



Committee on State Affairs

**Wednesday, April 2, 2008
8:00 AM – 9:30 AM
Morris Hall**

**Marco Rubio
Speaker**

**Andy Gardiner
Chairman**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on State Affairs

Start Date and Time: Wednesday, April 02, 2008 08:00 am

End Date and Time: Wednesday, April 02, 2008 09:30 am

Location: Morris Hall (17 HOB)

Duration: 1.50 hrs

Consideration of the following bill(s):

HB 389 Retirement by Precourt

HB 887 Career Service System by Coley

HB 1049 Florida Retirement System by Pickens

HB 1467 Access to Confidential Records of Children by Weatherford

Workshop on the following:

HB 1451 Operation of the Florida Lottery by Traviesa

NOTICE FINALIZED on 03/31/2008 16:10 by TUCK.SHIRLEY

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands the Special Risk Class to include certain existing members who are no longer able to perform in their Special Risk Class position due to a “qualifying injury” suffered in the line of duty.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

FLORIDA RETIREMENT SYSTEM

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

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

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

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

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.¹²

SPECIAL RISK CLASS

The Special Risk Class of the FRS was created to recognize that certain employees, because of the

¹ Section 121.025, F.S.

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

³ *Id.* at 43.

⁴ *Id.* at 52.

⁵ *Id.* at 49.

⁶ Section 121.021(12), F.S.

⁷ Section 121.0515, F.S.

⁸ Section 121.0515(7), F.S.

⁹ Section 121.052, F.S.

¹⁰ Section 121.055, F.S.

¹¹ FRS Annual Report at 43.

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

nature of the work they perform,¹³ might need to retire at an earlier age with less service than other types of employees. As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.¹⁴ Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.¹⁵ These increased benefits are funded through higher employer contribution rates: 19.76 percent of gross compensation, effective July 1, 2007, and 22.01 percent, effective July 1, 2008.¹⁶

Special Risk Class membership includes: law enforcement officers, correctional officers, and firefighters;¹⁷ emergency medical technicians and paramedics;¹⁸ community-based correctional probation officers;¹⁹ certain employees of correctional or forensic facilities or institutions;²⁰ youth custody officers;²¹ and employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline.²²

Special Risk Class members who suffer an injury or disability that does not render them totally and permanently disabled,²³ but renders them unable to perform the duties of their Special Risk Class position, are ineligible for disability retirement benefits.²⁴ If such member subsequently is retained or reemployed by an FRS employer in a non-Special Risk position, he or she is designated as a member of the applicable class and no longer a member of the Special Risk Class.

OFFICER ADAM PIERCE

In 2005, Orange County Sheriff's Deputy Officer Adam Pierce was involved in a confrontation on Orange Blossom Trail regarding a suspected drug deal. Officer Pierce was shot twice, once in the head and in the neck, severing his spine. At the age of 25, he is paralyzed from the mid section down. His twin brother and father are law enforcement officers.

PROPOSED CHANGES

This bill is designated the "Adam Pierce Special Risk Retirement Act." It expands the Special Risk Class to include Special Risk Class members employed in the categories of law enforcement, firefighting, and criminal detention who suffer a disability in the line of duty due to a qualifying injury.

¹³ Section 125.0515(1), F.S. (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).

¹⁴ Section 121.021(29), F.S., defines normal retirement date, which contrasts with members of the Regular Class who can retire at age 62 or with 30 years of creditable service.

¹⁵ Section 121.091(1)(a)2.h., F.S. (compared with 1.60 percent to 1.68 percent for Regular Class members).

¹⁶ Section 121.71(3), F.S. (compared with 8.69 percent, effective July 1, 2007, and 9.59 percent, effective July 1, 2008, for Regular Class members).

¹⁷ Ch. 78-308, L.O.F.; codified as s. 121.0515, F.S.

¹⁸ Ch. 99-392, L.O.F., s. 23.

¹⁹ Ch. 2000-169, L.O.F., s. 29.

²⁰ *Id.* (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietician; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DRC; pharmacist; certain senior pharmacists; dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager).

²¹ Ch. 2001-125, L.O.F., s. 43.

²² Ch. 2005-167, L.O.F., s. 1; codified as s. 121.0515(2)(h), F.S. (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification).

²³ Section 121.091(4)(b), F.S., defines "total and permanent disability" as being "prevented, by reason of a medically determinable physical or mental impairment, from rendering service as an officer or employee."

²⁴ Section 121.091(4)(a)1. and (c)4., F.S.

The injury must render them unable to perform the duties of their former Special Risk Class position, but allow them to work in a new position, for the same employer, after recovery.

This bill defines the term "qualifying injury" to mean an injury sustained in the line of duty, as certified by the member's employing agency, by a Special Risk Class member whose injury does not result in total and permanent disability. An injury is not a qualifying injury:

- Unless the injury is a physical injury to the member's physical body resulting in a loss, or loss of use, of one or both arms, legs, hands, or feet; or
- If the member is no longer employed by the same employer as when he or she was injured.

The member is no longer eligible for "qualifying injury" status upon terminating employment with the employer for whom the member was providing special risk services on the date the injury occurred. As such, Special Risk Class membership terminates at such time.

Eligibility requirements for membership in the Special Risk Class as a member who sustained a "qualifying injury" are as follows:

- The member must have already qualified and be an active participant in the Special Risk Class in the category of law enforcement, firefighting, or criminal detention at the time of the qualifying injury, and cannot be receiving disability retirement benefits.
- Two licensed medical physicians, one of whom is a primary treating physician of the member, must certify the existence of the physical injury and medical condition that constitute a qualifying injury, and that the member has reached Maximum Medical Improvement (MMI) after August 1, 2007. The certification from the licensed medical physicians must include six criteria:
 - The injury to the special risk member has resulted in a physical loss or loss of use of one or both arms, legs, hands, or feet.
 - The physical loss or loss of use is total and permanent, except in the event of a physical injury to the member's brain, in which event the loss of use is: permanent and total with respect to at least one hand or foot, or permanent with at least 75-percent loss of motor function with respect to at least one arm or leg.
 - The physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her special risk position.
 - Notwithstanding the physical loss or loss of use, the individual is able to perform the essential job functions required by the member's new position.
 - Use of artificial limbs is either not possible or does not alter the member's ability to perform the essential job functions of the member's position.
 - The physical loss or loss of use of one or both arms, legs, hands, or feet is a direct result of a physical injury and not of any mental, psychological, or emotional injury.

C. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 provides a statement of important state interest.

Section 3 amends s. 121.021, F.S., to revise the definition of "Special Risk Member" to include certain members suffering a qualifying injury.

Section 4 amends s. 121.0515, F.S., to provide eligibility requirements for membership in the Special Risk Class for certain members suffering a qualifying injury.

Section 5 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:

The fiscal impact of this bill cannot be determined until an actuarial special study is completed.²⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The fiscal impact of this bill cannot be determined until an actuarial special study is completed.²⁶

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services offered the following fiscal note:

As HB 389 is currently written, the impact on FRS employers and employees is prospective. The bill neither provides for nor funds retroactive service upgrade to members that may have already sustained a qualifying injury prior to the effective date of this bill. If the bill becomes amended to allow the upgrade of previous service, then the fiscal impact to the FRS would be greater and would require a revised actuarial special study.²⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds. Because the bill provides that it fulfills an important state interest and the expenditures required by the bill apply to all persons similarly situated, including state and local governments, the bill appears to satisfy the requirements of Article VII, s. 18 of the State Constitution.

2. Other:

Article X, s. 14 of the State Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.²⁸ The provisions

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ 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 State 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

of this bill require an actuarial special study to establish the required contribution rate to fund these benefits in an actuarially sound manner. Therefore, this bill does not appear to satisfy the requirements of Article X, s. 14 of the State Constitution.²⁹

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

29 provisions of s. 14, Art. X of the State Constitution as they
 30 relate to pension trust fund systems and plans, that such
 31 retirement systems or plans be managed, administered, operated,
 32 and funded in such manner as to maximize the protection of
 33 pension trust funds. Pursuant to s. 18, Art. VII of the State
 34 Constitution, the Legislature determines and declares that the
 35 provisions of this act fulfill an important state interest.

36 Section 3. Paragraph (f) is added to subsection (15) of
 37 section 121.021, Florida Statutes, to read:

38 121.021 Definitions.--The following words and phrases as
 39 used in this chapter have the respective meanings set forth
 40 unless a different meaning is plainly required by the context:

41 (15)

42 (f) Effective August 1, 2007, "special risk member"
 43 includes any member who meets the special criteria for continued
 44 membership set forth in s. 121.0515(2)(i).

45 Section 4. Paragraphs (g) and (h) of subsection (2) of
 46 section 121.0515, Florida Statutes, are amended, paragraph (i)
 47 is added to that subsection, and paragraph (d) is added to
 48 subsection (7) of that section, to read:

49 121.0515 Special risk membership.--

50 (2) CRITERIA.--A member, to be designated as a special
 51 risk member, must meet the following criteria:

52 (g) The member must be employed as a youth custody officer
 53 and be certified, or required to be certified, in compliance
 54 with s. 943.1395. In addition, the member's primary duties and
 55 responsibilities must be the supervised custody, surveillance,

56 control, investigation, apprehension, arrest, and counseling of
 57 assigned juveniles within the community; ~~or~~

58 (h) The member must be employed by a law enforcement
 59 agency or medical examiner's office in a forensic discipline
 60 recognized by the International Association for Identification
 61 and must qualify for active membership in the International
 62 Association for Identification. The member's primary duties and
 63 responsibilities must include the collection, examination,
 64 preservation, documentation, preparation, or analysis of
 65 physical evidence or testimony, or both, or the member must be
 66 the direct supervisor, quality management supervisor, or command
 67 officer of one or more individuals with such responsibility.
 68 Administrative support personnel, including, but not limited to,
 69 those whose primary responsibilities are clerical or in
 70 accounting, purchasing, legal, and personnel, shall not be
 71 included; ~~or-~~

72 (i) The member must have already qualified for and be
 73 actively participating in special risk membership under
 74 paragraph (a), paragraph (b), or paragraph (c), must have
 75 suffered a qualifying injury as defined in this paragraph, must
 76 not be receiving disability retirement benefits as provided in
 77 s. 121.091(4), and must satisfy the requirements of this
 78 paragraph.

79 1. The ability to qualify for the class of membership
 80 defined in s. 121.021(15)(f) shall occur when two licensed
 81 medical physicians, one of whom is a primary treating physician
 82 of the member, certify the existence of the physical injury and
 83 medical condition that constitute a qualifying injury as defined

84 | in this paragraph and that the member has reached maximum
 85 | medical improvement after August 1, 2007. The certifications
 86 | from the licensed medical physicians must include, at a minimum,
 87 | that the injury to the special risk member has resulted in a
 88 | physical loss, or loss of use, of one or both arms, legs, hands,
 89 | or feet, and:

90 | a. That this physical loss or loss of use is total and
 91 | permanent, except in the event of a physical injury to the
 92 | member's brain, in which event the loss of use is:

93 | (I) Permanent and total with respect to at least one hand
 94 | or foot; or

95 | (II) Permanent with at least 75-percent loss of motor
 96 | function with respect to at least one arm or leg.

97 | b. That this physical loss or loss of use renders the
 98 | member physically unable to perform the essential job functions
 99 | of his or her special risk position.

100 | c. That, notwithstanding this physical loss or loss of
 101 | use, the individual is able to perform the essential job
 102 | functions required by the member's new position, as provided in
 103 | subparagraph 3.

104 | d. That use of artificial limbs is either not possible or
 105 | does not alter the member's ability to perform the essential job
 106 | functions of the member's position.

107 | e. That the physical loss or loss of use of one or both
 108 | arms, legs, hands, or feet is a direct result of a physical
 109 | injury and not a result of any mental, psychological, or
 110 | emotional injury.

111 2. For the purposes of this paragraph, "qualifying injury"
112 means an injury sustained in the line of duty, as certified by
113 the member's employing agency, by a special risk member that
114 does not result in total and permanent disability as defined in
115 s. 121.091(4)(b). An injury is a qualifying injury when the
116 injury is a physical injury to the member's physical body
117 resulting in a physical loss, or loss of use, of one or both
118 arms, legs, hands, or feet. Notwithstanding anything in this
119 section to the contrary, an injury that would otherwise qualify
120 as a qualifying injury shall not be considered a qualifying
121 injury if and when the member ceases employment with the
122 employer for whom he or she was providing special risk services
123 on the date the injury occurred.

124 3. The new position, as described in sub-subparagraph
125 1.c., that is required for qualification as a special risk
126 member under this paragraph is not required to be a position
127 whose essential job functions entitle an individual to special
128 risk membership. Whether a new position as described in sub-
129 subparagraph 1.c. exists and is available to the special risk
130 member is a decision to be made solely by the employer in
131 accordance with its hiring practices and applicable law.

132 4. Nothing in this paragraph shall grant or create
133 additional rights for any individual to continued employment, to
134 be hired, or to be rehired by his or her employer that are not
135 already provided within the Florida Statutes, the State
136 Constitution, the Americans with Disabilities Act, if
137 applicable, or any other applicable state or federal law.

138 (7) RETENTION OF SPECIAL RISK NORMAL RETIREMENT DATE.--

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139 | (d) Notwithstanding any provision in this subsection to
140 | the contrary, this subsection shall not apply to any special
141 | risk member who qualifies for continued membership pursuant to
142 | the provisions of paragraph (2)(i).

143 | Section 5. This act shall take effect October 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 887 Career Service System
SPONSOR(S): Coley and others
TIED BILLS: IDEN./SIM. BILLS: SB 2202

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Committee on State Affairs, Bradley, Williamson.

SUMMARY ANALYSIS

Like most states, Florida has a civil service system for public employees not deemed to be executive or managerial. The State Constitution mandates such a system be created by the Legislature and authorizes a system for the collective bargaining of wages, hours and terms of conditions of employment by public employees with their public employer. Current law establishes the Career Service System, which was last amended in 2001.

The bill revises the changes made to the Career Service System by the 2001 Legislature.

The bill reinstates the practice of "bumping" for Career Service System employees not otherwise classified as law enforcement, firefighters, correctional officer, or professional health care providers. It provides for the return of a probationary employee to the former position from which promoted. It also provides that suspension or dismissal for a Career Service System employee may be imposed only for cause to a person who has achieved permanent status following completion of a one-year probationary period.

The bill requires that a grievance process be made available to all employees including those on probationary status. It also revises the timeframes for the filing of a grievance and permits the grieving party to appeal an unsatisfactory result above the level of the agency head.

The bill authorizes the Public Employees Relations Commission (PERC) to consider mitigation of a disciplinary action imposed by an agency. It modifies the basis for the action as "just" cause as opposed to "cause," and requires reinstatement with pay if the decision of the agency is reversed. The bill also requires that PERC disciplinary actions not consider any other set of facts in reaching its decision.

The bill increases the rulemaking authority of the Department of Management Services.

According to the Department of Management Services, the bill will produce the workload equivalent of 74 new positions for the Human Resource offices. The department estimates the recurring cost to be approximately \$4.2 million.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands the current rulemaking authority of the Department of Management Services (DMS) by allowing it to adopt regulations to permit agencies to utilize bumping procedures in layoffs for all permanent status Career Service System employees.

Safeguard individual liberty – The bill authorizes DMS to implement rules regarding layoffs, which include a bumping system, and imposes a requirement on DMS to adopt rules governing layoffs, which require retention of an agency's "best employees" and "consideration of objective measures." Further, the bill allows an employee to pursue a review by DMS of a grievance he or she has filed regarding the Personnel Rules and Regulations if the employee is unhappy with an agency head's decision.

B. EFFECT OF PROPOSED CHANGES:

Background

Like most states, Florida has a civil service system for public employees not deemed to be executive or managerial. The State Constitution mandates such a system be created by the Legislature¹ and authorizes a system for the collective bargaining of wages, hours, and terms of conditions of employment by public employees with their public employer.²

Career Service System

Part II of chapter 110, F.S., establishes the Career Service System. It requires the Department of Management Services (DMS) to:

- Develop and maintain a uniform classification and equitable pay plan applicable to all positions in the Career Service System;
- Determine guidelines for employee recruitment and selection to be used by employing agencies;
- Adopt rules and procedures for the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of employees; and
- Develop uniform rules, in consultation with affected agencies and pursuant to the approval of the Administration Commission, regarding employee appointment, promotion, demotion, reassignment, separation, status, attendance, and leave.³

DMS, however, is prohibited from adopting layoff⁴ rules, which include a "bumping" system, except with regard to law enforcement or correctional officers, firefighters, or professional health care providers. "Bumping" is defined to mean "any system whereby a career service employee with greater seniority has the option of selecting a different position not being eliminated, but either vacant or already occupied by an employee of less seniority, and taking that position."⁵ DMS must develop rules that mandate agencies to consider "comparative merit, demonstrated, skills, and the employee's experience."⁶

¹ Section 14, Art. III of the State Constitution.

² Section 6, Art. I of the State Constitution.

³ See s. 110.201, F.S.

⁴ Section 110.107(23), F.S., defines "layoff" to mean "termination of employment due to a shortage of funds or work, or a material change in the duties or organization of an agency, including the outsourcing or privatization of an activity or function previously performed by career service employees."

⁵ Section 110.227(2), F.S.

⁶ *Id.*

Current law does not define the terms "career service" and "career service employee." A "career service employee" may be a short-term or long-term employee. The rules distinguish among probationary, overlap, temporary, trainee, and permanent status. The rules further provide that an employee who has been appointed in accordance with chapter 110, F.S., and granted probationary status will attain permanent status in a class upon successful completion of the designated probationary period for the class.

Current law provides that an employee classified as a "permanent career service employee" only may be suspended or dismissed for cause.⁷ Cause includes negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime involving moral turpitude.⁸

The Career Service System was last amended in 2001.

Senior Management Service System

Part III of chapter 110, F.S., establishes the Senior Management Service System (SMS), which is a separate system of personnel administration for positions in the executive branch. The duties and responsibilities are primarily and essentially policymaking or managerial in nature.⁹ DMS is charged with adopting rules that provide for a system for employing, promoting, or reassigning managers that is responsive to organizational or program needs.¹⁰

Selected Exempt Service System

Part V of chapter 110, F.S., creates the Selected Exempt Service System (SES). The SES is a separate system of personnel administration that includes those positions that are exempt from the Career Service System. DMS is required to designate all positions included in the SES as managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.¹¹ Employees in SES serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.¹²

The Public Employees Relations Commission

The Public Employees Relations Commission (PERC) was established in 1974. PERC currently is composed of a chair and two full-time commissioners appointed by the Governor and confirmed by the Senate.¹³ PERC is housed within DMS for administrative purposes, but is not subject to its control, supervision, or direction.¹⁴

PERC decides cases sitting as a quasi-judicial collegial body and issues final orders. Any appeal of a PERC final order is taken to the District Court of Appeal. In addition to hearing cases, PERC is required to:

- Determine questions and controversies concerning claims for recognition as the bargaining agent for a bargaining unit;
- Determine or approve units appropriate for purposes of collective bargaining;
- Conduct secret ballot elections to determine whether public employees desire to be represented by a union; and
- Process charges of unfair labor practices as well as charges relating to a public employee or employee organization.

⁷ Section 110.227(1), F.S.

⁸ *Id.*

⁹ Section 110.402, F.S.

¹⁰ Section 110.403, F.S.

¹¹ Section 110.602, F.S.

¹² Section 110.604, F.S.

¹³ Section 447.205, F.S.

¹⁴ Section 447.205(3), F.S.

PERC handles public sector cases (unfair labor practice charges, representation petitions, amendments to certification, petitions to revoke certifications, and labor organizations registration), career service appeals, Drug-Free Workplace appeals, Whistleblower appeals, veterans' preference appeals, attorney's fees appeals, back pay appeals, elections, mediation, and district court appeals.¹⁵

Effect of Bill

The bill revises the changes made to the Career Service System by the 2001 Legislature.

The bill reinstates the practice of "bumping" for Career Service System employees not otherwise classified as law enforcement, firefighters, correctional officer, or professional health care providers. It further requires DMS to develop rules regarding layoffs that employ "objective measures" and require agencies to retain their "best employees," based on merit, skill, and experience.

The bill also provides that suspension or dismissal for a Career Service System employee may be imposed only for cause to a person who has achieved permanent status following completion of a one-year probationary period. It provides that layoff procedures apply to all Career Service System employees.

The bill provides that a permanent career service employee who is promoted is subject to the one year probationary period and may be removed from that position without cause, but is entitled to return to his or her former position (or the equivalent level of his or her former position) if such action is taken.

The bill provides a grievance process to all employees including those on probationary status. It revises the timeframes for the filing of a grievance from seven and five days to 14 and 7 days, respectively. It also permits the grieving party to appeal an unsatisfactory result above the level of the agency head.

The bill expands the entitlements and requirements provided to include employees who are subject to a lay off and those who are involuntarily transferred more than 50 miles by highway. It increases the timeframe for an employee to provide a written notice of appeal of an extraordinary action from 14 to 21 calendar days. In addition, it requires PERC to conduct a hearing within 60 days (current law requires 30 days) following the filing of such notice.

The bill authorizes PERC to consider mitigation of a disciplinary action imposed by an agency, modifies the basis for the action as "just" cause as opposed to "cause," and requires reinstatement with pay if the decision of the agency is reversed. It also requires that PERC disciplinary actions not consider any other set of facts in reaching its decision.

C. SECTION DIRECTORY:

Section 1 amends s. 110.227, F.S., to revise requirements regarding suspensions, dismissals, reductions in pay, demotions, layoffs, transfers, and grievances.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁵ See s. 447.207, F.S.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There will be an additional workload to the agencies and to PERC for the additional actions now covered by the expanded workforce and the lifting of the level two cap on appeals. DMS conducted an informal survey of state agencies. Those results indicated the bill would produce the workload equivalent of 74 new positions for the Human Resource offices to manage what it believes to be an additional workload. DMS estimated the recurring cost to be approximately \$4.2 million.¹⁶

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:

None.

B. RULE-MAKING AUTHORITY:

The bill increases the rulemaking authority provided to DMS. Under existing law, DMS is granted rulemaking authority and is required to "establish rules and procedures for the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of employees in the career service." Further, current law instructs that the aforementioned rules adopted by DMS may not include a "bumping" system, except with regard to "law enforcement or correctional officers, firefighters, or professional health care providers." The bill expands the department's rulemaking authority by creating an exception to the rule against bumping for "all other career service employees who have achieved permanent status in the Career Service System" in addition to the exception already provided.

Additionally, current law requires DMS to develop rules that instruct agencies to consider comparative merit, demonstrated skills, and the employee's experience during the implementation of layoffs. The bill requires DMS to promulgate rules for the implantation of layoffs that will require agencies to retain their "best employees" based on "consideration of objective measures" of the aforementioned factors. Under both current statute and the bill, the rules considered by DMS must be approved by the Administration Commission before they may be fully adopted by DMS.

¹⁶ Department of Management Services Bill Analysis for HB 887, March 28, 2008, at 4 (on file with the Committee on State Affairs).

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 132-133 and 146-147 provide rights and requirements to employees who are subject to an "involuntary transfer of more than 50 miles by highway." However, the phrase is unclear because it does not state from where the "50 miles by highway" should be measured.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to the Career Service System; amending s.
 3 110.227, F.S.; revising requirements for disciplining an
 4 employee; revising which employees may be suspended or
 5 dismissed only for cause; revising criteria for certain
 6 rules and procedures for the suspension, reduction in pay,
 7 transfer, layoff, demotion, and dismissal of employees in
 8 the career service; revising provisions relating to the
 9 applicability of layoff procedures; providing that the
 10 grievance process shall be available to all career service
 11 employees; increasing the amounts of time in which to
 12 submit grievances and respond to grievances; revising what
 13 written decisions of the agency shall be the final
 14 authority for all grievances at the Step Two level;
 15 authorizing certain Step Two grievances to be submitted to
 16 the Department of Management Services; revising notice
 17 requirements; providing for the removal and placement of
 18 certain career service employees serving a probationary
 19 period; authorizing certain employees to appeal to the
 20 Public Employees Relations Commission; increasing the
 21 amount of time in which the employee must file an appeal;
 22 revising procedures applicable to appeals filed with the
 23 commission; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Section 110.227, Florida Statutes, is amended
 28 to read:

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29 110.227 Suspensions, dismissals, reductions in pay,
 30 demotions, layoffs, transfers, and grievances.--

31 (1) Any employee who has permanent status in the Career
 32 Service System by satisfactorily completing ~~completed~~ at least a
 33 1-year probationary period in a career service ~~his or her~~
 34 ~~current~~ position and has subsequently been continuously employed
 35 thereafter in a career service position may be suspended or
 36 dismissed only for cause. Cause shall include, but is not
 37 limited to, poor performance, negligence, inefficiency or
 38 inability to perform assigned duties, insubordination, violation
 39 of the provisions of law or agency rules, conduct unbecoming a
 40 public employee, misconduct, habitual drug abuse, or conviction
 41 of any crime. The agency head shall ensure that all employees of
 42 the agency have reasonable access to the agency's personnel
 43 manual.

44 (2) The department shall establish rules and procedures
 45 for the suspension, reduction in pay, transfer, layoff,
 46 demotion, and dismissal of employees in the career service.
 47 Except with regard to law enforcement or correctional officers,
 48 firefighters, or professional health care providers, and all
 49 other career service employees who have achieved permanent
 50 status in the Career Service System by satisfactorily completing
 51 a probationary period of at least 1 year and being continuously
 52 employed as a career service employee thereafter, rules
 53 regarding layoff procedures shall not include any system whereby
 54 an a career service employee with greater seniority has the
 55 option of selecting a different position not being eliminated,
 56 but either vacant or already occupied by an employee of less

57 seniority, and taking that position, commonly referred to as
58 "bumping." For the implementation of layoffs as defined in s.
59 110.107, the department shall develop rules requiring retention
60 of the agency's best employees, upon ~~that~~ consideration of
61 objective measures of ~~be given to~~ comparative merit,
62 demonstrated skills, and the employee's experience. Such rules
63 shall be approved by the Administration Commission prior to
64 their adoption by the department.

65 (3) (a) With regard to law enforcement or correctional
66 officers, firefighters, or professional health care providers,
67 and all other career service employees who have achieved
68 permanent status in the Career Service System by satisfactorily
69 completing a probationary period of at least 1 year and been
70 continuously employed as a career service employee thereafter,
71 when a layoff becomes necessary, such layoff shall be conducted
72 within the competitive area identified by the agency head and
73 approved by the Department of Management Services. Such
74 competitive area shall be established taking into consideration
75 the similarity of work; the organizational unit, which may be by
76 agency, department, division, bureau, or other organizational
77 unit; and the commuting area for the work affected.

78 (b) With regard to law enforcement or correctional
79 officers, firefighters, or professional health care providers,
80 and all other career service employees who have achieved
81 permanent status in the Career Service System by satisfactorily
82 completing a probationary period of at least 1 year and been
83 continuously employed as a career service employee thereafter,
84 layoff procedures shall be developed to establish the relative

85 merit and fitness of employees and shall include a formula for
 86 uniform application among all employees in the competitive area,
 87 taking into consideration the type of appointment, the length of
 88 service, and the evaluations of the employee's performance
 89 within the last 5 years of employment.

90 (4) A grievance process shall be available to career
 91 service employees ~~who have satisfactorily completed at least a~~
 92 ~~1 year probationary period in their current positions.~~ A
 93 grievance is defined as the dissatisfaction that occurs when an
 94 employee believes that any condition affecting the employee is
 95 unjust, inequitable, or a hindrance to effective operation.
 96 Claims of discrimination and sexual harassment or claims related
 97 to suspensions, reductions in pay, demotions, and dismissals are
 98 not subject to the career service grievance process. The
 99 following procedures shall apply to any grievance filed pursuant
 100 to this subsection, except that all timeframes may be extended
 101 in writing by mutual agreement:

102 (a) Step One.--The employee may submit a signed, written
 103 grievance on a form provided by the agency to his or her
 104 supervisor within 14 ~~7~~ calendar days following the occurrence of
 105 the event giving rise to the grievance. The supervisor must meet
 106 with the employee to discuss the grievance within and provide a
 107 written response to the employee 7 ~~5~~ business days following
 108 receipt of the grievance.

109 (b) Step Two.--If the employee is dissatisfied with the
 110 response of his or her supervisor, the employee may submit the
 111 written grievance to the agency head or his or her designee
 112 within 7 ~~2~~ business days following receipt of the supervisor's

113 written response. The agency head or his or her designee must
114 meet with the employee to discuss the grievance within 5
115 business days following receipt of the grievance. The agency
116 head or his or her designee must respond in writing to the
117 employee within 5 business days following the meeting. The
118 written decision of the agency head shall be the final authority
119 for all grievances filed pursuant to this subsection not
120 involving an allegation of the agency's failure to comply with
121 the provisions of the Personnel Rules and Regulations. A claim
122 of a violation of the provisions of the Personnel Rules and
123 Regulations entitles the employee to pursue review of the filed
124 grievance through the Department of Management Services if the
125 employee is dissatisfied with the agency head's or his or her
126 designee's decision. Such grievances may not be appealed beyond
127 Step Two.

128 (5) (a) An A-career service employee who has permanent
129 status in the Career Service System satisfactorily completed at
130 least a 1 year probationary period in his or her current
131 position and who is subject to a lay off, suspension, reduction
132 in pay, demotion, involuntary transfer of more than 50 miles by
133 highway, or dismissal shall receive written notice of such
134 action at least 10 days prior to the date such action is to be
135 taken. Subsequent to such notice, and prior to the date the
136 action is to be taken, the affected employee shall be given an
137 opportunity to appear before the agency or official taking the
138 action to answer orally and in writing the charges against him
139 or her. The notice to the employee required by this paragraph
140 may be delivered to the employee personally or may be sent by

141 certified mail with return receipt requested. Such actions shall
 142 be appealable to the Public Employees Relations Commission as
 143 provided in subsection (6). Written notice of any such appeal
 144 shall be filed by the employee with the commission within 21 ~~14~~
 145 calendar days after the date on which the notice of lay off,
 146 suspension, reduction in pay, demotion, involuntary transfer of
 147 more than 50 miles by highway, or dismissal is received by the
 148 employee.

149 (b) A career service employee who has previously attained
 150 permanent status in the Career Service System, but is serving a
 151 probationary period in a position to which he or she has been
 152 promoted, may be removed from that promotional position at any
 153 time during the probationary period without a showing of cause
 154 but must be returned to his or her former position or
 155 occupational group and occupational level from which he or she
 156 was promoted.

157 (c) ~~(b)~~ In extraordinary situations such as when the
 158 retention of a career service employee who has permanent status
 159 in the Career Service System ~~satisfactorily completed at least a~~
 160 ~~1-year probationary period~~ in his or her current position would
 161 result in damage to state property, would be detrimental to the
 162 best interest of the state, or would result in injury to the
 163 employee, a fellow employee, or some other person, such employee
 164 may be suspended or dismissed without 10 days' prior notice,
 165 provided that written or oral notice of such action, evidence of
 166 the reasons therefor, and an opportunity to rebut the charges
 167 are furnished to the employee prior to such dismissal or
 168 suspension. Such notice may be delivered to the employee

169 personally or may be sent by certified mail with return receipt
 170 requested. Agency compliance with the foregoing procedure
 171 requiring notice, evidence, and an opportunity for rebuttal must
 172 be substantiated. Any employee who is suspended or dismissed
 173 pursuant to the provisions of this paragraph may appeal to the
 174 Public Employees Relations Commission as provided in subsection
 175 (6). Written notice of any such appeal shall be filed with the
 176 commission by the employee within 21 ~~14~~ days after the date on
 177 which the notice of suspension, ~~reduction in pay, demotion,~~ or
 178 dismissal is received by the employee.

179 (6) The following procedures shall apply to appeals filed
 180 pursuant to subsection (5) with the Public Employees Relations
 181 Commission, hereinafter referred to as the commission:

182 (a) The commission must conduct a hearing within 60 ~~30~~
 183 calendar days following the filing of a notice of appeal. No
 184 extension of time for the hearing may exceed 30 calendar days,
 185 absent exceptional circumstances, and no extension of time may
 186 be granted without the consent of all parties. Discovery may be
 187 granted only upon the showing of extraordinary circumstances. A
 188 party requesting discovery shall demonstrate a substantial need
 189 for the information requested and an inability to obtain
 190 relevant information by other means. Except where inconsistent
 191 with the requirements of this subsection, the provisions of s.
 192 447.503(4) and (5) and chapter 120 apply to proceedings held
 193 pursuant to this subsection.

194 (b) A person may represent himself or herself in
 195 proceedings before the commission or may be represented by legal

196 counsel or by any individual who qualifies as a representative
 197 pursuant to rules adopted by the commission.

198 (c) If the commission finds that cause did not exist for
 199 the agency action, the commission shall reverse the decision of
 200 the agency head and the employee shall be reinstated with or
 201 without back pay. If the commission finds that just cause
 202 existed for the agency action, the commission shall consider
 203 mitigation of the discipline for any appropriate cause and
 204 affirm the decision of the agency head. The commission may not
 205 reduce the penalty imposed by the agency head, except in the
 206 case of law enforcement or correctional officers, firefighters,
 207 and professional health care providers, and all other career
 208 service employees who have achieved permanent status in the
 209 Career Service System by satisfactorily completing a
 210 probationary period of at least 1 year and been continuously
 211 employed as a career service employee thereafter, if the
 212 commission makes specific written findings of mitigation.

213 (d) A recommended order shall be issued by the hearing
 214 officer within 30 days following the hearing. Exceptions to the
 215 recommended order shall be filed within 15 ~~5-business~~ days after
 216 the recommended order is issued. The final order shall be filed
 217 by the commission no later than 30 calendar days after the
 218 hearing or after the filing of exceptions or oral arguments if
 219 granted.

220 (e) Final orders issued by the commission pursuant to
 221 paragraph (d) shall be reviewable as provided in s. 447.504.

222 (7) Other than for law enforcement or correctional
 223 officers, firefighters, and professional health care providers,

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224 | and all other career service employees who have achieved
 225 | permanent status in the Career Service System by satisfactorily
 226 | completing a probationary period of at least 1 year and being
 227 | continuously employed as a career service employee thereafter,
 228 | each suspension, dismissal, demotion, or reduction in pay must
 229 | be reviewed without consideration of any other case or set of
 230 | facts.

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

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 887**

COUNCIL/COMMITTEE ACTION

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

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

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 110.227, Florida Statutes, is amended
7 to read:

8 110.227 Suspensions, dismissals, reductions in pay,
9 demotions, layoffs, transfers, and grievances.--

10 (1) Any employee who has permanent status in the Career
 11 Service System by satisfactorily completing ~~completed~~ at least a
 12 1-year probationary period in a career service ~~his or her~~
 13 ~~current~~ position and has subsequently been continuously employed
 14 thereafter in a career service position may be suspended or
 15 dismissed only for cause. Cause shall include, but is not
 16 limited to, poor performance, negligence, inefficiency or
 17 inability to perform assigned duties, insubordination, violation
 18 of the provisions of law or agency rules, conduct unbecoming a
 19 public employee, misconduct, habitual drug abuse, or conviction
 20 of any crime. The agency head shall ensure that all employees of
 21 the agency have reasonable access to the agency's personnel
 22 manual.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

23 (2) (a) The department shall establish rules and procedures
24 for the suspension, reduction in pay, transfer, layoff,
25 demotion, and dismissal of employees in the career service.
26 Except with regard to law enforcement or correctional officers,
27 firefighters, or professional health care providers, rules
28 regarding layoff procedures shall not include any system whereby
29 a career service employee with greater seniority has the option
30 of selecting a different position not being eliminated, but
31 either vacant or already occupied by an employee of less
32 seniority, and taking that position, commonly referred to as
33 "bumping."

34 (b) For the implementation of layoffs ~~as defined in s.~~
35 ~~110.107,~~ the department shall develop rules requiring retention
36 of agency's employees based upon objective measures of that
37 consideration be given to length of service, comparative merit,
38 demonstrated skills, and the employee's experience. Such rules
39 must shall be approved by the Administration Commission before
40 prior to their adoption by the department.

41 (3) (a) With regard to law enforcement or correctional
42 officers, firefighters, or professional health care providers,
43 and all other career service employees who have achieved
44 permanent status in the Career Service System by satisfactorily
45 completing a probationary period of at least 1 year and been
46 continuously employed as a career service employee thereafter,
47 when a layoff becomes necessary, such layoff shall be conducted
48 within the competitive area identified by the agency head and
49 approved by the Department of Management Services. Such
50 competitive area shall be established taking into consideration
51 the similarity of work; the organizational unit, which may be by
52 agency, department, division, bureau, or other organizational
53 unit; and the commuting area for the work affected.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

54 (b) With regard to law enforcement or correctional
55 officers, firefighters, or professional health care providers,
56 and all other career service employees who have achieved
57 permanent status in the Career Service System by satisfactorily
58 completing a probationary period of at least 1 year and been
59 continuously employed as a career service employee thereafter,
60 layoff procedures shall be developed to establish the relative
61 merit and fitness of employees and shall include a formula for
62 uniform application among all employees in the competitive area,
63 taking into consideration the type of appointment, the length of
64 service, and the evaluations of the employee's performance
65 within the last 5 years of employment.

66 (4) A grievance process shall be available to career
67 service employees ~~who have satisfactorily completed at least a~~
68 ~~1-year probationary period in their current positions.~~ A
69 grievance is defined as the dissatisfaction that occurs when an
70 employee believes that any condition affecting the employee is
71 unjust, inequitable, or a hindrance to effective operation.
72 Claims of discrimination and sexual harassment or claims related
73 to suspensions, reductions in pay, demotions, and dismissals are
74 not subject to the career service grievance process. The
75 following procedures shall apply to any grievance filed pursuant
76 to this subsection, except that all timeframes may be extended
77 in writing by mutual agreement:

78 (a) Step One.--The employee may submit a signed, written
79 grievance on a form provided by the agency to his or her
80 supervisor within 14 ⁷ calendar days following the occurrence of
81 the event giving rise to the grievance. The supervisor must meet
82 with the employee to discuss the grievance within and provide a
83 written response to the employee 7 ⁵ business days following
84 receipt of the grievance.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

85 (b) Step Two.--If the employee is dissatisfied with the
86 response of his or her supervisor, the employee may submit the
87 written grievance to the agency head or his or her designee
88 within 7 2 business days following receipt of the supervisor's
89 written response. The agency head or his or her designee must
90 meet with the employee to discuss the grievance within 5
91 business days following receipt of the grievance. The agency
92 head or his or her designee must respond in writing to the
93 employee within 5 business days following the meeting. The
94 written decision of the agency head shall be the final authority
95 for all grievances filed pursuant to this subsection not
96 involving an allegation of the agency's failure to comply with
97 the provisions of the Personnel Rules and Regulations. A claim
98 of a violation of the provisions of the Personnel Rules and
99 Regulations entitles the employee to pursue review of the filed
100 grievance through the Department of Management Services if the
101 employee is dissatisfied with the agency head's or his or her
102 designee's decision. Such grievances may not be appealed beyond
103 Step Two.

104 (5) (a) An A-career service employee who has permanent
105 status in the Career Service System ~~satisfactorily completed at~~
106 ~~least a 1-year probationary period in his or her current~~
107 ~~position~~ and who is subject to a lay off, suspension, reduction
108 in pay, demotion, involuntary transfer of more than 50 miles by
109 highway, or dismissal shall receive written notice of such
110 action at least 10 days prior to the date such action is to be
111 taken. Subsequent to such notice, and prior to the date the
112 action is to be taken, the affected employee shall be given an
113 opportunity to appear before the agency or official taking the
114 action to answer orally and in writing the charges against him
115 or her. The notice to the employee required by this paragraph

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

116 may be delivered to the employee personally or may be sent by
117 certified mail with return receipt requested. Such actions shall
118 be appealable to the Public Employees Relations Commission as
119 provided in subsection (6). Written notice of any such appeal
120 shall be filed by the employee with the commission within 21 ~~14~~
121 calendar days after the date on which the notice of lay off,
122 suspension, reduction in pay, demotion, involuntary transfer of
123 more than 50 miles by highway, or dismissal is received by the
124 employee.

125 (b) A career service employee who has previously attained
126 permanent status in the Career Service System, but is serving a
127 probationary period in a position to which he or she has been
128 promoted, may be removed from that promotional position at any
129 time during the probationary period without a showing of cause
130 but must be returned to his or her former position or
131 occupational group and occupational level from which he or she
132 was promoted, provided that the position is available. If the
133 position is unavailable, then the agency should make every
134 effort to retain the employee.

135 (c) ~~(b)~~ In extraordinary situations such as when the
136 retention of a career service employee who has permanent status
137 in the Career Service System ~~satisfactorily completed at least a~~
138 ~~1-year probationary period~~ in his or her current position would
139 result in damage to state property, would be detrimental to the
140 best interest of the state, or would result in injury to the
141 employee, a fellow employee, or some other person, such employee
142 may be suspended or dismissed without 10 days' prior notice,
143 provided that written or oral notice of such action, evidence of
144 the reasons therefor, and an opportunity to rebut the charges
145 are furnished to the employee prior to such dismissal or
146 suspension. Such notice may be delivered to the employee

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

147 personally or may be sent by certified mail with return receipt
148 requested. Agency compliance with the foregoing procedure
149 requiring notice, evidence, and an opportunity for rebuttal must
150 be substantiated. Any employee who is suspended or dismissed
151 pursuant to the provisions of this paragraph may appeal to the
152 Public Employees Relations Commission as provided in subsection
153 (6). Written notice of any such appeal shall be filed with the
154 commission by the employee within 21 ~~14~~ days after the date on
155 which the notice of suspension, ~~reduction in pay, demotion,~~ or
156 dismissal is received by the employee.

157 (6) The following procedures shall apply to appeals filed
158 pursuant to subsection (5) with the Public Employees Relations
159 Commission, hereinafter referred to as the commission:

160 (a) The commission must conduct a hearing within 60 ~~30~~
161 calendar days following the filing of a notice of appeal. No
162 extension of time for the hearing may exceed 30 calendar days,
163 absent exceptional circumstances, and no extension of time may
164 be granted without the consent of all parties. Discovery may be
165 granted only upon the showing of extraordinary circumstances. A
166 party requesting discovery shall demonstrate a substantial need
167 for the information requested and an inability to obtain
168 relevant information by other means. Except where inconsistent
169 with the requirements of this subsection, the provisions of s.
170 447.503(4) and (5) and chapter 120 apply to proceedings held
171 pursuant to this subsection.

172 (b) A person may represent himself or herself in
173 proceedings before the commission or may be represented by legal
174 counsel or by any individual who qualifies as a representative
175 pursuant to rules adopted by the commission.

176 (c) If the commission finds that cause did not exist for
177 the agency action, the commission shall reverse the decision of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

178 the agency head and the employee shall be reinstated with or
179 without back pay. If the commission finds that just cause
180 existed for the agency action, the commission shall consider
181 mitigation of the discipline for any appropriate cause and
182 affirm the decision of the agency head. The commission may ~~not~~
183 reduce the penalty imposed by the agency head, ~~except~~ in the
184 case of law enforcement or correctional officers, firefighters,
185 and professional health care providers, and all other career
186 service employees who have achieved permanent status in the
187 Career Service System by satisfactorily completing a
188 probationary period of at least 1 year and been continuously
189 employed as a career service employee thereafter, if the
190 commission makes specific written findings of mitigation.

191 (d) A recommended order shall be issued by the hearing
192 officer within 30 days following the hearing. Exceptions to the
193 recommended order shall be filed within 15 ~~5~~ business days after
194 the recommended order is issued. The final order shall be filed
195 by the commission no later than 30 calendar days after the
196 hearing or after the filing of exceptions or oral arguments if
197 granted.

198 (e) Final orders issued by the commission pursuant to
199 paragraph (d) shall be reviewable as provided in s. 447.504.

200 (7) Other than for law enforcement or correctional
201 officers, firefighters, and professional health care providers,
202 and all other career service employees who have achieved
203 permanent status in the Career Service System by satisfactorily
204 completing a probationary period of at least 1 year and being
205 continuously employed as a career service employee thereafter,
206 each suspension, dismissal, demotion, or reduction in pay must
207 be reviewed without consideration of any other case or set of
208 facts.

Amendment No. (for drafter's use only)

209 Section 2. This act shall take effect January 1, 2009.
210

211 -----
212 **T I T L E A M E N D M E N T**

213 Remove the entire title and insert:

214 A bill to be entitled

215 An act relating to the Career Service System; amending s.
216 110.227, F.S.; revising requirements for disciplining an
217 employee; revising which employees may be suspended or dismissed
218 only for cause; revising criteria for certain rules and
219 procedures for the suspension, reduction in pay, transfer,
220 layoff, demotion, and dismissal of employees in the career
221 service; revising provisions relating to the applicability of
222 layoff procedures; providing that the grievance process shall be
223 available to all career service employees; increasing the
224 amounts of time in which to submit grievances and respond to
225 grievances; revising what written decisions of the agency shall
226 be the final authority for all grievances at the Step Two level;
227 authorizing certain Step Two grievances to be submitted to the
228 Department of Management Services; revising notice requirements;
229 providing for the removal and placement of certain career
230 service employees serving a probationary period; authorizing
231 certain employees to appeal to the Public Employees Relations
232 Commission; increasing the amount of time in which the employee
233 must file an appeal; revising procedures applicable to appeals
234 filed with the commission; providing an effective date.
235

HOUSE OF REPRESENTATIVES STAFF ANALYSIS


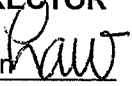
BILL #: HB 1049

Florida Retirement System

SPONSOR(S): Pickens

TIED BILLS:

IDEN./SIM. BILLS: SB 2814

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

SUMMARY ANALYSIS

The Legislature established the Senior Management Service Class for high-level policy-making and managerial positions in the executive branch. Members of this class have a normal retirement age of 62, but earn a higher accrual rate. Since the creation of this class, the Legislature has expanded eligibility to include high-level managerial and policy-making positions in the legislative and judicial branches, other positions in the executive branch, and positions within local agencies.

This bill expands the membership of the Senior Management Service Class by allowing school districts serving as the fiscal agents for regional consortium service organizations to designate up to 15 nonelective full-time positions for inclusion in the Senior Management Service Class.

This bill does not appear to have a fiscal impact on state government. The fiscal impact on eligible school districts depends on the number choosing to designate positions in the Senior Management Service Class.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill expands the membership of the Senior Management Service Class (SMSC) by allowing certain school districts to designate a certain number of full-time nonelective positions for inclusion in the SMSC.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

FLORIDA RETIREMENT SYSTEM

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

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

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

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

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.¹²

SENIOR MANAGEMENT SERVICE CLASS

The Legislature established the Senior Management Service Class (SMSC) in 1986 for certain high-level policy-making and managerial positions within the executive branch.¹³ Members of the SMSC

¹ Section 121.025, F.S.

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

³ *Id.* at 43.

⁴ *Id.* at 52.

⁵ *Id.* at 49.

⁶ Section 121.021(12), F.S.

⁷ Section 121.0515, F.S.

⁸ Section 121.0515(7), F.S.

⁹ Section 121.052, F.S.

¹⁰ Section 121.055, F.S.

¹¹ FRS Annual Report at 43.

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

¹³ Section 14, Ch. 86-149, L.O.F.

have a normal retirement age of 62,¹⁴ but they earn a higher accrual rate of two percent.¹⁵ This increased benefit is funded through higher employer contribution rates: 11.96 percent of gross compensation, effective July 1, 2007, and 13.35 percent, effective July 1, 2008.¹⁶

Elected officers may elect to participate in the SMSC rather than the Elected Officers' Class.¹⁷

SENIOR MANAGEMENT SERVICE CLASS AND ITS EXPANSION

Originally, membership in the SMSC was limited to those members who held positions in the Senior Management Service of the state personnel system (in the executive branch).¹⁸ However, since the creation of the class, the Legislature has expanded eligibility to certain positions in the legislative and judicial branches, other positions in the executive branch, and positions within local government agencies.

In 1994, the Legislature expanded eligibility to additional managerial or policymaking nonelective positions in local agencies¹⁹ and the offices of state attorneys and public defenders, up to 10 full-time positions for each agency. For agencies with 100 or more regularly established positions, this expansion allowed designation of additional full-time positions, not to exceed one percent of the regularly established positions within the agency.²⁰

Members whose positions have been added to the class subsequent to the SMSC's effective date of February 1, 1987, may purchase (or their employers may purchase for them) additional retirement credit for service within the purview of the class retroactive to February 1, 1987.²¹

INCLUSION CRITERIA FOR ADDITIONAL MANAGERIAL OR POLICYMAKING POSITIONS

Section 121.055(1)(b), F.S., authorizes the designation of additional managerial or policymaking nonelective positions in local agencies for inclusion in the SMSC. The local agency employer, however, must publish a notice of intent to designate such positions for inclusion in the SMSC once a week for two consecutive weeks in a newspaper of general circulation published in the county or counties affected. Furthermore, each position must be managerial or policymaking in nature, filled by an employee who is not subject to continuing contract, but serves at the pleasure of the local agency employer without civil service protection. The position must involve heading an organizational unit or having the responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in its areas of responsibility.²²

Section 121.055(1)(h)1., F.S., applies the same criteria to additional positions in the offices of state attorneys and public defenders.

REGIONAL CONSORTIUM SERVICE ORGANIZATIONS

Regional consortium service organizations, as described in s. 1001.451, F.S., are cooperative agreements between one or more school districts with 20,000 or fewer students each, developmental research (laboratory) schools, or the Florida School for the Deaf and the Blind. Regional consortium

¹⁴ Section 121.021(29)(c), F.S.

¹⁵ Section 121.091(1)(a)3., F.S. (compared with 1.60 percent to 1.68 percent for Regular Class members).

¹⁶ Section 121.71(3), F.S. (compared with 8.69 percent, effective July 1, 2006, and 9.55 percent effective July 1, 2007, for Regular Class members).

¹⁷ Section 121.052(3)(c), F.S.

¹⁸ Section 121.055(1)(a), F.S.

¹⁹ Section 121.029(42), F.S. defines "local agency employer" as "the board of county commissioners or other legislative governing body of a county, however styled, including that of a consolidated or metropolitan governments; a clerk of the circuit court, sheriff, property appraiser, tax collector, or supervisor of elections, provided such officer is elected or has been appointed to fill a vacancy in an elective office; a community college board of trustees or district school board; or the governing body of any city, metropolitan planning organization created pursuant to s. 339.175, F.S. or any other separate legal or administrative entity created pursuant to 339.175, F.S., or special district of the state which participates in the system for the benefit of certain of its employees."

²⁰ Section 121.055(1)(b) and (h)1., F.S.

²¹ Section 121.055(1)(j), F.S.

²² Section 121.055(1)(b)1., F.S.

service organizations meeting certain qualifications are eligible to receive incentive grants through the Department of Education. In addition, they may establish purchasing and bidding programs, including construction and construction management arrangements in lieu of individual school district bid arrangements.

PROPOSED CHANGES

This bill continues the expansion of the SMSC by allowing, but not requiring, school districts serving as the fiscal agents for regional consortium service organizations to designate up to 15 nonelective full-time positions for inclusion in the SMSC. This change essentially allows five more designated positions for these school boards compared to other local agency employers before considering additional optional designation of SMSC positions based upon total employees of the employer.

Designation of these positions in the SMSC is subject to the same inclusion criteria for additional managerial or policymaking positions for local agencies and offices of state attorneys and public defenders.

This bill would affect three regional consortium service organizations. In addition, there could be more fiscal agent school boards in the future.²³

C. SECTION DIRECTORY:

Section 1 amends s. 121.052, F.S., to make conforming changes.

Section 2 amends s. 121.055, F.S., to authorize designation of a certain number of nonelective full-time positions for certain school districts for inclusion within the Senior Management Service Class.

Section 3 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Because designation of the positions into the SMSC is voluntary, the fiscal impact of this bill will depend on the number of eligible employers who choose to designate positions into the SMSC. The cost in increased employer contribution rates to add SMSC positions within the affected school districts would be an extra 3.27 percent of pay for all affected members, based on the difference between Regular Class and SMSC retirement contribution rates in effect on July 1, 2008.

²³ Department of Management Services HB1049 (2008) Substantive Bill Analysis (Mar. 20, 2008) at 4 (on file with the Committee on State Affairs) [hereafter referred to as DMS Analysis].

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 State Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.²⁴

For SMSC membership, employers will pay the applicable higher contribution rate for each member. This increase in the required contribution rate appears to satisfy the requirements in Article X, s. 14 of the State Constitution²⁵ to fund benefit increases to public retirement or pension systems.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

²⁴ 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 State 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 which is funded in whole or in part by public funds.

²⁵ Chapter 112, part VII, 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 State 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.

1 A bill to be entitled
 2 An act relating to the Florida Retirement System; amending
 3 s. 121.052, F.S.; specifying that the election to
 4 participate as members in the Senior Management Service
 5 Class by certain elected officers shall have no effect on
 6 the statutory limit on the number of nonelective full-time
 7 positions that may be designated for inclusion within the
 8 Senior Management Service Class; amending s. 121.055,
 9 F.S.; authorizing designation of a certain number of
 10 nonelective full-time positions for certain school
 11 districts for inclusion within the Senior Management
 12 Service Class; providing an effective date.

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

15
 16 Section 1. Paragraph (c) of subsection (3) of section
 17 121.052, Florida Statutes, is amended to read:
 18 121.052 Membership class of elected officers.--
 19 (3) PARTICIPATION AND WITHDRAWAL, GENERALLY.--Effective
 20 July 1, 1990, participation in the Elected Officers' Class shall
 21 be compulsory for elected officers listed in paragraphs (2)(a)-
 22 (d) and (f) assuming office on or after said date, unless the
 23 elected officer elects membership in another class or withdraws
 24 from the Florida Retirement System as provided in paragraphs
 25 (3)(a)-(d):
 26 (c) Any elected officer may, within 6 months after
 27 assuming office, or within 6 months after this act becomes a law
 28 for serving elected officers, elect membership in the Senior

29 Management Service Class as provided in s. 121.055 in lieu of
 30 membership in the Elected Officers' Class. Any such election
 31 made by a county elected officer shall have no effect upon the
 32 statutory limit on the number of nonelective full-time positions
 33 that may be designated by a local agency employer or a specified
 34 school district for inclusion in the Senior Management Service
 35 Class under s. 121.055(1)(b)1.

36 Section 2. Paragraph (b) of subsection (1) of section
 37 121.055, Florida Statutes, is amended to read:

38 121.055 Senior Management Service Class.--There is hereby
 39 established a separate class of membership within the Florida
 40 Retirement System to be known as the "Senior Management Service
 41 Class," which shall become effective February 1, 1987.

42 (1)

43 (b)1. Except as provided in subparagraph 2., effective
 44 January 1, 1990, participation in the Senior Management Service
 45 Class shall be compulsory for the president of each community
 46 college, the manager of each participating city or county, and
 47 all appointed district school superintendents. Effective January
 48 1, 1994, additional positions may be designated for inclusion in
 49 the Senior Management Service Class of the Florida Retirement
 50 System, provided that:

51 a. Positions to be included in the class shall be
 52 designated by the local agency employer. Notice of intent to
 53 designate positions for inclusion in the class shall be
 54 published once a week for 2 consecutive weeks in a newspaper of
 55 general circulation published in the county or counties
 56 affected, as provided in chapter 50.

57 b. Up to 10 nonelective full-time positions may be
 58 designated for each local agency employer reporting to the
 59 Department of Management Services, and up to 15 nonelective
 60 full-time positions may be designated for school districts
 61 serving as the fiscal agent for a regional consortium service
 62 organization as established pursuant to s. 1001.451; for local
 63 agencies with 100 or more regularly established positions,
 64 additional nonelective full-time positions may be designated,
 65 not to exceed 1 percent of the regularly established positions
 66 within the agency.

67 c. Each position added to the class must be a managerial
 68 or policymaking position filled by an employee who is not
 69 subject to continuing contract and serves at the pleasure of the
 70 local agency employer without civil service protection, and who:
 71 (I) Heads an organizational unit; or
 72 (II) Has responsibility to effect or recommend personnel,
 73 budget, expenditure, or policy decisions in his or her areas of
 74 responsibility.

75 2. In lieu of participation in the Senior Management
 76 Service Class, members of the Senior Management Service Class
 77 pursuant to the provisions of subparagraph 1. may withdraw from
 78 the Florida Retirement System altogether. The decision to
 79 withdraw from the Florida Retirement System shall be irrevocable
 80 for as long as the employee holds such a position. Any service
 81 creditable under the Senior Management Service Class shall be
 82 retained after the member withdraws from the Florida Retirement
 83 System; however, additional service credit in the Senior
 84 Management Service Class shall not be earned after such

85 withdrawal. Such members shall not be eligible to participate in
 86 the Senior Management Service Optional Annuity Program.

87 3. Effective January 1, 2006, through June 30, 2006, an
 88 employee who has withdrawn from the Florida Retirement System
 89 under subparagraph 2. has one opportunity to elect to
 90 participate in either the defined benefit program or the Public
 91 Employee Optional Retirement Program of the Florida Retirement
 92 System.

93 a. If the employee elects to participate in the Public
 94 Employee Optional Retirement Program, membership shall be
 95 prospective, and the applicable provisions of s. 121.4501(4)
 96 shall govern the election.

97 b. If the employee elects to participate in the defined
 98 benefit program of the Florida Retirement System, the employee
 99 shall, upon payment to the system trust fund of the amount
 100 calculated under sub-sub-subparagraph (I), receive service
 101 credit for prior service based upon the time during which the
 102 employee had withdrawn from the system.

103 (I) The cost for such credit shall be an amount
 104 representing the actuarial accrued liability for the affected
 105 period of service. The cost shall be calculated using the
 106 discount rate and other relevant actuarial assumptions that were
 107 used to value the Florida Retirement System defined benefit plan
 108 liabilities in the most recent actuarial valuation. The
 109 calculation shall include any service already maintained under
 110 the defined benefit plan in addition to the period of
 111 withdrawal. The actuarial accrued liability attributable to any
 112 service already maintained under the defined benefit plan shall

113 | be applied as a credit to the total cost resulting from the
 114 | calculation. The division shall ensure that the transfer sum is
 115 | prepared using a formula and methodology certified by an
 116 | actuary.

117 | (II) The employee must transfer a sum representing the net
 118 | cost owed for the actuarial accrued liability in sub-sub-
 119 | subparagraph (I) immediately following the time of such
 120 | movement, determined assuming that attained service equals the
 121 | sum of service in the defined benefit program and the period of
 122 | withdrawal.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1467
SPONSOR(S): Weatherford
TIED BILLS:

Access to Confidential Records of Children

IDEN./SIM. BILLS: SB 2762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs		Williamson <i>Raw</i>	Williamson <i>Raw</i>
2) Government Efficiency & Accountability Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Department of Children and Family Services (Department) is an executive branch agency headed by a Secretary appointed by the Governor and confirmed by the Senate. As part of its responsibilities, the Department investigates reports of abuse, abandonment, or neglect of children and vulnerable adults.

Current law provides public record exemptions for all records held by the Department concerning reports of abandonment, abuse, or neglect of a child or vulnerable adult. This includes reports made to the central abuse hotline and all records generated because of such reports.

The bill creates requirements regarding case files for children under the supervision of or in the custody of the Department, and, at no cost, authorizes access to those files by the child or the child's caregiver, guardian ad litem, or attorney on behalf of the child. The bill also authorizes the court to determine whether sharing information in the case file is necessary to ensure access to appropriate services or for the safety of the child.

The bill authorizes release of a child's records to a prospective adoptive parent. Information available for release includes: family social and medical history form; biological mother's medical records; complete set of the child's medical records; all mental health, psychological, and psychiatric records concerning the child; child's educational records; records documenting all incidents that require the Department to provide services to the child; and written information relating to the availability of adoption subsidies for the child.

Current law authorizes the Department to petition the court for an order for the immediate public release of Department records pertaining to investigations of abuse or neglect of a child or vulnerable adult. This bill removes that additional option for court approved immediate release of confidential information.

The bill also authorizes the Department to release confidential and exempt records pertaining to investigations of abuse, abandonment, or neglect of a child or vulnerable adult that resulted in serious mental, emotional, or physical injury to that child or adult; however, the records may be released only if the Secretary determines that it is in the public interest. It further provides criteria that must be met by the Department prior to release of the records.

The bill appears to raise constitutional concerns. See CONSTITUTIONAL ISSUES section for further details.

The bill does not appear to create a fiscal impact on state or local governments.

The bill appears to require 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 creates new requirements related to the maintenance of child records. It decreases access to public records by removing a current option available for release of confidential and exempt information held by the Department of Children and Family Services (Department). The bill, however, creates a new opportunity for release of confidential and exempt information by authorizing release upon determination by the Secretary of the Department that release is in the public interest. Thus, the bill creates new responsibilities for the Secretary.

Safeguard individual liberty – The bill decreases safeguards afforded individuals by allowing the Secretary of the Department to release confidential and exempt information regarding an individual if he or she determines that release is in the public interest. The bill only appears to provide continued protection for the name of any person reporting abuse, abandonment, or neglect. It does not appear to continue to protect the name of the victim of such abuse, abandonment, or neglect.

Empower families – The bill authorizes access to confidential and exempt information by prospective adoptive parents. Such access could increase the opportunity for an adopted child to thrive in the custody of his or her adoptive parents.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Public Records Law

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² 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 public 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.

¹ Article I, s. 24(c) of the Florida Constitution.

² Section 119.15, F.S.

Department of Children and Family Services

The Department of Children and Family Services (Department) is an executive branch agency headed by a Secretary appointed by the Governor and confirmed by the Senate.³ As part of its responsibilities, the Department investigates reports of abuse, abandonment, or neglect of children and vulnerable adults.⁴ Sensitive information regarding children, vulnerable adults, and alleged perpetrators is collected during those investigations.

Public Record Exemptions for the Department

Current law provides public record exemptions for all records held by the Department concerning reports of abandonment, abuse, or neglect of a child⁵ or vulnerable adult.⁶ This includes reports made to the central abuse hotline and all records generated because of such reports.

The exemption authorizes release of the confidential and exempt⁷ information to certain agencies and persons or under certain circumstances. For example, the Department may release such information to the Department of Health, the Agency for Persons with disabilities, county agencies responsible for carrying out: child or adult protective investigations; ongoing child or adult protective services; early intervention and prevention services; Healthy Start services; licensure or approval of adoptive homes, foster homes, or child care facilities; or services for victims of domestic violence.⁸

If a child under investigation or supervision is determined to be missing, the Department may release to the public the name of the child and the child's date of birth, a physical description of the child,⁹ and a photograph of the child.¹⁰ The law enforcement agency primarily responsible for the investigation may release any information received from the Department regarding the investigation, if it believes release is likely to assist efforts in locating the child or to promote the safety or well-being of the child.¹¹

Current law also authorizes any person or organization, including the Department, to petition the court for an order making public the records of the Department pertaining to investigations of alleged abuse, abandonment, or neglect of a child¹² or vulnerable adult.¹³ The court must determine whether good cause exists for public access. In making this determination, the court must balance the best interests of the:

- Child and that child's siblings, together with the privacy rights of other persons identified in the reports, against the public interest.¹⁴
- Vulnerable adult with the privacy right of other persons identified in the reports against the public interest.¹⁵

The law also authorizes the Department to petition¹⁶ the court for an order for the immediate public release of Department records pertaining to such investigations. The court, within 24 hours after the

³ Section 20.19, F.S.

⁴ See chapters 39 and 415, F.S.

⁵ Section 39.202(1), F.S.

⁶ Section 415.107(1), F.S.

⁷ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁸ See ss. 39.202(2)(a) and 415.107(3)(a), F.S.

⁹ The physical description includes, at a minimum, the height, weight, hair color, eye color, gender, and any identifying physical characteristics of the child.

¹⁰ Section 39.202(4)(a), F.S.

¹¹ Section 39.202(4)(c), F.S.

¹² Section 39.202(1), F.S.

¹³ Section 415.107(1), F.S.

¹⁴ Section 39.202(1), F.S.

¹⁵ Section 415.107(1), F.S.

Department files the petition,¹⁷ must determine whether good cause exists.¹⁸ If the court determines that good cause exists for public access, the court must direct the Department to redact¹⁹ the name and other identifying information of any person identified in any protective investigation report until the court finds that there is probable cause to believe that the person identified committed an act of alleged abuse, abandonment, or neglect.²⁰

Effect of Bill

Child Case File Records

The bill requires that a case file for a child under the supervision of or in the custody of the Department of Children and Family Services (Department) be maintained in a complete and accurate manner. The case file must contain the child's case plan as required by part VIII of chapter 39, F.S., and the full name and street address of all shelters, foster parents, group homes, treatment facilities, or locations where the child is placed. At no cost, the child must be provided with a complete and accurate copy of the entire case file upon request of the child or the child's caregiver, guardian ad litem, or attorney on behalf of the child.

The bill further authorizes review of the case file by the child or the child's caregiver, guardian ad litem, or attorney, at no cost. A request to review the file must be submitted in writing if made by the attorney or guardian ad litem. First, it is unclear how a person's "review" of the file would create a cost. Second, it is unclear why a request to *review* the file must be made in writing but no written requirement is required for a complete *copy* of the record.

The bill also authorizes the court to determine whether sharing information in the case file is necessary to ensure access to appropriate services or for the safety of the child. If such determination is made, the court may approve direct release of the records to the Department of Juvenile Justice or its contractors, to the child's school, or to the child's physical health care, mental health care, or developmental disabilities provider. It is unclear why court determined access is limited to these entities only and whether there could be other entities that might need such information in order to ensure access to appropriate services or for the safety of the child.

The bill authorizes the sharing of confidential and exempt information between all state and local agencies and programs that provide services that benefit children, including the Department, the Department of Juvenile Justice, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, individual school districts, the Statewide Guardian Ad Litem program, and the Office of Child Abuse Prevention. With this broad exception to the exemption, it is unclear why the provision allowing the court to provide for release to similar entities is necessary. This provision would appear to allow for easier access to confidential and exempt records in lieu of going to the court for a determination that release would ensure receipt of appropriate services.

¹⁶ In cases involving a child, the petition must be personally served upon the child, the child's parent or guardian, and any person named as an alleged perpetrator in the report of abuse, abandonment, or neglect. In cases involving a vulnerable adult, the petition must be personally served upon the vulnerable adult, the vulnerable adult's legal guardian, if any, and any person named as an alleged perpetrator in the report of abuse, neglect, or exploitation.

¹⁷ If the court does not grant or deny the petition within the 24-hour period, the Department may release to the public summary information that includes a confirmation that an investigation has been conducted concerning the alleged victim; the dates and brief description of procedural activities undertaken during the Department's investigation; and the date of each judicial proceeding, a summary of each participant's recommendations made at the judicial proceeding, and the ruling of the court. The information cannot include the name of, or other identifying information with respect to, any person identified in any investigation.

¹⁸ Section 39.2021(2), F.S.

¹⁹ Section 119.011(12), F.S., defines "redact" to mean "to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information."

²⁰ Sections 39.2021(3) and 415.1071(3), F.S.

Adoption Records

The bill authorizes release of a child's records to a prospective adoptive parent. It is unclear, however, what criteria must be met in order for a person to be categorized as a "prospective" adoptive parent. This could authorize release to 10 prospective adoptive parents for one child.

The following information, if available to the adoption entity, must be provided to the prospective adoptive parent:

- The family social and medical history form.²¹
- The biological mother's medical records documenting her prenatal care and the birth and delivery of the child.
- A complete set of the child's medical records documenting all medical treatment and care since the child's birth.
- All mental health, psychological, and psychiatric records, reports, and evaluations concerning the child.
- The child's educational records.²²
- Records documenting all incidents that require the Department to provide services to the child.²³
- Written information relating to the availability of adoption subsidies for the child.

The prospective adoptive parent must receive the information by the date the final hearing on the adoption is noticed with the court, and the following information must be redacted: information identifying the child; information identifying the child's parents, siblings, and relatives; and information identifying perpetrators of crimes against the child or involving the child.

It is unclear whether providing access to the mother's medical records regarding prenatal care and the birth and delivery of the child is in violation of the federal Health Insurance Portability and Accountability Act. Further review of the federal law is required.

Reports and Records in Cases of Child Abuse or Neglect

Current law provides that all records held by the Department concerning reports of child abandonment, abuse, or neglect are confidential and exempt from public records requirements. It also provides for release of such records to certain entities or under certain circumstances.²⁴

The bill authorizes access to the confidential and exempt records by community-based care lead agencies and their subcontracted providers and by a person with whom placement of a child is being considered or has been granted. It is unclear what criteria must be met in order for a person to be categorized as "being considered" for a child being placed in his or her home.

The bill also requires any entity granted access to such confidential and exempt child abuse or neglect records to provide access to any other entity or individual entitled to access under s. 39.202, F.S. It is unclear how an entity or individual authorized to receive confidential and exempt records would know whether any other entity or individual also is granted such access. It is the responsibility of the Department to make that determination and not the responsibility of the receiving entity or individual who is granted an exception to the Department's public record exemption.

Current law authorizes the Department to petition the court for an order for the immediate public release of Department records pertaining to investigations of abuse or neglect of a child.²⁵ This bill

²¹ This form is completed pursuant to s. 63.082(3), F.S.

²² The educational records include all records relating to any special educational needs of the child.

²³ This includes all orders of adjudication of dependency or termination of parental rights issued pursuant to chapter 39, F.S., any case plans drafted to address the child's needs, all protective services investigations identifying the child as a victim, and all guardian ad litem reports filed with the court concerning the child.

²⁴ See s. 39.202(2), F.S.

²⁵ Section 39.2021(2), F.S.

removes that additional option for court approved immediate release of confidential information. As such, this bill appears to expand the current public record exemption by eliminating a possible means for release of confidential and exempt records.

The bill authorizes the Department to release confidential and exempt records pertaining to investigations of abuse, abandonment, or neglect of a child that resulted in serious mental, emotional, or physical injury to that child; however, the records may be released only if the Secretary determines that it is in the public interest. Public interest includes the need for the public to know of and adequately evaluate the actions of the Department and the court system in providing children with the protections enumerated in s. 39.001, F.S. The name of the person reporting the abuse, abandonment, or neglect remains confidential and exempt.

There is no requirement that the Secretary balance the best interests of the child or vulnerable adult against the public interest. Further, this could be considered an unlawful delegation of legislative authority as it is the responsibility of the Legislature to determine when confidential and exempt records can be released. Merely authorizing the Secretary to make that determination based upon whether it will prove the Department or court is performing its job does not seem to be adequate criteria.

Prior to releasing the confidential and exempt records, the Department must make a good faith effort to notify the child, the child's caregiver, the child's attorney, the guardian ad litem assigned to the case, any person named as an alleged perpetrator, and any law enforcement agency actively involved in investigating the alleged abuse, abandonment, or neglect. Notification must be made via hand or overnight delivery service with evidence of delivery and must take place at least 72 hours before release of the records. After receiving notice, any of the notified persons may petition a circuit court for an order preventing the Department from releasing the records. The circuit court may order the Department not to release the records only after finding that the best interests of the petitioner outweigh the public interest.

Reports and Records in Cases of Abuse or Neglect of a Vulnerable Adult

Current law authorizes the Department to petition the court for an order for the immediate public release of Department records pertaining to investigations of abuse or neglect of a vulnerable adult.²⁶ This bill removes that additional option for court approved immediate release of confidential information. As such, this bill appears to expand the current public record exemption by eliminating a possible means for release of confidential and exempt records.

The bill authorizes the Department to release confidential and exempt records pertaining to investigations of abuse, abandonment, or neglect of a vulnerable adult that resulted in serious mental, emotional, or physical injury to that adult; however, the records may be released only if the Secretary determines that it is in the public interest. Public interest includes the need for the public to know of and adequately evaluate the actions of the Department and the court system in providing vulnerable adults with the protections enumerated in s. 415.101, F.S. The name of the person reporting the abuse, abandonment, or neglect remains confidential and exempt. Once again, this could be considered an unlawful delegation of legislative authority as discussed previously.

Prior to releasing the confidential and exempt records, the Department must make a good faith effort to notify the vulnerable adult, the vulnerable adult's legal guardian (if any), any person named as an alleged perpetrator, and any law enforcement agency actively involved in investigating the alleged abuse, abandonment, or neglect. The same notification and petition criteria are afforded vulnerable adults as that afforded children who are the victim of abuse, abandonment, or neglect.

²⁶ Section 415.1071(2), F.S.
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Confidential and Exempt Status

The bill requires any person or entity with authorized access to confidential and exempt records to maintain the confidential status. In *Ragsdale v. State*,²⁷ the Supreme Court held that:

[T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands.²⁸

In *City of Riviera Beach v. Barfield*,²⁹ the court stated, “[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute.”³⁰ As such, the provision is unnecessary because had the Legislature intended for the confidential and exempt status of such records to evaporate then the Legislature would have stated as much.

C. SECTION DIRECTORY:

Section 1 creates s. 39.00145, F.S., to create requirements regarding the case file of a child under the supervision or in the custody of the Department of Children and Family Services.

Section 2 amends s. 39.202, F.S., to clarify who has access to a child’s records and who may bring an action to require access to confidential records.

Section 3 amends s. 39.2021, F.S., to make changes regarding access to confidential and exempt records of the Department of Children and Family Services.

Section 4 amends s. 63.038, F.S., to allow prospective adoptive parents access to confidential and exempt information.

Section 5 amends s. 402.115, F.S., to authorize the Department of Juvenile Justice to share confidential or exempt information with specified entities.

Section 6 amends s. 415.107, F.S., to clarify who may bring an action to require access to confidential records held by the Department of Children and Family Services.

Section 7 amends s. 415.1071, F.S., to make changes regarding access to confidential and exempt records of the Department of Children and Family Services.

Section 8 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

²⁷ 720 So.2d 203 (Fla. 1998).

²⁸ *Id.* at 206, 207.

²⁹ 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public record exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined “once a record is transferred from one public agency to another, the record loses its exempt status.” The court declined to accept the Attorney General’s view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.

³⁰ *Id.* at 1137.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

Article I, s. 24(c) of the State Constitution, authorizes the Legislature to create exemptions from public records requirements. The exemption must be provided by general law passed by a two-thirds vote of each house. In addition, the law must state with specificity the public necessity (public necessity statement) justifying the exemption.

The bill limits access to confidential and exempt records regarding the abuse, abandonment, or neglect of a child or vulnerable adult. In essence, it expands the current public record exemptions thus triggering the need for a public necessity statement and a two-thirds vote for passage. The bill does not have a public necessity statement, thereby raising constitutional concerns.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Open Government Sunset Review Act

The bill limits access to confidential and exempt records regarding the abuse, abandonment, or neglect of a child or vulnerable adult, thereby expanding the current public record exemptions. As such, the exemptions should be made subject to the Open Government Sunset Review Act,³¹ which provides for future legislative review and repeal of the exemptions five years after expansion.

³¹ Section 119.15, F.S.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to access to confidential records of
3 children; creating s. 39.00145, F.S.; requiring that the
4 case file of a child under the supervision or in the
5 custody of the Department of Children and Family Services
6 be maintained in a complete and accurate manner;
7 specifying who has access to the case file and records in
8 the file; authorizing the court to directly release the
9 child's records to certain entities; providing that
10 entities that have access to confidential information
11 about a child may share it with other entities that
12 provide services benefiting children; amending s. 39.202,
13 F.S.; clarifying who has access to a child's records and
14 who may bring an action to require access to confidential
15 records held by the department; amending s. 39.2021, F.S.;
16 expanding the authority of the Department of Children and
17 Family Services to release records relating to children on
18 its own initiative upon a showing of good cause; requiring
19 notice to certain parties before release; providing for a
20 court order to stop the release; creating s. 63.038, F.S.;
21 requiring the adoption entity to provide certain
22 information relating to a child to prospective adoptive
23 parents; amending s. 402.115, F.S.; adding the Department
24 of Juvenile Justice to the list of agencies that are
25 authorized to exchange confidential information; amending
26 s. 415.107, F.S.; clarifying who may bring an action to
27 require access to confidential records held by the
28 Department of Children and Family Services; amending s.

29 415.1071, F.S.; expanding the authority of the department
30 to release records relating to vulnerable adults on its
31 own initiative upon a showing of good cause; requiring
32 notice to certain parties before release; providing for a
33 court order to stop the release; providing an effective
34 date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Section 39.00145, Florida Statutes, is created
39 to read:

40 39.00145 Child records.--

41 (1) The case file of every child under the supervision of
42 or in the custody of the department, the department's authorized
43 agents, or contract providers for the department, including
44 community-based care lead agencies and their subcontracted
45 providers, must be maintained in a complete and accurate manner,
46 including, but not limited to, the child's case plan required by
47 part VIII of this chapter, and the full name and street address
48 of any and all shelters, foster parents, group homes, treatment
49 facilities, or locations where the child is placed. The child
50 shall be provided with a complete and accurate copy of his or
51 her entire case file, at no cost, upon the request of the child
52 or the child's caregiver, guardian ad litem, or attorney on
53 behalf of the child.

54 (2) Notwithstanding any other provision in this chapter,
55 the records in the case file shall be made available for review
56 upon request of the child or the child's caregiver, guardian ad

57 litem, or attorney, at no cost. A request by the child's
58 attorney or guardian ad litem must be submitted in writing.

59 (a) Release of records in the case file to the child, or
60 the child's caregiver, guardian ad litem, or attorney, does not
61 waive the confidential status of the information contained in
62 the records.

63 (b) If a child, or the child's caregiver, attorney, or
64 guardian ad litem, requests access to the child's case file, any
65 person who fails to provide records in the case file under
66 assertion of a claim of an exemption from the public-records
67 requirements of chapter 119, or who fails to provide access
68 within a reasonable time, is subject to sanctions and penalties
69 under s. 119.10.

70 (3) If a court determines that sharing information in the
71 child's case file is necessary to ensure access to appropriate
72 services or for the safety of the child, the court may approve
73 the direct release of records to the Department of Juvenile
74 Justice or its contractors under chapter 984 or chapter 985, to
75 the child's school, or to the child's physical health care,
76 mental health care, or developmental disabilities provider.
77 Information so released retains its confidential or exempt
78 status. For purposes of the Family Educational Rights and
79 Privacy Act, the disclosure of information in health and safety
80 emergencies applies to a child placed in shelter care or found
81 to be dependent under this chapter.

82 (4) Notwithstanding any other provision of law, all state
83 and local agencies and programs that provide services that
84 benefit children, from prenatal care to programs supporting

85 successful transition to self-sufficient adulthood, including
 86 the department, the Department of Juvenile Justice, the
 87 Department of Health, the Agency for Health Care Administration,
 88 the Agency for Persons with Disabilities, the Department of
 89 Education, individual school districts, the Statewide Guardian
 90 Ad Litem program, the Office of Child Abuse Prevention, and any
 91 contract provider of such agencies providing services that
 92 benefit children for such agencies, may share with each other
 93 confidential information or information that is exempt from
 94 disclosure under chapter 119 and that concerns any individual
 95 who is or has been the recipient of services within the
 96 jurisdiction of each agency or program. The department is
 97 considered a parent for the purpose of receiving and sharing
 98 education records. Confidential or exempt information shared
 99 among agencies and agency contractors, as agents for the state,
 100 remains confidential or exempt as provided by law.

101 Section 2. Subsection (1) and paragraph (a) of subsection
 102 (2) of section 39.202, Florida Statutes, are amended, paragraph
 103 (r) is added to subsection (2) of that section, and subsection
 104 (9) is added to that section, to read:

105 39.202 Confidentiality of reports and records in cases of
 106 child abuse or neglect.--

107 (1) In order to protect the rights of the child and the
 108 child's parents or other persons responsible for the child's
 109 welfare, all records held by the department concerning reports
 110 of child abandonment, abuse, or neglect, including reports made
 111 to the central abuse hotline and all records generated as a
 112 result of such reports, shall be confidential and exempt from

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113 the provisions of s. 119.07(1) and shall not be disclosed except
 114 as specifically authorized by this chapter. Such exemption from
 115 s. 119.07(1) applies to information in the possession of those
 116 entities granted access as set forth in this section. As
 117 provided in s. 39.00145, any entity granted access to records
 118 under this section shall grant access to any other entity or
 119 individual entitled to access under this section.

120 (2) Except as provided in subsection (4), access to such
 121 records, excluding the name of the reporter which shall be
 122 released only as provided in subsection (5), shall be granted
 123 only to the following persons, officials, and agencies:

124 (a) Employees, authorized agents, or contract providers of
 125 the department, including community-based care lead agencies and
 126 their subcontracted providers, the Department of Health, the
 127 Agency for Persons with Disabilities, or county agencies
 128 responsible for carrying out:

- 129 1. Child or adult protective investigations;
- 130 2. Ongoing child or adult protective services;
- 131 3. Early intervention and prevention services;
- 132 4. Healthy Start services;
- 133 5. Licensure or approval of adoptive homes, foster homes,
 134 child care facilities, facilities licensed under chapter 393, or
 135 family day care homes or informal child care providers who
 136 receive subsidized child care funding, or other homes used to
 137 provide for the care and welfare of children; or
- 138 6. Services for victims of domestic violence ~~when~~ provided
 139 by certified domestic violence centers working at the
 140 department's request as case consultants or with shared clients.

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Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

(r) Persons with whom placement of a child is being considered or has been granted.

(9) Any individual, agency, or other entity entitled to access records under this section may petition a circuit court, in accordance with s. 119.11, to enforce the provisions of this section.

Section 3. Section 39.2021, Florida Statutes, is amended to read:

39.2021 Release of confidential information.--

(1) Any person or organization, including the department ~~of Children and Family Services~~, may petition the court for an order making public the records of the department ~~of Children and Family Services~~ which pertain to an investigation ~~investigations~~ of alleged abuse, abandonment, or neglect of a child. The court shall determine whether there is good cause ~~exists~~ for public access to the records sought or a portion thereof.

(a) In making a ~~this~~ determination of good cause, the court shall balance the best interests of the child who is the focus of the investigation and the interest of the ~~that~~ child's siblings, together with the privacy rights of other persons identified in the reports, against the public interest. The public interest in access to such records is reflected in s. 119.01(1), and includes the need for the public ~~citizens~~ to know

169 of and adequately evaluate the actions of the department of
 170 ~~Children and Family Services~~ and the court system in providing
 171 children of this state with the protections enumerated in s.
 172 39.001. However, this subsection does not contravene s. 39.202,
 173 which protects the name of any person reporting the abuse,
 174 abandonment, or neglect of a child.

175 ~~(2) In cases involving serious bodily injury to a child,~~
 176 ~~the Department of Children and Family Services may petition the~~
 177 ~~court for an order for the immediate public release of records~~
 178 ~~of the department which pertain to the protective investigation.~~
 179 ~~The petition must be personally served upon the child, the~~
 180 ~~child's parent or guardian, and any person named as an alleged~~
 181 ~~perpetrator in the report of abuse, abandonment, or neglect. The~~
 182 ~~court must determine whether good cause exists for the public~~
 183 ~~release of the records sought no later than 24 hours, excluding~~
 184 ~~Saturdays, Sundays, and legal holidays, after the date the~~
 185 ~~department filed the petition with the court. If the court does~~
 186 ~~not grant or deny the petition within the 24 hour time period,~~
 187 ~~the department may release to the public summary information~~
 188 ~~including:~~

189 ~~(a) A confirmation that an investigation has been~~
 190 ~~conducted concerning the alleged victim.~~

191 ~~(b) The dates and brief description of procedural~~
 192 ~~activities undertaken during the department's investigation.~~

193 ~~(c) The date of each judicial proceeding, a summary of~~
 194 ~~each participant's recommendations made at the judicial~~
 195 ~~proceeding, and the ruling of the court.~~

196

197 ~~The summary information shall not include the name of, or other~~
 198 ~~identifying information with respect to, any person identified~~
 199 ~~in any investigation. In making a determination to release~~
 200 ~~confidential information, the court shall balance the best~~
 201 ~~interests of the child who is the focus of the investigation and~~
 202 ~~the interests of that child's siblings, together with the~~
 203 ~~privacy rights of other persons identified in the reports~~
 204 ~~against the public interest for access to public records.~~
 205 ~~However, this subsection does not contravene s. 39.202, which~~
 206 ~~protects the name of any person reporting abuse, abandonment, or~~
 207 ~~neglect of a child.~~

208 (b)(3) ~~If~~ When the court determines that there is good
 209 cause for public access ~~exists~~, the court shall direct ~~that~~ the
 210 department to redact the name of, and other identifying
 211 information with respect to, any person identified in the any
 212 protective investigation report until ~~such time as~~ the court
 213 finds that there is probable cause to believe that the person
 214 identified committed an act of alleged abuse, abandonment, or
 215 neglect.

216 (2) Notwithstanding subsection (1), the department may
 217 make public the records of the department, or any information
 218 included in such records, which pertain to investigations of
 219 abuse, abandonment, or neglect of a child which resulted in
 220 serious mental, emotional, or physical injury to the child, if
 221 the secretary determines that release of the records is in the
 222 public interest. The public interest in access to such records
 223 is reflected in s. 119.01(1), and includes the need for the
 224 public to know of and adequately evaluate the actions of the

225 department and the court system in providing children with the
 226 protections enumerated in s. 39.001. However, this subsection
 227 does not contravene s. 39.202, which protects the name of any
 228 person reporting the abuse, abandonment, or neglect of a child.

229 (a) Before releasing the records, the department shall
 230 make a good faith effort to notify the child, the child's
 231 caregiver, the child's attorney, the guardian ad litem assigned
 232 to the case, any person named as an alleged perpetrator in the
 233 report of abuse, abandonment, or neglect, and any law
 234 enforcement agency actively involved in investigating the
 235 alleged abuse, abandonment, or neglect. Such notification must
 236 take place at least 72 hours before the release of the records,
 237 by hand or via overnight delivery service, with evidence of
 238 delivery.

239 (b) After receiving notice, the child, the child's
 240 caregiver, the child's attorney, the guardian ad litem assigned
 241 to the case, any person named as an alleged perpetrator in the
 242 report, and any law enforcement agency actively investigating an
 243 allegation may petition a circuit court for an order preventing
 244 the department from releasing the records.

245 (c) The circuit court may order the department not to
 246 release the records only after finding that the best interests
 247 of the petitioner outweigh the public interest. Any information
 248 otherwise made confidential or exempt by law, including the name
 249 of the person reporting the abuse, abandonment, or neglect, may
 250 not be released pursuant to this subsection.

251 Section 4. Section 63.038, Florida Statutes, is created to
 252 read:

253 | 63.038 Access to child's records.--At the time that a
 254 | prospective adoptive parent is identified for a born or unborn
 255 | child whose parents are seeking to place the child for adoption
 256 | or whose parental rights were terminated pursuant to chapter 39,
 257 | the prospective adoptive parent is entitled to access to the
 258 | child's records upon request.

259 | (1) The following information shall, at a minimum and if
 260 | available to the adoption entity, be provided to the prospective
 261 | adoptive parent:

262 | (a) The family social and medical history form completed
 263 | pursuant to s. 63.082(3).

264 | (b) The biological mother's medical records documenting
 265 | her prenatal care and the birth and delivery of the child.

266 | (c) A complete set of the child's medical records
 267 | documenting all medical treatment and care since the child's
 268 | birth.

269 | (d) All mental health, psychological, and psychiatric
 270 | records, reports, and evaluations concerning the child.

271 | (e) The child's educational records, which include all
 272 | records relating to any special educational needs of the child.

273 | (f) Records documenting all incidents that require the
 274 | department to provide services to the child, including all
 275 | orders of adjudication of dependency or termination of parental
 276 | rights issued pursuant to chapter 39, any case plans drafted to
 277 | address the child's needs, all protective services
 278 | investigations identifying the child as a victim, and all
 279 | guardian ad litem reports filed with the court concerning the
 280 | child.

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281 (g) Written information relating to the availability of
 282 adoption subsidies for the child.

283 (2) In all cases, the prospective adoptive parent shall
 284 receive all available information requested by the date that the
 285 final hearing on the adoption is noticed with the court.

286 (3) When providing information pursuant to this section,
 287 the adoption entity responsible for the record shall redact any
 288 identifying information concerning the child; the child's
 289 parents, siblings, and relatives; and perpetrators of crimes
 290 against the child or involving the child.

291 (4) Disclosure under this section does not waive the
 292 confidential status of the information contained in the records.

293 Section 5. Section 402.115, Florida Statutes, is amended
 294 to read:

295 402.115 Sharing confidential or exempt
 296 information.--Notwithstanding any other provision of law to the
 297 contrary, the Department of Health, the Department of Children
 298 and Family Services, the Department of Juvenile Justice, and the
 299 Agency for Persons with Disabilities may share confidential
 300 information or information exempt from disclosure under chapter
 301 119 on any individual who is or has been the subject of a
 302 program within the jurisdiction of each agency. Information so
 303 exchanged remains confidential or exempt as provided by law.

304 Section 6. Present subsections (6), (7), and (8) of
 305 section 415.107, Florida Statutes, are renumbered as subsections
 306 (7), (8), and (9), respectively, and a new subsection (6) is
 307 added to that section, to read:

308 415.107 Confidentiality of reports and records.--

309 (6) Any individual, agency, or other entity entitled to
 310 access records under this section may petition a circuit court,
 311 in accordance with s. 119.11, to enforce the provisions of this
 312 section.

313 Section 7. Section 415.1071, Florida Statutes, is amended
 314 to read:

315 415.1071 Release of confidential information.--

316 (1) Any person or organization, including the department
 317 ~~of Children and Family Services~~, may petition the court for an
 318 order making public the records of the department ~~of Children~~
 319 ~~and Family Services~~ which pertain to an investigation
 320 ~~investigations~~ of alleged abuse, neglect, or exploitation of a
 321 vulnerable adult. The court shall determine whether there is
 322 good cause ~~exists~~ for public access to the records sought or a
 323 portion thereof.

324 (a) In making a this determination of good cause, the
 325 court shall balance the best interests of the vulnerable adult
 326 who is the focus of the investigation together with the privacy
 327 right of other persons identified in the reports, against the
 328 public interest. The public interest in access to such records
 329 is reflected in s. 119.01(1), and includes the need for the
 330 public ~~citizens~~ to know of and adequately evaluate the actions
 331 of the department ~~of Children and Family Services~~ and the court
 332 system in providing vulnerable adults ~~of this state~~ with the
 333 protections enumerated in s. 415.101. However, this subsection
 334 does not contravene s. 415.107, which protects the name of any
 335 person reporting the abuse, neglect, or exploitation of a
 336 vulnerable adult.

337 ~~(2) In cases involving serious bodily injury to a~~
 338 ~~vulnerable adult, the Department of Children and Family Services~~
 339 ~~may petition the court for an order for the immediate public~~
 340 ~~release of records of the department which pertain to the~~
 341 ~~protective investigation. The petition must be personally served~~
 342 ~~upon the vulnerable adult, the vulnerable adult's legal~~
 343 ~~guardian, if any, and any person named as an alleged perpetrator~~
 344 ~~in the report of abuse, neglect, or exploitation. The court must~~
 345 ~~determine whether good cause exists for the public release of~~
 346 ~~the records sought no later than 24 hours, excluding Saturdays,~~
 347 ~~Sundays, and legal holidays, after the date the department filed~~
 348 ~~the petition with the court. If the court does not grant or deny~~
 349 ~~the petition within the 24 hour time period, the department may~~
 350 ~~release to the public summary information including:~~

351 ~~(a) A confirmation that an investigation has been~~
 352 ~~conducted concerning the alleged victim.~~

353 ~~(b) The dates and brief description of procedural~~
 354 ~~activities undertaken during the department's investigation.~~

355 ~~(c) The date of each judicial proceeding, a summary of~~
 356 ~~each participant's recommendations made at the judicial~~
 357 ~~proceeding, and the ruling of the court.~~

358
 359 ~~The summary information shall not include the name of, or other~~
 360 ~~identifying information with respect to, any person identified~~
 361 ~~in any investigation. In making a determination to release~~
 362 ~~confidential information, the court shall balance the best~~
 363 ~~interests of the vulnerable adult who is the focus of the~~
 364 ~~investigation together with the privacy rights of other persons~~

365 ~~identified in the reports against the public interest for access~~
 366 ~~to public records. However, this subsection does not contravene~~
 367 ~~s. 415.107, which protects the name of any person reporting~~
 368 ~~abuse, neglect, or exploitation of a vulnerable adult.~~

369 (b)(3) If ~~When~~ the court determines that there is good
 370 cause for public access ~~exists~~, the court shall direct ~~that~~ the
 371 department to redact the name of and other identifying
 372 information with respect to any person identified in the any
 373 protective investigation report until ~~such time as~~ the court
 374 finds that there is probable cause to believe that the person
 375 identified committed an act of alleged abuse, neglect, or
 376 exploitation.

377 (2) Notwithstanding subsection (1), the department may
 378 make public records of the department which pertain to
 379 investigations of alleged abuse, neglect, and exploitation of a
 380 vulnerable adult which resulted in serious mental, emotional, or
 381 physical injury to the adult if the secretary determines that
 382 release of the records is in the public interest. The public
 383 interest in access to such records is reflected in s. 119.01(1),
 384 and includes the need for the public to know of and adequately
 385 evaluate the actions of the department and the court system in
 386 providing vulnerable adults of this state with the protections
 387 enumerated in s. 415.101. However, this subsection does not
 388 contravene s. 415.107, which protects the name of any person
 389 reporting the abuse, neglect, or exploitation of a vulnerable
 390 adult.

391 (a) Before releasing the records, the department shall
 392 make a good faith effort to notify the vulnerable adult, the

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393 vulnerable adult's legal guardian, if any, any person named as
 394 an alleged perpetrator in the report of abuse, neglect, or
 395 exploitation, and any law enforcement agency actively involved
 396 in investigating the alleged abuse, neglect, or exploitation.
 397 Such notification must take place at least 72 hours before the
 398 release of the records, by hand or via overnight delivery
 399 service, with evidence of delivery.

400 (b) After receiving notice, the vulnerable adult, the
 401 vulnerable adult's legal guardian, any person named as an
 402 alleged perpetrator in the report, or any law enforcement agency
 403 actively investigating an allegation may petition a circuit
 404 court for an order preventing the department from releasing the
 405 records.

406 (c) The circuit court may order the department not to
 407 release the records only after finding that the best interests
 408 of the petitioner outweigh the public interest. Any information
 409 otherwise made confidential or exempt by law, including the name
 410 of the person reporting the abuse, neglect, or exploitation, may
 411 not be released pursuant to this subsection.

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

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 1467**

COUNCIL/COMMITTEE ACTION

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

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

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 39.00145, Florida Statutes, is created
 7 to read:

8 39.00145 Child records.--

9 (1) The case file of every child under the supervision of
 10 or in the custody of the department or its authorized agents or
 11 contract providers, including community-based care lead agencies
 12 and their subcontracted providers, must be maintained in a
 13 complete and accurate manner. A complete and accurate manner
 14 includes, but is not limited to, the child's case plan required
 15 by part VIII of this chapter and the full name and street
 16 address of all shelters, foster parents, group homes, treatment
 17 facilities, or locations where the child is placed.

18 (2) (a) Notwithstanding any other provision in this
 19 chapter, the records in the case file shall be made available
 20 for inspection upon request of the child or the child's
 21 caregiver, guardian ad litem, or attorney, at no cost. A request

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22 by the child's attorney or guardian ad litem must be submitted
23 in writing.

24 (b) The child shall be provided with a complete and
25 accurate copy of his or her entire case file, at no cost, upon
26 the request of the child or the child's caregiver, guardian ad
27 litem, or attorney on behalf of the child.

28 (c) Release of records in the case file to the child or
29 the child's caregiver, guardian ad litem, or attorney, does not
30 waive the confidential and exempt status of the records.

31 (3) If a court determines that sharing information in the
32 child's case file is necessary to ensure the child receives
33 access to appropriate services or for the safety of the child,
34 the court may approve the release of the confidential and exempt
35 records.

36 (4) For purposes of the Family Educational Rights and
37 Privacy Act, the disclosure of information in health and safety
38 emergencies applies to a child placed in shelter care or found
39 to be dependent under this chapter.

40 (5) (a) Notwithstanding any other provision of law, all
41 state and local agencies and programs that provide services to
42 children or are responsible for the safety of the child,
43 including the department, the Department of Juvenile Justice,
44 the Department of Health, the Agency for Health Care
45 Administration, the Agency for Persons with Disabilities, the
46 Department of Education, individual school districts, the
47 Statewide Guardian Ad Litem Office, and any contract provider of
48 such agencies, may share with each other confidential and exempt
49 records if the records are reasonably necessary to ensure access
50 by the child to appropriate services or for the safety of the
51 child.

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52 (b) This subsection does not apply to information
53 concerning clients and records of certified domestic violence
54 centers which are confidential under s. 39.908 and privileged
55 under s. 90.5036.

56 Section 2. Paragraph (a) of subsection (2) of section
57 39.202, Florida Statutes, is amended, and paragraph (r) is added
58 to subsection (2) of that section, to read:

59 39.202 Confidentiality of reports and records in cases of
60 child abuse or neglect.--

61 (2) Except as provided in subsection (4), access to such
62 records, excluding the name of the reporter which shall be
63 released only as provided in subsection (5), shall be granted
64 only to the following persons, officials, and agencies:

65 (a) Employees, authorized agents, or contract providers of
66 the department, including community-based care lead agencies and
67 their subcontracted providers, the Department of Health, the
68 Agency for Persons with Disabilities, or county agencies
69 responsible for carrying out:

- 70 1. Child or adult protective investigations;
- 71 2. Ongoing child or adult protective services;
- 72 3. Early intervention and prevention services;
- 73 4. Healthy Start services;
- 74 5. Licensure or approval of adoptive homes, foster homes,
75 child care facilities, facilities licensed under chapter 393, or
76 family day care homes or informal child care providers who
77 receive subsidized child care funding, or other homes used to
78 provide for the care and welfare of children; or
- 79 6. Services for victims of domestic violence ~~when~~ provided
80 by certified domestic violence centers working at the
81 department's request as case consultants or with shared clients.

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83 Also, employees or agents of the Department of Juvenile Justice
84 responsible for the provision of services to children, pursuant
85 to chapters 984 and 985.

86 (r) Persons with whom placement of a child is being
87 considered or has been granted, including, but not limited to,
88 foster parents, pre-adoptive or adoptive parents, or an adoption
89 entity acting on their behalf.

90 Section 3. Section 39.2021, Florida Statutes, is amended
91 to read:

92 39.2021 Release of confidential information.--

93 (1)(a) Any person or organization, including the
94 ~~department of Children and Family Services~~, may petition the
95 court for an order making public the records of the department
96 ~~of Children and Family Services~~ which pertain to an
97 investigation ~~investigations~~ of alleged abuse, abandonment, or
98 neglect of a child. The court shall determine whether there is
99 good cause ~~exists~~ for public access to the records sought or a
100 portion thereof.

101 (b) In making a this ~~determination~~ of good cause, the
102 court shall balance the best interests of the child who is the
103 focus of the investigation and the interest of the ~~that~~ child's
104 siblings, together with the privacy rights of other persons
105 identified in the reports, against the public interest. The
106 public interest in access to such records is reflected in s.
107 119.01(1), and includes the need for the public ~~citizens~~ to know
108 of and adequately evaluate the actions of the department ~~of~~
109 ~~Children and Family Services~~ and the court system in providing
110 children ~~of this state~~ with the protections enumerated in s.
111 39.001. However, this subsection does not contravene s. 39.202,
112 which protects the name of any person reporting the abuse,
113 abandonment, or neglect of a child.

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114 (2) (a) In cases involving serious bodily injury to a
115 child, the department ~~of Children and Family Services~~ may
116 petition the court for an order for the immediate public release
117 of records of the department which pertain to the protective
118 investigation. The petition must be personally served upon the
119 child, the child's parent or guardian, and any person named as
120 an alleged perpetrator in the report of abuse, abandonment, or
121 neglect. The court must determine whether good cause exists for
122 the public release of the records sought no later than 24 hours,
123 excluding Saturdays, Sundays, and legal holidays, after the date
124 the department filed the petition with the court. If the court
125 does not grant or deny the petition within the 24-hour time
126 period, the department may release to the public summary
127 information including:

128 1. ~~(a)~~ A confirmation that an investigation has been
129 conducted concerning the alleged victim.

130 2. ~~(b)~~ The dates and brief description of procedural
131 activities undertaken during the department's investigation.

132 3. ~~(c)~~ The date of each judicial proceeding, a summary of
133 each participant's recommendations made at the judicial
134 proceeding, and the ruling of the court.

135 (b) The summary information shall not include the name of,
136 or other identifying information with respect to, any person
137 identified in any investigation. In making a determination to
138 release confidential information, the court shall balance the
139 best interests of the child who is the focus of the
140 investigation and the interests of that child's siblings,
141 together with the privacy rights of other persons identified in
142 the reports against the public interest for access to public
143 records. However, this subsection does not contravene s. 39.202,

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144 which protects the name of any person reporting abuse,
145 abandonment, or neglect of a child.

146 (3) If ~~When~~ the court determines that there is good cause
147 for public access ~~exists~~, the court shall direct ~~that~~ the
148 department to redact the name of, and other identifying
149 information with respect to, any person identified in the any
150 protective investigation report until ~~such time as~~ the court
151 finds that there is probable cause to believe that the person
152 identified committed an act of alleged abuse, abandonment, or
153 neglect.

154 Section 4. Section 402.115, Florida Statutes, is amended
155 to read:

156 402.115 Sharing confidential or exempt
157 information.--Notwithstanding any other provision of law to the
158 contrary, the Department of Health, the Department of Children
159 and Family Services, the Department of Juvenile Justice, and the
160 Agency for Persons with Disabilities may share confidential
161 information or information exempt from disclosure under chapter
162 119 on any individual who is or has been the subject of a
163 program within the jurisdiction of each agency. Information so
164 exchanged remains confidential or exempt as provided by law.

165 Section 5. Section 415.1071, Florida Statutes, is amended
166 to read:

167 415.1071 Release of confidential information.--

168 (1) (a) Any person or organization, including the
169 department ~~of Children and Family Services~~, may petition the
170 court for an order making public the records of the department
171 ~~of Children and Family Services~~ which pertain to an
172 investigation ~~investigations~~ of alleged abuse, neglect, or
173 exploitation of a vulnerable adult. The court shall determine

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174 whether there is good cause ~~exists~~ for public access to the
175 records sought or a portion thereof.

176 (b) In making a ~~this~~ determination of good cause, the
177 court shall balance the best interests of the vulnerable adult
178 who is the focus of the investigation together with the privacy
179 right of other persons identified in the reports, against the
180 public interest. The public interest in access to such records
181 is reflected in s. 119.01(1), and includes the need for the
182 public citizens to know of and adequately evaluate the actions
183 of the department ~~of Children and Family Services~~ and the court
184 system in providing vulnerable adults ~~of this state~~ with the
185 protections enumerated in s. 415.101. However, this subsection
186 does not contravene s. 415.107, which protects the name of any
187 person reporting the abuse, neglect, or exploitation of a
188 vulnerable adult.

189 (2)(a) In cases involving serious bodily injury to a
190 vulnerable adult, the department ~~of Children and Family Services~~
191 may petition the court for an order for the immediate public
192 release of records of the department which pertain to the
193 protective investigation. The petition must be personally served
194 upon the vulnerable adult, the vulnerable adult's legal
195 guardian, if any, and any person named as an alleged perpetrator
196 in the report of abuse, neglect, or exploitation. The court must
197 determine whether good cause exists for the public release of
198 the records sought no later than 24 hours, excluding Saturdays,
199 Sundays, and legal holidays, after the date the department filed
200 the petition with the court. If the court does not grant or deny
201 the petition within the 24-hour time period, the department may
202 release to the public summary information including:

203 1.(a) A confirmation that an investigation has been
204 conducted concerning the alleged victim.

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205 ~~2.(b)~~ The dates and brief description of procedural
206 activities undertaken during the department's investigation.

207 ~~3.(c)~~ The date of each judicial proceeding, a summary of
208 each participant's recommendations made at the judicial
209 proceeding, and the ruling of the court.

210 (b) The summary information shall not include the name of,
211 or other identifying information with respect to, any person
212 identified in any investigation. In making a determination to
213 release confidential information, the court shall balance the
214 best interests of the vulnerable adult who is the focus of the
215 investigation together with the privacy rights of other persons
216 identified in the reports against the public interest for access
217 to public records. However, this subsection does not contravene
218 s. 415.107, which protects the name of any person reporting
219 abuse, neglect, or exploitation of a vulnerable adult.

220 (3) ~~If~~ ~~When~~ the court determines that there is good cause
221 for public access ~~exists~~, the court shall direct ~~that~~ the
222 department to redact the name of and other identifying
223 information with respect to any person identified in the ~~any~~
224 protective investigation report until ~~such time as~~ the court
225 finds that there is probable cause to believe that the person
226 identified committed an act of alleged abuse, neglect, or
227 exploitation.

228 Section 6. This act shall take effect July 1, 2008.

229

230

231

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

232

Remove the entire title and insert:

233

A bill to be entitled

234

An act relating to access to confidential records of children;

235

creating s. 39.00145, F.S.; requiring that the case file of a

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236 child under the supervision or in the custody of the Department
237 of Children and Family Services be maintained in a complete and
238 accurate manner; specifying who has access to the case file and
239 records in the file; authorizing the court to release the
240 child's records to certain entities; providing that entities
241 that have access to confidential and exempt records about a
242 child may share it with other entities that provide services
243 benefiting children; amending s. 39.202, F.S.; specifying who
244 has access to a child's records; amending s. 39.2021, F.S.;
245 making editorial changes; amending s. 402.115, F.S.; adding the
246 Department of Juvenile Justice to the list of agencies that are
247 authorized to exchange confidential or exempt information;
248 amending s. 415.1071, F.S.; making editorial changes; providing
249 an effective date.

250

1 A bill to be entitled
2 An act relating to operation of the Florida Lottery;
3 amending s. 20.317, F.S.; clarifying provisions concerning
4 regional offices; amending s. 24.101, F.S.; revising a
5 reference; amending s. 24.102, F.S.; revising provisions
6 relating to legislative intent to provide for operation of
7 the lottery under a concession agreement; amending s.
8 24.103, F.S.; providing additional definitions; amending
9 s. 24.104, F.S.; revising language concerning the purpose
10 of the Department of the Lottery to permit operation of
11 the lottery by the state through a concessionaire;
12 amending s. 24.105, F.S.; revising provisions concerning
13 the powers and duties of the Department of the Lottery to
14 allow for possible operation of the lottery through a
15 concessionaire; providing that specified provisions apply
16 whether the department operates the lottery directly or
17 through a concessionaire; deleting obsolete language;
18 amending s. 24.107, F.S.; revising provisions concerning
19 lottery security to conform to the possible operation of
20 the lottery through a concessionaire; amending ss. 24.108
21 and 24.111, F.S.; revising provisions to conform to the
22 possible operation of the lottery through a
23 concessionaire; creating s. 24.1115, F.S.; providing for a
24 concession agreement under which the lottery may be
25 operated; providing intent; providing definitions;
26 limiting the duration of such an agreement; providing
27 limits on the games that may be offered under such an
28 agreement; providing for an initial payment to the

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

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

65

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

67

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

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

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

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

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

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

83 24.102 Purpose and intent.--

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

89 (2) The intent of the Legislature is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

353 24.107 Advertising and promotion of lottery games.--

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

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

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

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

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

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

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

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

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

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

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

439 24.111 Vendors; disclosure and contract requirements.--

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

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

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

465 (h) If the department operates the lottery directly, it
 466 ~~The department~~ shall lease all instant ticket vending machines.
 467

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

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

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

482 24.1115 Concession agreement.--

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

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

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

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

498 1. Statements of qualifications.

499 2. Proposals to enter into a management agreement.
 500 (c) "Selected offer" means the final offer of an offeror
 501 that is the preliminary selection to be the concessionaire for
 502 the lottery under subsection (12).
 503 (3)(a) This section contains full and complete authority
 504 for a concession agreement between the department and a
 505 concessionaire and any rules adopted thereunder. No law,
 506 procedure, proceeding, publication, notice, consent, approval,
 507 order, or act by the department or any other officer,
 508 department, agency, or instrumentality of the state or any
 509 political subdivision is required for the department to enter
 510 into a concession agreement under this section.
 511 (b) This section contains full and complete authority for
 512 the department to approve any subcontracts entered into by a
 513 concessionaire under the terms of a management agreement.
 514 (4) Subject to the other provisions of this section, the
 515 department may enter into a concession agreement with a
 516 concessionaire for a term not to exceed 30 years.
 517 (5) The department may not enter into a concession
 518 agreement that authorizes a concessionaire to operate any of the
 519 following games or a game simulating any of the following games:
 520 (a) Video lottery games.
 521 (b) Pari-mutuel wagering on any form of racing.
 522 (c) A game in which winners are selected on the results of
 523 a race or sporting event.
 524 (d) Any other game commonly considered to be a form of
 525 gambling that is not a game or a variation of a game that the
 526 department operated before the concession agreement is executed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

600 b. The balance in the excess payments account.

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

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

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

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

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

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

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

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

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

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

654 (h) Cash reserve requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

735 4. Integrity, background, and reputation.

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

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

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

742 2. Terminate the request for qualifications process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

846 24.112 Retailers of lottery tickets.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

903 (d) Insufficient sale of tickets.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

957

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

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

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

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

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

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

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

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

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

1010 24.113 Minority participation.--

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

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

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

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

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

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

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

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

1072 24.115 Payment of prizes.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1166 24.1153 Assignment of prizes payable in installments.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1271
 1272 ~~commits is guilty of~~ a misdemeanor of the first degree,
 1273 punishable as provided in s. 775.082 or s. 775.083.

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

1276 24.118 Other prohibited acts; penalties.--

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

1285 (5) UNLAWFUL REPRESENTATION.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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