions  
 233 with reference to the budgets.

234 Section 4. Section 166.241, Florida Statutes, is amended  
 235 to read:

236 166.241 Fiscal years, appropriations, budgets, and budget  
 237 amendments.--

238 (1) DEFINITIONS.--As used in this section, the term:

239 (a) "Fund" means a fiscal and accounting entity with a  
 240 self-balancing set of accounts which are recorded and segregated  
 241 to carry on specific activities or to attain certain objectives  
 242 in accordance with special regulations, restrictions, or  
 243 limitations.

244 (b) "Object of expenditure" means the classification of  
 245 fund data by character of expenditure. "Object of expenditure"  
 246 includes, but is not limited to, personal services, purchased  
 247 services, debt service, supplies, capital outlay, grants, and  
 248 transfers.

249 (c) "Spending entity," as designated by the municipality,  
 250 means any office, unit, department, board, commission, or  
 251 institution which is responsible for any particular expenditures  
 252 or revenues.

PCB GEAC 08-24

ORIGINAL

YEAR

253           (2±) Each municipality shall make provision for  
 254 establishing a fiscal year beginning October 1 of each year and  
 255 ending September 30 of the following year.

256           (3±) The governing body of each municipality shall adopt a  
 257 budget each fiscal year. The budget ~~shall~~must be adopted by  
 258 ordinance or resolution unless otherwise specified in the  
 259 respective municipality's charter. The amount available from  
 260 taxation and other sources, including amounts carried over from  
 261 prior fiscal years, must equal the total appropriations for  
 262 expenditures and reserves. The budget ~~shall~~must regulate  
 263 expenditures of the municipality, and it is unlawful for any  
 264 officer of a municipal government to expend or contract for  
 265 expenditures in any fiscal year except in pursuance of budgeted  
 266 appropriations. The tentative budgets, adopted tentative  
 267 budgets, and final budgets shall be filed at a designated public  
 268 office within the boundaries of the municipality as a public  
 269 record. For those municipalities that have websites, the  
 270 tentative budgets, adopted tentative budgets, and final budgets  
 271 shall be made available online when filed with the designated  
 272 public office.

273           (4) (a) The budget shall present a complete financial plan  
 274 by fund and by spending entity within each fund for the fiscal  
 275 year and shall set forth the following:

276           1. All proposed expenditures for administration,  
 277 operations, maintenance, debt service, and capital projects  
 278 to be undertaken or executed by any spending entity during  
 279 the fiscal year;

280           2. Anticipated revenues for the fiscal year;



PCB GEAC 08-24

ORIGINAL

YEAR

281       3. Estimated beginning and ending fund balances;  
 282       4. The corresponding actual figures for the prior  
 283 fiscal year, estimated figures projected through the end of  
 284 the current fiscal year, including disclosure of all  
 285 beginning and ending fund balances, consistent with the  
 286 basis of accounting used to prepare the budget, and  
 287 projections for the next fiscal year;

288       5. Explanatory schedules or statements classifying  
 289 the objects of expenditure and the revenues by source; and

290       6. The unreserved undesignated fund balance, of not more  
 291 than ten (10.0%) percent of operating expenses, necessary to  
 292 secure and maintain investment grade credit ratings, meet  
 293 seasonal shortfalls in cash flow, and reduce susceptibility to  
 294 emergency or unanticipated expenditures or to revenue  
 295 shortfalls. Any remaining fund balance shall not be used to  
 296 increase expenditures within the budget, but shall be carried  
 297 forward to the next fiscal year in furtherance of the fund.

298       (b) A municipality shall prepare a written budget message,  
 299 not to exceed four pages, describing the important features of  
 300 the proposed budget. The message shall include an overview of  
 301 the municipality, a description of the previous fiscal year's  
 302 performance, a review of the current fiscal year's revenues and  
 303 expenditures, and an economic outlook and future challenges or  
 304 objectives description. The message must include within it a  
 305 statement of the budgetary basis of accounting used and a  
 306 description of the services to be delivered during the fiscal  
 307 year. The municipality shall make the message available to

PCB GEAC 08-24

ORIGINAL

YEAR

308 municipal residents and post the message prominently online if  
 309 the municipality has web capability.

310 (5) Upon receipt of the tentative budgets of each  
 311 spending entity and completion of any revisions made by the  
 312 municipality, the municipality shall prepare a statement  
 313 summarizing all of the adopted tentative budgets. This  
 314 summary statement shall show for each budget the total of  
 315 all budgets, the proposed tax millages, the balances, the  
 316 reserves, and the total of each major classification of  
 317 receipts and expenditures, classified according to the  
 318 classification of accounts prescribed by the appropriate  
 319 state agency, and a brief explanation of any increase or  
 320 decrease by account. The municipality shall cause this  
 321 summary statement to be advertised one time in a newspaper  
 322 of general circulation published in the municipality, or by  
 323 posting at the designated public office within the  
 324 boundaries of the municipality if there is no such  
 325 newspaper, and the advertisement shall appear adjacent to  
 326 the advertisement required pursuant to s. 200.065. For  
 327 those municipalities that have websites, the municipality  
 328 shall make the summary statement available online when  
 329 published in the newspaper.

330 (63) The governing body of each municipality at any time  
 331 within a fiscal year or within up to 60 days following the end  
 332 of the fiscal year may amend a budget for that year as follows:

333 (a) Appropriations for expenditures within a fund may be  
 334 decreased or increased by motion recorded in the minutes,

PCB GEAC 08-24

ORIGINAL

YEAR

335 provided that the total of the appropriations of the fund is not  
 336 changed.

337 (b) The governing body may establish procedures by which  
 338 the designated budget officer may authorize certain budget  
 339 amendments within a department, provided that the total of the  
 340 appropriations of the department is not changed.

341 (c) If a budget amendment is required for a purpose not  
 342 specifically authorized in paragraph (a) or paragraph (b), the  
 343 budget amendment must be adopted in the same manner as the  
 344 original budget unless otherwise specified in the charter of the  
 345 respective municipality.

346 Section 5. Section 189.418, Florida Statutes, is amended  
 347 to read:

348 189.418 Reports; budgets; audits.--

349 (1) DEFINITIONS.--As used in this section, the term:

350 (a) "Fund" means a fiscal and accounting entity with a  
 351 self-balancing set of accounts which are recorded and segregated  
 352 to carry on specific activities or to attain certain objectives  
 353 in accordance with special regulations, restrictions, or  
 354 limitations.

355 (b) "Object of expenditure" means the classification of  
 356 fund data by character of expenditure. "Object of expenditure"  
 357 includes, but is not limited to, personal services, purchased  
 358 services, debt service, supplies, capital outlay, grants, and  
 359 transfers.

360 (c) "Spending entity," as designated by the special  
 361 district, means any office, unit, department, board, commission,

PCB GEAC 08-24

ORIGINAL

YEAR

362 or institution which is responsible for any particular  
 363 expenditures or revenues.

364 (21) When a new special district is created, the district  
 365 must forward to the department, within 30 days after the  
 366 adoption of the special act, rule, ordinance, resolution, or  
 367 other document that provides for the creation of the district, a  
 368 copy of the document and a written statement that includes a  
 369 reference to the status of the special district as dependent or  
 370 independent and the basis for such classification. In addition  
 371 to the document or documents that create the district, the  
 372 district must also submit a map of the district, showing any  
 373 municipal boundaries that cross the district's boundaries, and  
 374 any county lines if the district is located in more than one  
 375 county. The department must notify the local government or other  
 376 entity and the district within 30 days after receipt of the  
 377 document or documents that create the district as to whether the  
 378 district has been determined to be dependent or independent.

379 (32) Any amendment, modification, or update of the  
 380 document by which the district was created, including changes in  
 381 boundaries, must be filed with the department within 30 days  
 382 after adoption. The department may initiate proceedings against  
 383 special districts as provided in s. 189.421 for failure to file  
 384 the information required by this subsection.

385 (43) (a) The governing body of each special district shall  
 386 adopt a budget by resolution each fiscal year. The total amount  
 387 available from taxation and other sources, including amounts  
 388 carried over from prior fiscal years, must equal the total of  
 389 appropriations for expenditures and reserves. The adopted budget

PCB GEAC 08-24

ORIGINAL

YEAR

390 must regulate expenditures of the special district, and it is  
 391 unlawful for any officer of a special district to expend or  
 392 contract for expenditures in any fiscal year except in pursuance  
 393 of budgeted appropriations. The budget shall present a complete  
 394 financial plan by fund and by spending entity within each fund  
 395 for the fiscal year and shall set forth the following:

396 1. All proposed expenditures for administration,  
 397 operations, maintenance, debt service, and capital projects  
 398 to be undertaken or executed by any spending entity during  
 399 the fiscal year;

400 2. Anticipated revenues for the fiscal year;

401 3. Estimated beginning and ending fund balances;

402 4. The corresponding actual figures for the prior  
 403 fiscal year, estimated figures projected through the end of  
 404 the current fiscal year, including disclosure of all  
 405 beginning and ending fund balances, consistent with the  
 406 basis of accounting used to prepare the budget, and  
 407 projections for the next fiscal year;

408 5. Explanatory schedules or statements classifying  
 409 the objects of expenditure and the revenues by source.

410 6. The unreserved undesignated fund balance, of not more  
 411 than ten (10.0%) percent of operating expenses, necessary to  
 412 secure and maintain investment grade credit ratings, meet  
 413 seasonal shortfalls in cash flow, and reduce susceptibility to  
 414 emergency or unanticipated expenditures or to revenue  
 415 shortfalls. Any remaining fund balance shall not be used to  
 416 increase expenditures within the budget, but shall be carried  
 417 forward to the next fiscal year in furtherance of the fund.

PCB GEAC 08-24

ORIGINAL

YEAR

418 (b) A special district shall prepare a written budget  
 419 message, not to exceed four pages, describing the important  
 420 features of the final budget. The message shall include an  
 421 overview of the special district, a description of the previous  
 422 fiscal year's performance, a review of the current fiscal year's  
 423 revenues and expenditures, and an economic outlook and future  
 424 challenges or objectives description. The message must include  
 425 within it a statement of the budgetary basis of accounting used  
 426 and a description of the services to be delivered during the  
 427 fiscal year. The special district shall make the message  
 428 available to district residents and post the message prominently  
 429 online if the special district has web capability.

430 (C) The tentative budgets, adopted tentative budgets,  
 431 and final budgets shall be filed as a public record at a  
 432 designated public office within the boundaries of the  
 433 special district, or, if a public office is not available  
 434 within the boundaries, shall be filed with a public office  
 435 close to the boundaries of the special district. For those  
 436 special districts that have websites, the tentative  
 437 budgets, adopted tentative budgets, and final budgets shall  
 438 be made available online when filed with the designated  
 439 public office.

440 (d) Upon receipt of the tentative budgets of each  
 441 spending entity and completion of any revisions made by the  
 442 special district, the special district shall prepare a  
 443 statement summarizing all of the adopted tentative budgets.  
 444 This summary statement shall show for each budget the total  
 445 of all budgets, the proposed tax millages, the balances,

PCB GEAC 08-24

ORIGINAL

YEAR

446 the reserves, and the total of each major classification of  
 447 receipts and expenditures, classified according to the  
 448 classification of accounts prescribed by the appropriate  
 449 state agency, and a brief explanation of any increase or  
 450 decrease by account. The special district shall cause this  
 451 summary statement to be advertised one time in a newspaper  
 452 of general circulation published in the special district,  
 453 or by posting at a designated public office within the  
 454 boundaries of the special district, or, if a public office  
 455 is not available within the boundaries, shall be filed with  
 456 a public office close to the boundaries of the special  
 457 district and the advertisement shall appear adjacent to the  
 458 advertisement required pursuant to s. 200.065. For those  
 459 special districts that have websites, the special district  
 460 shall make the summary statement available online when  
 461 published in the newspaper.

462 (54) The proposed budget of a dependent special district  
 463 shall be presented in accordance with generally accepted  
 464 accounting principles, contained within the general budget of  
 465 the local governing authority, and be clearly stated as the  
 466 budget of the dependent district. However, with the concurrence  
 467 of the local governing authority, a dependent district may be  
 468 budgeted separately.

469 (65) The governing body of each special district at any  
 470 time within a fiscal year or within up to 60 days following the  
 471 end of the fiscal year may amend a budget for that year. The  
 472 budget amendment must be adopted by resolution.

PCB GEAC 08-24

ORIGINAL

YEAR

473            (76) A local governing authority may, in its discretion,  
 474 review the budget or tax levy of any special district located  
 475 solely within its boundaries.

476            (87) All reports or information required to be filed with  
 477 a local governing authority under ss. 189.415, 189.416, and  
 478 189.417 and this section shall:

479            (a) When the local governing authority is a county, be  
 480 filed with the clerk of the board of county commissioners.

481            (b) When the district is a multicounty district, be filed  
 482 with the clerk of the county commission in each county.

483            (c) When the local governing authority is a municipality,  
 484 be filed at the place designated by the municipal governing  
 485 body.

486            Section 6. This act shall take effect October 1, 2008.







## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GEAC 08-30 Local Government Investment Pool  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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

### SUMMARY ANALYSIS

At the direction of Speaker Marco Rubio and under the leadership of Rep. Carl Domino, the House recently undertook an investigation of the Local Government Investment Pool (LGIP) managed by the State Board of Administration. In the fall of 2007, the LGIP went through a series of tumultuous events related to the subprime mortgage meltdown leading to a freeze of the LGIP and subsequent formation of a Pool A and Pool B. Pool A is subject to certain withdrawal limitations and Pool B remains frozen. The team hired for the investigation issued its report on March 24, 2008, and listed 16 recommendations. Speaker Rubio further directed the House to consider legislation that could effectively provide control measures and ensure accountability and return investor trust in the Pool.

This proposed bill addresses a number of issues related to the overall management of the Local Government Investment Pool (Pool) such as governance, investor protection, and mandated transparency. The bill addresses the governance by the Trustees of the Pool by increasing their accountability to participants and the Legislature for the management of the Pool, and increasing their role in review and approval of a number of critical management documents. The bill also addresses investor protection by increasing the transparency of the State Board of Administration (SBA) or professional money management firm's operations of the Pool to participants or prospective investors. It seeks to accomplish this objective by fully disclosing or reporting enrollment materials to prospective participants; a written investment policy; how the fund is operated; how the fund may be restricted in a crisis; what fees and charges may be imposed; how reserves are established; how interest may be used; at a minimum, monthly management reports based on best investment practices; and market value calculations of the portfolio.

Further, the bill requires employees and management to: abide by the "prudent person" standard; follow certain ethical standards; establish internal controls for escalation reporting purposes; and immediately disclose material impacts to the Pool or its operations to participants as well as other groups like the Investment Advisory Council. The bill also establishes a procedure to deal with material impacts to the Pool or its operations and explicates how the executive director may respond by taking action for 48 hours. The Trustees must convene a meeting and vote to continue the action up to a maximum of 15 days.

Additionally, the bill creates a Participant Local Government Advisory Council, composed of a majority of trust fund participants, who will be involved in reviewing critical documents and providing input regarding the operation of the trust fund. The bill also requires the distribution of the November 2007 interest.

The bill does not appear to have a fiscal impact.

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

**STORAGE NAME:** pcb30.GEAC.doc  
**DATE:** 3/27/2008

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Lower taxes:** A successfully administered investment pool for local governments may mean a higher rate of return and more revenue available for local governments, diminishing the need for increased revenue from taxes.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **State Board of Administration**

The State Board of Administration of Florida (the "SBA" or the "Board") is an agency of Florida state government that provides a variety of investment services to various governmental entities. These include managing the assets of the Florida Retirement System (FRS) Pension Plan (i.e., defined benefit plan) and Investment Plan (i.e., defined contribution plan), the Lawton Chiles Endowment Fund, the Local Government Surplus Funds Trust Fund (also known as the "Local Government Investment Pool" or "LGIP"), the Hurricane Catastrophe Fund, the Lottery Fund and a variety of smaller funds. Total assets under management as of June 30, 2007 were approximately \$184 billion.

The SBA's Trustees are the Governor who serves as Chairman, the CFO who serves as Treasurer and the Attorney General who serves as Secretary. The Trustees delegate authority to the Executive Director, who serves at the discretion of the Trustees and is responsible for managing and directing all administrative, personnel, budgeting, investment policy and investment functions. The Executive Director manages 162 professional and administrative support staff. The Board of Trustees appoints six members to serve on the Investment Advisory Council. The Investment Advisory Council provides independent oversight of SBA's funds and major investment responsibilities. The Council meets on an ongoing basis to discuss general investment policies and broad topics related to the general economic outlook.

##### **History of the Pool**

The Local Government Investment Pool (Pool) was established "to provide local governments a low cost, low risk, fully transparent investment option for their surplus funds".<sup>1</sup> The Pool is open to all units of local government in Florida and has been operated by the SBA since January 1982. As of June 30, 2007, the SBA managed approximately \$31 billion in assets in the Pool serving almost 1000 participants.

Confidence in the Fund began to erode as a result of the Pool's July and August 2007 purchase of four securities, Ottimo, KKR Pacific, KKR Atlantic and Axon (the "Securities"), with a par value at time of purchase of \$947.8 million. These Securities were downgraded in late summer and early fall 2007 below the Pool's investment guidelines. Knowledge of these downgrades, primarily from financial news accounts and rumors that in July and August one or more of the Securities had defaulted, all against the backdrop of the national sub-prime mortgage crisis, prompted participants into withdrawing \$14 billion from the Pool in mid- to late- November 2007.

As a result of this run, on November 29, 2007, the SBA Trustees suspended withdrawals from the Pool and on December 4, 2007, split the Pool into two funds, Fund A and Fund B. The four downgraded Securities with a then-par value of approximately \$867 million together with additional securities with a par value of approximately \$1.2 billion deemed by an investment manager hired by the SBA,

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<sup>1</sup> [http://sbafla.com/fund\\_pool.aspx](http://sbafla.com/fund_pool.aspx)

BlackRock, to have an unacceptable level of risk, were placed in Fund B and frozen. Additionally, the Trustees transferred to Fund B the Pool's entire \$22 million in accumulated, unspecified reserves and \$96 million representing the Pool's interest earned in November 2007 by all participants in the Pool. The \$96 million was transferred to Fund B in the form of \$82 million in cash and \$14 million in securities.

The Pool's remaining securities were placed in Fund A and rated by Standard and Poor's as AAA. When Fund A was reopened, the SBA established withdrawal limitations based upon the Fund's liquidity and imposed a 2% fee on participants which elected to withdraw more than they were allowed under the liquidity restrictions on redemptions. The 2% fee was based upon an assessment by the SBA staff that a complete liquidation of Fund A would result in a 2% shortfall. On January 18, 2008, the SBA released the greater of 22% or \$2 million in additional liquidity.

On February 12, 2008, the SBA chose Federated Investors Inc. to take over management of the Pool.

Federated reported on March 14, 2008, the following investment management guidelines or practices:

- LGIP Fund A managed in compliance with investment guidelines and Standard & Poor's (S&P) AAA rating criteria
- Dollar-weighted average maturity not greater than 60 days
- Final maturity of an individual security not greater than 397 days
- 5% individual issuer limit
- 10% limit on illiquid securities/"limited liquidity securities"
- At least 50% of the LGIP's securities must be rated A1+; remainder invested in at A1 only
- Weekly reporting to Standard & Poor's

The SBA is currently undergoing a search, through an executive placement company, for a new executive director.

An unofficial LGIP Participant Advisory Committee was created at the outset of the situation and currently consists of 17 members with various affiliations.

At the direction of Speaker Marco Rubio and under the leadership of Rep. Carl Domino, the House undertook an investigation of the Pool. The team hired for this role issued its report on March 24, 2008, and listed 16 recommendations. Speaker Rubio further directed the House to consider legislation that could effectively provide control measures and ensure accountability and return investor trust in the Pool.

### **Statutes Governing Local Government Investment Pool**

The Pool was created by s. 218.405, F.S., and this section also provided the board with rulemaking powers. Section 218.407, F.S., provides the criteria for local governments to invest in the Pool. The local government must pass a resolution that it is in the interest of the unit of local government to deposit surplus funds in the trust fund, which is then filed with the SBA and authorizes investment of its surplus funds in the trust fund. The SBA may invest those moneys in the trust fund in the same manner and subject to the same restrictions as are set forth in s. 215.47, F.S. Normally, the local governments will have surplus funds deposited into a pooled investment account. This section does not impair the power of a unit of local government to hold funds in deposit accounts with banking or savings institutions or to invest funds as otherwise authorized by law.

The provisions for the administration of the trust fund are set out in s. 218.409, F.S.:

- (1) Upon receipt of the resolution from the local governing body, the State Board of Administration shall accept all wire transfers of funds into the trust fund. The State Board of Administration shall also wire-transfer invested local government funds to the local government upon request of the local government official named in the resolution.

(2) The State Board of Administration shall administer the investment trust funds on behalf of the participants and shall have the power to invest such funds. A fee may be charged on any transaction that is not in accord with the close of business as set by the board.

(3) The State Board of Administration may purchase such surety or other bonds as may be necessary for its officials in order to protect the fund. A reserve fund may be established to fulfill this purpose.

(4) All investments may be purchased jointly for the participants in the trust fund. The board may also purchase investments for a pooled investment account in which all participants may share pro rata, as determined by rule of the board, in the capital gain, income, or losses, subject to any penalties for early withdrawal. The board shall determine the rate of return for the pooled investment account. A system may be developed by the board to keep current account balance information and to apportion pooled investment earnings back to individual accounts.

(5) The State Board of Administration shall keep a separate account, designated by name and number of each participating local government. A maximum number of accounts allowed for each participant may be established by the board. Individual transactions and totals of all investments, or the share belonging to each participant, shall be recorded in the accounts.

(6) The State Board of Administration shall report semiannually or upon request to every participant having a beneficial interest in the trust fund. The report shall show the changes in investments made during the preceding period. The report shall delineate, in a manner which is in accordance with generally accepted governmental accounting procedures, those funds on deposit, the manner in which the funds are invested, and the interest earnings thereon. The State Board of Administration shall furnish upon request the details of an investment transaction to any participant. Additional reporting may be made to pool participants.

(7) Costs incurred in carrying out the provisions of this part shall be deducted from the interest earnings accruing to the trust fund. Such deductions shall be prorated among the participant local governments in the percentage that each participant's deposits bear to the total trust fund.

(8)(a) The principal, and any part thereof, of each and every account constituting the trust fund shall be subject to payment at any time from the moneys in the fund or as otherwise provided by agreement between the State Board of Administration and the investing unit.

(b) An order or warrant may not be issued upon any account for a larger amount than the share of the particular account to which it applies; and if such order or warrant is issued, the responsible official shall be personally liable under his or her bond for the entire overdraft resulting from the payment if made.

### **Government Finance Officers Association (GFOA) Guidance**

The GFOA has issued a sample investment policy as a model to help investing entities customize a policy to fit their particular needs, constraints and capabilities. The sample policy covers 11 areas including general objectives (safety, liquidity, yield), standards of care (prudence, ethics and conflicts of

interest, delegation of authority), safekeeping and custody (internal controls), reporting, and approval of investment policies.<sup>2</sup>

The GFOA has also issued guidance on mark-to-market practices:

**Background.** Market risk is significant in public investment portfolios. Due to price volatility, valuing investments at their current price is necessary to provide a realistic measure of a portfolio's true liquidation value. Over time, reporting standards for state and local government investment portfolios have been enhanced so that investors, governing bodies, and the public remain informed of the current market value of the portfolio. Regular disclosure of the value of a governmental entity's investments is an important step to furthering taxpayer and market confidence in state and local government investment practices. The Governmental Accounting Standards Board (GASB) has also recognized the need to report investments at fair value at fiscal year end.

Government officials should be aware of state, local, accounting, and rating agency requirements regarding mark-to-market practices.

**Recommendation.** The Government Finance Officers Association (GFOA) recommends that state and local government officials responsible for investment portfolio reporting determine the market value of all securities in the portfolio on at least a quarterly basis. These values should be obtained from a reputable and independent source and disclosed to the governing body or other oversight body at least quarterly in a written report. The independent source of pricing should not be one of the parties to the transaction being valued and could include:

- 1) a broker or other financial institution who was not a counterparty to the transaction,
- 2) the custodial bank if the bank was not a counterparty to the transaction,
- 3) publicly available publications such as the Wall Street Journal, or
- 4) other pricing services for which a separate fee would be paid.

It is recommended that the written report include the market value, book value, and unrealized gain or loss of the securities in the portfolio.

If there is a significant event in the local or national economy that might affect the value of the portfolio, then a mid-term valuation of the portfolio should be conducted. Governments that employ a more active portfolio management style should consider more frequent marking to market and reporting.<sup>3</sup>

### **Governmental Accounting Standards Board (GASB) Guidance**

The GASB has issued a "Statement No. 31 Accounting and Financial Reporting for Certain Investments and for External Investment Pools"<sup>4</sup> which establishes accounting and financial reporting standards for all investments held by governmental external investment pools. LGIPs that are 2a7-like pools are allowed to report their investments at amortized cost. Rule 2a7 allows money market mutual funds to use amortized cost to report net assets. This Statement establishes, among other things:

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<sup>2</sup> GFOA Sample Investment Policy, located at <http://www.gfoa.org/downloads/SampleInvestmentPolicy.pdf>, last viewed March 25, 2008.

<sup>3</sup> GFOA Mark-to-Market Reporting Practices for State and Local Government Investment Portfolios (1995, 2000, 2003, 2005, and 2008) (CASH), located at <http://www.gfoa.org/downloads/MarktomarketFINAL.pdf>, last viewed March 25, 2008.

<sup>4</sup> GASB Summary of Statement No. 31 Accounting and Financial Reporting for Certain Investments and for External Investment Pools (Issued 3/97), located at <http://www.gasb.org/st/index.html>, last viewed March 24, 2008.

- that governments should report investments at fair value in the balance sheet (or other statement of financial position).
- that investment income, including changes in the fair value of investments, should be reported as revenue in the operating statement (or other statement of activities).
- minimum requirements for the financial statements to be presented and the disclosures to be made in the separate financial reports of governmental external investment pools.

### **Advantages and Disadvantages of Pools to Local Governments**

Local government investment pools (“pools”) have existed for more than 100 years. Today, 45 of the fifty states have such pools and the funds run by these pools exceed \$200 billion.<sup>5</sup> There are significant tangible and intangible public service benefits related to these pools. Tangible benefits typically are lower fees, diversification and access to professional management. Fees paid by participants to the Fund averaged a very favorable 1.5 basis points from the Pool’s inception in 1982 through June, 2007, a savings of over 73% relative to the average fees paid. Intangible benefits include the ability of a State’s Auditor General and other oversight and control functions to perform reviews of a single entity, the Pool, to enhance protection of participants, rather than reviews of numerous entities.

Local Government Investment Pools “are not registered with the Securities and Exchange Commission (SEC) and are exempt from SEC regulatory requirements because they fall under a governmental exclusion clause. While this exemption allows pools greater flexibility, it also reduces investor protection. Investments in these pools are not insured or guaranteed and substantial losses have occurred in the past. Some rating agencies rate LGIPs using the same criteria as money market mutual funds. These ratings are based on safety of principal and ability to maintain a NAV of \$1. Pool ratings can provide an additional method of due diligence.”<sup>6</sup>

### **Effect of Proposed Changes**

This proposed bill is designed to address a number of issues related to the overall management of the Local Government Investment Pool (Pool) such as governance, investor protection, and mandated transparency. The bill addresses the governance by the Trustees of the Pool by:

- Increasing their accountability to participants and the Legislature for the management of the Pool; and
- Increasing their role in review and approval of a number of critical management documents.

The bill addresses investor protection by increasing the transparency of the State Board of Administration (SBA) or professional money management firm’s operations of the Pool to participants or prospective investors by fully disclosing or reporting:

- Enrollment materials to prospective participants;
- A written investment policy;
- How the fund is operated;
- How the fund may be restricted in a crisis;
- What fees and charges may be imposed;
- How reserves are established;
- How interest may be used;
- At a minimum, monthly management reports based on best investment practices; and
- Market value calculations of the portfolio.

<sup>5</sup> Source: iMoneyNet, “Government Investment Pools: 2007 Update of Investment Strategies, Facts, Figures and Trends”.

<sup>6</sup> GFOA Use of Local Government Investment Pools (LGIPs) (2007) (CASH), located at <http://www.gfoa.org/downloads/cashlgip.pdf>, last viewed March 24, 2008.



Further, the bill requires employees and management to abide by the “prudent person” standard, follow certain ethical standards, establish internal controls for escalation reporting purposes, and immediately disclose material impacts to the Pool or its operations to participants as well as other groups like the Investment Advisory Council. The bill also deletes the authority of the SBA to set the rate of return for participants so that the rate will be based on market conditions. This will prevent a rate of return being set at zero as it was in November 2007 when the November interest was transferred to the Fund B Pool.

The bill also establishes a procedure to deal with material impacts to the Pool or its operations and how the executive director may respond by limiting or restricting the Pool for a maximum of 48 hours. The Trustees must convene a meeting and vote to continue the action up to a maximum of 15 days, and thereafter must reconvene to vote to continue any action up to a maximum 15 days at a time.

The bill also increases the role of the Investment Advisory Council in reviewing critical management documents. Further, the bill creates a Participant Local Government Advisory Council, composed of a majority of trust fund participants, which is also closely involved in reviewing critical documents and providing input to the SBA or a professional money management firm regarding the operation of the trust fund. Both Councils receive immediate notification of any actions taken by the executive director to address material impacts on the fund.

The bill also requires the distribution of the November 2007 interest to the participants owed that interest.

## **Section By Section Analysis**

### Purpose

Section 1 amends the purpose of the bill by requiring the investment of the funds to be based on the principles of investor protection, mandated transparency, and proper governance.

### Definitions

Section 2 adds definitions for, among other things, the Governmental Accounting Standards Board and the Government Finance Officers Association.

### Administration and Certification

Section 3 allows for a professional money management firm to administer the trust fund. This section sets out the objectives of the fund which are safety, liquidity, and competitive returns with minimization of risks, in that order. Additionally, this section requires the Trustees to annually certify to the Joint Legislative Auditing Committee (JLAC) that the trust fund is in compliance with the statutes governing the fund and that the Trustees have reviewed the fund and determined that the management of the fund is in accord with best investment practices. Also, this section requires that the cash from the November 2007 interest be distributed to the participants owed that interest within 30 days of the bill becoming law that creates the Fund B Surplus Funds Trust Fund. Further, the bill requires the distribution of the funds from the securities that composed part of the November .2007 interest after the bill creating the Fund B Surplus Funds Trust Fund becomes law and then based on when the securities either mature or are sold.

### Enrollment in Fund

Section 4 creates a process for the board or a professional money management firm to provide enrollment materials with such things as:

- A profile with information regarding the administration and investment policy of the trust fund;
- Rights and conditions of participation, including potential restrictions on withdrawals;
- Historical performance, investment holdings, credit quality and average maturity of the trust fund investments;
- Applicable administrative rules;
- Rate determination processes for any deposit or withdrawal;

- Any fees, charges, penalties, and deductions that apply to the account;
- Most recently published financial statements or independent audit, if available, prepared under generally accepted accounting principles; and a
- Disclosure statement for signature by the appropriate local government official.

A local government official must sign the disclosure accepting the terms of investment and return it with the resolution in order to invest funds. This section also requires funds to be invested in a pooled investment account.

#### Standard of Care

Section 5 establishes the standards of care that must be followed by the board or a professional money management firm. Under the heading of "prudence," the Trustees are required to insure that the fund is administered on behalf of the participants. Further, the bill requires that the power to invest funds must be based on a written investment policy which must be updated annually to conform to best investment practices. The bill then spells out the "prudent person" standard and its application. This section also addresses ethics and conflicts of interests and sets out a policy for all employees to observe including disclosures of certain actions related to personal investments. In addition, this section creates a framework for internal controls to be established. At the outset it creates an affirmative duty for all employees to immediately disclose any material impact to the trust fund to participants. The internal controls cover a number of circumstances such as fraud or employee error and must be set out in writing as part of the investment policy. The internal controls also include formal escalation procedures to address material impacts that require reporting and action.

#### Approval of Investment Policy

The bill also requires review and approval of the investment policy by the Trustees at least annually or as market conditions dictate. The investment policy is also reviewed at those times as well by the Investment Advisory Council and the Participant Local Government Advisory Council created later in this section.

#### Reserves

Further, this section establishes the policy for reserves which must be a portion of the management fee and must be fully disclosed to participants with an opportunity to withdraw from the fund if the participant does not agree to a change in the reserve fee.

#### Penalties & Rate of Return

This section amends the provisions related to penalties for early withdrawal by requiring that information regarding penalties must be disclosed to participants and an opportunity to withdraw from the fund if the participant does not agree to a change in the reserve fee. Also, the SBA's authority to set the rate of return is deleted so that the rate is based on market conditions. This will prevent a rate of return being set at zero as it was in November 2007 when the interest was transferred to the Fund B Pool.

In addition, this section requires that a system be developed, approved by the Trustees, and disclosed to keep current account balances and to apportion pooled investment earnings to individual accounts.

#### Reports

The bill establishes a reporting program for the board or a professional money management firm. A report must be provided, at least monthly, or upon the occurrence of a material event, to all participants, the board's executive director, the Trustees, the JLAC, the Investment Advisory Council, and the Participant Local Government Advisory Council. The report includes:

- Reports of any material impacts on the trust fund, and any actions or escalations taken by staff to address such impacts. The Trustees shall provide quarterly a report to the Joint legislative Auditing Committee that the Trustees have reviewed and approved the monthly reports and actions taken, if any, to address any impacts.

- A management summary that provides an analysis of the status of the current investment portfolio and the individual transactions executed over the last month. This management summary will be prepared in a manner which will allow anyone to ascertain whether investment activities during the reporting period have conformed to investment policies. Such reporting shall be in conformance with best market practices.

The details of any particular transaction are available upon request.

#### Marking to Market

The bill provides that the market value of the portfolio must be calculated on a daily basis. A transparent process must be created to prevent an advantage or disadvantage to parties making deposits or withdrawals on any particular day. A statement of the market value and amortized cost of the portfolio must be issued in conjunction with deposits and withdrawals which must also be reported monthly with the management report. The review of the portfolio must be in conformance with GFOA and GASB statements. Procedures for additional reporting are also created.

#### Interest

This section provides that administrative costs may be deducted from the interest earned by participants, but that the remaining interest must be distributed and may not be used for any other purpose including making up investment losses.

#### Material Impacts on Fund

This section of the bill provides that the executive director may, in good faith, on the occurrence of an event that has a material impact on liquidity or operations of the fund, for 48 hours limit contributions to or withdrawals from the trust fund to ensure that the board can invest monies entrusted to it. Such action must be immediately disclosed to all participants, the Trustees, the Joint Legislative Auditing Committee, the Investment Advisory Council, and the Local Government Advisory Council. The Trustees must then convene an emergency meeting as soon as practicable from the time the executive director has instituted such measures and review the necessity of those measures. If the Trustees agree with them, the Trustees must vote to continue the measures for up to an additional 15 days. The Trustees must convene and vote to continue any such measures prior to the expiration of the time limit set, but in no case may the time limit set by the Trustees exceed 15 days.

#### Annual Financial Audit

The bill also provides that an annual financial audit must be conducted which must include testing for compliance with the investment policy. The audit is provided to all participants, the board, the Trustees, the Joint Legislative Auditing Committee, the Investment Advisory Council, and the Local Government Advisory Council. The Trustees must certify to JLAC that they have reviewed the audit and that any necessary items are being addressed by a corrective action plan which includes target completion dates.

#### Participant Local Government Advisory Council

The final portion of this section creates a 16 member Participant Local Government Advisory Council. 13 members of the Council must be current participants in the fund and three must have significant investment experience. The Governor, Attorney General, and Chief Financial Officer each make four appointments, three from the participants and one with investment experience, and the President of the Senate and the Speaker of the House of Representatives each make two appointments both from current participants. In choosing participants, the appointing body must attempt to choose participants with differing levels of participation. The appointees serve staggered two year terms and are limited to three consecutive terms. The Council meets quarterly or upon the call of the chair, who is selected by the Council members. An appointee may only be removed for cause. If the entity represented by an appointee ceases to be a participant in the fund, then the appointment is vacated to be filled by the original appointing entity. The Council may choose a volunteer executive director.

The Council may:

- Provide the board with input regarding proposed investment policies, internal controls, investment classes, competitively-bid contracts, and programs that may affect trust fund participants;
- Consider requests from trust fund participants to review the board's investment policies, internal controls, investment classes, competitively-bid contracts, and programs that may affect trust fund participants; and
- Review rules promulgated by the board. The Council may provide input on any rule and offer alternatives that the Council believes reduce the impact on trust fund participants while meeting the stated objectives of the proposed rule.

The Council may not:

- Interfere with, modify, prevent or delay board action or investment activities;
- Intervene in legal actions; or
- Subpoena witnesses to testify or to produce documents, but it may request witnesses to voluntarily testify or produce documents.

The Council shall prepare and submit a written biennial report to the board, Trustees, the Investment Advisory Council, and the Joint Legislative Auditing Committee that describes the activities and recommendations of the Council.

#### Effective Date

Section 6 provides that the bill is effective upon becoming law.

#### C. SECTION DIRECTORY:

Section 1: Amends s. 218.401, F.S., to provide for investment principles.

Section 2: Amends s. 218.403, F.S., adding additional definitions.

Section 3: Amends s. 218.405, F.S., relating to Trustee certification and objectives of the trust fund.

Section 4: Amends s. 218.407, F.S., relating to local government investment authority.

Section 5: Amends s. 218.409, F.S., relating to administration of the trust fund and the creation of a Participant Advisory Council.

Section 6: Provides that the bill is effective upon becoming a law.

## 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:

A successfully managed local government investment pool may create an environment in which local government participants may benefit from a higher rate of return, which in turn may lower the necessity for additional taxes.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take an action requiring 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:

None.

D. STATEMENT OF THE SPONSOR

Not applicable.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES



PCB GEAC 08-30

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to the Local Government Surplus Funds  
 3 Trust Fund; amending s. 218.401, F.S.; revising the  
 4 purpose; amending s. 218.403, F.S.; adding definitions;  
 5 amending s. 218.405, F.S.; establishing objectives of the  
 6 trust fund; providing for Trustee certification; providing  
 7 for distribution of interest with contingent effective  
 8 date; restricting use of interest except for distribution;  
 9 amending s. 218.407, F.S.; providing for enrollment  
 10 materials received by and submitted from local government  
 11 to invest in trust fund; requiring funds to be invested in  
 12 pooled investment account; amending s. 218.409, F.S.;  
 13 revising administration of trust fund; providing standards  
 14 of care including level of prudence, ethics and conflicts  
 15 of interest, and internal controls; providing for review  
 16 and approval of investment policy and controls; providing  
 17 for reports; revising use and disclosure of reserves;  
 18 requiring investments to be made in pooled account;  
 19 requiring establishment and approval of account balance  
 20 information system; providing transparency; requiring  
 21 monthly reports to certain groups; providing criteria of  
 22 the report; requiring marking to market calculation and  
 23 reporting; providing criteria; providing for additional  
 24 reporting; authorizing limited withdrawals or  
 25 contributions to fund under certain circumstances;  
 26 providing criteria for use of interest by board; requiring  
 27 annual financial audit; requiring audit to be reported to  
 28 certain groups; requiring certification report by

PCB GEAC 08-30

ORIGINAL

YEAR

29 Trustees; creating Participant Local Government Advisory  
 30 Council; providing for appointments, membership, and  
 31 meetings; providing administrative location for Council;  
 32 providing powers and limitations of Council; requiring  
 33 reports by Council to certain groups; providing an  
 34 effective date.

35  
 36 Be It Enacted by the Legislature of the State of Florida:

37  
 38 Section 1. Section 218.401, Florida Statutes, is amended  
 39 to read:

40 218.401 Purpose.--It is the intent of this part to  
 41 promote, through state assistance, the maximization of net  
 42 interest earnings on invested surplus funds of local units of  
 43 government, based on the principals of investor protection,  
 44 mandated transparency, and proper governance, with the goal of  
 45 ~~thereby~~ reducing the need for imposing additional taxes.

46 Section 2. Section 218.403, Florida Statutes, is amended  
 47 to read:

48 218.403 Definitions.--The following words or terms, when  
 49 used in this part, shall have the following meanings:

50 (1) "Board" means the State Board of Administration.

51 (2) "Chief financial officer" means the mayor, manager,  
 52 administrator, clerk, comptroller, treasurer, director of  
 53 finance, or other local government official, regardless of the  
 54 title of his or her office, charged with administering the  
 55 fiscal affairs of a unit of local government.



PCB GEAC 08-30

ORIGINAL

YEAR

56           (~~32~~) "Current expenses" means expenses to meet known cash  
57 needs and anticipated cash-flow requirements for the short term.

58           (4) "GASB" means the Governmental Accounting Standards  
59 Board.

60           (5) "GFOA" means the Government Finance Officers  
61 Association.

62           (63) "Governing body" means the body or board in which the  
63 legislative power of a unit of local government is vested.

64           (74) "Short term" means a maximum of 6 months of  
65 operation.

66           (85) "Surplus funds" means any funds in any general or  
67 special account or fund of a unit of local government, or funds  
68 held by an independent trustee on behalf of a unit of local  
69 government, which in reasonable contemplation will not be  
70 immediately needed for the purposes intended.

71           (96) "Trust fund" means the pooled investment fund created  
72 by s. 218.405 and known as the Local Government Surplus Funds  
73 Trust Fund.

74           (10) "Trustees" mean the Trustees of the State Board of  
75 Administration.

76           (117) "Unit of local government" means any governmental  
77 entity within the state not part of state government and shall  
78 include, but not be limited to, the following and the officers  
79 thereof: any county, municipality, school district, special  
80 district, clerk of the circuit court, sheriff, property  
81 appraiser, tax collector, supervisor of elections, authority,  
82 board, public corporations, or any other political subdivision  
83 of the state.

PCB GEAC 08-30

ORIGINAL

YEAR

84 Section 3. Section 218.405, Florida Statutes, is amended  
 85 to read:

86 218.405 Local Government Surplus Funds Trust Fund;  
 87 creation; objectives; certification; interest; rulemaking.-

88 (1) There is hereby created a Local Government Surplus  
 89 Funds Trust Fund to be administered by the ~~State board of~~  
 90 ~~Administration~~ or a professional money management firm and to be  
 91 composed of local government surplus funds deposited therein by  
 92 units of local government under the procedures established in  
 93 this part.

94 (2) The primary objectives, in priority order, of  
 95 investment activities shall be safety, liquidity, and  
 96 competitive returns with minimization of risks.

97 (3) The Trustees shall annually certify to the Joint  
 98 Legislative Auditing Committee that the trust fund is in  
 99 compliance with the requirements of this part and has conducted  
 100 a review of the trust fund and determined that the management of  
 101 the trust fund is in accord with best investment practices.

102 (4) The board or a professional money management firm  
 103 shall distribute the cash from the November 2007 interest to the  
 104 participants owed such funds within 30 days of the passage of HB  
 105 or similar legislation adopted in the same legislative session  
 106 or an extension thereof and becomes law. The board or a  
 107 professional money management firm shall distribute the earnings  
 108 from the remaining securities that were part of the November  
 109 2007 interest after the passage of HB or similar legislation  
 110 adopted in the same legislative session or an extension thereof  
 111 and becomes law as those securities mature or are sold. In no

PCB GEAC 08-30

ORIGINAL

YEAR

112 event may the board or a professional money management firm use  
 113 the November 2007 interest for any other purpose but to be  
 114 distributed to the participants owed such interest as described  
 115 above.

116 The board may adopt rules to administer the provisions of this  
 117 section.

118 Section 4. Section 218.407, Florida Statutes, is amended  
 119 to read:

120 218.407 Local government investment authority.--

121 (1) Prior to any determination by the governing body that  
 122 it is in the interest of the unit of local government to deposit  
 123 surplus funds in the trust fund, the board or a professional  
 124 money management firm must provide to the governing body  
 125 enrollment materials, including a trust fund profile containing  
 126 impartial educational information describing the administration  
 127 and investment policy of the trust fund including, but not  
 128 limited to:

129 (a) Rights and conditions of participation, including  
 130 potential restrictions on withdrawals.

131 (b) Historical performance, investment holdings, credit  
 132 quality and average maturity of the trust fund investments.

133 (c) Applicable administrative rules.

134 (d) Rate determination processes for any deposit or  
 135 withdrawal.

136 (e) Any fees, charges, penalties, and deductions that apply  
 137 to the account.

PCB GEAC 08-30

ORIGINAL

YEAR

138 (f) Most recently published financial statements or  
 139 independent audit, if available, prepared under generally  
 140 accepted accounting principles.

141 (g) Disclosure statement for signature by the appropriate  
 142 local government official.

143 Upon review of the enrollment materials and upon determination  
 144 by the governing body that it is in the interest of the unit of  
 145 local government to deposit surplus funds in the trust fund, a  
 146 resolution by the governing body and the signed acceptance of  
 147 the disclosure statement by the local government official, who  
 148 may be the chief financial or administrative officer of the  
 149 local government, shall be filed with the State board of  
 150 Administration and, if appropriate, a copy to a professional  
 151 money management firm authorizing investment of its surplus  
 152 funds in the trust fund established by this part. The resolution  
 153 shall name:

154 (a) The local government official, who may be the chief  
 155 financial or administrative officer of the local government, or

156 (b) An independent trustee holding funds on behalf of the  
 157 unit of local government, responsible for deposit and withdrawal  
 158 of such funds.

159 (2) The ~~State board of Administration~~ or a professional  
 160 money management firm shall, upon the filing of the resolution,  
 161 invest the moneys in the trust fund in the same manner and  
 162 subject to the same restrictions as are set forth in s. 215.47.  
 163 ~~Except when authorized by the board,~~ All units of local  
 164 government which qualify to be participants in the Local  
 165 Government Surplus Funds Trust Fund ~~after January 1, 1982,~~ will

PCB GEAC 08-30

ORIGINAL

YEAR

166 normally have surplus funds deposited into a pooled investment  
 167 account.

168 Section 5. Section 218.409, Florida Statutes, is amended  
 169 to read:

170 218.409 Administration of the trust fund; creation of  
 171 advisory council.--

172 (1) Upon receipt of the ~~items~~resolution specified in s.  
 173 218.407, F.S., from the local governing body, the ~~State board of~~  
 174 ~~Administration~~ or a professional money management firm shall  
 175 accept all wire transfers of funds into the trust fund. The  
 176 ~~State board of Administration~~ or a professional money management  
 177 firm shall also wire-transfer invested local government funds to  
 178 the local government upon request of the local government  
 179 official named in the resolution.

180 (2) Standards of Care.

181 (a) Prudence. The Trustees shall insure that the State  
 182 ~~board of Administration~~ or a professional money management firm  
 183 ~~shall administers~~ the investment trust funds on behalf of the  
 184 participants. The board or a professional money management firm  
 185 ~~and~~ shall have the power to invest such funds in accordance with  
 186 a written investment policy. ~~A fee may be charged on any~~  
 187 ~~transaction that is not in accord with the close of business as~~  
 188 ~~set by the board.~~ The investment policy shall be updated  
 189 annually to conform to best investment practices. The standard  
 190 of prudence to be used by investment officials shall be the  
 191 "prudent person" standard and shall be applied in the context of  
 192 managing an overall portfolio. Investment officers acting in  
 193 accordance with written procedures and an investment policy and

PCB GEAC 08-30

ORIGINAL

YEAR

194 exercising due diligence shall be relieved of personal  
 195 responsibility for an individual security's credit risk or  
 196 market price changes, provided deviations from expectations are  
 197 reported in a timely fashion and the liquidity and the sale of  
 198 securities are carried out in accordance with the terms of this  
 199 part. The "prudent person" standard states that, "Investments  
 200 shall be made with judgment and care, under circumstances then  
 201 prevailing, which persons of prudence, discretion and  
 202 intelligence exercise in the management of their own affairs,  
 203 not for speculation, but for investment, considering the  
 204 probable safety of their capital as well as the probable income  
 205 to be derived."

206 (b) Ethics and Conflicts of Interest. Officers and  
 207 employees involved in the investment process shall refrain from  
 208 personal business activity that could conflict with the proper  
 209 execution and management of the investment program, or that  
 210 could impair their ability to make impartial decisions.  
 211 Employees and investment officials shall disclose any material  
 212 interests in financial institutions with which they conduct  
 213 business. They shall further disclose any personal  
 214 financial/investment positions that could be related to the  
 215 performance of the investment portfolio. Employees and officers  
 216 shall refrain from undertaking personal investment transactions  
 217 with the same individual with whom business is conducted on  
 218 behalf of the SBA.

219 (c) Internal Controls. The board or a professional money  
 220 management firm and all employees have an affirmative duty to  
 221 immediately disclose any material impact to the trust fund to

PCB GEAC 08-30

ORIGINAL

YEAR

222 | the participants. To insure such disclosure, a system of  
 223 | internal controls shall be established by the board, which shall  
 224 | be documented in writing as part of the investment policy. The  
 225 | controls shall be designed to prevent the loss of public funds  
 226 | arising from fraud, employee error, and misrepresentation by  
 227 | third parties, unanticipated changes in financial markets, or  
 228 | imprudent actions by employees and officers of the board or a  
 229 | professional money management firm. The controls shall also  
 230 | include formal escalation reporting guidelines for all  
 231 | employees. The guidelines will establish procedures to address  
 232 | material impacts on the trust fund that require reporting and  
 233 | action.

234 |       (d) Approval of Investment Policy. The investment policy  
 235 | shall be reviewed and approved annually by the Trustees or when  
 236 | market changes dictate, and in each event the investment policy  
 237 | shall be reviewed by the Investment Advisory Council and by the  
 238 | Participant Local Government Advisory Council.

239 |       (3) The ~~State board of Administration~~ or a professional  
 240 | money management firm may purchase such surety or other bonds as  
 241 | may be necessary for its officials in order to protect the trust  
 242 | fund. A reserve fund may be established to fulfill this purpose.  
 243 | However, any reserve must be a portion of the management fee and  
 244 | must fully disclosed, including its purpose, in the enrollment  
 245 | materials at the time a unit of local government considers  
 246 | participation. Further, any change in the amount to be charged  
 247 | for a reserve must have a reasonable notice period to allow any  
 248 | participant to withdraw from the trust fund prior to the new  
 249 | reserve charge being imposed.

PCB GEAC 08-30

ORIGINAL

YEAR

250           (4) ~~All investments may be purchased jointly for the~~  
 251 ~~participants in the trust fund.~~ The board or a professional  
 252 money management firm shall~~may also~~ purchase investments for a  
 253 pooled investment account in which all participants ~~may~~ share  
 254 pro rata, ~~as determined by rule of the board,~~ in the capital  
 255 gain, income, or losses, subject to any penalties for early  
 256 withdrawal. Any provisions for penalties, including their  
 257 purpose, must be disclosed in the enrollment materials. Any  
 258 change in the amount to be charged for a penalty must have a  
 259 reasonable notice period to allow any participant to withdraw  
 260 from the trust fund prior to the new penalty charge being  
 261 imposed. The board shall determine the rate of return for the  
 262 ~~pooled investment account.~~ A system shall~~may~~ be developed by the  
 263 board, and disclosed in the enrollment materials, subject to  
 264 annual approval by the Trustees, to keep ~~current~~ account  
 265 balances ~~current~~information and to apportion pooled investment  
 266 earnings ~~back~~ to individual accounts.

267           (6) (a) Reports. The State board ~~of Administration~~ or a  
 268 professional money management firm shall provide a report at a  
 269 minimum, monthly, semiannually or upon the occurrence of a  
 270 material event, request to every participant having a beneficial  
 271 interest in the trust fund, the board's executive director, the  
 272 Trustees, the Joint Legislative Auditing Committee, the  
 273 Investment Advisory Council, and the Participant Local  
 274 Government Advisory Council. The report shall include:

275                 1. reports of any material impacts on the trust fund, and  
 276 any actions or escalations taken by staff to address such  
 277 impacts. The Trustees shall provide quarterly a report to the



PCB GEAC 08-30

ORIGINAL

YEAR

278 Joint legislative Auditing Committee that the Trustees have  
 279 reviewed and approved the monthly reports and actions taken, if  
 280 any, to address any impacts.

281 2. a management summary that provides an analysis of the  
 282 status of the current investment portfolio and the individual  
 283 transactions executed over the last month. This management  
 284 summary will be prepared in a manner which will allow anyone to  
 285 ascertain whether investment activities during the reporting  
 286 period have conformed to investment policies. Such reporting  
 287 shall be in conformance with best market practices.

288 ~~show the changes in investments made during the preceding~~  
 289 ~~period. The report shall delineate, in a manner which is in~~  
 290 ~~accordance with generally accepted governmental accounting~~  
 291 ~~procedures, those funds on deposit, the manner in which the~~  
 292 ~~funds are invested, and the interest earnings thereon. The State~~  
 293 ~~board of Administration or a professional money management firm~~  
 294 ~~shall furnish upon request the details of an investment~~  
 295 ~~transaction to any participant, the Trustees, the Investment~~  
 296 ~~Advisory Council, and the Participant Local Government Advisory~~  
 297 ~~Council.~~

298 (b) Marking to Market Calculation and Reporting. The market  
 299 value of the portfolio shall be calculated daily. Withdrawals  
 300 from the fund shall be based on a process that is transparent to  
 301 participants and will insure that advantages or disadvantages do  
 302 not occur to parties making deposits or withdrawals on any  
 303 particular day. A statement of the market value and amortized  
 304 cost of the portfolio shall be issued to participants in  
 305 conjunction with any deposits or withdrawals. In addition, this

PCB GEAC 08-30

ORIGINAL

YEAR

306 information shall be reported monthly with the items in  
 307 paragraph (a) to participants, the Trustees, the Investment  
 308 Advisory Council, and the Participant Local Government Advisory  
 309 Council. The review of the investment portfolio, in terms of  
 310 value and price volatility, shall be performed with practices  
 311 consistent with the GFOA Recommended Practice on "Mark-to-Market  
 312 Practices for State and Local Government Investment Portfolios  
 313 and Investment Pools." In defining market value, considerations  
 314 should be given to the GASB Statement 31 pronouncement.  
 315 Additional reporting may be made to pool participants through  
 316 regular and frequent ongoing multi-media educational materials  
 317 and communications including, but not limited to, historical  
 318 performance, investment holdings, amortized cost and market  
 319 value of the trust fund, credit quality and average maturity of  
 320 the trust fund investments.

321 (7) Administrative costs incurred in carrying out the  
 322 provisions of this part shall be deducted from the interest  
 323 earnings accruing to the trust fund. Such deductions shall be  
 324 prorated among the participant local governments in the  
 325 percentage that each participant's deposits bear to the total  
 326 trust fund. The remaining interest earned shall be distributed  
 327 monthly to participants according to the amount invested. Except  
 328 for administrative costs, the board or a professional money  
 329 management firm may not transfer the interest or use the  
 330 interest for any other purpose, including, but not limited to,  
 331 making up investment losses.

332 (8) (a) The principal, and any part thereof, of each and  
 333 every account constituting the trust fund shall be subject to

PCB GEAC 08-30

ORIGINAL

YEAR

334 payment at any time from the moneys in the fund. However, the  
 335 executive director, may, in good faith, on the occurrence of an  
 336 event that has a material impact on liquidity or operations of  
 337 the fund, for 48 hours limit contributions to or withdrawals  
 338 from the trust fund to ensure that the board can invest monies  
 339 entrusted to it in exercising its fiduciary responsibility ~~or as~~  
 340 ~~otherwise provided by agreement between the State Board of~~  
 341 ~~Administration and the investing unit. Such action shall be~~  
 342 immediately disclosed to all participants, the Trustees, the  
 343 Joint Legislative Auditing Committee, the Investment Advisory  
 344 Council, and the Local Government Advisory Council. The Trustees  
 345 shall convene an emergency meeting as soon as practicable from  
 346 the time the executive director has instituted such measures and  
 347 review the necessity of those measures. If the Trustees agree  
 348 with such measures, the Trustees shall vote to continue the  
 349 measures for up to an additional 15 days. The Trustees must  
 350 convene and vote to continue any such measures prior to the  
 351 expiration of the time limit set, but in no case may the time  
 352 limit set by the Trustees exceed 15 days.

353 (b) An order to withdraw funds~~or warrant~~ may not be issued  
 354 upon any account for a larger amount than the share of the  
 355 particular account to which it applies; and if such order ~~or~~  
 356 ~~warrant~~ is issued, the responsible official shall be personally  
 357 liable under his or her bond for the entire overdraft resulting  
 358 from the payment if made.

359 (9) The auditor general shall conduct an annual financial  
 360 audit of the trust fund which shall include testing for  
 361 compliance with the investment policy. The completed audit shall

PCB GEAC 08-30

ORIGINAL

YEAR

362 be provided to the participants, the board, the Trustees, the  
 363 Investment Advisory Council, the Participant Local Government  
 364 Advisory Council, and the Joint Legislative Auditing Committee.  
 365 As soon as practicable, but no later than 30 days after  
 366 completion of the audit, the Trustees shall report to the Joint  
 367 Legislative Auditing Committee that the Trustees have reviewed  
 368 the audit of the trust fund and shall certify that any necessary  
 369 items are being addressed by a corrective action plan which  
 370 includes target completion dates.

371 (10) Creation of Participant Local Government Advisory  
 372 Council; Membership; Powers and Duties;--

373 (a) The "Participant Local Government Advisory Council" is  
 374 created. The Council shall consist of 16 members. The executive  
 375 director of the State Board of Administration shall be an ex-  
 376 officio member of the Council. The 16 members must be divided as  
 377 follows: 13 members must be current participants in the trust  
 378 fund; three members must have significant accounting and/or  
 379 investment experience. The Governor, the Attorney General, and  
 380 the Chief Financial Officer shall each make four appointments,  
 381 three from among the trust fund participants, and one with  
 382 significant accounting and/or investment experience. The  
 383 President of the Senate and the Speaker of the House of  
 384 Representatives shall each make two appointments, both from  
 385 trust fund participants. In choosing members from trust fund  
 386 participants, the appointing official should attempt to choose  
 387 participants with differing levels of participation in the trust  
 388 fund. The initial appointments to the council must be made  
 389 within thirty days from the effective date of this act. Members

PCB GEAC 08-30

ORIGINAL

YEAR

390 shall serve two-year terms; however in order to establish  
 391 staggered terms, for the initial appointments, each appointing  
 392 official appointing four member shall appoint two members to a  
 393 one-year term and two members to a two-year term; each  
 394 appointing official appointing two members shall appoint one  
 395 member to a one-year term and one member to a two-year term. A  
 396 member shall not serve more than three consecutive terms.  
 397 Members shall name the chairperson of the Council. A member  
 398 whose term has expired shall continue to serve on the Council  
 399 until such time as a replacement is appointed. The Council shall  
 400 meet quarterly or upon the call of the chairperson. A majority  
 401 of the members constitutes a quorum for the conduct of business.  
 402 Members of the council shall serve without compensation. The  
 403 appointing official may only remove their appointee with cause.  
 404 If the entity represented by an appointee ceases to be a  
 405 participant in the trust fund, then the appointment is vacated.  
 406 Vacancies shall be filled for the remainder of the term and by  
 407 the original appointing official.

408 (b) The Council is independent from but administratively  
 409 attached to the board. A volunteer Executive Director for the  
 410 Council may be chosen by majority vote of the Council.

411 (c) The Council may:

412 1. Provide the board with input regarding proposed  
 413 investment policies, internal controls, investment classes,  
 414 competitively-bid contracts, and programs that may affect trust  
 415 fund participants;

416 2. Consider requests from trust fund participants to  
 417 review the board's investment policies, internal controls,

PCB GEAC 08-30

ORIGINAL

YEAR

418 investment classes, competitively-bid contracts, and programs  
 419 that may affect trust fund participants; and

420 3. Review rules promulgated by the board. The Council may  
 421 provide input on any rule and offer alternatives that the  
 422 Council believes reduce the impact on trust fund participants  
 423 while meeting the stated objectives of the proposed rule.

424 (d) The Council does not have authority to:

425 1. Interfere with, modify, prevent or delay board action  
 426 or investment activities;

427 2. Intervene in legal actions; or

428 3. Subpoena witnesses to testify or to produce documents,  
 429 but it may request witnesses to voluntarily testify or produce  
 430 documents.

431 (e) The Council shall prepare and submit a written  
 432 biennial report to the board, Trustees, the Investment Advisory  
 433 Council, and the Joint Legislative Auditing Committee that  
 434 describes the activities and recommendations of the Council.

435 Section 6. This act shall take effect upon becoming a law.









## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Lower taxes:** A successfully administered investment pool for local governments may mean a higher rate of return and more revenue available for local governments, diminishing the need for increased revenue from taxes.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **State Board of Administration**

The State Board of Administration of Florida (the "SBA" or the "Board") is an agency of Florida state government that provides a variety of investment services to various governmental entities. These include managing the assets of the Florida Retirement System (FRS) Pension Plan (i.e., defined benefit plan) and Investment Plan (i.e., defined contribution plan), the Lawton Chiles Endowment Fund, the Local Government Surplus Funds Trust Fund (also known as the "Local Government Investment Pool" or "LGIP"), the Hurricane Catastrophe Fund, the Lottery Fund and a variety of smaller funds. Total assets under management as of June 30, 2007 were approximately \$184 billion.

The SBA's Trustees are the Governor who serves as Chairman, the CFO who serves as Treasurer and the Attorney General who serves as Secretary. The Trustees delegate authority to the Executive Director, who serves at the discretion of the Trustees and is responsible for managing and directing all administrative, personnel, budgeting, investment policy and investment functions. The Executive Director manages 162 professional and administrative support staff. The Board of Trustees appoints six members to serve on the Investment Advisory Council. The Investment Advisory Council provides independent oversight of SBA's funds and major investment responsibilities. The Council meets on an ongoing basis to discuss general investment policies and broad topics related to the general economic outlook.

##### **History of the Pool**

The Local Government Investment Pool (Pool) was established "to provide local governments a low cost, low risk, fully transparent investment option for their surplus funds".<sup>1</sup> The Pool is open to all units of local government in Florida and has been operated by the SBA since January 1982. As of June 30, 2007, the SBA managed approximately \$31 billion in assets in the Pool serving almost 1000 participants.

Confidence in the Fund began to erode as a result of the Pool's July and August 2007 purchase of four securities, Ottimo, KKR Pacific, KKR Atlantic and Axon (the "Securities"), with a par value at time of purchase of \$947.8 million. These Securities were downgraded in late summer and early fall 2007 below the Pool's investment guidelines. Knowledge of these downgrades, primarily from financial news accounts and rumors that in July and August one or more of the Securities had defaulted, all against the backdrop of the national sub-prime mortgage crisis, prompted participants into withdrawing \$14 billion from the Pool in mid- to late- November 2007.

As a result of this run, on November 29, 2007, the SBA Trustees suspended withdrawals from the Pool and on December 4, 2007, split the Pool into two funds, Fund A and Fund B. The four downgraded Securities with a then-par value of approximately \$867 million together with additional securities with a

<sup>1</sup> [http://sbafla.com/fund\\_pool.aspx](http://sbafla.com/fund_pool.aspx)

par value of approximately \$1.2 billion deemed by an investment manager hired by the SBA, BlackRock, to have an unacceptable level of risk, were placed in Fund B and frozen. Additionally, the Trustees transferred to Fund B the Pool's entire \$22 million in accumulated, unspecified reserves and \$96 million representing the Pool's interest earned in November 2007 by all participants in the Pool. The \$96 million was transferred to Fund B in the form of \$82 million in cash and \$14 million in securities.

The Pool's remaining securities were placed in Fund A and rated by Standard and Poor's as AAA. When Fund A was reopened, the SBA established withdrawal limitations based upon the Fund's liquidity and imposed a 2% fee on participants which elected to withdraw more than they were allowed under the liquidity restrictions on redemptions. The 2% fee was based upon an assessment by the SBA staff that a complete liquidation of Fund A would result in a 2% shortfall. On January 18, 2008, the SBA released the greater of 22% or \$2 million in additional liquidity.

On February 12, 2008, the SBA chose Federated Investors Inc. to take over management of the Pool. Federated reported on March 14, 2008, the following investment management guidelines and practices:

- LGIP Fund A managed in compliance with investment guidelines and Standard & Poor's (S&P) AAA rating criteria
- Dollar-weighted average maturity not greater than 60 days
- Final maturity of an individual security not greater than 397 days
- 5% individual issuer limit
- 10% limit on illiquid securities/"limited liquidity securities"
- At least 50% of the LGIP's securities must be rated A1+; remainder invested in at A1 only
- Weekly reporting to Standard & Poor's

#### **LGIP B**

- Daily assessment of liquidity
- Daily assessment of market value of all securities
- All cash invested in overnight securities only
- Countrywide maturity: \$200 million will move to LGIP A 3/17/08
- Ongoing assessment of impaired assets

#### **LGIP B Securities**

By July 31, 2007, the Pool had invested in 28 collateralized debt obligations and structured investment vehicles and seven extendable asset-backed commercial paper (ABCP) issued by seven ABCP programs that chose to extend. The Pool's investment guidelines effective July 1, 2006, to October 31, 2007, permitted the purchase of first-tier securities, which are, as defined by SEC Rule 2a-7, those receiving the highest short term rating for debt obligations from two of the nationally recognized statistical rating organizations. If only one service rated the security, only one was required.

The first tier rating for the three major agencies are:

- Standard and Poor's A-1+ and A-1
- Moody's P-1
- Fitch F1+ and F1

KKR Pacific and KKR Atlantic, sponsored by KKR Financial Holdings, and Ottimo, sponsored by Aladdin Capital Management, three ABCP issues, extended their maturities and chose to negotiate with their investors to meet a mutually agreed-upon liquidation plan for the assets collateralizing the

securities. Axon, a SIV sponsored by Axon Financial Funding, is also in restructuring. All of these Securities were first-tier rated.

The following table sets forth the history and status of the rating of these four Securities with their original par value totaling \$947.8 million.

SECURITIES	PAR (\$MM)	SELLER	PURCHASE DATE	RATING AT PURCHASE	DOWNGRADE DATE & RATING
Ottimo	52.8	Lehman	7/3/2007	A-1+/P-1	8/30/2007 A-2 (S&P)
Ottimo	100	Lehman	7/9/2007	A-1+/P-1	8/30/2007 A-2 (S&P)
KKR Pacific	125.1	Lehman	7/26/2007	A-1+/P-1/F1+	10/29/2007 Fitch B
KKR Pacific	200	Lehman	7/27/2007	A-1+/P-1/F1+	10/29/2007 NP (Moody)
Ottimo	30.7	JP Morgan	7/27/2007	A-1+/P-1	NA
Axon	175	JP Morgan	7/27/2007	A-1/P-1/F1+	10/29/2007 F3 (Fitch)
KKR Pacific	64.3	Lehman	8/1/2007	A-1/P-1/F1+	8/15/2007 B (Fitch)
KKR Pacific	200	Lehman	8/1/2007	A-1/P-1/F1+	10/24/2007 A-2 (S&P)

The SBA is currently undergoing a search, through an executive placement company, for a new executive director.

An unofficial LGIP Participant Advisory Committee was created at the outset of the situation and currently consists of 17 members with various affiliations.

At the direction of Speaker Marco Rubio and under the leadership of Rep. Carl Domino, the House undertook an investigation of the Pool. The team hired for this role issued its report on March 24, 2008, and listed 16 recommendations. Speaker Rubio further directed the House to consider legislation that could effectively provide control measures and ensure accountability and return investor trust in the Pool.

### **Advantages and Disadvantages of Pools to Local Governments**

Local government investment pools (“pools”) have existed for more than 100 years. Today, 45 of the fifty states have such pools and the funds run by these pools exceed \$200 billion.<sup>2</sup> There are significant tangible and intangible public service benefits related to these pools. Tangible benefits typically are lower fees, diversification and access to professional management. Fees paid by participants to the Fund averaged a very favorable 1.5 basis points from the Pool’s inception in 1982 through June, 2007, a savings of over 73% relative to the average fees paid. Intangible benefits include the ability of a State’s Auditor General and other oversight and control functions to perform reviews of a single entity, the Pool, to enhance protection of participants, rather than reviews of numerous entities.

Local Government Investment Pools “are not registered with the Securities and Exchange Commission (SEC) and are exempt from SEC regulatory requirements because they fall under a governmental exclusion clause. While this exemption allows pools greater flexibility, it also reduces investor protection. Investments in these pools are not insured or guaranteed and substantial losses have occurred in the past. Some rating agencies rate LGIPs using the same criteria as money market mutual

<sup>2</sup> Source: iMoneyNet, “Government Investment Pools: 2007 Update of Investment Strategies, Facts, Figures and Trends”.

funds. These ratings are based on safety of principal and ability to maintain a NAV of \$1. Pool ratings can provide an additional method of due diligence."<sup>3</sup>

### **Effect of Proposed Changes**

The bill creates the Fund B Surplus Funds Trust Fund. Funds are credited to it by a transfer of the investments, interest earned, except for the November 2007 interest, and reserves in Fund B of the Local Government Surplus Funds Trust Fund. The bill provides that the funds are carried forward each year. The trust fund terminates upon self-liquidation.

#### **C. SECTION DIRECTORY:**

Section 1: Creates the Fund B Surplus Funds Trust Fund.

Section 2: Provides a contingent effective date.

## **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:**

E. Although the bill creates a new trust fund, the funds come from the Fund B of the Local Government Surplus Funds Trust Fund already being managed by Federated Investors Inc.

## **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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<sup>3</sup> GFOA Use of Local Government Investment Pools (LGIPs) (2007) (CASH), located at <http://www.gfoa.org/downloads/cashlgip.pdf>, last viewed March 24, 2008.

Not applicable because this bill does not appear to: require cities or counties to spend funds or take an action requiring 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:

None.

D. STATEMENT OF THE SPONSOR

Not applicable.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

PCB GEAC 08-31

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to trust funds; creating the Fund B  
 3 Surplus Funds Trust Fund within the State Board of  
 4 Administration; providing for source of funds; providing  
 5 for transfer of funds to trust fund; providing for an  
 6 annual carryforward of funds; providing for future  
 7 termination; providing a contingent effective date.  
 8

9 Be It Enacted by the Legislature of the State of Florida:  
 10

11 Section 1. (1) There is created the Fund B Surplus Funds  
 12 Trust Fund within the State Board of Administration. Funds  
 13 credited to the trust fund shall consist of the investments,  
 14 interest earned, except for the November 2007 interest, and  
 15 reserve in Fund B of the Local Government Surplus Funds Trust  
 16 Fund. The funds shall be transferred to the trust fund from the  
 17 Local Government Surplus Funds Trust Fund within 30 days of the  
 18 effective date of this act.

19 (2) Notwithstanding s. 216.301, F.S., and pursuant to s.  
 20 216.351, F.S., any balance in the trust fund at the end of the  
 21 fiscal year shall remain in the fund and be available for  
 22 carrying out the purposes of the trust fund.

23 (3) The trust fund shall be terminated upon self-  
 24 liquidation.

25 Section 2. This act shall take effect upon becoming a law,  
 26 if House Bill or similar legislation is adopted in the  
 27 same legislative session or an extension thereof and becomes  
 28 law.











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### **Statutes Governing Local Government Investment Pool**

The Pool was created by s. 218.405, F.S., and this section also provided the board with rulemaking powers. Section 218.407, F.S., provides the criteria for local governments to invest in the Pool. The local government must pass a resolution that it is in the interest of the unit of local government to deposit surplus funds in the trust fund, which is then filed with the SBA and authorizes investment of its surplus funds in the trust fund. The SBA may invest those moneys in the trust fund in the same manner and subject to the same restrictions as are set forth in s. 215.47, F.S. Normally, the local governments will have surplus funds deposited into a pooled investment account. This section does not impair the power of a unit of local government to hold funds in deposit accounts with banking or savings institutions or to invest funds as otherwise authorized by law.

The provisions for the administration of the trust fund are set out in s. 218.409, F.S.:

(1) Upon receipt of the resolution from the local governing body, the State Board of Administration shall accept all wire transfers of funds into the trust fund. The State Board of Administration shall also wire-transfer invested local government funds to the local government upon request of the local government official named in the resolution.

(2) The State Board of Administration shall administer the investment trust funds on behalf of the participants and shall have the power to invest such funds. A fee may be

charged on any transaction that is not in accord with the close of business as set by the board.

(3) The State Board of Administration may purchase such surety or other bonds as may be necessary for its officials in order to protect the fund. A reserve fund may be established to fulfill this purpose.

(4) All investments may be purchased jointly for the participants in the trust fund. The board may also purchase investments for a pooled investment account in which all participants may share pro rata, as determined by rule of the board, in the capital gain, income, or losses, subject to any penalties for early withdrawal. The board shall determine the rate of return for the pooled investment account. A system may be developed by the board to keep current account balance information and to apportion pooled investment earnings back to individual accounts.

(5) The State Board of Administration shall keep a separate account, designated by name and number of each participating local government. A maximum number of accounts allowed for each participant may be established by the board. Individual transactions and totals of all investments, or the share belonging to each participant, shall be recorded in the accounts.

(6) The State Board of Administration shall report semiannually or upon request to every participant having a beneficial interest in the trust fund. The report shall show the changes in investments made during the preceding period. The report shall delineate, in a manner which is in accordance with generally accepted governmental accounting procedures, those funds on deposit, the manner in which the funds are invested, and the interest earnings thereon. The State Board of Administration shall furnish upon request the details of an investment transaction to any participant. Additional reporting may be made to pool participants.

(7) Costs incurred in carrying out the provisions of this part shall be deducted from the interest earnings accruing to the trust fund. Such deductions shall be prorated among the participant local governments in the percentage that each participant's deposits bear to the total trust fund.

(8)(a) The principal, and any part thereof, of each and every account constituting the trust fund shall be subject to payment at any time from the moneys in the fund or as otherwise provided by agreement between the State Board of Administration and the investing unit.

(b) An order or warrant may not be issued upon any account for a larger amount than the share of the particular account to which it applies; and if such order or warrant is issued, the responsible official shall be personally liable under his or her bond for the entire overdraft resulting from the payment if made.

### **Government Finance Officers Association (GFOA) Guidance**

The GFOA has issued a sample investment policy as a model to help investing entities customize a policy to fit their particular needs, constraints and capabilities. The sample policy covers 11 areas including general objectives (safety, liquidity, yield), standards of care (prudence, ethics and conflicts of interest, delegation of authority), safekeeping and custody (internal controls), reporting, and approval of investment policies.<sup>2</sup>

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<sup>2</sup> GFOA Sample Investment Policy, located at <http://www.gfoa.org/downloads/SampleInvestmentPolicy.pdf>, last viewed March 25, 2008.

The GFOA has also issued guidance on mark-to-market practices:

**Background.** Market risk is significant in public investment portfolios. Due to price volatility, valuing investments at their current price is necessary to provide a realistic measure of a portfolio's true liquidation value. Over time, reporting standards for state and local government investment portfolios have been enhanced so that investors, governing bodies, and the public remain informed of the current market value of the portfolio. Regular disclosure of the value of a governmental entity's investments is an important step to furthering taxpayer and market confidence in state and local government investment practices. The Governmental Accounting Standards Board (GASB) has also recognized the need to report investments at fair value at fiscal year end.

Government officials should be aware of state, local, accounting, and rating agency requirements regarding mark-to-market practices.

**Recommendation.** The Government Finance Officers Association (GFOA) recommends that state and local government officials responsible for investment portfolio reporting determine the market value of all securities in the portfolio on at least a quarterly basis. These values should be obtained from a reputable and independent source and disclosed to the governing body or other oversight body at least quarterly in a written report. The independent source of pricing should not be one of the parties to the transaction being valued and could include:

- 1) a broker or other financial institution who was not a counterparty to the transaction,
- 2) the custodial bank if the bank was not a counterparty to the transaction,
- 3) publicly available publications such as the Wall Street Journal, or
- 4) other pricing services for which a separate fee would be paid.

It is recommended that the written report include the market value, book value, and unrealized gain or loss of the securities in the portfolio.

If there is a significant event in the local or national economy that might affect the value of the portfolio, then a mid-term valuation of the portfolio should be conducted. Governments that employ a more active portfolio management style should consider more frequent marking to market and reporting.<sup>3</sup>

### **Governmental Accounting Standards Board (GASB) Guidance**

The GASB has issued a "Statement No. 31 Accounting and Financial Reporting for Certain Investments and for External Investment Pools"<sup>4</sup> which establishes accounting and financial reporting standards for all investments held by governmental external investment pools. LGIPs that are 2a7-like pools are allowed to report their investments at amortized cost. Rule 2a7 allows money market mutual funds to use amortized cost to report net assets. This Statement establishes, among other things:

- that governments should report investments at fair value in the balance sheet (or other statement of financial position).
- that investment income, including changes in the fair value of investments, should be reported as revenue in the operating statement (or other statement of activities).

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<sup>3</sup> GFOA Mark-to-Market Reporting Practices for State and Local Government Investment Portfolios (1995, 2000, 2003, 2005, and 2008) (CASH), located at <http://www.gfoa.org/downloads/MarktmarketFINAL.pdf>, last viewed March 25, 2008.

<sup>4</sup> GASB Summary of Statement No. 31 Accounting and Financial Reporting for Certain Investments and for External Investment Pools (Issued 3/97), located at <http://www.gasb.org/st/index.html>, last viewed March 24, 2008.



- minimum requirements for the financial statements to be presented and the disclosures to be made in the separate financial reports of governmental external investment pools.

## **Advantages and Disadvantages of Pools to Local Governments**

Local government investment pools (“pools”) have existed for more than 100 years. Today, 45 of the fifty states have such pools and the funds run by these pools exceed \$200 billion.<sup>5</sup> There are significant tangible and intangible public service benefits related to these pools. Tangible benefits typically are lower fees, diversification and access to professional management. Fees paid by participants to the Fund averaged a very favorable 1.5 basis points from the Pool’s inception in 1982 through June, 2007, a savings of over 73% relative to the average fees paid. Intangible benefits include the ability of a State’s Auditor General and other oversight and control functions to perform reviews of a single entity, the Pool, to enhance protection of participants, rather than reviews of numerous entities.

Local Government Investment Pools “are not registered with the Securities and Exchange Commission (SEC) and are exempt from SEC regulatory requirements because they fall under a governmental exclusion clause. While this exemption allows pools greater flexibility, it also reduces investor protection. Investments in these pools are not insured or guaranteed and substantial losses have occurred in the past. Some rating agencies rate LGIPs using the same criteria as money market mutual funds. These ratings are based on safety of principal and ability to maintain a NAV of \$1. Pool ratings can provide an additional method of due diligence.”<sup>6</sup>

## **Effect of Proposed Changes**

### **Purpose**

PCB 32 implements the Fund B Surplus Funds Trust Fund created in PCB 31 in order to legally separate these funds from Fund A in the Local Government Surplus Funds Trust Fund. The purpose stated in the bill is to maximize the payout of principal on invested surplus funds of units of local government formerly in Fund B of the Local Government Surplus Funds Trust Fund through a prudent workout of the trust fund with the ultimate goal of self-liquidating the trust fund through maturity and payout of the investments.

### **Administration and Certification**

The fund may be administered by the SBA or a professional money management firm based on a written investment policy. The investment policy must be annually reviewed and approved by the Trustees. The Trustees must certify to the Joint Legislative Auditing Committee that the fund is being operated in accordance with the statutes implementing the trust fund and that the fund is being managed in accord with best investment practices. The bill provides for the accounting mechanisms for the trust fund participants and establishment of accounts. The principal may be paid out when the administrator finds that it is in the best interests of the participants. Participants may not conduct transactions in the fund.

### **Internal Controls**

This section creates a framework for internal controls to be established. At the outset it creates an affirmative duty for all employees to immediately disclose any material impact to the trust fund to participants. The internal controls cover a number of circumstances such as fraud or employee error and must be set out in writing as part of the investment policy. The internal controls also include formal escalation procedures to address material impacts that require reporting and action.

The bill also requires review and approval of the investment policy by the Trustees at least annually or as market conditions dictate. The investment policy is also reviewed at those times as well by the

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<sup>5</sup> Source: iMoneyNet, “Government Investment Pools: 2007 Update of Investment Strategies, Facts, Figures and Trends”.

<sup>6</sup> GFOA Use of Local Government Investment Pools (LGIPs) (2007) (CASH), located at <http://www.gfoa.org/downloads/cashlgip.pdf>, last viewed March 24, 2008.

Investment Advisory Council and the Participant Local Government Advisory Council created later in this section.

#### Costs and Interest

This section further provides that administrative costs may be deducted from the interest earned by participants, but that the remaining interest must be distributed and may not be used for any other purpose including making up investment losses.

#### Reserves

Once the pool self-liquidates, any remaining reserve shall be distributed on a pro rata basis in the percentage that each participant's deposits bear to the total trust fund.

#### Reporting

The bill establishes a reporting program for the board or a professional money management firm. A report must be provided, at least monthly, or upon the occurrence of a material event, to all participants, the board's executive director, the Trustees, the JLAC, the Investment Advisory Council, and the Participant Local Government Advisory Council. The report includes:

- Reports of any material impacts on the trust fund, and any actions or escalations taken by staff to address such impacts. The Trustees shall provide quarterly a report to the Joint legislative Auditing Committee that the Trustees have reviewed and approved the monthly reports and actions taken, if any, to address any impacts.
- A management summary that provides an analysis of the status of the current investment portfolio and the individual transactions executed over the last month. This management summary will be prepared in a manner which will allow anyone to ascertain whether investment activities during the reporting period have conformed to investment policies. Such reporting shall be in conformance with best market practices.

The details of any particular transaction are available upon request.

#### Mark to Market

The bill provides that the market value of the portfolio must be calculated on a daily basis. A statement of the market value and amortized cost of the portfolio must be issued monthly with the management report. The review of the portfolio must be in conformance with GFOA and GASB statements. Procedures for additional reporting are also created.

#### Trustee Review

The Trustees are required to review the progress of the fund at each meeting of the State Board of Administration until the fund self-liquidates. The bill also provides for an Auditor general report to be issued prior to the 2013 Legislative session.

The bill takes effect upon becoming a law.

### C. SECTION DIRECTORY:

Section 1: Creates s. 218.418, F.S., to provide definitions.

Section 2: Creates s. 218.420, F.S.; relating to the trust funds purpose, rulemaking authority, administration, and reporting.

Section 3: Creates s. 218.423, F.S. providing for an Auditor General review of the trust fund.

Section 4: Provides that the bill is effective upon becoming a law.

## 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:

Although the bill implements a new trust fund, the funds come from the Fund B of the Local Government Surplus Funds Trust Fund already being managed by Federated Investors Inc.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take an action requiring 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:

The bill provides rulemaking authority to the State Board of Administration to implement the provisions of the bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### D. STATEMENT OF THE SPONSOR

Not applicable.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

PCB GEAC 08-32

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to the Fund B Surplus Funds Trust Fund;  
 3 creating s. 218.418, F.S.; providing definitions; creating  
 4 s. 218.420, F.S.; providing for purpose of Fund B Surplus  
 5 Funds Trust Fund; providing rulemaking authority;  
 6 providing for administration of fund; providing for annual  
 7 certification by Trustees to Joint Legislative Auditing  
 8 Committee of review and compliance of fund; providing  
 9 restrictions on the fund; providing criteria for payment  
 10 of principal; restricting participant transactions in  
 11 fund; providing for investment policy criteria; providing  
 12 procedures for internal controls; providing duty to  
 13 disclose material impacts on fund; providing for  
 14 investment policy implementation; providing criteria for  
 15 payment of costs and use of interest; providing for  
 16 distribution of reserve upon self-liquidation; providing  
 17 reporting requirements; requiring monthly reports to  
 18 certain groups; providing criteria of the report;  
 19 requiring marking to market calculation and reporting;  
 20 providing criteria; providing for additional reporting;  
 21 requiring Trustee review; creating s. 218.422, F.S.;  
 22 providing Auditor General review and report to certain  
 23 groups; providing an effective date.

24  
 25 Be It Enacted by the Legislature of the State of Florida:  
 26

27 Section 1. Section 218.418, Florida Statutes, is created  
 28 to read:

PCB GEAC 08-32

ORIGINAL

YEAR

29           218.418 Definitions.--The following words or terms, when  
 30 used in ss. 218.420 through 218.422, F.S., shall have the  
 31 following meaning:

32           (1) "Board" means the State Board of Administration.

33           (2) "GASB" means the Governmental Accounting Standards  
 34 Board.

35           (3) "GFOA" means the Government Finance Officers  
 36 Association.

37           (4) "Surplus funds" means any funds in any general or  
 38 special account or fund of a unit of local government, or funds  
 39 held by an independent trustee on behalf of a unit of local  
 40 government, which in reasonable contemplation will not be  
 41 immediately needed for the purposes intended.

42           (5) "Trust fund" means the pooled investment fund known as  
 43 the Fund B Surplus Funds Trust Fund.

44           (6) "Trustees" means the Trustees of the State Board of  
 45 Administration.

46           (7) "Unit of local government" means any governmental  
 47 entity within the state not part of state government and shall  
 48 include, but not be limited to, the following and the officers  
 49 thereof: any county, municipality, school district, special  
 50 district, clerk of the circuit court, sheriff, property  
 51 appraiser, tax collector, supervisor of elections, authority,  
 52 board, public corporations, or any other political subdivision  
 53 of the state.

54           Section 2. Section 218.420, Florida Statutes, is created  
 55 to read:

PCB GEAC 08-32

ORIGINAL

YEAR

56 218.420 Fund B Surplus Funds Trust Fund; purpose;  
 57 rulemaking; administration; reporting.--

58 (1) The purpose of the trust fund is to maximize the  
 59 payout of principal on invested surplus funds of units of local  
 60 government formerly in Fund B of the Local Government Surplus  
 61 Funds Trust Fund through a prudent workout of the trust fund  
 62 with the ultimate goal of self-liquidating the trust fund  
 63 through maturity and payout of the investments. The board may  
 64 adopt rules to administer the provisions of this section.

65 (2) Administration.

66 (a) The State Board of Administration or a professional  
 67 money management firm shall administer the trust fund on behalf  
 68 of the participants based on a written investment policy,  
 69 annually approved by the Trustees, and shall have the power to  
 70 workout, restructure, or invest such funds. The Trustees shall  
 71 annually certify to the Joint Legislative Auditing Committee  
 72 that the trust fund is in compliance with the requirements of  
 73 this section and has conducted a review of the trust fund and  
 74 determined that the management of the trust fund is in accord  
 75 with best investment practices. Any investments must be made in  
 76 money market or equivalent funds. The board or a professional  
 77 money management firm shall keep a separate account, designated  
 78 by name and number of each participating local government.  
 79 Individual transactions and totals of all investments, or the  
 80 share belonging to each participant, shall be recorded in the  
 81 accounts. The principal, and any part thereof, shall be subject  
 82 to payment from the moneys in the fund as determined by the  
 83 board or a professional money management firm to be in the best

PCB GEAC 08-32

ORIGINAL

YEAR

84 interests of the participants. Participants may not conduct  
 85 transactions in the trust fund.

86 (b) Internal Controls. The board or a professional money  
 87 management firm and all employees have an affirmative duty to  
 88 immediately disclose any material impact to the trust fund to  
 89 the participants. To insure such disclosure, a system of  
 90 internal controls shall be established by the board, which shall  
 91 be documented in writing as part of the investment policy. The  
 92 controls shall be designed to prevent the loss of public funds  
 93 arising from fraud, employee error, and misrepresentation by  
 94 third parties, unanticipated changes in financial markets, or  
 95 imprudent actions by employees and officers of the board or a  
 96 professional money management firm. The controls shall also  
 97 include formal escalation reporting guidelines for all  
 98 employees. The guidelines will establish procedures to address  
 99 material impacts on the trust fund that require reporting and  
 100 action.

101 (c) Approval of Investment Policy. The investment policy  
 102 shall be reviewed and approved annually by the Trustees or when  
 103 market changes dictate, and in each event, the investment policy  
 104 shall be reviewed by the Investment Advisory Council and by the  
 105 Participant Local Government Advisory Council.

106 (d) Except for administrative costs incurred in carrying  
 107 out the provisions of this section, which shall be prorated  
 108 among the participants in the percentage that each participant's  
 109 deposits bear to the total trust fund, any interest earned in  
 110 the trust fund shall be distributed monthly to the fund  
 111 participants according to the amount invested. The board or a



PCB GEAC 08-32

ORIGINAL

YEAR

112 professional money management firm may not transfer the interest  
 113 or use the interest for any other purpose, including, but not  
 114 limited to, making up investment losses.

115 (e) Once the pool self-liquidates, any remaining reserve  
 116 shall be distributed on a pro rata basis in the percentage that  
 117 each participant's deposits bear to the total trust fund.

118 (3) Reports. (a) The State Board of Administration or a  
 119 professional money management firm shall provide a report at a  
 120 minimum, monthly, or upon the occurrence of a material event, to  
 121 every participant having a beneficial interest in the trust  
 122 fund, the board's executive director, the Trustees, the Joint  
 123 Legislative Auditing Committee, the Investment Advisory Council,  
 124 and the Participant Local Government Advisory Council. The  
 125 report shall include:

126 1. reports of any material impacts on the trust fund, and  
 127 any actions or escalations taken by staff to address such  
 128 impacts. The Trustees shall provide quarterly a report to the  
 129 Joint legislative Auditing Committee that the Trustees have  
 130 reviewed and approved the monthly reports and actions taken, if  
 131 any, to address any impacts.

132 2. a management summary that provides an analysis of the  
 133 status of the current investment portfolio and the individual  
 134 transactions executed over the last month. This management  
 135 summary will be prepared in a manner which will allow anyone to  
 136 ascertain whether investment activities during the reporting  
 137 period have conformed to investment policies. Such reporting  
 138 shall be in conformance with best market practices.

PCB GEAC 08-32

ORIGINAL

YEAR

139           3. The State Board of Administration or a professional  
 140 money management firm shall furnish upon request the details of  
 141 an investment transaction to any participant, the Trustees, the  
 142 Investment Advisory Council, and the Participant Local  
 143 Government Advisory Council.

144           (b) Marking to Market Calculation and Reporting. The market  
 145 value of the portfolio shall be calculated daily. A statement of  
 146 the market value and amortized cost of the portfolio shall be  
 147 reported monthly with the items in paragraph (a) to  
 148 participants, the Trustees, the Investment Advisory Council, and  
 149 the Participant Local Government Advisory Council. The review of  
 150 the investment portfolio, in terms of value and price  
 151 volatility, shall be performed with practices consistent with  
 152 the GFOA Recommended Practice on "Mark-to-Market Practices for  
 153 State and Local Government Investment Portfolios and Investment  
 154 Pools." In defining market value, considerations should be given  
 155 to the GASB Statement 31 pronouncement.

156           (c) Additional reporting may be made to pool participants  
 157 through regular and frequent ongoing multi-media educational  
 158 materials and communications including, but not limited to,  
 159 historical performance, investment holdings, amortized cost and  
 160 market value of the trust fund, credit quality and average  
 161 maturity of the trust fund investments.

162           (4) The Trustees shall review the board's progress in  
 163 returning the principal in the trust fund to the participants at  
 164 each meeting of the State Board of Administration until the  
 165 trust fund terminates.

PCB GEAC 08-32

ORIGINAL

YEAR

166 Section 3. Section 218.423, Florida Statutes, is created  
167 to read:

168 218.422 Fund B Surplus Funds Trust Fund; review.--

169 Unless the trust fund has been terminated through self-  
170 liquidation, prior to the regular session of the Legislature for  
171 2013, the Auditor General shall review the trust fund and the  
172 steps taken up to that time to return as much of the principal  
173 to the participants and provide a summary report to the board,  
174 the Trustees, the President of the Senate, the Speaker of the  
175 House of Representatives, the Investment Advisory Council, and  
176 the Participant Local Government Advisory Council.

177 Section 4. This act shall take effect upon becoming a law.

