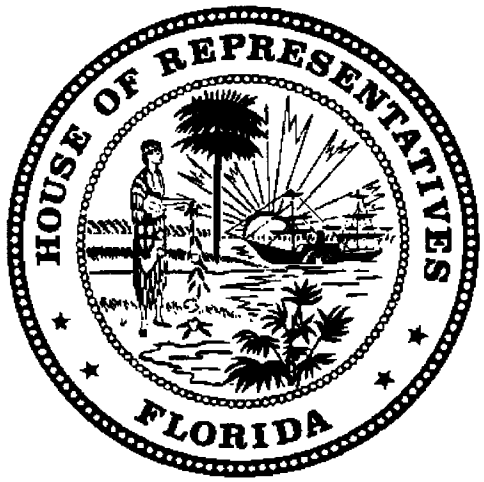

Policy and Budget Council

April 20, 2007
1:00 p.m.
212 Knott Building

Meeting Packet

1 of 2

Revised

Marco Rubio
Speaker

Ray Sansom
Chair

The Florida House of Representatives

Policy & Budget Council

Marco Rubio
Speaker

Ray Sansom
Chair

Meeting Agenda
Friday, April 20, 2007
212 Knott Building
1:00 p.m.

I. Call to Order

II. Roll Call

III. Consideration of the following bills:

CS/HB 51 - - Transitional Services for Young Adults with Disabilities by Healthcare Council and Representative D. Davis

CS/HB 189 - - Relief/Laura Laporte/DOACS by Environment & Natural Resources Council and Representative Mayfield

CS/HB 359 - - Motor Vehicle Financial Responsibility by Economic Expansion & Infrastructure Council and Representative Mayfield

CS/HB 397 - - Caregivers for Adults by Healthcare Council and Representative Anderson

HB 521 - - Florida Retirement System by Representative Weatherford

HB 645 - - Growth Management by Representative Hays

CS/HB 843 - - Owner-controlled Insurance Programs for Public Construction Projects by Government Efficiency & Accountability Council and Representative Murzin

HB 851 - - Historic Preservation by Representative Proctor

418 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
850-488-1601 Fax: 850-414-6879

HB 853 - - Public Records/St. Augustine Historic Preservation Donors by Representative Proctor

CS/HB 1125 - - Mortgage Brokering and Lending by Jobs & Entrepreneurship Council and Representative Richter

CS/HB 1197 - - Department of Agriculture and Consumer Services by Environment & Natural Resources Council and Representative Nelson

HB 1199 - - Tax on Sales, Use and Other Transactions by Representative Nelson

CS/HB 1269 - - Infant Mortality by Healthcare Council and Representative Reed

CS/HB 1381 - - Branch Insurance Agencies by Jobs & Entrepreneurship Council and Representative Richter

CS/HB 1477 - - Forensic Mental Health by Healthcare Council and Representative Ausley

HB 7103 - - High-Risk Offenders by Safety & Security Council and Representative Dean

HB 7105 - - Florida Retirement System by Government Efficiency & Accountability Council and Representative Attkisson

HB 7119 - - Solid Waste by Environment & Natural Resources Council and Representative Mayfield

HB 7123 - - Energy by Environment & Natural Resources Council and Representative Mayfield

HB 7143 - - Leasing of Private Property by State Agencies by Government Efficiency & Accountability Council and Representative Homan

IV. Consideration of the following proposed council bills:

PCB PBC 07-09 - - Assessment of Homestead

PCB PBC 07-10 - - Special Election

V. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 51 Transitional Services for Adolescents and Young Adults with Disabilities
SPONSOR(S): Healthcare Council; Davis and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 394

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Health Quality	9 Y, 0 N	Guy	Lowell
2) Healthcare Council	13 Y, 0 N, As CS	Guy	Gormley
3) Policy & Budget Council		Leznoff	Hansen
4)			
5)			

SUMMARY ANALYSIS

CS/HB 51 creates the Health and Transition Services Program in the Children's Medical Services program within the Department of Health. This program is authorized to serve 14-26 year old persons with chronic health-related or developmental conditions in transitioning from children's health and education services to adult health care and employment. The bill authorizes the department to contract with local health and transition services programs to provide participants with specified services and referral information. The department's authority to enter into contracts with local providers is contingent upon a specific appropriation in the General Appropriations Act.

The House of Representatives proposal for general appropriations provides $500,000 non-recurring tobacco settlement trust funds to implement the provisions in the bill.

The bill provides for an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – this bill will create the Health and Transition Services Program within the Department of Health to assist young adults with chronic health-related or developmental conditions IN transitioning from pediatric to adult health care, education and vocational programs.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Children with special health care or educational needs face significant obstacles as they age out of child health care and educational service programs. Many states, universities, organizations, and health care providers are developing plans to assist youth with special health care and educational needs to successfully transition into multiple aspects of adult life.

Transitioning into adulthood is a difficult process for all adolescents, but the transition presents additional challenges for young people with health care and educational disabilities. "Transition services" is the term used to describe a set of services and supports designed to assist adolescents in adjusting to the change from the home and school environment to independent living and meaningful employment. Students with health or educational disabilities often face this transition unprepared for further vocational training, post secondary education, gainful employment, or the ability to navigate the non-pediatric health care system.

Children's Medical Services
Chapter 391, Florida Statutes, governs the Children's Medical Services ("CMS") program within the Department of Health ("department"). CMS provides children with special health care needs with a managed system of care. CMS serves children under age 21 whose serious or chronic physical, developmental, behavioral or emotional conditions require extensive preventive and maintenance care beyond that required by typically healthy children.[1]

CMS provides a comprehensive continuum of medical and supporting services to medically and financially eligible children and high-risk pregnant women. The continuum of care includes prevention and early intervention programs, primary care, medical and therapeutic specialty care and long-term care. Services are provided through an integrated statewide system that includes local, regional, and tertiary care facilities and providers.

The CMS website does contain some information regarding transition into adult health care services.[2] However, the CMS only provides services for enrollees from birth to 21 years of age.

Health Care Transitioning
Persons with special health care needs or disabilities are more than twice as likely to postpone needed health care because they cannot afford it. Furthermore, people with disabilities are four times more likely to have special needs that are not covered by their health insurance. Children and adolescents with special health care needs face significant challenges in transitioning into the adult health care system. Primarily, this is because of the complexity of their health care needs and their high utilization of medical services relative to other adults.

[1] Section 391.029, F.S.
[2] http://www.cms-kids.com/CMSNTransition.htm

Currently, in Florida, there are a number of initiatives that conduct research and provide information to patients and their families on how to transition children and adolescents into the non-pediatric health care system. These initiatives include the following:

- Health Care Transitions—The Promising Practices in Health Care Transition Project is a research and training initiative of the Institute for Child Health Policy at the University of Florida. The website includes tools, resources, and links that deal with transition issues and how other youth and families are meeting this goal. It is also the site of a Transition Listserv that provides international communication for youth, families, and professionals who would like to communicate and share ideas and resources with each other.[3]

- The Transition Center—The Transition Center, located at the University of Florida in Gainesville, aims to enrich the lives of students through self-advocacy, access to contacts, proper resources, and by providing an opportunity for students to interact with one another as they make decisions and discover what they want out of life. They are also a resource for family members and professionals.[4]

- The Jacksonville Health and Transition Services ("JaxHATS") program, based at the University of Florida Shands-Jacksonville campus, serves young adults age 14-25 in Northeast Florida with chronic medical or developmental disabilities. The program provides a "medical home" for health care services and has collaborative agreements with many providers in the area. JaxHATS also provides staff and referral information for other transition services issues.[5] For FY 2006-2007, the program was funded through CMS within the department.[6]

Educational and Vocational Transitioning

Advocates for persons with disabilities emphasize that education is the key to independence and future success, is critical to obtaining work, and affects how much money an individual can earn. Recently, there have been several statewide initiatives focused on helping to identify challenges faced by young adults with disabilities as they transition from high school to adult life and to develop strategies to create an effective transition system. The state agencies involved in these interagency activities include the Agency for Persons with Disabilities, the Department of Education, the Department of Children and Family Services, the Department of Health, the Agency for Health Care Administration, and the Department of Juvenile Justice.

A variety of private organizations and individuals have also been involved in these activities, including the Able Trust, the Advocacy Center for Persons with Disabilities, Inc., the ADA Working Group, Center for Autism and Related Disabilities at the University of South Florida, Family Network on Disabilities of Florida, Inc., the Florida Developmental Disabilities Council, Inc., the Florida Independent Living Council, Inc., the Florida Institute for Family Involvement, the Florida Recreation and Parks Association, the Florida Rehabilitation Council, the Florida Schools Health Association, the Transition Center at the University of Florida, the Transition to Independence Process Project, Workforce Florida, Inc., parents, self-advocates, and teachers from throughout the state.[7]

Effect of Proposed Changes

The bill creates the Health and Transition Services Program ("program") in CMS within the department. The program is for 14-26 year old persons with chronic health-related or developmental conditions. The department is authorized to contract with local health and transition services programs to assist young

[3] http://hctransitions.ichp.edu/about_us.html
[4] http://www.thetransitioncenter.org/mission.htm
[5] http://www.jaxhats.ufl.edu/about.php
[6] The FY 2006-2007 $300,000 appropriation was funded through Line Item 623.
[7] http://www.partnersintransition.org/members

adults with special health care, educational and vocational needs in transitioning from the child heath care and education system to adult health care and employment. Local health and transition services programs should provide services that facilitate the transition from pediatric to adult health care providers, including:

- A consultative partnership between adult and pediatric health care providers in either a major medical health care center or an academic medical setting for training and transferring adolescents to adult health care services;
- A primary care clinic in a major medical health care organization to foster the partnership between pediatric and adult health care providers;
- Community-based health care services, provided by either a major medical health care center or an academic medical center, that provide consultation regarding special needs health care management; and
- Community-based support services to provide assistance with supported living and employment.

The bill authorizes local health and transition services programs to offer the following services to participants:

- An assessment of health, educational, and vocational needs and health insurance status;
- A transition plan that includes health care, health insurance, living, and employment items;[8]
- A "medical home" that provides multidisciplinary care and focuses on engaging adult health care providers in the care and treatment of young adults; and
- Disease self-management programs.

The bill requires local programs to have at least two staff members: a medical director, who has experience in adolescent health, and a project coordinator who assists the medical director in developing and implementing the program.

The bill authorizes up to 11 sites statewide that provide the above-referenced services. The bill requires the Jacksonville program (JaxHATS) to be the first program and those subsequent local programs be organized in a substantially similar manner. The bill provides for flexibility to local programs in rural areas when implementing the (JaxHATS) organizational components.

The bill requires an evaluation of local provider programs to be performed by an organization or university that has expertise in evaluating health care programs. The bill authorizes evaluation results to be used to improve and develop other local health and transition services programs.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of Florida Statute which creates the Health and Transition Services Program within the Department of Health.

Section 2. Provides for an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[8]This service must be developed in coordination with education and vocational systems and community-based organizations.

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill encourages the participation of community-based organizations in order to ensure a successful Health and Transition Services Program, and thus, may provide potential income for organizations that decide to participate. In addition, the bill will extend health care services to enrolled CMS individuals between 22-26 years of age.

D. FISCAL COMMENTS:

The House of Representatives proposal for general appropriations provides $500,000 non-recurring tobacco settlement trust funds to implement the provisions in the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is required as a result of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

HB 51 expands the existing Jax Health & Transition Program (Jax Hats) to a statewide program which establishes a medical home providing primary care for all youth/young adults with chronic medical or developmental problems in Florida. It will adapt current transition services to meet the needs of local communities and develop a reliable referral network of adult medical and surgical specialists.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2007, the Health Quality Committee adopted one amendment to the bill. The amendment authorizes the department to contract, subject to a specific appropriation in the General Appropriations Act, with local health and transition services programs for up to 11 sites statewide.

The bill was reported favorably with a Recommended Council Substitute.

On March 27, 2006, the Healthcare Council adopted one technical amendment.

The bill was reported favorably with a Council Substitute.

A bill to be entitled

An act relating to transitional services for young adults with disabilities; creating the Health and Transition Services Program; assigning the program for administrative purposes to Children's Medical Services in the Department of Health; authorizing the department to enter into certain contracts, contingent upon an appropriation; providing purposes of the program; delineating the target population; describing participating service providers and the services that they are to provide; creating an operational site in a designated locality in the state; providing for expansion of program sites; providing for an evaluation of the program; providing an effective date.

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

Section 1. Health and Transition Services Program; creation; purposes; participating agencies and services provided; evaluation.--

(1) A Health and Transition Services Program is created for the purpose of assisting adolescents and young adults who have chronic special health care needs in making a smooth transition from the child health care and educational systems to the adult health care system and to employment.

(2) For administrative purposes, the program is located in Children's Medical Services in the Department of Health. The department may enter into contracts, contingent upon a specific appropriation provided in the General Appropriations Act for

this purpose, with local health and transition services programs that meet the requirements of this act.

(3) The target population for the program consists of persons who are 14 through 26 years of age and who have chronic special health care needs.

(4) The program structure and design must be adapted to the needs of the local community and health services delivery system; however, the following elements should be in place in order to ensure the success of a local health and transition services program:

(a) A consultative partnership between adult and pediatric health care providers in a major medical health care organization or academic medical setting for the purpose of training and transferring adolescents and young adults to adult health care services.

(b) A primary care clinic established in a major medical health care organization for the purpose of fostering a partnership between adult and pediatric health care providers.

(c) Community-based health care services that are provided under agreements with major health care organizations or academic medical centers for the purpose of providing consultation concerning the management of special health care needs.

(d) Community-based support organizations that can provide assistance with services such as supported living and employment, health insurance, and support services to maintain the young adult in the community.

(5) The following services may be offered by the local

health and transition services program to individuals who are served in the local health and transition services program:

(a) An assessment of health needs, educational and vocational status and needs, and health insurance status.

(b) In coordination with the educational system, community-based organizations, and the vocational system, a plan for transition which includes adult health care services, education, habilitative services, independent living, adult employment, and health insurance.

(c) A medical home that provides for coordinated and multidisciplinary care and focuses on engaging adult health care providers in the care and treatment of adolescents or young adults.

(d) Disease self-management programs.

(6) The local health and transition services program must be directed by a medical director having experience in adolescent health. A project coordinator shall assist the medical director in developing and implementing the program. Other staff may be included in order to provide a full range of health and transition services.

(7) There may be up to 11 sites statewide, with the Jacksonville program (JaxHATS) being the first site. Each additional site must be organized in a substantially similar manner as the JaxHATS program and have flexibility with regard to staffing and costs in rural areas of the state.

(8) The local health and transition services program must be evaluated by an organization or university that has expertise and experience in evaluating health care programs. The

evaluation must be formative and cumulative and must include program process and outcome measures as well as client outcomes. The results of the evaluation may be used to improve and develop other local health and transition services programs.

Section 2. This act shall take effect July 1, 2007.

STORAGE NAME: h0189.PBC
DATE: April 2, 2007

April 2, 2007

SPECIAL MASTER'S FINAL REPORT

The Honorable Marco Rubio
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 189 - Representative Mayfield
Relief of Laura Laporte v. Department of Agriculture and Consumer Services

THIS IS A CONTESTED, VERDICT-BASED EXCESS JUDGMENT CLAIM FOR $5,500,647.81 ON FUNDS OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO COMPENSATE LAURA LAPORTE FOR DAMAGES SHE SUSTAINED IN A MOTOR VEHICLE ACCIDENT IN WHICH HER VEHICLE WAS STRUCK BY A VEHICLE DRIVEN BY AN EMPLOYEE OF THE DEPARTMENT. THE DEPARTMENT HAS PAID $100,000 PURSUANT TO THE SOVEREIGN IMMUNITY CAP SPECIFIED BY LAW.

FINDING OF FACT:

On October 9, 1999, Sandra Jackson was driving a four-wheel drive truck within the course and scope of her employment with the Department of Agriculture and Consumer Services (hereinafter referred to as the 'Department') as a grove inspector. She was traveling south on 66th Avenue in Indian River County, a straight two-lane road west of Vero Beach. At the same time, Laura Laporte was driving north on 66th Avenue in a safe and lawful manner. Ms. Jackson attempted to turn left in front of Ms. Laporte onto 65th Street and pulled directly into her path, striking her nearly head-on and causing extensive damage to both vehicles. Ms. Jackson was cited for violation of the right of way.

The Department admitted liability for the crash.

As a result of the accident Ms. Laporte suffered fractures to her left femur, her right ankle, and to her pubic bone. She suffered a puncture wound to her left knee and also received a gash on her left heel and sprain to her left ankle. Ms. Laporte has

undergone four surgeries to try to repair her legs. The first surgery attempted to repair her broken femur by the insertion of a metal rod in the bone. Due to hardware failure, a second attempt was made to remove the broken hardware and to realign her femur. This required the surgeon to re-break the bone. The hardware failed again, and Ms. Laporte required a third surgery to reset the femur. The fourth surgery fused her right ankle to her leg bone. The ankle surgery resulted in an infection that was successfully treated with antibiotics.

Ms. Laporte's injuries have left her with a permanent deformity in her left leg which will require a knee replacement and an additional femur surgery in order to repair bowing. She will also require further corrective surgery to her right ankle, which will involve cutting and repositioning of the heel bone for added stability. She currently experiences significant pain, decreased mobility, and walks with a waddling gait. She is unable to get up on her own when she falls.

Ms. Laporte's injuries are more significant because of a diagnosis of muscular dystrophy, first made in 1978. The type of muscular dystrophy affecting Ms. Laporte mainly diminished her upper body strength. Since 1990, Ms. Laporte has received social security disability due to her muscular dystrophy; however the jury was properly precluded from hearing evidence of Ms. Laporte's social security disability payments. Ms. Laporte was 42 years old at the time of the accident. She was active as the owner of a mobile petting zoo, an avid horsewoman, and the director of numerous summer and after-school programs for children. Since the accident, Ms. Laporte is increasingly immobile and is not able to care for her animals.

STANDARDS FOR FINDINGS OF FACT: Findings of fact must be supported by a preponderance of the evidence, although the Special Master is not bound by the formal rules of evidence or procedure applicable in the trial of civil cases. The claimant has the burden of proof on each required element.

LEGAL PROCEEDINGS:

Ms. Laporte filed suit against the Department on December, 6, 2000 in the Circuit Court of the 19th Judicial Circuit in and for Indian River County, Case No. 00-0738-CA-10. The Department admitted liability, but contended Ms. Laporte's muscular dystrophy was responsible for some of her injuries.

The claimant requested compensation for past and future medical expenses, and for past and future pain and suffering. No claim was made for past or future lost wages.

The jury returned the following verdict:

- Past medical expenses: $ 160,536.82
- Future medical expenses reduced to present value: 422,240.00
- Past pain & suffering: 500,000.00

• Future pain & suffering:	4,500,000.00
• TOTAL DAMAGES	$5,582,776.82

A final judgment was entered in the amount of $5,600,647.81, which included $17,870.99 in costs. The Department's motions for remittitur and for a new trial were denied. No appeal was filed.

CLAIMANT'S POSITION:

- Ms. Laporte's muscular dystrophy did not significantly affect her quality of life prior to the accident; however, the combination of her injuries and the muscular dystrophy will likely lead to the premature loss of her ability to function independently.
- The jury verdict was completely reasonable considering the extent of Ms. Laporte's injuries.

RESPONDENT'S POSITION:

- Ms. Laporte's pre-existing muscular dystrophy is the cause of much of her damages.
- The Department was unable to introduce social security records, which would have showed that Ms. Laporte misrepresented certain business activities in order to collect disability payments. If the claimant's social security records had been considered by the jury, her credibility would have been called into question.
- Evidence of the claimant's inability to maintain her petting zoo was not due to the accident, but instead due to property division inherent in her dissolution of marriage.
- Ms. Laporte aggravated her injuries by riding her horse prematurely, not following her physical therapy regime, and quitting therapy prematurely.
- The claim bill amount is clearly excessive and more than the claimant's attorney requested in closing arguments.

CONCLUSION OF LAW:

As discussed earlier, the Respondent admits liability in this case. Nevertheless, the Claimant has the burden of proof on liability and damages. As discussed below, I find that the Claimant has met that burden.

Liability: Evidence presented at the Special Master's hearing indicated that Ms. Jackson turned left within an intersection directly in the path of Ms. Laporte's vehicle, which was close enough to constitute an immediate hazard. Section 316.122, F.S., requires a left-turning driver to yield the right-of-way under such circumstance. Therefore, I find that Ms. Jackson had the duty to yield to Ms. Laporte's vehicle, and that the breach of this duty was the proximate cause of the claimant's damages.

Damages: a respondent that assails a jury verdict as being excessive should have the burden of showing the Legislature that the verdict was unsupported by sufficient credible evidence; or that it was influenced by corruption, passion, prejudice, or other improper motives; or that it has no reasonable relation to the damages shown; or that it

imposes an overwhelming hardship on the Respondent out of proportion to the injuries suffered; or that it obviously and grossly exceeds the maximum limit of a reasonable range within which a jury may properly operate. The portion of damages most at issue is the amount for pain and suffering. I find that the Department did not present evidence sufficient to overturn the jury verdict in this case.

- Pre-Existing Muscular Dystrophy: Ms. Laporte was diagnosed in 1978 with fascioscapulohumeral muscular dystrophy (FSHMD). The evidence indicated that FSHMD has primarily affected Ms. Laporte's upper extremities. Ms. Laporte has difficulty raising her arms above her head, and her face muscles droop slightly. Medical records indicated that FSHMD has had some affect upon Ms. Laporte's legs. She admitted that prior to the accident she had good days and bad days and would fall down from time to time. In times of great stress, Ms. Laporte had greater trouble with her legs than usual. During the twenty years up to the accident, however, the disease progressed slowly, owing in part to Ms. Laporte's attempts to remain as physically active as possible. Based upon video taped evidence of Ms. Laporte just prior to the accident, it appeared that she functioned like a healthy, average person.

Ms. Laporte's neurologist, Dr. James Shafer, testified that with FSHMD a percentage of the patient's muscles remain healthy. He indicated that by keeping those muscles active, it was possible to maintain relatively normal function. He indicated that Ms. Laporte's injuries "significantly forever altered the natural course of the disease." He testified that Ms. Laporte's disease would likely progress at a faster rate, because the injuries would limit her mobility.

- Social Security Disability: Prior to 1991, Ms. Laporte worked as a clerk for a newspaper company. In November of 1990, she was diagnosed as 100% disabled due to FSHMD. Ms. Laporte began collecting social security disability payments in 1991. Ms. Laporte receives an average of $10,000 per year.

Subsequent to receiving disability payments, Ms. Laporte started a mobile petting zoo and numerous summer and after-school horseback-riding programs for children under the name of Laporte Farms. One of Ms. Laporte's claims at trial was that the injuries sustained from her accident incapacitated her to the point where she could no longer care for animals or run her programs. At trial, the Department attempted to characterize Ms. Laporte's petting zoo and programs as an income-generating business and that she was untruthful in claiming social security payments during that time.

The Department argues that for social security purposes the Claimant was 100% disabled, yet for purposes of the trial, she was an active woman for whom FSHMD was only a "minor inconvenience." It alleges that had it been allowed to introduce the social security records into evidence, Ms. Laporte's

credibility may have been called into question, and the jury may have awarded a lesser verdict.

I find the Department's argument speculative. The greater weight of the evidence indicates that Laporte Farms was a means by which Ms. Laporte could remain physically active, enjoy life, and feel productive. Social security records indicate that Ms, Laporte did report the existence of Laporte farms to the Social Security Administration. Records indicated that her income from Laporte Farms was applied to its expenses. Ms. Laporte made no claim at trial for lost wages, and the jury specifically received that instruction. Therefore, the social security benefits are immaterial, and the trial court properly ruled to exclude them. Case law holds that social security payments should not be withheld from a verdict where the benefits are for a disability that is not the subject of the lawsuit. Morales v. Scherer, 528 So. 2d 1 (Fla. 4th DCA 1988), *aff'd in part, quashed in part {on other grounds} sub nom.* Florida Patient's Compensation Fund v. Scherer, 558 So.2d 411 (Fla. 1990).

Furthermore, the Department did have the opportunity to use the social security records when questioning Ro Baltayan, a rehabilitative counselor hired by the Ms. Laporte's attorney to assess her future needs, to attempt to show inconsistencies in Ms. Laporte's statements. Ms. Baltayan testified that there was no inconsistency; that she was never lead to believe that the Farm was anything other than a hobby. She stated that, "It was something that allows her to feel good about herself, give her something to do, be productive, give to the community. It was not something that generated an income." Ms. Baltayan also testified that she did not include any costs of running Laporte Farms into her calculation for future needs.

- Petting Zoo: The Department also argues that Ms. Laporte's inability to maintain her petting zoo resulted from a property division in a divorce settlement, not the accident.

The evidence shows that a final dissolution of marriage between David and Laura Laporte was entered on July 31, 2002. However, the mediation agreement attached to the judgment indicates that Ms. Laporte would retain sole ownership of Laporte Farms.

- Aggravation of Injuries: The Department asserts that Ms. Laporte aggravated her injuries by attempting to ride horseback too soon following her initial femur surgery, and by failing to attend prescribed physical therapy sessions. The Department specifically cites an accident on April 13, 2000, when Ms. Laporte fell while attempting to ride a horse.

Ms. Laporte's initial femur surgery was performed by Dr. O'Brien immediately after her accident in October of 1999. In February of 2000, Dr. O'Brien examined Ms. Laporte and indicated that she could resume normal activities as the pain

would allow. Sometime during the following month, Ms. Laporte heard a "popping" sound in her leg. On April 13, 2000, Ms. Laporte attempted to ride a horse for the first time since the accident. She attempted to climb onto the horse from the back of a truck, but the horse shifted, and Ms. Laporte fell to the ground. Records from Sebastian River Medical Center indicate that Ms. Laporte fell on her "butt." She was diagnosed with lumbar strain, but there was nothing to suggest that she reinjured her femur.

Subsequent to the incident with the horse, Ms. Laporte's husband mentioned to an acquaintance, Dr. Cynthia Crawford, that Ms. Laporte was experiencing pain in her left leg. Dr. Crawford examined Ms. Laporte and prescribed physical therapy. Evidence indicates that Ms. Laporte attempted physical therapy. At times she did not attend, because her insurance company did not cover certain care providers. Ms. Laporte testified that at other times, the pain was too great. In September of 2000, Dr. O'Brien examined Ms. Laporte and determined that her femur had not properly healed. He referred Ms. Laporte to an orthopedic surgeon, Dr. Cole, who determined that Ms. Laporte's problem resulted from broken surgical hardware. Dr. Cole broke and reset the bone in November of 2000; however, the hardware failed again, and another surgery was performed in January of 2001.

The Department's medical expert testified that the failure of the femur to properly heal could have resulted despite the best medical care. He indicated that the assertion that Ms. Laporte's failure to follow therapy caused the hardware failure was speculative. He indicated that hardware failure could occur in a "perfectly compliant patient." Further, neither orthopedic surgeon – Dr. O'Brien or Dr. Cole – prescribed physical therapy. Additionally, there is no evidence to establish that hardware failure resulted from a horseback-riding accident.

- Excessive Jury Award: The main bone of contention in this case is the $5,000,000 award for pain and suffering. The Department states that the amount is clearly excessive when compared with other cases, and the award exceeded the amount requested by Ms. Laporte's attorney during his closing argument at trial.

Both parties provided numerous jury award summaries from other cases. The Department provided samples of multiple - fracture cases where the injured party was awarded far less than $5,000,000. The Claimant's attorney provided cases involving partial paralysis or amputation. Neither side could point to an identical scenario to the case at hand, and the samples provided did not include extensive details regarding the actual facts of each case. With regard to the amount requested by Ms. Laporte's attorney, the trial transcript indicates that he recommended a minimum figure of $500,000 for past pain and suffering and $100,000 a year for life, for future pain and suffering to the jury.

I find that the greater weight of the evidence supports the pain and suffering award in this case. The Claimant has demonstrated that Ms. Laporte suffered a devastating injury, which has left her in great pain, has significantly affected her ability to walk, will require additional painful surgery and recovery, and will likely result in her continued health deterioration. Additionally, Ms. Laporte has suffered a loss to her capacity for enjoyment of life due to her inability to maintain her animals and to conduct children's programs. I therefore find that the jury properly evaluated the evidence in making its decision, and the amount awarded is reasonable under the circumstances.

Collateral sources: Mrs. Laporte has received $10,000 in PIP benefits from her automobile insurer; and $25,000 from the driver's insurance. Deductions of both of these collateral sources should be made pursuant to section 768.76, Florida Statutes. Medicare has been reimbursed a total of $16,378.23. A balance of $26,135.75 remains to be paid to Medicare, but it is unknown how much Medicare will demand as reimbursement. Medicare benefits are not considered collateral sources under Florida law. $100,000 was paid by Ms. Laporte's insurance company (USAA) for uninsured motorist coverage. As USAA has a right to subrogation for any amount paid by a tortfeasor, this amount is not considered a collateral source pursuant to s. 768.76, F.S.

LEGISLATIVE HISTORY:

This bill has been filed since 2003, but has never received a committee hearing in either chamber.[1] A Special Master hearing was conducted in 2003 by both House and Senate Special Masters.

In 2006, HB 1159 was filed by Rep. Mayfield and died in the Claims Committee. SB 50 (2006) was filed by Sen. Clary and died in the Rules and Calendar committee. In anticipation of the 2007 legislation, both parties were given the opportunity to update the record.

The claimant reports that her muscular dystrophy has remained stable, but her injuries are progressing to the point where her ability to live alone is in jeopardy. In December, 2004 she suffered a fall outside of her house and was found unconscious in her driveway. In August of 2005, Ms. Laporte underwent tendon transfer surgery with Dr. Cole. In 2006, Ms. Laporte fell and broke the tendons that were previously transferred to her damaged ankle and required another surgery. Whole Laporte Farms was under contract in 2005, the buyer is reported to have backed out. Ms. Laporte is left caring for several animals and additional debt. Her home has been on the market for two years.

[1] HB 1053 and SB 14 (2003); HB 829 and SB 14 (2004); SB 12 (2005).

ATTORNEYS FEES: Claimant's attorney has acknowledged and verified in writing that any recovery of fees will be limited to 25% of any award received by the claimant in this matter. There are outstanding costs in the amount of $19,614.56. The lobbyist reports that his fees will not exceed 6% of the award, to be paid in addition to the 25% attorney's fees.

RECOMMENDATIONS: I recommend that the amount of the award be reduced by $35,000 to reflect collateral payments made to Ms. Laporte. Based upon the findings herein, I respectfully recommend HB 189 **FAVORABLY, WITH AMENDMENTS.**

Respectfully submitted,

Stephanie Birtman, House Special Master

cc: Rep. Mayfield, House Sponsor
Senator Lawson, Senate Sponsor
Judge Bram Canter, Senate Special Master
D. Stephen Kahn, Senate General Counsel.

A bill to be entitled

An act for the relief of Laura Laporte; providing an appropriation to compensate Laura Laporte for injuries she sustained as a result of the negligence of an employee of the Department of Agriculture and Consumer Services; authorizing specified trust fund expenditures; providing an effective date.

WHEREAS, on October 9, 1999, Sandra Jackson, a grove inspector for the Department of Agriculture and Consumer Services, was driving a four-wheel-drive truck southward on 66th Avenue in Indian River County, Florida, a straight two-lane road, and

WHEREAS, Ms. Jackson's vehicle pulled into the path of a vehicle driven northward on 66th Avenue by Laura Laporte, causing the vehicles to collide nearly head-on and extensively damaging both vehicles, and

WHEREAS, at the time of the accident, Ms. Jackson was acting within the course and scope of her employment, and the Department of Agriculture and Consumer Services admitted liability for the negligent conduct of its employee, and

WHEREAS, medical records obtained during the court case filed on behalf of Laura Laporte revealed that Ms. Jackson had opiates and benzodiazepines in her system at the time of the accident, and

WHEREAS, the crash severely injured Laura Laporte's lower extremities and, over the following 2 years, Ms. Laporte

underwent four major orthopedic surgeries to her legs at a cost in excess of $160,000, and

WHEREAS, notwithstanding surgical intervention, Ms. Laporte remains in extensive pain, has impaired mobility, and, according to her physicians, will be permanently impaired, in spite of anticipated surgery, and

WHEREAS, the cost of future medical expenses and household assistance for Ms. Laporte is anticipated to approach $500,000, and

WHEREAS, in addition to the injuries suffered on October 9, 1999, Ms. Laporte suffers from muscular dystrophy, which was diagnosed when she was a teenager and which mainly affects the strength of her upper extremities, and

WHEREAS, notwithstanding her physical limitations, before the accident Ms. Laporte was very active as the owner of a mobile petting zoo, operated numerous summer and after-school programs for children, and spent many hours riding horses, and

WHEREAS, following the accident, Ms. Laporte is unable to properly care for her animals and requires assistance if she falls, and

WHEREAS, on January 10, 2002, a jury returned a verdict awarding $5,582,776.82 in damages to Laura Laporte, and the Department of Agriculture and Consumer Services moved for a remittitur, claiming that the damage award was excessive, and

WHEREAS, the trial judge affirmed the jury's decision, and a final judgment in the amount of $5,600,647.81, representing the amount of the verdict plus taxable costs, was signed by the court on May 13, 2002, and

WHEREAS, the Department of Agriculture and Consumer Services has paid $100,000 pursuant to its obligation under section 768.28, Florida Statutes, leaving a remaining excess judgment amount of $5,500,647.81, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The total sum of $4,000,000 is appropriated to the Department of Agriculture and Consumer Services as follows:

(1) Two million dollars from the General Revenue Fund; and

(2) Two million dollars from the Incidental Trust Fund within the Department of Agriculture and Consumer Services

for the relief of Laura Laporte for injuries and damages sustained.

Section 3. Notwithstanding any statutory limitation on the use of money in the trust fund from which money is appropriated by this act, expenditures from that trust fund are hereby authorized during the 2007-2008 fiscal year as provided by this act.

Section 4. The Chief Financial Officer is directed to draw a warrant in favor of Laura Laporte in the sum of $4,000,000 upon funds of the Department of Agriculture and Consumer Services, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 5. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.

Bill No. **CS/HB 189**

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	_____

Council/Committee hearing bill: Policy & Budget Council

Representative Mayfield offered the following:

Amendment (with directory and title amendments)

Between lines 82 and 83 insert:

Section 5. This award is intended to provide the sole compensation for any and present and future claims arising out of the factual situation in connection with the injury to Laura Laporte. Not more than 25% of the award may be paid by the claimant for attorney's fees, lobbying fees, costs or other similar expenses.

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

Remove line 6 and insert:

authorizing specified trust fund expenditures; providing for a limitation on payment of fees and costs; providing

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 359 Motor Vehicle Financial Responsibility
SPONSOR(S): Economic Expansion & Infrastructure; Kriseman & others
TIED BILLS: **IDEN./SIM. BILLS:** SB 846

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure	8 Y, 0 N	Owen	Miller
2) Economic Expansion & Infrastructure Council	14 Y, 0 N, As CS	Owen	Tinker
3) Policy & Budget Council		Martin	Hansen
4)			
5)			

SUMMARY ANALYSIS

Under Florida law, motorists are required to purchase personal injury protection (PIP) and property damage (PD) liability coverages. The no-fault coverage, referred to as PIP, provides $10,000 of coverage. Current law also requires vehicle owners to obtain $10,000 in PD liability coverage which pays for the physical damage expenses caused by the insured to third parties in the accident. Additionally, under Florida's Financial Responsibility law, motorists must provide proof of ability to pay monetary damages for bodily injury (BI) and PD liability after motor vehicle accidents or serious traffic violations.

HB 359 creates s. 324.023, F.S., to increase the limits of PIP and PD insurance and require purchase of BI insurance for anyone who has been convicted, after October 1, 2007, of s. 316.193, F.S., which address driving under the influence (DUI), in the amounts of $100,000/$300,000/$50,000 and provides the option of posting a bond or furnishing a certificate of deposit in an amount no less than $350,000. Such higher limits must be carried for a period of three years. If the person has not been convicted of a DUI or a felony traffic offense during the three year period, they are allowed to return to the standard coverage limits.

The bill requires those directed to maintain the higher insurance limits to keep proper proof of the insurance in his or her possession at all times. Violation of this provision is a nonmoving traffic violation. If the violator provides the necessary proof before the court date the fine and court appearance may be waived. Failure to furnish proof results in suspension of the registration and driver's license of the person.

The bill requires tax collector employees to verify that BI insurance has been purchased by a person required to do so under s. 324.023, F.S., at the time the person applies for a vehicle registration or registration renewal.

The bill increases the reinstatement fee of a driver's license from $15 (s. 324.071, F.S.) to the limits under the no-fault law, which are $150 for a first reinstatement, $250 for a second reinstatement, or $500 for each subsequent reinstatement during the three years following the first reinstatement.

The Department of Highway Safety and Motor Vehicles' (Department) estimates a nonrecurring impact of $110,000 to re-program computer systems and a recurring impact of $18,450 annually for postage for notices. They also estimate an increase of $2.3 million in fee revenues for the first year, with recurring revenues of $3 million for all subsequent years. The agency is able to absorb the up-front costs of the computer programming and will be able to offset those costs with the additional fee revenue that is received in the first year. However, there is no provision made for any increased budget authority that may be needed by the department to spend the additional revenues.

There may be additional fines for state and local governments based on additional citations issued for failure to provide adequate proof of insurance.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The Department is provided additional authority to require DUI offenders to carry increased liability insurance limits for a minimum period of three years.

Promote Personal Responsibility: Those convicted of DUI are required to carry increased liability insurance limits for a minimum period of three years. Such increased coverage would be available to pay expenses related to personal injury or property damage caused by the DUI offender in the future.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Under Florida law, motorists are required to purchase personal injury protection (PIP) and property damage (PD) liability coverages. The no-fault coverage, referred to as PIP, provides $10,000 of coverage. Current law also requires vehicle owners to obtain $10,000 in PD liability coverage which pays for the physical damage expenses caused by the insured to third parties in the accident. Additionally, under Florida's Financial Responsibility law, motorists must provide proof of ability to pay monetary damages for bodily injury (BI) and PD liability after motor vehicle accidents or serious traffic violations. They are required to have evidence of such coverage in a form prescribed by the Department and maintain such limits for three years. The form used by the Department is called the SR-22 and is provided by the insurance carriers, with a requirement for the carrier to notify the Department immediately upon cancellation.

According to s. 324.021(9)(b)1., F.S., a person who leases a motor vehicle for one year or longer, is required to obtain insurance containing limits not less than $100,000/$300,000 BI liability and $50,000 PD liability.

The current financial responsibility reinstatement fee per s. 324.071, F.S., is $15 which is deposited into the Department's Highway Safety Operating Trust Fund.

Proposed Changes:

HB 359 creates s. 324.023, F.S., and requires two separate limits of liability insurance, depending on the type of offense. The current law with limits of $10,000/$20,000/$10,000 will continue to apply to motorists who are involved in serious traffic violations. The bill will increase the limits to $100,000/$300,000/$50,000 whenever a revocation is applied on a person's driver's license for a violation of s. 316.193, F.S., which addresses DUI. More specifically, the person must establish and maintain the ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle in the amount of $100,000 because of bodily injury to, or death of, one person in any one crash and, subject to such limits for one person, in the amount of $300,000 because of bodily injury to, or death of, two or more persons in any one crash and in the amount of $50,000 because of property damage in any one crash.

The bill indicates that the revised higher limits apply to any owner or operator who has been found guilty of a charge of DUI after October 1, 2007. The Department estimates that there are 45,000 new DUI convictions each year. Such higher limits must be carried for a minimum of three years. If the person is not convicted of a DUI or a felony traffic offense during the three year period, they may return to the standard coverage requirements.

The bill amends s. 316.646, F.S., to require law enforcement officers to verify proof of insurance and to verify that the driver carries the right type of coverage based on the violations the person may have committed. Violation of this provision is a nonmoving traffic violation. If the violator provides the necessary proof before the court date, the fine and court appearance may be waived. Failure to furnish proof results in suspension of the registration and driver's license of the person. Currently, the details required to enforce this provision are not available to the officer at road side, according to the Department. It will require programming changes to their computer system to make the information available.

The bill amends s. 320.02, F.S., to require tax collector employees to verify that BI insurance has been purchased by a person required to do so under s. 324.023, F.S., at the time the person applies for a vehicle registration or registration renewal.

The bill amends s. 627.733, F.S., to increase the driver's license reinstatement fee for violation of s. 324.023, F.S., to the limits found under the no-fault law, which are $150 for a first reinstatement of a driver's license, $250 for a second reinstatement, or $500 for each subsequent reinstatement during the three years following the first reinstatement.

C. SECTION DIRECTORY:

Section 1. Creates s. 324.023, F.S., requiring proof of increased financial responsibility for bodily injury or death caused by owners or operators found guilty of a DUI offense.

Section 2. Amends s. 316.646, F.S., with a conforming a provision.

Section 3. Amends s. 320.02, F.S., with a conforming a provision.

Section 4. Amends s. 627.733, F.S., providing an additional cross-reference concerning motor vehicle security following motor vehicle license or registration suspension.

Section 5. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	Amt. Year 1 FY 2007-08	Amt. Year 2 FY 2008-09	Amt. Year 3 FY 2009-10
Highway Safety Operating TF			
Financial Responsibility Reinstatement Fee:	$2,278,200	$3,037,500	$3,037,500
TOTAL:	$2,278,200	$3,037,500	$3,037,500

SEE FISCAL COMMENTS.

2. Expenditures:

Highway Safety Operating TF			
Contracted Programming (DDL):	$90,000	$0	$0
Contracted Programming (DMV):	$20,000	$0	$0
Postage:	$18,450	$18,450	$18,450

TOTAL:	$128,450	$18,450	$18,450

SEE FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may generate additional fine revenues for local governments based on additional citations issued for failure to provide adequate proof of insurance. The amount of which is indeterminate.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill applies to any owner or operator who has been found guilty of a DUI offense. This population will be required to carry motor vehicle insurance at the increased rate of $100,000/$300,000/$50,000. According to the Department, there are approximately 45,000 new DUI convictions each year. Each person convicted of a DUI would be required to carry the increased limits for a minimum period of three years.

The Department provided sample quotes for motor vehicle operators of different genders and age who could be affected by the bill. These quotes are *estimates* based on the increased limits found in HB 359. No discounts other than a SRS Airbag are provided. No multi-car or home-owner's discounts are provided. All quotes are for a 6-month period and are based on a 1997 Ford Taurus vehicle.

Gender	Age	County	Quote w/ one DUI	Quote w/ two DUIs
Male	21	Miami-Dade	$1,639.23	$1,895.71
Female	35	Lake	$870.62	$1,020.04
Male	70	Escambia	$888.76	$1,054.44

D. FISCAL COMMENTS:

According to the Department, implementation of the bill will require 900 hours of contracted programming modifications to the Driver License Software Information systems at a cost of $100 per hour. In addition, 200 hours of DMV programming will be required to the Florida Real Time Vehicle Information System to determine if increased coverage is required and if the required coverage has been provided to the Financial Responsibility Section of the Division of Drivers License. An estimated 45,000 notices will need to be mailed to customers to notify them of the new financial responsibility requirements, at a cost of $0.41 per piece of mail.

According to the Department, the bill may increase financial responsibility reinstatement revenues which are deposited into the Highway Safety Operating Trust Fund. Since there are approximately 45,000 new DUI cases per year, the Department assumed that 45% of them will be non-compliant with the new insurance requirements, resulting in 20,250 additional suspensions per year. At a reinstatement fee of $150 each, there will be an estimated increase in revenue of $3,037,500 each year. However, because the bill will not be implemented until October 1, 2007, it is estimated that only 15,188 suspension cases will occur. This will provide for revenues of $2,278,200 in the first fiscal year.

In summary, the Department of Highway Safety and Motor Vehicles' (Department) estimates a nonrecurring impact of $110,000 to re-program computer systems and a recurring impact of $18,450 annually for postage for notices. They also estimate an increase of $2.3 million in fee revenues for the

first year, with recurring revenues of $3 million for all subsequent years. The agency is able to absorb the up-front costs of the computer programming and will be able to offset those costs with the additional fee revenue that is received in the first year. However, there is no provision made for any increased budget authority that may be needed by the department to spend the additional revenues.

The bill may also generate additional fines for state and local governments based on additional citations issued for failure to provide adequate proof of insurance. The amount of which is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

This bill simply raises the amount of financial responsibility required for persons guilty of DUI or other serious traffic offenses.

Under current law, someone who has committed a DUI or other serious offense, like vehicular manslaughter, is only required to carry bodily injury (BI) liability insurance of $10,000 per person and $20,000 per incident. (A "10/20" insurance policy). This amount has not changed since the 1970s. These limits are extremely low in light of today's medical costs which would be incurred in the event a serious accident occurred.

My bill will raise the minimum amount of BI required of DUI offenders to $100,000 per person, $300,000 per incident, plus $50,000 for property damage. (A "100/300/50" insurance policy.) These are the same limits required by car leasing companies if you lease a car instead of purchasing a car.

It is reasonable to expect that someone who has been convicted of a DUI may drive under the influence again. As such, it is reasonable to require a DUI offender to be completely financially responsible to other drivers if the DUI offender is to continue to enjoy the privilege of driving on our Florida highways.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2007, this bill was considered by the Committee on Infrastructure. An amendment was adopted which deleted the retroactive provision of the bill and limited the increased financial responsibility requirements to only those convicted of DUI (s. 316.193, F.S.). The bill was reported favorably with one amendment.

On April 4, 2007, this bill was considered by the Economic Expansion and Infrastructure Council. An amendment was adopted which specified that the higher limits must be carried for a minimum of three years and allowed for the owner/operator to be exempt from the higher limits if that person has not been convicted of a DUI or felony traffic offense during the three year period. The bill was reported favorably as a council substitute.

A bill to be entitled

An act relating to motor vehicle financial responsibility; creating s. 324.023, F.S.; requiring proof of increased financial responsibility for bodily injury or death caused by owners or operators found guilty of a DUI offense or who had a license or driving privilege revoked or suspended under a specified provision; providing an exemption if specified conditions are met; amending ss. 316.646 and 320.02, F.S.; conforming provisions; amending s. 627.733, F.S.; providing an additional cross-reference concerning motor vehicle security following motor vehicle license or registration suspension; providing an effective date.

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

Section 1. Section 324.023, Florida Statutes, is created to read:

324.023 Financial responsibility for bodily injury or death.--In addition to any other financial responsibility required by law, every owner or operator of a motor vehicle that is required to be registered in this state, or that is located within this state, and who has been convicted of a charge of driving under the influence under s. 316.193 after October 1, 2007, shall, by one of the methods established in s. 324.031(1), (2), or (3), establish and maintain the ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle in the amount of $100,000 because of

bodily injury to, or death of, one person in any one crash and, subject to such limits for one person, in the amount of $300,000 because of bodily injury to, or death of, two or more persons in any one crash and in the amount of $50,000 because of property damage in any one crash. If the owner or operator chooses to establish and maintain such ability by posting a bond or furnishing a certificate of deposit pursuant to s. 324.031(2) or (3), such bond or certificate of deposit must be in an amount not less than $350,000. Such higher limits must be carried for a minimum period of 3 years. If the owner or operator has not been convicted of driving under the influence or a felony traffic offense for a period of 3 years from the date of reinstatement of driving privileges for a violation of s. 316.193, the owner or operator shall be exempt from this section.

Section 2. Subsections (1) and (3) of section 316.646, Florida Statutes, are amended to read:

316.646 Security required; proof of security and display thereof; dismissal of cases.--

(1) Any person required by s. 324.023 to maintain liability security for bodily injury or death or any person required by s. 627.733 to maintain personal injury protection security on a motor vehicle shall have in his or her immediate possession at all times while operating such motor vehicle proper proof of maintenance of the required security ~~required by s. 627.733~~. Such proof shall be either a uniform proof-of-insurance card in a form prescribed by the department, a valid insurance policy, an insurance policy binder, a certificate of

insurance, or such other proof as may be prescribed by the department.

(3) Any person who violates this section commits ~~is guilty of~~ a nonmoving traffic infraction subject to the penalty provided in chapter 318 and shall be required to furnish proof of security as provided in this section. If any person charged with a violation of this section fails to furnish proof, at or before the scheduled court appearance date, that security was in effect at the time of the violation, the court may immediately suspend the registration and driver's license of such person. Such license and registration may only be reinstated as provided in s. 627.733.

Section 3. Paragraphs (a) and (b) of subsection (5) of section 320.02, Florida Statutes, are amended to read:

320.02 Registration required; application for registration; forms.--

(5)(a) Proof that personal injury protection benefits have been purchased when required under s. 627.733, that property damage liability coverage has been purchased as required under s. 324.022, that bodily injury or death coverage has been purchased if required under s. 324.023, and that combined bodily liability insurance and property damage liability insurance have been purchased when required under s. 627.7415 shall be provided in the manner prescribed by law by the applicant at the time of application for registration of any motor vehicle owned as defined in s. 627.732. The issuing agent shall refuse to issue registration if such proof of purchase is not provided. Insurers shall furnish uniform proof-of-purchase cards in a form

prescribed by the department and shall include the name of the insured's insurance company, the coverage identification number, the make, year, and vehicle identification number of the vehicle insured. The card shall contain a statement notifying the applicant of the penalty specified in s. 316.646(4). The card or insurance policy, insurance policy binder, or certificate of insurance or a photocopy of any of these; an affidavit containing the name of the insured's insurance company, the insured's policy number, and the make and year of the vehicle insured; or such other proof as may be prescribed by the department shall constitute sufficient proof of purchase. If an affidavit is provided as proof, it shall be in substantially the following form:

Under penalty of perjury, I (Name of insured) do hereby certify that I have (Personal Injury Protection, Property Damage Liability, and, when required, Bodily Injury Liability) Insurance currently in effect with (Name of insurance company) under (policy number) covering (make, year, and vehicle identification number of vehicle) . (Signature of Insured)

Such affidavit shall include the following warning:

WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS SUBJECT TO PROSECUTION.

When an application is made through a licensed motor vehicle dealer as required in s. 319.23, the original or a photostatic copy of such card, insurance policy, insurance policy binder, or certificate of insurance or the original affidavit from the insured shall be forwarded by the dealer to the tax collector of the county or the Department of Highway Safety and Motor Vehicles for processing. By executing the aforesaid affidavit, no licensed motor vehicle dealer will be liable in damages for any inadequacy, insufficiency, or falsification of any statement contained therein. A card shall also indicate the existence of any bodily injury liability insurance voluntarily purchased.

(b) When an operator who owns a motor vehicle is subject to the financial responsibility requirements of chapter 324, including ss. ~~s.~~ 324.022 and 324.023, such operator shall provide proof of compliance with such financial responsibility requirements at the time of registration of any such motor vehicle by one of the methods constituting sufficient proof of purchase under paragraph (a). The issuing agent shall refuse to register a motor vehicle if such proof of purchase is not provided or if one of the other methods of proving financial responsibility as set forth in s. 324.031 is not met.

Section 4. Subsection (7) of section 627.733, Florida Statutes, is amended to read:

627.733 Required security.--

(7) Any operator or owner whose driver's license or registration has been suspended pursuant to this section or s. 316.646 may effect its reinstatement upon compliance with the

requirements of this section and upon payment to the Department of Highway Safety and Motor Vehicles of a nonrefundable reinstatement fee of $150 for the first reinstatement. Such reinstatement fee shall be $250 for the second reinstatement and $500 for each subsequent reinstatement during the 3 years following the first reinstatement. Any person reinstating her or his insurance under this subsection must also secure noncancelable coverage as described in ss. 324.021(8) and ~~s.~~ 627.7275(2) and present to the appropriate person proof that the coverage is in force on a form promulgated by the Department of Highway Safety and Motor Vehicles, such proof to be maintained for 2 years. If the person does not have a second reinstatement within 3 years after her or his initial reinstatement, the reinstatement fee shall be $150 for the first reinstatement after that 3-year period. In the event that a person's license and registration are suspended pursuant to this section or s. 316.646, only one reinstatement fee shall be paid to reinstate the license and the registration. All fees shall be collected by the Department of Highway Safety and Motor Vehicles at the time of reinstatement. The Department of Highway Safety and Motor Vehicles shall issue proper receipts for such fees and shall promptly deposit those fees in the Highway Safety Operating Trust Fund. One-third of the fee collected under this subsection shall be distributed from the Highway Safety Operating Trust Fund to the local government entity or state agency which employed the law enforcement officer who seizes a license plate pursuant to s. 324.201. Such funds may be used by the local government entity or state agency for any authorized purpose.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 397 Caregivers for Adults
SPONSOR(S): Healthcare Council and Anderson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 434

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Healthy Seniors	8 Y, 0 N	Walsh	Schoolfield
2) Healthcare Council	13 Y, 0 N, As CS	Schoolfield	Gormley
3) Policy & Budget Council		Leznoff	Hansen
4)			
5)			

SUMMARY ANALYSIS

Committee Substitute for House Bill 397 would allow the Department of Elderly Affairs (DOEA) to establish a pilot program to train persons to act as companions and provide personal assistance to frail adults age 60 or older. The pilot program would be established for a period no longer than three years in Pasco or Pinellas County, or both. The bill requires the DOEA to submit a report to the President of the Senate and the Speaker of the House of Representatives by January 1, 2010 if the pilot program is established.

The CS appropriates $75,000 of non-recurring general revenue to the DOEA to fund the pilot program.

The effective date of this CS is July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility — The CS establishes a pilot program to train persons to provide care and assistance to frail adults age 60 and older.

B. EFFECT OF PROPOSED CHANGES:

Background

Caregiving

About 10.1 million people over the age of 18 in the U.S.—nearly 4 percent of the population—need another person's assistance to carry out activities such as bathing, feeding, cleaning, or grocery shopping.[1] Within this group, nearly 80 percent of care recipients are 50 and older, and the average age of care recipients 50 and older in the U.S. is 75.[2] Most care recipients (79 percent) who need long-term care live at home or in the community,[3] and those individuals living in nursing homes and other institutional settings could potentially live in the community if appropriate, affordable support was available.[4]

Although family members and friends provide most of the needed assistance for people in home and community-based settings, home care workers, personal assistants, direct support professionals and other direct-care workers are a critical resource for many. Individuals and families rely on these workers to provide them with comfort, companionship, and care in an atmosphere that preserves their dignity and well-being. Such workers are already in short supply in many regions and demand is expected to grow rapidly, due to a combination of consumer demand and changes in public policy.

Federal funds allocated for health care training are typically reserved for the development of various medical professionals (doctors, nurses, etc.). Consequently, there are limited resources available to address the training needs of paraprofessional caregivers who work in community settings.

Effect of Proposed Legislation

CS for HB 397 would allow DOEA to establish a pilot program to train persons to act as companions and provide personal assistance to frail adults age 60 or older. The pilot may begin in Fiscal Year 2007-2008 and cannot exceed three years.

The CS specifies that the purposes of the pilot are to:

- Meet the demand for in-home companion care and assistance service providers to prevent costly and premature institutional placements
- Act as a direct referral service for DOEA

The CS requires that if DOEA establishes the pilot program, it must provide a report to the Speaker of the House and the President of the Senate by January 1, 2010. The report must include the status of

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[1] McNeil, Jack. 2001. *Americans with disabilities: Household economic studies.* Washington, DC: US Department of Commerce, Economics and Statistics Administration, US Census Bureau.

[2] *Caregiving in the U.S.*, 2004, National Alliance for Caregiving and AARP, available at http://www.aarp.org/research/reference/publicopinions/aresearch-import-853.html.

[3] *Long-term Care Users Range in Age and Most Do Not Live in Nursing Homes: Research Alert*, 2000, Agency for Healthcare Research and Quality, available, in part, at http://www.ahcpr.gov/research/nov00/1100RA19.htm.

[4] *Understanding Medicaid Home and Community Services: A Primer*, 2000, U.S. Department of Health and Human Services. Available at http://aspe.hhs.gov/daltcp/reports/primer.pdf.

the pilot; the number of persons who have been trained to provide community-based care for frail adults age 60 or older; the number of those frail adults served; and recommendations for further legislation, including whether the pilot program should be replicated statewide.

The CS appropriates $75,000 in non-recurring general revenue funds to the Department of Elderly Affairs to fund the pilot.

The effective date of the CS is July 1, 2007.

C. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of Florida Statutes allowing DOEA to establish a pilot program to train persons to serve frail adults; providing purposes of the pilot; requiring that DOEA report to the Legislature if the pilot program is established.

Section 2: Provides an appropriation.

Section 3: Provides that the act is effective July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The CS establishes a pilot program to train and employ persons to provide care and assistance to frail adults age 60 and older. It affords opportunities to those persons to become employed in jobs serving elders in their own homes and communities.

D. FISCAL COMMENTS:

The CS appropriates $75,000 in non-recurring general revenue funds to the Department of Elderly Affairs to fund the pilot.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This CS does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

D. STATEMENT OF THE SPONSOR:

   This CS will result in the provision of additional in-home care services to Florida's seniors, who are the fastest growing segment of our population. This will make it possible for them to remain in the comfort of their own homes and prevent costly premature institutional placement.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At its March 6, 2007, meeting, the Committee on Healthy Seniors adopted three amendments to HB 397 as filed. The amendments:

- Locate the proposed pilot program in Pasco or Pinellas County or both.
- Appropriate $100,000 from General Revenue to fund the pilot.
- Delete reference to the Senior Community Service Employment Program.

The Committee reported the bill favorably with three amendments.

At its April 4, 2007, meeting the Healthcare Council adopted a strike all amendment to the bill as reported by the Healthy Seniors Committee. The strike all:

- Locates the proposed pilot program in Pasco or Pinellas County or both.
- Deletes references to economically-disadvantaged workers over age 55.
- Deletes references to the Senior Community Service Employment Program.
- Deletes certain purposes of the pilot.
- Appropriates $75,000 of general revenue to DOEA to fund the pilot.

The bill was reported favorably as a Council Substitute.

This analysis is drafted to the Council Substitute.

A bill to be entitled

An act relating to caregivers for adults; authorizing the Department of Elderly Affairs to create a pilot program in specified counties to train persons to act as companions and provide certain services to frail adults in the community; specifying additional purposes of the pilot program; requiring an evaluation and report to the Legislature; providing an appropriation; providing an effective date.

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

Section 1. (1) Beginning in the 2007-2008 fiscal year and for a period of no longer than 3 years, the Department of Elderly Affairs may establish a pilot program in Pasco County or Pinellas County, or both, to train persons to act as companions and provide personal assistance to frail adults 60 years of age or older in the community. The purposes of the pilot program are to:

(a) Assist in meeting the growing demand for in-home companion care services and personal care services and preventing costly and premature institutional placements; and

(b) Act as a direct referral service for the Department of Elderly Affairs.

(2) By January 1, 2010, if the pilot program is established, the Department of Elderly Affairs shall submit a report to the President of the Senate and the Speaker of the House of Representatives which includes the status of the

implementation of the program, the number of persons who have been trained to provide community-based care for frail adults 60 years of age or older who live in the community, the number of frail adults 60 years of age or older who have received such services, and recommendations for further legislation, including a recommendation regarding extending the pilot program throughout the state.

Section 2. The sum of $75,000 in nonrecurring revenue is appropriated from the General Revenue Fund to the Department of Elderly Affairs for fiscal year 2007-2008 to implement the provisions of this act.

Section 3. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 521 Florida Retirement System
SPONSOR(S): Weatherford and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 838

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs	7 Y, 0 N	Cámara	Williamson
2) Government Efficiency & Accountability Council	12 Y, 0 N	Camara	Cooper
3) Policy & Budget Council		Leznoff	Hansen
4)			
5)			

SUMMARY ANALYSIS

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

The nature and amount of these payments are not expected to be sufficient to require a specific increase in the Special Risk Class employer contribution rate to fund this proposal. However, the bill could create an actuarial liability to the FRS. The fiscal impact, if any, will become evident in future FRS valuations and may affect future employer contribution rates for the Special Risk Class.

The bill has an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

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 158 cities and 192 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: 600,000 active members, 252,000 retirees and surviving beneficiaries, and 31,000 Deferred Retirement Option Program participants.[3] Members of the FRS belong to one of five membership classes:

1. Regular Class[4]	583,213 members	87.73% of membership
2. Special Risk Class[5]	72,078 members	10.84% of membership
3. Special Risk Administrative Support Class[6]	74 members	0.01% of membership
4. Elected Officers' Class[7]	2,195 members	0.33% of membership
5. Senior Management Service Class[8]	7,259 members	1.09% of membership[9]

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

Special Risk Class

The Special Risk Class of the FRS was created to recognize that certain employees, because of the nature of the work they perform,[11] may 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.[12] Members of the Special Risk Class also earn a higher normal retirement benefit of

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[1] Section 121.025, F.S.
[2] FL. Dept. of Mgmt. Svcs., *Florida Division of Retirement Main Page* (visited Feb. 12, 2007) <www.frs.state.fl.us>
[3] *Id.*
[4] Section 121.021(12), F.S.
[5] Section 121.0515, F.S.
[6] Section 121.0515(7), F.S.
[7] Section 121.052, F.S.
[8] Section 121.055, F.S.
[9] Department of Management Services HB 521 (2007) Substantive Bill Analysis at 3. [hereafter referred to as DMS Analysis] (on file at dept. and the Committee on State Affairs)
[10] *See, e.g.,* s. 121.055(3)(a)1., F.S.
[11] Section 125.0515(1), F.S. (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity)
[12] Section 121.021(29), F.S., defines normal retirement date, which contrasts with members of the Regular Class who can retire at age 62 or with 30 years of creditable service.

three percent of the member's average final compensation.[13] These increased benefits are funded through higher employer contribution rates: 19.76 percent of gross compensation, effective July 1, 2006, and 21.96 percent, effective July 1, 2007.[14]

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

Retirement Benefit Calculation

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

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

Proposed Changes

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

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[13] Section 121.091(1)(a)2.h., F.S. (compared with 1.60 percent to 1.68 percent for Regular Class members).
[14] Section 121.71(3), F.S. (compared with 8.69 percent, effective July 1, 2006, and 9.55 percent effective July 1, 2007, for Regular Class members).
[15] Ch. 78-308, L.O.F.; codified as s. 121.0515, F.S.
[16] Ch. 99-392, L.O.F., s. 23.
[17] Ch. 2000-169, L.O.F., s. 29.
[18] *Id.* (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietician; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DRC; pharmacist; certain senior pharmacists; dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager)
[19] Ch. 2001-125, L.O.F., s. 43.
[20] Ch. 2005-167, L.O.F., s. 1; codified as s. 121.0515(2)(h), F.S. (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification).
[21] Section 121.091(1), F.S.
[22] Section 121.021(24), F.S.
[23] Section 121.021(22), F.S.
[24] *Id.*
[25] See ss. 121.021(22)(b)2. and (24)(b)4, F.S.

This expansion of the definition for compensation may likely result in a higher AFC, which would result in a higher retirement benefit for firefighters, paramedics, and emergency medical technicians who are compensated for such training or other additional job-related duties and responsibilities.

The Department of Management Services identified approximately 128 employers with approximately 10,950 employees that could be impacted by this bill. It is unknown how many agencies currently pay these types of supplemental payments, how many employees receive them, or the amount of such payments.[26]

C. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., to revise the definition of "compensation."

Section 2 provides a declaration of important state interest.

Section 3 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Unknown, but insignificant. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Unknown, but insignificant. See fiscal comments.

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 evaluated the fiscal impact of the bill and offered the following summation:

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

[26] DMS Analysis at 2.

the HIS.[27] We identified approximately 128 employers with at minimum of 10,950 employees who could have additional compensation reported to the FRS under HB 521.[28]

The Department of Management Services also provided the following fiscal note from the enrolled actuary:

> Allowing nonrecurring payments to be treated as compensation that may be recognized in the calculation of retirement benefits[29] could lead to artificially inflated benefits. If benefit inflation occurs, it would be a source of actuarial losses which could lead to an increase in normal costs and unfunded actuarial liabilities, possibly resulting in higher contribution rates in the future for the FRS Special Risk Class. There would be a fiscal impact resulting from HB 521, but the nature and amount of these payments are not expected to be sufficient to require a specific increase in the Special Risk Class employer contribution rate to fund this proposal. Future actuarial experience studies and valuations of the FRS would reveal the impact, if any, of covering these payments as compensation for retirement purposes and be reflected in the contribution rate recommended by future valuations.[30]

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 counties or municipalities have to raise revenue.

   This bill may, however, require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Yet, the bill appears to satisfy the requirements of s. 18, art. VII of the State Constitution because it provides that the act fulfills an important state interest and the expenditures are required by a law which appears to apply to all persons similarly situated, included the state and local governments.

2. Other:

   Article X, section 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.[31] According to the Department of Management Services, this bill complies with these requirements.[32]

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate any rule-making authority.

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[27] HIS means health insurance subsidy.
[28] DMS Analysis at 6.
[29] If any of the salaries from the five highest fiscal years include such payments, the payments would boost the member's initial benefit.
[30] *Id.* at 7.
[31] 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, section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district, and municipal governments participating in or operating a retirement system for public employees that is funded in whole or in party by public funds.
[32] DMS Analysis at 7.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Possible policy change

As previously discussed, the definition of compensation specifically excludes bonuses,[33] which are payments made in addition to an employee's regular or overtime salary, are usually nonrecurring, do not increase the employee's base rate of pay, and include no commitment for payment in a subsequent year.[34] Furthermore, a payment is considered a "bonus" if any of the following applies:

- The payment is not made according to a formal written policy that applies to all eligible employees equally.
- The payment commences later than the 11th year of employment.
- The payment is not based on permanent eligibility.
- The payment is made less frequently than annually.[35]

Bonuses were originally included in the definitions of compensation and AFC. In 1984, the Legislature excluded bonuses from the definitions of AFC.[36] According to the Department of Management Services, the Legislature enacted this change in definition based upon recommendations from the consulting actuary and the Auditor General who sought to insure that promised benefits would be funded on a sound actuarial basis as required by the State Constitution. By excluding bonuses from consideration as compensation, retirement benefits would not be artificially inflated by payments at or near retirement that are not representative of the regular salary or regular payments received over a member's career. This way, unanticipated contribution rate increases are prevented and retirement benefits remain properly funded. In 1989, the Legislature excluded bonus payments from the definition of compensation;[37] thereby, making reported compensation consistent with compensation eligible for inclusion in a member's average final compensation.[38]

The Department of Management Services provided the following statement from the enrolled actuary regarding this bill:

> HB 521 proposes to include salary supplements paid to firefighters, paramedics, and emergency medical technicians for successful completion of employer-approved educational training or for additional job-related duties and responsibilities as compensation for retirement purposes, without regard to the criteria described above. Employers would be required to make retirement contributions on such amounts just as they now make contributions based upon the employee's base pay. These changes would take effect July 1, 2007.
>
> Under current law, payments made in addition to an employee's base rate of pay must be made according to a formal written policy that applies to all eligible employees equally, must be paid at least annually, and must continue for as long as the employee continues his or her employment in order to be considered compensation for retirement. Such payments may begin no later than the 11th year of employment. These provisions are designed to safeguard against "windfall" benefits.

To the extent that any of the salary supplements included in this bill can operate without the constraints listed above, they may operate like bonuses. Thus, the bill may create a policy change as it relates to bonuses as well as conflict between the definition of "compensation" and the definition of "bonuses."

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[33] Section 121.021(22)(b)2., F.S.
[34] Section 121.021(47), F.S.
[35] *Id.*
[36] Ch. 84-266, L.O.F., revised the definition of "average final compensation" to exclude bonuses from coverage for retirement
[37] Ch. 89-126, L.O.F., revised the definition of "compensation" to exclude bonuses from consideration as compensation subject to retirement contributions.
[38] DMS Analysis at 5.

Other Comments: Differential treatment of class members

This bill permits certain salary supplements to be "compensation" for retirement purposes only for firefighters, paramedics, or emergency medical technicians. Yet, the Special Risk Class also includes law enforcement officers, correctional officers, community-based correctional probation officers, youth custody officers, certain employees whose duties involve contact with patients or inmates in a correctional or forensic facility or institution, and employees of a law enforcement agency or medical examiner's office who are engaged in a forensic discipline. [39] It is not clear how the salary supplements for firefighters, paramedics, or emergency medical technicians differ from those of the other Special Risk Class members, such that the salary supplements for one group are counted for retirement purposes, but not for the rest of the class.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

[39] Section 121.0515(2), F.S.

A bill to be entitled

An act relating to the Florida Retirement System; amending s. 121.021, F.S.; redefining the term "compensation" to include certain supplementary payments made to firefighters, paramedics, and emergency medical technicians and certain employer-reported retirement contributions; providing legislative findings and a declaration of important state interest; providing an effective date.

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

Section 1. Paragraph (a) of subsection (22) of section 121.021, Florida Statutes, is amended to read:

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

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

(a) Compensation shall include:

1. Overtime payments paid from a salary fund.

2. Accumulated annual leave payments.

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

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

b. The policy provides that payments shall commence no

later than the 11th year of employment;

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

d. The payments are paid at least annually.

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

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

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

7. Effective July 1, 2007, salary supplements made to firefighters, paramedics, or emergency medical technicians for the successful completion of employer-approved educational training or for additional job-related duties and responsibilities, notwithstanding the provisions of subparagraph 3.

Section 2. It is declared by the Legislature that firefighters, emergency medical technicians, and paramedics perform state and municipal functions; that it is their duty to protect life and property at their own risk and peril; that it

is their duty to continuously instruct school personnel, public officials, and private citizens about safety; and that their activities are vital to the public safety. Therefore, the Legislature declares that it is a proper and legitimate state purpose to provide a uniform retirement system for the benefit of firefighters, emergency medical technicians, and paramedics and intends, in implementing the provisions of s. 14, Art. X of the State Constitution as they relate to municipal and special district pension trust fund systems and plans, that such retirement systems or plans be managed, administered, operated, and funded in such a manner as to maximize the protection of pension trust funds. Pursuant to s. 18, Art. VII of the State Constitution, the Legislature determines and declares that the provisions of this act fulfill an important state interest.

Section 3. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 645 Growth Management
SPONSOR(S): Hays
TIED BILLS: **IDEN./SIM. BILLS:** SB 680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Schools & Learning Council	11 Y, 0 N	Eggers	Cobb
2) Policy & Budget Council		Martin	Hansen
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill revises eligibility criteria and allocation methodology for the High Growth District Capital Outlay Assistance Grant Program. The bill does not make an appropriation to the High Growth District Capital Outlay Assistance Grant Program.

The bill increases by $33.25 million from $41.75 to $75 million the amount of the Public Education Capital Outlay and Debt Service Trust Fund (PECO) that shall be appropriated to fund the Classrooms for Kids Program.

The bill has an effective date upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Educational Facilities Funding

Funding for educational facilities is addressed in Part IV of Chapter 1013, F.S. Each district school board is required to adopt a capital outlay budget for the upcoming year, as part of the annual budget.[1] The board is prohibited from expending any funds on any project that is not included in the budget. Prior to adoption of the capital outlay budget, each district school board is required to prepare its tentative district educational facilities plan.[2]

Section 1013.64, F.S., addresses funds for comprehensive educational plant needs, and provides for specific allocations from the Public Education Capital Outlay and Debt Service Trust Fund (PECO). The Legislature is required to give priority consideration to remodeling, renovation, maintenance, repairs, and site improvement for existing satisfactory facilities for appropriations allocated to district school boards from the total amount of PECO.[3]

Each district school board is required to meet all educational plant space needs of its elementary, middle, and high schools, prior to spending funds from PECO or the School District and Community College District Capital Outlay and Debt Service Trust Fund for any ancillary plant or any other new construction, renovation, or remodeling of ancillary space.[4]

PECO consists of the following sources:

- Proceeds, premiums, and accrued interest from the sale of public education bonds and that portion of revenues accruing from the gross receipts tax, investment interest, and federal interest subsidies;
- General revenue funds appropriated to the fund for educational capital outlay purposes;
- All capital outlay funds previously appropriated and certified forward; and
- Funds paid pursuant to the excise tax on documents.[5]

Section 1013.64(3)(a)2., F.S., directs that 60 percent of each year's appropriation for new public school construction facilities be allocated to districts based on growth in capital outlay full-time equivalent (FTE) student membership and 40 percent allocated on base capital outlay FTE. State PECO funds are only one portion of the funds available to a district for its school facility construction needs. For most districts, the majority of the capital outlay funds are generated at the local level.

Section 1013.64(2)(a), F.S., authorizes as a part of the PECO Trust Fund, a separate account, in an amount determined by the Legislature, for the "Special Facility Construction Account" program, which is used to provide construction funds to school districts with urgent construction needs and insufficient local resources to meet those needs. The district must also pledge to use all of the school district's

[1] s. 1013.64, F.S.
[2] *Id.*
[3] s. 1013.64(1)(a), F.S.
[4] s. 1013.64(6)(a), F.S.
[5] s. 1013.65(s)(a), F.S.

other capital outlay resources toward the project, with the understanding that the state will provide the remaining unfunded portion of the cost of the project.

Classrooms for Kids Program

Section 1013.735, F.S., provides for the allocation of funds for the Classrooms for Kids Program, the purpose of which is to increase capacity to reduce class size.[6] Section 1013.65(4), F.S., provides that $41.75 million of PECO funds emanating from the excise tax on documents shall be appropriated annually to fund the Classrooms for Kids Program. A specific formula is provided in statute representing each district school board's share of the annual appropriation for the Classroom for Kids Program.[7] To be eligible to participate in the Program, a district school board is required to enter into an interlocal agreement; and certify that the district's inventory of facilities listed in the Florida Inventory of School Houses is accurate and current. Funds received are limited to certain expenditures involving construction, purchase, or lease-purchase.[8]

High Growth District Capital Outlay Assistance Grant Program

The 2005 Legislature established the High Growth District Capital Outlay Assistance Grant Program to provide additional money to high growth districts without sufficient capital outlay revenue[9] for the construction of student stations needed due to the rapid increase in the student population. The high growth districts targeted have comparatively low property tax bases. The program is funded through moneys provided in the General Appropriations Act.

To be eligible to participate in the Program, a school district must comply with the following:

- The district must have levied the full two mills of nonvoted discretionary capital outlay millage for each of the past four fiscal years;
- Fifty percent of the revenue derived from the two mill nonvoted discretionary capital outlay millage for the past four fiscal years, when divided by the district's growth in capital outlay FTE students over this period, produces a value that is less than the average cost per student station and weighted by statewide growth in capital outlay FTE students in elementary, middle, and high schools for the past four fiscal years;
- The district must have reached at least twice the statewide average of growth in capital outlay FTE students over this same four year period;
- The Commissioner of Education must have released all funds allocated to the district from the Classrooms First Program, which were fully expended by the district as of February 1 of the current fiscal year; and
- The total capital outlay FTE students of the district are more than 15,000 students.[10]

A $30 million appropriation in the 2005-06 fiscal year, subsequently vetoed by the Governor, was allocated based on the following methodology:

- For each eligible district, the Department of Education is required to calculate the value of 50 percent of the revenue derived from the two mill nonvoted discretionary capital outlay millage for the previous four fiscal years, divided by the increase in capital outlay FTE students for the same period;
- The Department of Education is required to determine, for each eligible district, the amount that must be added to the calculated value to produce the weighted average value per student station;

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[6] The Legislature established the Program in 2003 (Chapter 2003-391, L.O.F.)
[7] s. 1013.735(1), F.S.
[8] s. 1013.735(3), F.S.
[9] Chapter 2005-290, L.O.F.
[10] s. 1013.738(2), F.S.

- The value calculated for each eligible district is to be multiplied by the average increase in capital outlay FTE students for the previous four fiscal years to determine the maximum grant award; and
- If the funds are insufficient to fully fund the maximum grants calculation, the Department is required to allocate the funds based on each district's prorated share of the total maximum award amount calculated for all eligible districts.[11]

Seven districts, Clay, Hernando, Hillsborough, Lake, Osceola, St. Johns, and St. Lucie qualified for the grant. In terms of capital outlay FTE growth, the districts ranked 2nd, 7th, 8th, 9th, 14th, 15th, and 17th among the 67 school districts. Of the top twenty growth districts, ten districts did not qualify due to the two mill revenue and average cost per student station requirement, two districts did not qualify due to not levying the full two mills, and one district did not qualify due to having less than 15,000 students.

Legislation to revise the methodology and establish an appropriation for the 2006-07 fiscal year was not successful.

Proposed Changes:

This bill increases by $33.25 million from $41.75 to $75 million the amount of the Public Education Capital Outlay and Debt Service Trust Fund (PECO) that shall be appropriated to fund the Classrooms for Kids Program.

This bill additionally amends the qualifying formula for school district eligibility for High Growth District Capital Outlay Assistance Grants. To be eligible, the districts must meet all five of the following criteria:

- Must have levied the full 2 mills of the the nonvoted discretionary capital outlay millage or received an equivalent amount from capital outlay sales tax or when combined with capital sales tax revenue received an equivalent amount that would be generated if the full 2 mills of nondiscretionary capital outlay millage had been collected over the past 3 fiscal years;
- Must have received revenue from impact fees in the prior fiscal year;
- Must have received revenue in the prior fiscal year from one of the following:
  - Local government infrastructure sales surtax in which a portion is dedicated for the construction of schools in the prior fiscal year;
  - School capital outlay surtax, subject to certain requirements; or
  - Local bond referendum;
- Must not have received an appropriation from the special facilities construction program in the current fiscal year or any of the two fiscal years prior to the current fiscal year; and
- Must have equaled or exceeded three times the statewide average of growth in capital outlay FTE students over the prior three fiscal years;

The allocation formula is revised as follows:

- The amount appropriated is prorated to each district based on each district's portion of the statewide growth in capital outlay FTE. For purposes of this distribution, growth in capital outlay FTE for each district is determined by subtracting the highest of the 3 years' preceding capital outlay FTE from the prior year's capital outlay FTE.
- Capital outlay FTE includes, but is not limited to:
  - K-12 students except hospital and homebound part-time students; and
  - Students who are career education students and adult disabled students, who are enrolled in school district career centers.

[11] s. 1013.738(3), F.S.

- The capital outlay full-time equivalent membership shall be determined for kindergarten through grade 12 and for career centers by averaging the unweighted full-time equivalent student membership for the second and third surveys and comparing the results on a school-by-school basis with the Florida Inventory for School Houses.
- If a change, correction, or recomputation of data during any year results in a reduction or increase of the calculated amount previously allocated to a district, the allocation to that district shall be adjusted correspondingly. If such recomputation results in an increase or decrease of the calculated amount, such additional or reduced amounts shall be added to or reduced from the districts's future appropriations. However, no change, correction, or recomputation of data shall be made subsequent to 2 years following the initial annual allocation.

Based on the most recent information available, the following 11 districts would receive grants under the new methodology: Clay, Flagler, Hernando, Hillsborough, Lake, Manatee, Osceola, Orange, Pasco, Polk, and St. Lucie. It is important to note that district allocations for an appropriation made in the 2007-08 fiscal year would be based on data that is updated one year to include data from the 2006-07 fiscal year, which may result in the same or different districts receiving the grants.

The bill does not make an appropriation to the High Growth District Capital Outlay Assistance Grant Program.

C. SECTION DIRECTORY:

Section 1. Amends section 1013.65(2)(a)4.a., F.S., revising the appropriation for the Classrooms for Kids Program.

Section 2. Amends section 1013.738 F.S., revising the eligibility criteria and funding methodology for the High Growth District Capital Outlay Assistance Grant Program.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

This bill increases by $33.25 million from $41.75 to $75 million the amount of the Public Education Capital Outlay and Debt Service Trust Fund (PECO) that shall be appropriated to fund the Classrooms for Kids Program. The bill does not make an appropriation to the High Growth District Capital Outlay Assistance Grant Program.

The bill revises eligibility criteria and allocation methodology for the High Growth District Capital Outlay Assistance Grant Program. Based on the revised criteria proposed by the bill, the following districts would qualify for the program: Clay, Flagler, Hernando, Hillsborough, Lake, Manatee, Osceola, Orange, Pasco, Polk, and St. Lucie.

It is important to note that district allocations for an appropriation, if any, made in the 2007-08 fiscal year would be based on data that is updated one year to include the 2006-07 fiscal year, which may result in the same or different districts receiving the grant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to growth management; amending s. 1013.65, F.S.; revising the sum appropriated for the Classrooms for Kids Program; amending s. 1013.738, F.S.; revising the eligibility criteria for the High Growth District Capital Outlay Assistance Grant Program; revising provisions for allocating funds provided by the General Appropriations Act to the Public Education Capital Outlay and Debt Service Trust Fund; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 1013.65, Florida Statutes, is amended to read:

1013.65 Educational and ancillary plant construction funds; Public Education Capital Outlay and Debt Service Trust Fund; allocation of funds.--

(2)(a) The Public Education Capital Outlay and Debt Service Trust Fund shall be comprised of the following sources, which are hereby appropriated to the trust fund:

1. Proceeds, premiums, and accrued interest from the sale of public education bonds and that portion of the revenues accruing from the gross receipts tax as provided by s. 9(a)(2), Art. XII of the State Constitution, as amended, interest on investments, and federal interest subsidies.

2. General revenue funds appropriated to the fund for educational capital outlay purposes.

3. All capital outlay funds previously appropriated and

certified forward pursuant to s. 216.301.

4.a. Funds paid pursuant to s. 201.15(1)(d).

b. The sum of $75 ~~$41.75~~ million of such funds shall be appropriated annually for expenditure to fund the Classrooms for Kids Program created in s. 1013.735 and shall be distributed as provided by that section.

Section 2. Subsections (2) and (3) of section 1013.738, Florida Statutes, are amended to read:

1013.738 High Growth District Capital Outlay Assistance Grant Program.--

(2) In order to qualify for a grant, a school district must meet the following criteria:

(a) The district must have levied the full 2 mills of nonvoted discretionary capital outlay millage authorized in s. 1011.71(2) for each of the past 3 ~~4~~ fiscal years or receive an amount from the school capital outlay surtax authorized in s. 212.055(6) which, when added to the nonvoted discretionary capital outlay millage collected, equals the amount that would be generated if the full 2 mills of nonvoted discretionary capital outlay millage had been collected over the past 3 fiscal years.

(b) The district must have received in the prior fiscal year revenue from the collection of an impact fee specifically for schools and revenue from the collection of one of the following:

1. A local government infrastructure sales surtax authorized in s. 212.055(2) in which a portion is dedicated for the construction of schools in such prior fiscal year or for

satisfaction of debt service pledged for the construction of schools.

2. A school capital outlay surtax authorized in s. 212.055(6). If the school capital outlay surtax is used to meet the conditions of paragraph (a), the amount of the school capital outlay surtax collected must be in excess of the amount in paragraph (a).

3. A local bond referendum as authorized in ss. 1010.40-1010.55. ~~Fifty percent of the revenue derived from the 2-mill nonvoted discretionary capital outlay millage for the past 4 fiscal years, when divided by the district's growth in capital outlay FTE students over this period, produces a value that is less than the average cost per student station calculated pursuant to s. 1013.72(2), and weighted by statewide growth in capital outlay FTE students in elementary, middle, and high schools for the past 4 fiscal years.~~

(c) The district must have equaled or exceeded three times ~~twice~~ the statewide average of growth in capital outlay FTE students over the prior 3 fiscal years. Growth in any one year must be determined by calculating the increase in students over the prior year ~~this same 4 year period~~.

(d) The district must not have received an appropriation from the special facilities construction program in the current fiscal year or any of the 2 fiscal years prior to the current fiscal year. ~~The Commissioner of Education must have released all funds allocated to the district from the Classrooms First Program authorized in s. 1013.68, and these funds were fully expended by the district as of February 1 of the current fiscal~~

~~year.~~

~~(c) The total capital outlay FTE students of the district is greater than 15,000 students.~~

(3) The funds provided in the General Appropriations Act shall be allocated pursuant to the following methodology:

(a) Each eligible district school board shall receive an amount from the Public Education Capital Outlay and Debt Service Trust Fund to be calculated by computing the capital outlay full-time equivalent membership as determined by the Department of Education. Such membership must include, but is not limited to, kindergarten through 12th grade students, except hospital and homebound part-time students, students who are career education students, and adult disabled students who are enrolled in school district career centers. ~~For each eligible district, the Department of Education shall calculate the value of 50 percent of the revenue derived from the 2-mill nonvoted discretionary capital outlay millage for the past 4 fiscal years divided by the increase in capital outlay FTE students for the same period.~~

(b) The capital outlay full-time equivalent membership shall be determined for kindergarten through the 12th grade and for career centers by averaging the unweighted full-time equivalent student membership for the second and third surveys and comparing the results on a school-by-school basis with the Florida Inventory for School Houses. The capital outlay full-time equivalent membership by grade level organization shall be used in making the following calculation: the capital outlay full-time equivalent membership by grade-level organization for

the prior year must be used to compute the growth over the highest of the 3 years preceding the prior year. ~~The Department of Education shall determine, for each eligible district, the amount that must be added to the value calculated pursuant to paragraph (a) to produce the weighted average value per student station calculated pursuant to paragraph (2)(b).~~

(c) The total amount appropriated by the Legislature pursuant to this subsection shall be allocated among the growth capital outlay full-time equivalent membership. The allocation shall be prorated to the districts based upon each district's percentage of growth capital outlay full-time membership. The most recent 4-year capital outlay full-time equivalent membership data shall be used in each subsequent year's calculation for the allocation of funds pursuant to this subsection. ~~The value calculated for each eligible district pursuant to paragraph (b) shall be multiplied by the average increase in capital outlay FTE students for the past 4 fiscal years to determine the maximum amount of a grant that may be awarded to a district pursuant to this section.~~

(d) If a change, correction, or recomputation of data during any year results in a reduction or increase of the calculated amount previously allocated to a district, the allocation to that district shall be adjusted correspondingly. If such recomputation results in an increase or decrease of the calculated amount, such additional or reduced amounts shall be added to or reduced from the district's future appropriations. However, no change, correction, or recomputation of data shall be made subsequent to 2 years following the initial annual

allocation. ~~In the event the funds provided in the General Appropriations Act are insufficient to fully fund the maximum grants calculated pursuant to paragraph (c), the Department of Education shall allocate the funds based on each district's prorated share of the total maximum award amount calculated for all eligible districts.~~

Section 3. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 645

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	_____

Council/Committee hearing bill: Policy and Budget Council

Representative(s) Pickens offered the following:

Amendment

Remove lines 50-74 and insert:

(b) The district must have received in the prior fiscal year revenue from the collection of an impact fee specifically for schools and meet one of the following criteria:

1. Have received revenue from a local government infrastructure sales surtax authorized in s. 212.055(2) in which a portion is dedicated for the construction of schools in such prior fiscal year or for satisfaction of debt service pledged for the construction of schools.

2. Have received revenue from a school capital outlay surtax authorized in s. 212.055(6). If the school capital outlay surtax is used to meet the conditions of paragraph (a), the amount of the school capital outlay surtax collected must be in excess of the amount in paragraph (a).

3. Have received revenue from a local bond referendum as authorized in ss. 1010.40-1010.55.

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4. Have paid debt service in the prior fiscal year for a local bond referendum as authorized in ss. 1010.40-1010.55.

~~(b) Fifty percent of the revenue derived from the 2-mill nonvoted discretionary capital outlay millage for the past 4 fiscal years, when divided by the district's growth in capital outlay FTE students over this period, produces a value that is less than the average cost per student station calculated pursuant to s. 1013.72(2), and weighted by statewide growth in capital outlay FTE students in elementary, middle, and high schools for the past 4 fiscal years.~~

(c) The district must have equaled or exceeded three times ~~twice~~ the statewide average percentage of growth in capital outlay FTE

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 843 Owner-controlled Insurance Programs for Public Construction Projects
SPONSOR(S): Government Efficiency & Accountability Council and Murzin
TIED BILLS: **IDEN./SIM. BILLS:** SB 1624

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Audit & Performance	6 Y, 0 N	Strickland	De La Paz
2) Government Efficiency & Accountability Council	11 Y, 0 N, As CS	Strickland	Cooper
3) Policy & Budget Council		Leznoff	Hansen
4)			
5)			

SUMMARY ANALYSIS

Historically, state and local governments have required contractors and subcontractors performing public works to assume full liability for loss, and to purchase and maintain adequate insurance to cover such losses. That coverage may be in the form of a consolidated insurance coverage plan known as an owner-controlled insurance program (OCIP). An OCIP is a centralized insurance program whereby one party is responsible for procuring insurance coverage for all participants under a contract rather than each party providing its own insurance.

The law currently prohibits state and local governments constructing public works from requiring a contractor or subcontractor to participate in an OCIP, with certain exceptions.

The bill amends current statutory law relating to OCIPs by:

- Providing that a site or a series of contiguous sites along a single continuous system satisfies the definition of a "specified contracted work site."
- Providing a definition for a "capital infrastructure improvement program."
- Requiring an OCIP to provide completed operations coverage for at least 10 years as opposed to the 5 years provided in current law.
- Authorizing general contractors and subcontractors working under a construction project to combine their payrolls under the owner-controlled insurance program to satisfy eligibility requirements for large deductible workers' compensation rating plans under specified circumstances.
- Providing that owner-controlled insurance programs issued prior to October 1, 2007 are exempt from the provisions of this bill.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 255, F.S., provides for the procurement of public property and public buildings, and the construction thereof. Section 255.05, F.S., provides that any person entering into a formal contract with the state or any county, city, political subdivision, or other public authority for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work must deliver to the public owner a payment and performance bond. This bond requires the contractor to perform under the contract in the time and manner prescribed. The contractor is also required to make prompt payments of all persons whose claims derive directly or indirectly from the prosecution of the work provided for in the contract. Any person providing materials, labor, or services under the improvement contract who does not receive proper payment may make a claim against the bond for the amount due.

For large construction projects, project owners (e.g., state and local government agencies), contractors, and subcontractors have traditionally purchased insurance independently to protect themselves against financial losses related to the project. Consolidated insurance programs, commonly referred to as "Owner Controlled Insurance Programs" (OCIP) and "Contractor Controlled Insurance Programs" (CCIP), are available in the insurance market for large construction projects. These programs are also referred to as "wrap-up insurance." This coverage is a centralized insurance program that covers the project owner and all contractors and subcontractors. Rather than having each party provide its own insurance, one party is responsible for procuring certain insurance coverage that will apply to all participants in the project under the contract. Generally coverage under these plans includes workers' compensation, general liability, builders' risk, excess liability, and professional liability. In recent years, the practice of consolidating insurance has increased.

With the creation of s. 255.0517, F.S. in 2004, state and local governments were prohibited from requiring an OCIP unless the estimated total cost of the project is $75 million or more; the estimated total cost of the project is $30 million or more, if the project is for the construction or renovation of two or more public schools during a fiscal year; or the estimated total cost of the project is $10 million or more, if the project is for the construction or renovation of one public school, regardless of whether the project's duration extends beyond a fiscal year. If an owner-controlled insurance program is authorized, the following terms apply:

- The program must maintain completed-operations insurance coverage for a term during which the coverage is reasonably commercially available as determined by the state or local government, but for no less than 5 years.
- The advertisement for bids or proposals clearly discloses the insurance coverage provided under the program and the minimum safety requirements that must be met.
- The program may not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that the contractor or subcontractor believes is necessary for protection against any liability arising out of the contract. The cost of the additional insurance must be disclosed to the public agency.
- The program may not include surety insurance.

- The deductible or self-insured retention may not exceed $1 million per occurrence, and the state or local government must be responsible for the deductible.

Current law also provides exemptions to these requirements. Roads, bridges, and related construction projects constructed by the Department of Transportation are exempt. Additionally, any project subject to an ongoing owner-controlled insurance program issued before October 1, 2004, or any public works project advertised before October 1, 2004, is exempt.

Current law also provides a requirement that liability insurers must offer coverage at an appropriate additional premium for liability arising out of current or completed operations under an owner-controlled insurance program for any period beyond the period for which the program provides liability coverage (commonly referred to as "tail coverage).[1]

Effect of Proposed Change

The bill provides that a specified contracted work site, as it pertains to s. 255.0517, F.S., includes a site or a series of contiguous sites along a single continuous system.

The bill defines a "capital infrastructure improvement program" as a construction program with a single public agency provided service, system, or facility. The bill further provides that a single service, system, or facility must not be combined with another unless they are performed under a single prime contract. Potable water, wastewater, reclaimed water, stormwater, drainage, streets or roads, intermodal transportation, electric service, gas service, airport services, or seaport services are examples provided by the bill as acceptable services, systems, or facilities.

The bill also allows general contractors and subcontractors working under a construction project to combine their payrolls under the owner-controlled insurance program to satisfy eligibility requirements for large deductible workers' compensation rating plans as long as the minimum deductible for the construction project is $100,000 or more and the estimated premium for the construction project is $500,000 or more.

The bill extends the amount of time required for an OCIP to maintain completed operations insurance coverage to 10 years or more. Currently the term for which completed operations insurance must be maintained is the term during which "the coverage is reasonably commercially available, as determined by the public agency, but for no less than 5 years." This provision eliminates the potential gap between the 5 year minimum under the current law and the 10 year statute of repose for latent defects.

Any project issued an owner-controlled insurance program prior to October 1, 2007 is exempt from the provisions of this bill.

C. SECTION DIRECTORY:

Section 1. Amends s. 255.0517, F.S., relating to owner-controlled insurance programs for public construction projects.

Section 2. Provides an effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[1] The tail coverage is from the expiration of the expiration of the owner-controlled insurance program though the time within which an action may brought, as limited by the applicable statute of limitations, s. 95.11(3)(c), F.S., which is generally 4 years, but up to 15 years under certain circumstances related to latent construction defects.

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   This bill does not create, modify, amend, or eliminate an expenditure for local governments.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 11, 2007, the Government Efficiency & Accountability Council adopted a strike-all amendment and reported HB 843 as a council substitute. The strike-all amendment made the following changes to current law:

- Providing that a site or a series of contiguous sites along a single continuous system satisfies the definition of a "specified contracted work site."

- Providing a definition for a "capital infrastructure improvement program."
- Requiring an OCIP to provide completed operations coverage for at least 10 years.
- Authorizing general contractors and subcontractors working under a construction project to combine their payrolls under the owner-controlled insurance program to satisfy eligibility requirements for large deductible workers' compensation rating plans under specified circumstances.
- Providing that owner-controlled insurance programs issued prior to October 1, 2007 are exempt from the provisions of this bill.

A bill to be entitled

An act relating to owner-controlled insurance programs for public construction projects; amending s. 255.0517, F.S.; revising definitions; extending the time for which an owner-controlled insurance program must maintain completed operations insurance coverage as a condition precedent to the purchase by specified state agencies or entities of an owner-controlled insurance program in connection with a public construction project; exempting certain contractors and subcontractors from eligibility requirements for certain workers' compensation rating plans; authorizing certain contractors and subcontractors to combine payrolls for workers' compensation coverage under certain circumstances; specifying additional projects exempt from application of program requirements; providing an effective date.

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

Section 1. Subsection (1) and paragraphs (b) and (f) of subsection (2) of section 255.0517, Florida Statutes, are amended, and paragraph (d) is added to subsection (3) of that section, to read:

255.0517 Owner-controlled insurance programs for public construction projects.--

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

(a) "Capital infrastructure improvement program" means a construction program with respect to a single public agency

provided service, system, or facility, including, but not limited to, potable water, wastewater, reclaimed water, stormwater, drainage, streets or roads, intermodal transportation, electric service, gas service, airport services, or seaport services, and services, systems, or facilities incidental to such services, systems, and facilities. A single public agency service, system, or facility shall not be combined with another public agency service, system, or facility to satisfy the amount specified in subparagraph (2)(a)1. unless the construction of such services, systems, or facilities are performed under a single prime contract.

(b) ~~(c)~~ "Multiple contracted work site" means construction being performed at multiple sites during one or more fiscal years that is part of an ongoing capital infrastructure improvement program or involves the construction of one or more public schools.

(c) ~~(a)~~ "Owner-controlled insurance program" means a consolidated insurance program or series of insurance policies issued to a public agency that may provide one or more of the following types of insurance coverage for any contractor or subcontractor working at specified or multiple contracted work sites of a public construction project: general liability, property damage excluding coverage for damage to real property, workers' compensation, employer's liability, or pollution liability coverage.

(d) ~~(b)~~ "Specified contracted work site" means construction being performed during one or more fiscal years at one site or a series of contiguous sites separated only by a street, roadway,

waterway, or railroad right-of-way or along a single continuous system ~~for the provision for water and power~~.

(2) PURCHASE REQUIREMENTS.--A state agency, political subdivision, state university, community college, airport authority, or other public agency in this state, or any instrumentality thereof, may only purchase an owner-controlled insurance program in connection with a public construction project if it is determined necessary and in the best interest of the public agency and if all of the following conditions are met:

(b) The program maintains completed operations insurance coverage for a term during which the coverage is reasonably commercially available, as determined by the public agency, but for no less than 10 ~~5~~ years.

(f) The public agency may only purchase an owner-controlled insurance policy that has a deductible or self-insured retention if the deductible or self-insured retention does not exceed $1 million per occurrence. Contractors, including any owner or principal acting as a general contractor, and subcontractors performing work under a construction project insured by an owner-controlled insurance program are not required to individually satisfy eligibility requirements for large deductible workers' compensation rating plans. Such contractors and subcontractors may combine their payrolls under the owner-controlled insurance program for workers' compensation coverage so long as the minimum deductible for the construction project is $100,000 or more and the standard estimated premium for the construction project is $500,000 or more.

(3) EXEMPTIONS.--This section does not apply to the following projects:

(d) Any project of a public agency which is committed to an ongoing, owner-controlled insurance program issued before October 1, 2007.

Section 2. This act shall take effect October 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **CS/HB 843**

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	_____

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Council/Committee hearing bill: Policy & Budget Council

Representative Murzin offered the following:

Amendment (with directory and title amendments)

Remove line(s) 85-87 and insert:

(3) CAPITAL INFRASTRUCTURE IMPROVEMENT PROGRAM.-The construction of a single public agency service, system, facility, or other public work may not be combined with the construction of another public agency service, system, facility, or other public work to satisfy the amount specified in subparagraph (2)(a)1. unless the multiple services, systems, facilities, or other public works are part of:

(a) A capital infrastructure improvement program that will be performed under a single prime contract; or

(b) An interrelated capital infrastructure improvement program that interconnects the housing or transportation of persons or cargo arriving via an airport or seaport, and the combined estimated costs of the construction projects exceed $125 million.

(4) ~~(3)~~ EXEMPTION.-This section does not apply to the following projects:

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Amendment No. 1 (for drafter's use only)

(a) Any project of the Department of Transportation which is authorized under s. 337.11;

(b) Any existing project or projects of a public agency which are the subject of an ongoing, owner-controlled insurance program issued before October 1, 2004; ~~or~~

(c) Any project of a public agency which is advertised by the public agency before October 1, 2004, for the purpose of receiving bids or proposals for the project; or~~.~~

(d) Any project or projects of a public agency which are committed to

========== D I R E C T O R Y A M E N D M E N T ==========

Remove line(s) 20-23 and insert:

Section 1. Subsection (1), paragraphs (b) and (f) of subsection (2), and subsection (3) of section 255.0517, Florida Statutes, are amended to read:

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

Remove line 14 and insert:

circumstances; prohibiting the combination of services, systems, and facilities relating to a capital infrastructure improvement program and specified circumstances; specifying additional projects exempt from

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2(for drafter's use only)

Bill No. **CS/HB 843**

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	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Murzin offered the following:

Amendment

Remove line(s) 27-39 and insert:

(a) "Capital infrastructure improvement program" means a public agency program involving the construction of a public service, system, facility, or other public work, including, but not limited to, potable water, wastewater, reclaimed water, stormwater, drainage, streets or roads, intermodal transportation, electric service, gas service, airport services, or seaport services, and services, systems, facilities, or other public works incidental thereto.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 851 Historic Preservation
SPONSOR(S): Proctor and others
TIED BILLS: HB 853 **IDEN./SIM. BILLS:** SB 2404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Tourism & Trade	6 Y, 0 N	Vogt	Hoagland
2) Economic Expansion & Infrastructure Council	12 Y, 0 N	Vogt	Tinker
3) Policy & Budget Council		Martin	Hansen
4)			
5)			

SUMMARY ANALYSIS

HB 851 transfers the management and maintenance of select St. Augustine historical properties through contract to the University of Florida. The bill provides the goals for long-term preservation, and delineates the powers and duties of the university and its direct support organization in relation to the properties. It gives authority for the University of Florida to form a direct support organization (DSO) to support the historic preservation efforts, education programs and initiatives of the university and provides for powers and duties of the DSO. The bill provides that upon execution of a contract between the Board of Trustees of the Internal Improvement Trust Fund and the University of Florida, section 267.171, Florida Statutes (F.S.), authorizing the state lease of the properties to the City of St. Augustine, is repealed.

The bill appears to have an approximate $408,940 recurring impact to state government beginning in fiscal year 2008-09. This amount is computed based on the current formula that allows for roughly $7.00 per square foot for the operation and maintenance of state university educational buildings. These funds would be subject to legislative appropriation to the University of Florida. This bill appears to have a positive fiscal impact on the local government of St. Augustine.

The bill provides an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Background

The state owned historic properties in St. Augustine have been leased by the City of St. Augustine through statute (s. 267.171, F.S.) since 1997. The current lease terms state:

- An initial term of 5 years with an option for renewal for successive periods of 5 years
- An annual rent of $1.00
- The city shall maintain all buildings to promote a better understanding of the history of St. Augustine and an appreciation for historic structures
- The Florida Department of State's Division of Historical Resources (Division) shall transfer to the City a one-time sum of $425,000 to assist in the establishment of a property management program and the maintenance of the properties
- The city shall provide security and protection at its own expense
- The city shall maintain the buildings on the properties in accordance with good preservation practices
- The city shall reimburse the Division for any and all insurance premium incurred by the Division

The State of Florida through the Trustees of the Internal Improvement Trust Fund owns 37 individual parcels of property that contain 32 primary buildings in the St. Augustine Historic district. All of these properties were previously administered by the state funded Historic St. Augustine Preservation Board which was dissolved by the Legislature in 1997.

The buildings are either reconstructions or restored historic structures that portray civilian life in Spanish colonial St. Augustine. An interpretive program based on the properties and collections was developed by the Historic St. Augustine Preservation Board and is still used for educational programs on the properties. The colonial town plan of St. Augustine, which includes the aforementioned property, was designated a National Historic Landmark in 1970[1].

Several other state historic buildings are currently managed by universities. For example, historic properties in Pensacola are managed by the University of West Florida and the Ringling Museum is managed by Florida State University. In these cases, following the year that responsibility was transferred, the universities requested and received operations and maintenance funds from the Board of Governors and the Legislature.

Proposed Changes

HB 851 creates s. 267.1735, F.S., transferring the management of various historic properties in St. Augustine through contract to the University of Florida. The goals for contracting with the university are delineated and include:

[1] http://www.cr.nps.gov/nhl/designations/Lists/FL01.pdf

- ensuring the long-term preservation and interpretation of state-owned historic properties in St. Augustine
- facilitating an educational program at the University of Florida that will be responsive to the state's needs for professionals in historic preservation, archaeology, cultural resource management, cultural tourism, and museum administration

HB 851 also creates s. 267.1736, F.S., giving authority to the University of Florida to form a direct-support organization (DSO). The purpose of the DSO would be to assist the university in carrying out its historic preservation and education purposes for the St. Augustine properties. The bill specifies that the DSO may raise money, submit requests and receive grants for the federal, state or its political subdivisions, private foundations, and individuals. The university and its direct-support organization are also eligible to match state funds in the Trust Fund for University Major Gifts under s. 1011.94, F.S.

The bill provides that upon execution of a contract between the Board of Trustees of the Internal Improvement Trust Fund and the University of Florida, section 267.171, F.S., authorizing the lease of the properties to the City of St. Augustine, is repealed.

Contract Requirements

All existing management contracts are rescinded upon execution of a contract between the Board of Trustees of the Internal Improvement Trust Fund and the University of Florida for the management of the properties. The university is required to use the proceeds derived from the properties for the purpose of advancing historic preservation.

The bill allows for the transfer of ownership and responsibilities for certain property and requires the transfer of other property, funds, records, and personnel to the university. The subsection also requires that the transfer of segregated funds be made in such a way that the relation between program and revenue source is retained pursuant to law.

Direct Support Organization

The bill provides for both broad and specific powers and duties of the university. Included in those is contracting with the direct-support organization in s. 267.1736, F.S., to assist the university in carrying out its historic preservation and education responsibilities. The university or direct support organization shall have the power to engage in any lawful business or activity to establish, maintain and operate the state-owned facilities and properties under contract with the Board of Trustees of the Internal Improvement Fund including:

- renting or leasing for revenue of any land, improved or restored real estate, or personal property directly related to carrying out the purposes for historic preservation
- selling of craft products
- selling of merchandise relating to historical and antiquarian period of St. Augustine
- fix and collect charges for admission to the facilities

The membership of the board of directors of the DSO must include individuals that have professional expertise in historic preservation and history. Membership must also be representative of the areas of the state served by the direct-support organization. The number of the board of directors shall be determined by the president of the university.

The bill delineates how the DSO shall operate under written contract with the university. This includes approval of articles of incorporation and bylaws, submission of an annual budget, and terms of the fiscal year. The bill also provides that the provisions outlined in s.1004.28, F.S., which state DSO requirements, apply to this newly created DSO as well and that the university may adopt policies and rules pursuant to the statute. The bill states that moneys may be held in a separate account in the name of the DSO and may include lease income, admissions income, membership fees, and private donations. The bill provides that an annual financial audit of the DSO is to occur.

The bill also provides several exemptions to the university:

- exemption from the competitive bid requirements when the protection or preservation of historic properties is involved.
- exemption from the surplus property requirements under certain circumstances, particularly when the object is determined to no longer be appropriate for advancing historic preservation. However, any artifacts, documents, or other forms of tangible personal property that have intrinsic historical or archaeological value relating to the history, government, or culture of the state may not be exchanged, sold, or otherwise transferred without prior authorization from the Department of State.

Provides an effective date of July 1, 2007.

B. SECTION DIRECTORY:

Section 1: Creates section 267.1735, F.S. Authorizes the transfer of management by contract of state owned properties in St. Augustine to the University of Florida.

Section 2: Creates section 267.1736, F.S. Authorizes the University of Florida to create a Direct Support Organization to assist the university in carrying out the historic preservation responsibilities.

Section 3: Provides that upon execution of a contract between the Board of Trustees Internal Improvement Trust Fund and the University of Florida, section 267.171, F.S., is repealed. This section leased the historic properties to the City of St. Augustine.

Section 4: Provides an effective date of July, 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: none.

2. Expenditures: Beginning in the fiscal year following execution of the contract between the Board of Trustees of the Internal Improvement Trust Fund and the University of Florida, a potential recurring fiscal impact for operation and maintenance costs will occur. Currently this amount is estimated to be $408,940, but would increase annually by a rate set within the university's budget. Any budget request for additional state funds would require a legislative appropriation. See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The City of St. Augustine will experience a loss in admission fees, proceeds from the gift shop, and rental income in relation to the historic sites.

2. Expenditures: This bill will likely have a positive fiscal impact on the City of St. Augustine. According to the city, the revenues brought in by the sites do not meet the costs of maintenance and operation. The city has been using funds from its general revenue sources for maintenance of these historic sites over the past 10 years.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: none.

D. FISCAL COMMENTS: The bill appears to have an approximate $408,940 potential recurring impact on state government beginning the fiscal year after the contract is executed. This amount is computed based on the current formula that allows for roughly $7.00 per square foot for the operation and maintenance of state university educational facilities. The buildings contain approximately 58,420 square feet of space that can be used for the educational mission of the university thus making them eligible for the operation and maintenance funds. Any additional state funds needed by the University of Florida would be subject to legislative appropriation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to historic preservation; creating s. 267.1735, F.S.; providing goals for contracting with the University of Florida for management of certain state-owned properties; requiring agreement of all parties to contracts for management of such properties and the University of Florida; rescinding existing contracts upon execution of contract between the University of Florida and the Board of Trustees of the Internal Improvement Trust Fund; specifying use of proceeds derived from the management of such properties; authorizing transfer and ownership of certain artifacts, documents, and properties to the university; providing for transfer of records, property, and funds to the university; specifying certain powers and duties of the University of Florida; providing that the university may contract with its direct-support organization to perform all acts necessary to assist the university in carrying out its historic preservation and historic education responsibilities; delineating certain powers; authorizing contracting without competitive bidding under certain circumstances; providing eligibility to match state funds in the Trust Fund for University Major Gifts; creating s. 267.1736, F.S.; requiring the authorization of a direct-support organization to assist the university in historic preservation and historic preservation education purposes and responsibilities; providing purposes and duties of the direct-support organization; providing for a board of directors;

providing membership requirements; delineating contract and other governance requirements; repealing s. 267.171, F.S., relating to contract with the City of St. Augustine for the management of certain state-owned properties, contingent on execution of a specified contract; providing an effective date.

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

Section 1. Section 267.1735, Florida Statutes, is created to read:

267.1735 Historic preservation in St. Augustine; goals; contracts for historic preservation; powers and duties.--

(1) The goal for contracting with the University of Florida is to ensure long-term preservation and interpretation of state-owned historic properties in St. Augustine while facilitating an educational program at the University of Florida that will be responsive to the state's needs for professionals in historic preservation, archaeology, cultural resource management, cultural tourism, and museum administration and will help meet needs of St. Augustine and the state through educational internships and practicums.

(2)(a) Upon agreement by all parties to the contracts for the management of the various state-owned properties presently subleased to and managed by the City of St. Augustine and by the University of Florida to assume the management of those properties, all existing management contracts shall be rescinded upon execution of a contract between the Board of Trustees of

the Internal Improvement Trust Fund and the University of Florida for the management of those properties.

(b) The contract shall provide that the University of Florida shall use all proceeds derived from the management of these state-owned properties for the purpose of advancing historic preservation.

(3) The Board of Trustees of the Internal Improvement Trust Fund may transfer ownership and responsibility of any artifacts, documents, equipment, and other forms of tangible personal property to the University of Florida to assist the university in the transition of the management of the state-owned properties. All records, property, and unexpended balances of appropriations, allocations, or other funds associated with the state-owned properties shall be transferred to the University of Florida to be used for its historic preservation activities and responsibilities as provided in the contract with the Board of Trustees of the Internal Improvement Trust Fund. The transfer of segregated funds must be made in such a manner that the relation between program and revenue source as provided by law is retained.

(4)(a) The University of Florida is the governing body for the management and maintenance of state-owned properties contracted by this section and shall exercise those powers delegated to it by contract as well as perform all lawful acts necessary, convenient, and incident to the effectuating of its function and purpose under this section and s. 267.1736. The University of Florida may contract with its direct-support organization described in s. 267.1736 to perform all acts that

are lawful and permitted for not-for-profit corporations under chapter 617 in assisting the university in carrying out its historic preservation and historic preservation education responsibilities.

(b) The university or its direct-support organization, if permitted in its contract with the university, shall have the power to engage in any lawful business or activity to establish, maintain, and operate the state-owned facilities and properties under contract with the Board of Trustees of the Internal Improvement Trust Fund, including, but not limited to:

1. The renting or leasing for revenue of any land, improved or restored real estate, or personal property directly related to carrying out the purposes for historic preservation under terms and conditions of the contract with the Board of Trustees of the Internal Improvement Trust Fund and deemed by the university to be in the best interest of the state.

2. The selling of craft products created through the operation and demonstration of historical museums, craft shops, and other facilities.

3. The limited selling of merchandise relating to the historical and antiquarian period of St. Augustine and its surrounding territory and the historical period of East Florida from the Apalachicola River to the eastern boundaries of the state.

(c) The university or its direct-support organization, if permitted in its contract with the university, shall have the authority to:

1. Enter into agreements to accept credit card payments as compensation and establish accounts in credit card banks for the deposit of credit card sales invoices.

2. Fix and collect charges for admission to any of the state-owned facilities under contract with the Board of Trustees of the Internal Improvement Trust Fund.

3. Permit the acceptance of tour vouchers issued by tour organizations or travel agents for payment of admissions.

4. Adopt and enforce reasonable rules to govern the conduct of the visiting public.

(5) Notwithstanding the provisions of s. 287.057, the University of Florida or its direct-support organization may enter into contracts or agreements with or without competitive bidding, in its discretion, for the protection or preservation of historic properties.

(6) Notwithstanding s. 273.055, the University of Florida may exchange, sell, or otherwise transfer any artifact, document, equipment, and other form of tangible personal property if its direct-support organization recommends such exchange, sale, or transfer to the president of the university and if it is determined that the object is no longer appropriate for the purpose of advancing historic preservation. However, any artifacts, documents, or other forms of tangible personal property that have intrinsic historical or archaeological value relating to the history, government, or culture of the state may not be exchanged, sold, or otherwise transferred without prior authorization from the Department of State.

(7) Notwithstanding any other provision of law, the University of Florida and its direct-support organization are eligible to match state funds in the Trust Fund for University Major Gifts established in s. 1011.94.

Section 2. Section 267.1736, Florida Statutes, is created to read:

267.1736 Direct-support organization.--

(1) The University of Florida shall authorize a direct-support organization to assist the university in carrying out its dual historic preservation and historic preservation education purposes and responsibilities for the City of St. Augustine, St. Johns County, and the state under s. 267.1735 by raising money; submitting requests for and receiving grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals; receiving, holding, investing, and administering property; and making expenditures to or for the benefit of the university. The sole purpose for the direct-support organization is to support the historic preservation efforts and historic preservation education programs and initiatives of the university. Such a direct-support organization is an organization that is:

(a) Incorporated under the provisions of chapter 617 and approved by the Department of State as a Florida corporation not for profit;

(b) Organized and operated to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the university; and

(c) Approved by the university to be operating for the benefit of and in a manner consistent with the goals of the university and in the best interest of the state.

(2) The number of the board of directors of the direct-support organization shall be determined by the president of the university. Membership on the board of directors of the direct-support organization shall include the professional expertise needed to ensure that the university is meeting its dual purposes of historic preservation and historic preservation education. Such membership shall include, but not be limited to, a licensed architect who has expertise in historic preservation and architectural history, a professional historian in the field of American history, and a professional archaeologist. All board members must have demonstrated interest in the preservation of Florida's historical and archaeological heritage. Membership on the board of directors must be representative of the areas of the state served by the direct-support organization and the university in its preservation efforts. The president of the university, or the president's designee, shall serve as a member of the board of directors.

(3) The direct-support organization shall operate under written contract with the university. The contract must provide for:

(a) Approval of the articles of incorporation and bylaws of the direct-support organization by the university.

(b) Submission of an annual budget for the approval of the university. The budget must comply with rules adopted by the university.

(c) Certification by the university that the direct-support organization is complying with the terms of the contract and in a manner consistent with the historic preservation goals and purposes of the university and in the best interest of the state. Such certification must be made annually by the university and reported in the official minutes of a meeting of the university.

(d) The reversion to the university, or the state if the university ceases to exist, of moneys and property held in trust by the direct-support organization for the benefit of the university if the direct-support organization is no longer approved to operate for the university or if the university ceases to exist.

(e) The fiscal year of the direct-support organization, which must begin July 1 of each year and end June 30 of the following year.

(f) The disclosure of material provisions of the contract and the distinction between the University of Florida and the direct-support organization to donors of gifts, contributions, or bequests, as well as on all promotional and fundraising publications.

(4) The university may authorize a direct-support organization to use its property (except money), facilities, and personal services, subject to the provisions of this section and s. 1004.28. A direct-support organization that does not provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin may not use the property, facilities, or personal services of the

university. For the purposes of this subsection, the term "personal services" includes full-time personnel and part-time personnel as well as payroll processing.

(5) The university shall establish policies and may adopt rules pursuant to s. 1004.28 prescribing the procedures by which the direct-support organization is governed and any conditions with which a direct-support organization must comply to use property, facilities, or personal services of the university.

(6) Any moneys may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the contract with the university. Such moneys may include lease income, admissions income, membership fees, private donations, income derived from fundraising activities, and grants applied for and received by the direct-support organization.

(7) The direct-support organization shall provide for an annual financial audit in accordance with s. 1004.28.

(8) Provisions governing direct-support organizations in s. 1004.28 and not provided in this section shall apply to the direct-support organization.

Section 3. Upon execution of a contract between the Board of Trustees of the Internal Improvement Trust Fund and the University of Florida for the management of state-owned properties currently managed by the City of St. Augustine under contract with the Department of State, section 267.171, Florida Statutes, is repealed.

Section 4. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 853 Pub. Rec./St. Augustine Historic Preservation Donors
SPONSOR(S): Proctor
TIED BILLS: HB 851 **IDEN./SIM. BILLS:** SB 2406

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Tourism & Trade	6 Y, 0 N	Vogt	Hoagland
2) Economic Expansion & Infrastructure Council	13 Y, 0 N	Vogt	Tinker
3) Policy & Budget Council		Martin	Hansen
4)			
5)			

SUMMARY ANALYSIS

The bill creates a public records exemption for identifying information of persons making a donation to the direct-support organization of the University of Florida for the purpose of supporting the educational and historic preservation of state-owned historic properties in St. Augustine. This anonymity must also be maintained in any publication concerning the direct-support organization.

This bill provides for future review and repeal of the exemption on October 2, 2012, and provides a statement of public necessity.

The bill does not appear to have an impact on state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited Government - This bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level. Section (24)(a), Art. I of the State Constitution provides that:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created there under; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law[1] also specifies conditions under which the public must have access to governmental records. Section 119.011(11), F.S., defines the term "public records" to include:

> all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition of public records to include all materials made or received by an agency in connection with official business which are used "to perpetuate, communicate, or formalize knowledge."[2] Unless the Legislature makes these materials exempt, they are open for public inspection, regardless of whether they are in final form.[3]

Under s. 24(c), Art. I of the State Constitution, the Legislature may provide for the exemption of records from the public records requirements provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

The Open Government Sunset Review Act, s. 119.15, F.S., provides for the review, repeal, and reenactment of an exemption. A new exemption is repealed on October 2nd in the fifth year after enactment, unless the exemption is reenacted by the Legislature. An exemption may be created or maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose.

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[1] Chapter 119, F.S.
[2] *Shevin v. Byron, Harless, Schaffer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[3] *See Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

Proposed Changes

The bill creates a public records exemption to allow to remain anonymous, if they wish, donors and prospective donors to the direct-support organization of the University of Florida who support the educational and historic preservation of state-owned historic properties in St. Augustine. The bill provides that the public records exemption is necessary because the release of information identifying donors will adversely affect the direct-support organization's ability to further the state goal of maintaining, preserving, promoting and advancing historic preservation of these state owned properties. The bill states that the exemption will allow the DSO to administer the promotion, preservation, and public education efforts effectively and efficiently.

This bill takes effect on the date that HB 851 or similar legislation takes effect. The public records exemption will automatically repeal on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

C. SECTION DIRECTORY:

Section 1: amends s. 267.1736, F.S., as created by HB 851, 2007 Regular session, to create a public records exemption for identifying information of persons making a donation to the direct-support organization of the University of Florida to support the educational and historic preservation of state-owned historic properties in St. Augustine. This section also provides for review and future repeal of the public records exemption on October 2, 2012.

Section 2: provides a statement of public necessity.

Section 3: provides an effective date of the same date that HB 851, or similar legislation takes effect.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested

record to determine if a public records exemption prohibits release of the record. There is likely no fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

3. Other:

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; amending s. 267.1736, F.S.; providing an exemption from public records requirements for certain donor and prospective donor information involving state-owned properties in a historic district in the City of St. Augustine; providing for future legislative review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (9) is added to section 267.1736, Florida Statutes, as created by HB 851, 2007 Regular Session, to read:

267.1736 Direct-support organization.--

(9)(a) The identity of a donor or prospective donor to the direct-support organization who desires to remain anonymous, and all information identifying such donor or prospective donor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; and that anonymity must be maintained in the auditor's report. The university and the Auditor General shall have access to all records of the direct-support organization upon request.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds a public necessity in protecting the identity of donors and prospective donors to the direct-support organization authorized to assist the University of Florida in carrying out its dual historic preservation and historic preservation education purposes and responsibilities for the various state-owned properties within the historic district currently subleased by the Department of State to the City of St. Augustine for management. This protection will enable the direct-support organization to effectively and efficiently administer the promotion, preservation, and public education efforts related to these state-owned properties. The purpose of the exemption is to honor the request for anonymity of donors or prospective donors to the not-for-profit corporation and thereby encourage donations from individuals and entities that might otherwise decline to contribute. Without the exemption, potential donors may be dissuaded from contributing to the direct-support organization because such donors fear being harmed by the release of sensitive financial information. Difficulty in soliciting donations would hamper the ability of the direct-support organization to carry out its marketing, promotion, education, and preservation activities and would hinder fulfillment of the goal of the state in maintaining these state-owned properties and in preserving, promoting, and advancing historic preservation of these properties through funding by both the public sector and the private sector.

Section 3. This act shall take effect on the same date that HB 851 or similar legislation takes effect, if such

legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1125 Mortgage Brokering and Lending
SPONSOR(S): Jobs & Entrepreneurship Council and Richter
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Financial Institutions	6 Y, 0 N	Holt	Haug
2) Jobs & Entrepreneurship Council	10 Y, 0 N, As CS	Holt	Thorn
3) Policy & Budget Council		Martin	Hansen
4)			
5)			

SUMMARY ANALYSIS

The bill creates a comprehensive consumer protection package relating to mortgages. Bill provisions provide that mortgage brokers and lenders supply to borrowers detailed disclosures for various loan products. The bill requires establishment of at least 4 hours continuation education that specifically addresses Chapter 494, Florida Statutes (F.S.), and corresponding rules. The bill also authorizes The Office of Financial Regulation (OFR) within the Department of Financial Services (DFS) to take enforcement action against those mortgage brokers and mortgage lenders who violate the federal Real Estate Settlement Procedures Act or the federal Truth-in-Lending Act.

The bill creates the Florida Residential Mortgage Fraud Act. The bill provisions address mortgage fraud by providing another tool for prosecuting those who commit this crime. The bill provides definitions of mortgage fraud. There are also included in the bill provisions for venue and penalty.

On February 16, 2007, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

The annual increase in Regulatory Trust Fund revenues that may result from this bill are estimated to be $150,000. Any cost increases required will be minimal, and the OFR will be able to absorb them within current resources.

The act takes effect October 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill requires mortgage brokers and lenders to provide borrowers with detailed disclosures regarding certain loan products. Provisions in the bill require borrowers to be informed about the risks associated with these loan products as well as any material changes in their terms. Moreover the burden of proving that certain notice requirements have been provided to the borrower is incumbent upon the licensee.

Protects individual liberty: The bill provides additional enforcement and investigative tools for prosecuting mortgage fraud.

Provide limited government – The bill increases the enforcement authority of OFR against mortgage brokers and mortgage lenders who violate the federal Real Estate Settlement Procedures Act or the federal Truth-in-Lending Act. Additionally, OFR will be authorized to take action against the principal representative of a lender based on the actions of the lender's associates or employees. Rulemaking authority is also granted to the Financial Services Commission (Commission) to implement the provisions of the bill.

B. EFFECT OF PROPOSED CHANGES:

Present Situation Sections 1-12

According to OFR, there is no requirement under Chapter 494, F.S., for lenders or mortgage brokers to promptly notify borrowers about subsequent changes in the terms of certain variable rate loan products prior to closing. In some cases, borrowers learn of these changes at closing. Moreover, OFR lacks the authority to enforce federal laws and regulations governing such lending practices.

Likewise, there is no provision in current law that allows the OFR to impose a fee if an applicant requests to review his or her mortgage broker test. When OFR has contracted with a vendor to administer the mortgage broker test, the vendor, if requested by an applicant, imposes a test review fee for an applicant to review his or her test. In a scenario where a review fee is charged by a vendor, OFR has been absorbing that cost.

Proposed Changes

Sections 1-4 of the bill provide amendments to Part I, Chapter 494, F.S., General Provisions.

Section 1: The bill amends s. 494.001, F.S., relating to definitions.

The bill revises the definition of the term "act as a loan originator." The definition specifies the acts that are comprised in the definition. It includes the act of assisting any licensed or exempt entity in negotiating the making of a mortgage loan, including working with a licensed or exempt entity to structure a loan or discussing the terms and conditions necessary for the delivery of the loan product. The revised definition is intended to further clarify that an employee of a licensed mortgage lender or correspondent lender who acts as a wholesale account representative is considered a loan originator. By revising the definition, these individuals will also be required to complete 14 hours of continuing education every two years, and the lender will be required to list them on its quarterly report filed with OFR pursuant to s. 494.0067(9), F.S.

The bill adds a definition for the term "mortgage loan application", which is defined as: "a submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a mortgage loan."

A definition for the term "mortgage brokerage fee" is added which is defined as: "the total compensation to be received by a mortgage brokerage business for acting as a mortgage broker."

Also, the bill adds a definition for the term "business day" which is defined as: "any calendar day except Sunday or a legal holiday."

Section 2: The bill amends s. 494.0014, F.S., relating to cease and desist orders; administrative fines; and refund orders.

This section is amended to allow OFR to impose a fine upon any person who makes or brokers a loan, or a mortgage business school for violations of Part I of Chapter 494, F.S., relating to its general provisions. Currently, OFR has the authority to impose fines under Parts II and III of Chapter 494, F.S., relating to the regulation of mortgage brokers and mortgage lenders, respectively. The bill will broaden OFR authority to impose fines against perpetrators that also violate the general provisions of the chapter.

Section 3: The bill amends s. 494.0029, F.S., relating to mortgage business schools.

In addition to the remedies set forth in 494.0014, F.S., the bill authorizes OFR to revoke, suspend, or place on probation the permit of a mortgage business school that fails to meet the requirements of this section.

Further, permitted mortgage business schools must conduct classes on a 50-minute classroom hour basis, and they must develop procedures to confirm the identity of each attending student in accordance with applicable rules and the chapter. This provision ensures that all students are receiving the same number of instruction hours.

Section 4: The bill amends s. 494.00295, F.S., relating to professional continuing education.

Current law requires that every two years mortgage brokers and mortgage lenders, principal representatives and loan originators for a mortgage lender, as well as correspondent mortgage lenders, successfully complete 14 hours of professional continuation education, pursuant to s. 494.0065, F.S.[1]

Although the instructional materials provided in these courses address the requirements of Chapter 494, F.S., there is no minimum number of hours that specifically speaks to all of the chapter provisions and their corresponding rules. Of the 14 hours of continuing education, the bill requires that at least 4 hours address the chapter and the rules.

The bill further amends the section to reduce the time period for the waiver provision that is applicable to the continuing education requirements for mortgage brokers' first time license renewal. Currently, s. 494.00295, F.S., reads in part:

> The requirements for professional continuing education for a principal representative are waived for the license renewal of a mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to s. 494.0065 for the biennial license period immediately following the period in which the principal representative completed the 24 hours of classroom education and passed a written test in order to qualify to be a principal representative.

The bill would limit the waiver to those brokers who have completed the 24-hour pre-licensure course within 90 days of the biennial renewal period.

[1] 494.0065 Saving clause

The bill also authorizes OFR to conduct professional continuing education programs. Presently, the statute lists permitted mortgage business schools, or entities specifically exempted from permitting as mortgage business schools (e.g., community colleges, universities, etc.) as the only entities authorized to conduct the programs.

Moreover, the bill creates in paragraph (a) of subsection (3) requirements for electronically transmitted courses (i.e., courses taken via the Internet). All electronically transmitted courses shall require that the time spent attending such courses is equal to the number of qualifying hours awarded a participant attending courses at a permitted facility.

Before a participant receives a course completion certificate, the course provider shall ensure the participant: 1) logged the required hours for a module; 2) completed a comprehensive test on the particular module; and 3) correctly answered all the test questions.

In paragraph (b) of subsection (3), additional requirements are imposed by the bill upon distance education course participants. that providers for distance education courses (i.e., course taken via the mail). The bill requires that the course participants successfully complete a test that covers the course content. The test must consist of at least 100 questions, and the participant must successfully answer at least 75% of the test questions in order to be awarded a certificate of course completion. There is a prohibition provision to keep the course provider from providing the test answers to course participants.

The bill clarifies that the Commission shall adopt rules pursuant to ss. 120.536(1)[2] and 120.54[3], F.S., to administer this section.

Sections 5-8 of the bill provide amendments to Part II, Chapter 494, F.S., Mortgage Brokers.

Section 5: The bill amends s. 494.0033, F.S., relating to mortgage broker's license.

The bill requires a person seeking a mortgage brokers license to have a high school diploma or its equivalent. Currently, this is not a requirement for licensure.

The bill authorizes the Commission to adopt rules prescribing an additional fee that may not exceed $50 for applicants to review their graded mortgage broker test. Rulemaking is also provided to the Commission regarding the administration of the testing process. However, OFR plans to contract with a vendor to administer the mortgage broker test. According to OFR, the collection of a "review fee" is a standard provision in most vendor contracts.

Section 6: The bill amends s. 494.0038, F.S., relating to mortgage broker disclosures.

There are extensive changes to this section. The following paragraphs summarizes these changes: Subsection (1): When a mortgage brokerage business (business), in the presence of the borrower, has a lender to accept the borrower's mortgage loan application, the bill requires that within 3 days of the acceptance, a written, executed mortgage brokerage agreement, between the business and the borrower, is necessary for the business to receive a brokerage fee. Moreover, if the borrower is not present during the transaction between the business and the acceptance of the application, the bill states that the "licensee" shall forward the agreement to the borrower within the same 3-day

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[2] 120.536 Rulemaking authority; repeal; challenge.—
(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

[3] 120.54 Rulemaking.—

acceptance window. Additionally, the bill states the "licensee" bears the burden of proving the borrower received and approved the agreement.

In the mortgage brokerage agreement, the bill requires other disclosures be made in its terms that include: 1) the maximum dollar amount the business receives from the lender. The Commission may prescribe rules regarding the acceptable form this disclosure assumes. 2) The nature of the relationship between the business and the lender. 3) A description of how compensation is paid by the lender. 4) A description of how the interest rate affects the compensation paid to the business. Currently, fees are disclosed in terms such as range of points (percentages), instead of dollar amounts. Disclosing the fees in terms of dollars is intended to be more informative for consumers.

Furthermore, unless a loan application fee or other third party fee is accepted by the mortgage brokerage business, the business is not required to disclose to the borrower the exact amount of the fee received from the lender until closing. OFR has shared with staff that it has seen a variety of fees on mortgage brokerage agreements and/or the closing statements that are payable to the mortgage brokerage business, but they have not previously been disclosed as such fees to the borrower (e.g., processing fees, handling fees, loan origination fees, discount fees, etc.). Provisions are included in the bill that require the exact amounts of any payments from the lender to the business be disclosed to the borrower within 3 business days of the business becoming aware of those amounts, or no later than 3 business days before the execution of the closing or settlement documents. The "licensee" bears the burden of proving such notification was provided to the borrower.

Likewise, the bill requires a good faith estimate be signed and dated by the borrower. However, the estimate does not replace the written mortgage brokerage agreement. Clarification is provided in the bill that the estimate is to disclose the total amount of each of the fees that the borrower may reasonably expect to pay if the loan is closed, including, but not limited to, fees earned by the mortgage brokerage business, lender fees, third party fees, and official fees. Additionally, recipient identification of all fees or payments charged the borrower is to be included in the estimate. Those fees may be disclosed in generic terms, such as paid to lender, appraiser, or title company. However, an exception to use of generic terms appears to apply to those fees received by the mortgage brokerage business. Current law provides for inclusion in the terms and conditions how one obtains a refund of such fees, if any.

Not only are disclosures required at the time an adjustable rate mortgage is offered to the borrower, but also whenever the terms of the adjustable loan materially change prior to closing. Prescribed format requirements for these disclosures are also provided in the bill. Similarly, the "licensee" bears the burden of proving such disclosure was provided to the borrower. It is unclear what constitutes a material change in the loan terms.

Section 7: The bill amends s. 494.004, F.S., relating to requirements of licensees.

The bill requires that in every mortgage loan transaction, licensees under ss. 494.003-494.0043, F.S., shall notify a borrower when material changes to the terms of a previously offered loan occurs. This notification must be provided to the borrower within 3 business days after the licensee is made aware of the changes, but not less than 3 business days before closing. The licensee bears the burden of proving the notification was provided and accepted by the borrower.

In addition, the bill allows the borrower to waive notice in writing of material changes in the loan terms if the borrower determines a loan is needed to meet a bona fide personal emergency and the notice requirement would delay the closing. An imminent foreclosure during the 3-day period prior to closing constitutes a bona fide personal emergency. Further, a description of a borrower's waiver in provided in the bill.

Section 8: The bill amends s. 494.0041, F.S., relating to administrative penalties and fines; license violations.

The bill authorizes the OFR to enforce the provisions of the federal Real Estate Procedures Act and federal Truth in Lending Act, and any regulations adopted under those acts. Currently, the OFR lacks the authority to enforce these federal regulations.

Sections 9-12 of the bill provide amendments to Part III, Chapter 494, F.S., Lenders

Section 9: The bill amends s. 494.0064, F.S., relating to renewal of mortgage lender's license; branch office license renewal.

As part of the license renewal process, lenders must certify that they meet the minimum net worth requirements under the chapter. Currently, such certification is not required.

Section 10: The bill amends s. 494.0067, F.S., relating to requirements of licensees under ss. 494.006-494.007, F.S.

As provided also in section 6 of the bill, the good faith estimate must identify the recipient of all fees and payments charged to the borrower. Those fees may be disclosed in generic terms, such as paid to lender, appraiser, or title company. However, an exception to the use of generic terms appears to apply to those fees received by the mortgage brokerage business. Current law provides for inclusion in the terms and conditions how one obtains a refund of such fees, if any. The licensee bears the burden of proving such disclosures were provided to the borrower.

Not only are disclosure required at the time an adjustable rate mortgage is offered to the borrower, but also whenever the terms of the adjustable loan materially change prior to closing. Prescribed format requirements for these disclosures are also included in the bill. Similarly, the "licensee" bears the burden of proving such disclosure was provided to the borrower. It is unclear what constitutes a material change in the loan terms.

As provided also in section 7 of the bill, the bill provisions require that in every mortgage loan transaction, licensees under ss. 494.003-494.0043, F.S., shall notify a borrower when material changes to the terms of a previously offered loan occurs. This notification must be provided to the borrower within 3 business days after the licensee is made aware of the changes, but not less than 3 business days before closing. The licensee bears the burden of proving the notification was provided and accepted by the borrower.

In addition, the bill allows the borrower to waive notice in writing of material changes in the loan terms if the borrower determines a loan is needed to meet a bona fide personal emergency and the notice requirement would delay the closing. An imminent foreclosure during the 3-day period prior to closing constitutes a bona fide personal emergency. A description of a borrower's waiver in provided in the bill.

Section 11: The bill amends s. 494.0072, F.S., relating to administrative penalties and fines; license violations.

The OFR is authorized by the bill to enforce the provisions of the federal Real Estate Procedures Act and federal Truth in Lending Act, and any regulations adopted under those acts. Currently, the OFR lacks the authority to enforce these federal regulations.

Authorization is also given to the OFR to take disciplinary action against a principal representative of a mortgage lender or correspondent lender based on the actions of the lender's associates or employees. The principal representative is subject to suspension or revocation for an associate or employee's actions if there is a pattern of repeated violations by associates or employees or if the principal broker or principal representative had knowledge of the violations.

Section 12: The bill amends s. 494.0073, F.S., relating to mortgage lender or correspondent mortgage lender when acting as a mortgage brokerage business.

The bill subjects a mortgage lender or a correspondent lender, when acting as a mortgage brokerage business, to the provision of new subsection 494.004(8), F.S., which requires a borrower to be notified of any material changes in the loan terms within 3 business days after the specific entity is made aware of such changes, but not less than three business days before closing.

Section 13:

Present Situation

This section addresses mortgage fraud which is one of the most proliferating of white collar, real property crimes occurring in the U.S. The crime is defined as a material misstatement, misrepresentation, or omissions relied upon by an underwriter or lender to fund, to purchase, or to insure a loan.[4] According to the Federal Bureau of Investigations' (FBI) statistics, the number of reported mortgage fraud cases more than tripled from 6,890 in 2003 to 21,944 in 2005, based on Suspicious Activity Reports that are required to be filed by financial institutions and certain other entities with the Financial Crimes Enforcement Network of the U.S. Department of the Treasury.

The extent or dollar amount of this type of fraud is unknown. However, the dollar amount potentially exposed to mortgage fraud, according to the Mortgage Bankers' Association, was estimated to have reached $2.8 trillion in 2004 by the volume of mortgage originations. It is also estimated that up to 10 percent of all residential loan applications have some form of material misrepresentation, both inadvertent and malicious.[5]

There are specific factors that may be attributable to this trend. In recent years, there has been a dramatic growth in the housing market accelerated by low interest rates. This area is vulnerable for exploitation as credit is strong, profits are high, and technology is enhancing criminals' ability to access financial institution data.

Mortgage fraud is divided into two types: fraud for property and fraud for profit. Fraud for property is a misrepresentation made by a borrower or other party in order to qualify for a mortgage loan. The applicant may alter or falsify tax returns or misrepresent income or expenses. Generally, the buyer intends to repay the loan. The FBI estimates that this type of fraud accounts for 20 percent of all the fraud.

Fraud for profit generally involves multiple loan transactions with several financial institutions involved. Parties to these schemes, generally devise a transaction by using fictitious, forged, or altered documents, fraudulently transferring deeds, grossly inflating the value of purchased homes, and submitting fraudulent escrow letters or other documents to mortgage companies. This type of fraud may involve numerous gross misrepresentations regarding the true identity of the buyer or seller, income, assets, collateral, and employment. Various documents relating to title insurance, which confirms the stated owner has title and right to transfer the property, can be altered to change the financial institution lender or omit prior liens. Often, the borrower assumes the identity of another person (straw buyer). The FBI estimates that 80 percent of all mortgage fraud involves collaboration or collusion by industry insiders.

Residential Mortgage Fraud in Florida

In recent years, according to information provided to staff, the investigations, arrests, and prosecutions of mortgage cases have dramatically increased. According to the Miami-Dade Police, the number of reported mortgage and real estate fraud cases increased from 16 in 2003 to 78 in 2006. The FBI reported 1,191 cases of real estate and mortgage fraud cases in Miami, thereby ranking Miami fourth highest in the top ten spots for fraud for the quarter ending September 30, 2006. Los Angeles was ranked first with 2,293 reported cases.

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[4] 1 Federal Bureau of Investigations website: http://www.fbi.gov/page2/dec05/operationquickflip121405.htm.

[5] The Detection, Investigation, and Deterrence of Mortgage Loan Fraud Involving Third Parties: White Paper, Federal Financial Institutions Examination Council, February 2005.

An example case occurred in February 2006; the Florida Office of the Statewide Prosecutor and the Florida Department of Law Enforcement (FDLE) arrested several persons for allegedly conducting mortgage fraud. The mortgage broker completed the loan applications, which included false credit information of the borrowers. A title company approved the transactions with knowledge of false information being filed. Six individuals were charged with participation in an enterprise through a pattern of racketeering activity, racketeer influence and corrupt action (RICO) and conspiracy to commit RICO, under ch. 895, F.S., both of which are first–degree felonies. These types of collaborative activities have resulted in fraud against mortgage lenders exceeding $3.7 million.

Florida Regulation of Mortgage Brokerage and Lender Transactions

The Financial Services Commission (Commission) consists of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. The Commission is an independent entity housed within the Department of Financial Services. The Office of Financial Regulation is one of the entities under Commission jurisdiction.

The Office of Financial Regulation (OFR) is responsible for all activities of the Commission relating to the regulation of financial institutions, mortgage brokers and lenders, finance companies, securities industries, and money transmitters.[6] Mortgage brokers, lenders, and transactions are regulated by the OFR pursuant to chapter 494, F.S., the Mortgage Brokerage and Lending Act. The OFR also is charged with enforcing the Florida Financial Institutions Code, chs. 655-667, F.S.

Mortgage brokerage businesses, lenders, and brokers must apply to the OFR and meet certain licensing standards before they may offer their services to the public. Monetary fines and civil sanctions can be levied if a person or company is discovered to be operating in Florida without being exempt or properly licensed. These entities are subject to periodic examinations to ensure compliance with the laws.

Section 494.0025, F.S., provides that it is unlawful for any person, engaging in a mortgage transaction, to knowingly or willingly employ any scheme to defraud, obtain property by fraud, willful misrepresentation, and to falsify, conceal or cover up a material fact, make any false or fraudulent statement or representation or make or use any false writing or document.

Section 494.0018, F.S., provides that any person who knowingly violates s. 494.0025, F.S., is guilty of a felony of the third degree. If the value of the land and property exceeds $50,000 and involves five or more victims, then it is a felony of the first degree.

Section 655.0322(5) and (6), F.S., provides criminal penalties for fraudulent transactions involving land or property for the purpose of obtaining a loan. Any person who makes any false statement or willfully overvalues any land or property for the purpose of influencing a financial institution or any other entity authorized to extend credit is guilty of a felony in the second degree. Additionally, any person who knowingly executes or attempts to execute a scheme to defraud a financial institution or other entity authorized to extend credit by means of false representations or fraudulent representations is guilty of a felony of the second degree.

Section 494.001 Definitions.—As used in ss. 494.001-494.0077, F.S., the term: "Person" means an individual, partnership, corporation, association, or other group, however organized.

Prosecution of Residential Mortgage Fraud in Florida

According to information provided to staff, prosecutors in South Florida utilize various criminal provisions to prosecute residential mortgage, including ss. 494.0018, 812.014, 817.03, 817.034(4)(a)(1), 817.54, F.S., and ch. 895, F.S.

Section 812.014, F.S., provides in part that:

[6] Section 20.121(3), F.S.

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
(a) Deprive the other person of a right to the property or a benefit from the property.
(b) Appropriate the property to his or her use or to the use of any person not entitled to the use of the property.

(2)(a)1. If the property stolen is valued at $100,000 or more or is a semitrailer that was deployed by a law enforcement officer;

the offender commits grand theft in the first degree, punishable as a felony of the first degree, as provided in s. 775.082, s. 775.083, or s. 775.084. . .

(b)1. If the property stolen is valued at $20,000 or more, but less than $100,000;

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

Pursuant to s. 817.03, F.S.: "Making false statement to obtain property or credit.—Any person who shall make or cause to be made any written false statement, in writing, relating to his or her financial condition, assets or liabilities, or relating to the financial condition, assets or liabilities of any firm or corporation in which such person has a financial interest, or for whom he or she is acting, with a fraudulent intent of obtaining credit, goods, money or other property, and shall by such false statement obtain credit, goods, money or other property, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083."

Section 817.34, F.S., "False entries and statements by investment companies offering stock or security for sale" provides that:

Any person who shall knowingly subscribe to or make or cause to be made, any false statements or false entry in any book of any investment company or exhibit any false paper with the intention of deceiving any person authorized to examine into the affairs of any investment company, or shall make, utter or publish any false statement of the financial condition of any investment company, or the stock, bonds or other securities by it offered for sale, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 817.54, F.S., "Obtaining of mortgage, mortgage note, promissory note, etc., by false representation" provides that:

Any person who, with intent to defraud, obtains any mortgage, mortgage note, promissory note or other instrument evidencing a debt from any person or obtains the signature of any person to any mortgage, mortgage note, promissory note or other instrument evidencing a debt by color or aid of fraudulent or false representation or pretenses, or obtains the signature of any person to a mortgage, mortgage note, promissory note, or other instrument evidencing a debt, the false making whereof would be punishable as forgery, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Chapter 895, F.S., is the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. Racketeering activity means to commit, to conspire to commit, or to solicit another person to commit any crime that is chargeable, as delineated in s. 895.02, F.S. This list includes ch. 812, F.S., relating to theft and ch. 817, F.S., relating to fraudulent practices. Section 895.03, F.S., provides that it is unlawful

for any person who with criminal intent receives any proceeds derived from a pattern of racketeering activity Section 895.04, F.S., provides that any person convicted of engaging in activity that is a violation of s. 895.03, F.S., is guilty of a felony of the first degree.

Proposed Changes
Section 13: The bill creates 817.545, F.S. This section may be cited as the "Florida Mortgage Fraud Act."

For the purposes of subsection (2) of s. 817.545, F.S., the bill provides that the term:

"mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan including, but not limited to, solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to mortgages, deeds, surveys, inspection reports, uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, credit reports, bank statements, tax returns, and payroll stubs; and any required disclosures.

Subsection (3) of the new section provides that:

A person commits the offense of mortgage fraud if, with the intent to defraud, the person knowingly:

(a) Makes any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that the misstatement, misrepresentation, or omission will be relied on by a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process; provided however that omissions on a loan application regarding employment, income or assets for a loan that does not require this information shall not be a material omission for purposes of this subsection.

(b) Uses or facilitates the use of any material misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that the material misstatement, misrepresentation, or omission will be relied on by a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process; provided however that omissions on a loan application regarding employment, income or assets for a loan that does not require this information shall not be a material omission for purposes of this subsection.

(c) Receives any proceeds or any other funds in connection with the mortgage lending process that the person knew resulted from a violation of paragraph (a) or paragraph (b).

(d) Files or causes to be filed with the clerk of the circuit court for any county of this state a mortgage lending process document which contains a material misstatement, misrepresentation, or omission.

An offense of mortgage fraud shall not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, or interpretations related to the mortgage lending process.

For the purpose of venue under section (5), any violation of this section shall be considered to have been committed:

(a) In the county in which the real property is located; or
(b) In any county in which a material act was performed in furtherance of the violation.

Any person who violates subsection (3) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Section 14: This act takes effect October 1, 2007.

C. SECTION DIRECTORY:

Section 1: The bill amends s. 494.001, F.S., relating to definitions.
Section 2: The bill amends s. 494.0014, F.S., relating to cease and desist; and refund orders.
Section 3: The bill amends s. 494.0029, F.S., relating to mortgage business schools.
Section 4: The bill amends s. 494.00295, F.S., relating to professional continuing education.
Section 5: The bill amends s. 494.0033, F.S., relating to mortgage broker's license.
Section 6: The bill amends s. 494.0038, F.S., relating to mortgage broker disclosures.
Section 7: The bill amends s. 494.004, F.S., relating to requirements of licensees (mortgage brokers and mortgage brokerage businesses).
Section 8: The bill amends s. 494.0041, F.S., relating to administrative penalties and fines; license violations.
Section 9: The bill amends s. 494.0064, F.S., relating to renewal of mortgage lender's license; branch office license renewal.
Section 10: The bill amends s. 494.0067, F.S., relating to requirements of licensees (mortgage lenders) under ss. 494.006-494.007, F.S..
Section 11: The bill amends s. 494.0072, F.S., relating to administrative penalties and fines; license violations.
Section 12: The bill amends s. 494.0073, F.S., relating to mortgage lender or correspondent mortgage lender when acting as a mortgage brokerage business.
Section13: The bill creates s. 817.545, F.S., Florida Mortgage Fraud Act.
Section 14: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Estimated increase of $150,000 in the Regulatory Trust Fund (Annually)

2. Expenditures:

   Any additional costs will be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Minimal if any.

2. Expenditures:

   Minimal if any.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

The proposed change would allow the Office to pass along the charge for reviewing a mortgage broker test to applicants who wish to review their test. Right now OFR absorbs that cost. The proposed language allows the Office to charge an amount up to the amount actually charged by the test vendor, not to exceed $50 per test, for the review. During 2005, 675 applicants reviewed their test and during 2006, 1040 applicants requested to review their tests. An estimate of 1000 applicants per year is used above.

Section 2 of this bill would allow OFR to impose a fine upon any person who makes or brokers a loan, or a mortgage business school for violations of Part I of Chapter 494, F.S., relating to its general provisions. Currently, OFR has the authority to impose fines under Parts II and III of Chapter 494, F.S., relating to the regulation of mortgage brokers and mortgage lenders, respectively. The bill will broaden OFR authority to impose fines against perpetrators that also violate the general provisions of the chapter.

There are 129 mortgage business schools currently permitted statewide. The agency estimates that the administrative fine provision contained in section 2 of the bill will have less than a $100,000 revenue impact on an annual basis. This figure includes persons who make or broker loans in violation of the statute and also the mortgage business schools. Since the Office currently has fine authority under parts II, III, and IV of chapter 494, Florida Statutes, this analysis covers the fine authority that is applicable to individuals with regard to those issues that are not covered elsewhere in the chapter. These fines are estimated to be minimal in nature. For violations that could result in criminal sanctions, the Office would most likely refer those cases for criminal prosecution; and therefore, most likely would not receive administrative fines.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill appears to provide clear powers and duties to the Financial Services Commission to implement provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

HB 1125 is a consumer protection bill. The bill provides for mortgage brokers and lenders to provide detailed disclosures for various loan products in a manner that is clear and timely for borrowers. It also provides for specific training in the form of continuing education to mortgage brokers to make them more aware of Chapter 494 requirements. The bill also authorizes the OFR to take enforcement action against those mortgage brokers and mortgage lenders who violate the federal Real Estate Settlement Procedures Act or the federal Truth-in-Lending Act.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to mortgages; amending s. 494.001, F.S.; revising definitions; amending s. 494.0014, F.S.; authorizing the Office of Financial Regulation to impose fines; amending s. 494.0029, F.S.; authorizing the office to take certain adverse actions on permits of certain mortgage business schools; providing additional requirements for such schools; amending s. 494.00295, F.S.; providing an additional professional continuing education requirement; authorizing the office to offer professional continuing education programs; specifying requirements for electronically transmitted and distance education courses; amending s. 494.0033, F.S.; revising mortgage broker license applicant requirements; authorizing an additional fee for reviewing mortgage broker's license tests; providing for review of the testing process; amending s. 494.0038, F.S.; providing additional disclosure requirements for mortgage brokerage businesses; amending s. 494.004, F.S.; specifying an additional notification requirement for mortgage broker licensees; providing disclosure requirements; authorizing a borrower to waive notification under certain circumstances; providing waiver requirements; amending s. 494.0041, F.S.; specifying additional acts constituting grounds for certain disciplinary actions; providing for fines and penalties; amending s. 494.0064, F.S.; providing additional requirements for renewals of mortgage lender's licenses; amending s. 494.0067, F.S.; providing additional

requirements for mortgage lender licenses; providing disclosure and notification requirements; authorizing a borrower to waive notification under certain circumstances; providing waiver requirements; amending s. 494.0072, F.S.; specifying additional acts constituting grounds for certain disciplinary actions; providing fines and penalties; amending s. 494.0073, F.S.; providing for application of certain provisions to mortgage brokerage businesses; providing for adoption of rules by the Financial Services Commission; creating s. 817.545, F.S.; providing a short title; providing a definition; specifying criteria for committing the offense of mortgage fraud; providing for venue with respect to the committed offense; providing a criminal penalty; providing an effective date.

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

Section 1. Subsection (2) of section 494.001, Florida Statutes, is amended, and subsections (32), (33), and (34) are added to that section, to read:

494.001 Definitions.--As used in ss. 494.001-494.0077, the term:

(2) "Act as a loan originator" means being employed by a mortgage lender or correspondent mortgage lender, for compensation or gain or in the expectation of compensation or gain, to negotiate, ~~or~~ offer to negotiate, or assist any licensed or exempt entity in negotiating the making of a

mortgage loan, including, but not limited to, working with a licensed or exempt entity to structure a loan or discussing terms and conditions necessary for the delivery of a loan product. A natural person whose activities are ministerial and clerical, which may include quoting available interest rates ~~or loan terms and conditions~~, is not acting as a loan originator.

(32) "Mortgage loan application" means a submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a mortgage loan.

(33) "Mortgage brokerage fee" means the total compensation to be received by a mortgage brokerage business for acting as a mortgage broker.

(34) "Business day" means any calendar day except Sunday or a legal holiday.

Section 2. Subsection (4) is added to section 494.0014, Florida Statutes, to read:

494.0014 Cease and desist orders; administrative fines; refund orders.--

(4) The office may impose upon any person who makes or brokers a loan, or any mortgage business school, a fine for violations of any provision of ss. 494.001-494.00295 or any rule

or order issued under ss. 494.001-494.00295 in an amount not exceeding $5,000 for each separate count or offense.

Section 3. Paragraph (f) is added to subsection (1), and paragraphs (g) and (h) are added to subsection (2) of section 494.0029, Florida Statutes, to read:

494.0029 Mortgage business schools.--

(1)

(f) In addition to the remedies set forth in s. 494.0014, the office may revoke, suspend, or place on probation the permit of any mortgage business school that fails to meet the requirements of this section, subject to all reasonable conditions that the office specifies.

(2)

(g) A school permitted under this section must conduct classes on the basis of a 50-minute classroom hour in accordance with the requirements of this chapter and commission rules.

(h) Each school permitted under this section is responsible for developing procedures to confirm, and for actually confirming, the identity of each student attending any course offering.

Section 4. Section 494.00295, Florida Statutes, is amended to read:

494.00295 Professional continuing education.--

(1) Mortgage brokers, and the principal representatives and loan originators of a mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to s. 494.0065, must successfully complete at least 14 hours of professional continuing education covering primary and subordinate mortgage

financing transactions and the provisions of this chapter during the 2-year period immediately preceding the renewal deadline for a mortgage broker, mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to s. 494.0065. A minimum of 4 hours shall cover the provisions of this chapter and the rules adopted under this chapter. At the time of license renewal, a licensee must certify to the office that the professional continuing education requirements of this section have been met. Licensees shall maintain records documenting compliance with this subsection for a period of 4 years. The requirements for professional continuing education are waived for the license renewal of a mortgage broker who has completed the 24-hour prelicensing classroom education requirement of s. 494.0033(3) within 90 days of ~~for~~ the biennial license period immediately following the period in which the person became licensed as a mortgage broker. The requirements for professional continuing education for a principal representative are waived for the license renewal of a mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to s. 494.0065 for the biennial license period immediately following the period in which the principal representative completed the 24 hours of classroom education and passed a written test in order to qualify to be a principal representative.

(2) Professional continuing education programs must contribute directly to the professional competency of the participants, may only be offered by permitted mortgage business schools, the office, or entities specifically exempted from

permitting as mortgage business schools, and may include electronically transmitted or distance education courses.

(3)(a) All electronically transmitted courses shall require that the time spent attending electronically transmitted professional education courses is equal to the number of qualifying hours awarded to participants for course attendance. Before allowing a course participant to complete a course and receive a certificate of course completion, the course provider shall ensure that the course participant has:

1. Logged the required number of hours for the particular timed module.

2. Completed a test that comprehensively covers the course content for the particular timed module.

3. Correctly answered all test questions for the particular timed module.

(b) All distance education course participants shall successfully complete a test that comprehensively covers course content in order to receive a certificate of course completion. Distance education providers shall not provide answers to test questions to course participants and shall not issue a certificate of course completion to any course participant who has failed to correctly answer at least 75 percent of the total test questions. The test must consist of at least 100 questions.

(4) ~~(3)~~ The commission shall adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to administer this section, including rules governing qualifying hours for professional continuing education programs and standards for electronically

transmitted or distance education courses, including course completion requirements.

Section 5. Paragraphs (a) and (b) of subsection (2) of section 494.0033, Florida Statutes, are amended to read:

494.0033 Mortgage broker's license.--

(2) Each initial application for a mortgage broker's license must be in the form prescribed by rule of the commission. The commission may require each applicant to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The office shall issue an initial license to any natural person who:

(a) Is at least 18 years of age and has a high school diploma or its equivalent.

(b) Has passed a written test adopted and administered by the office, or has passed an electronic test adopted and administered by the office or a third party approved by the office, which is designed to determine competency in primary and subordinate mortgage financing transactions as well as to test knowledge of ss. 494.001-494.0077 and the rules adopted pursuant thereto. The commission may prescribe by rule an additional fee that may not exceed $100 for the electronic version of the mortgage broker test. The commission may waive by rule the examination requirement for any person who has passed a test approved by the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or the United States Department of Housing and Urban Development if the test covers primary and subordinate mortgage financing transactions. The commission may adopt rules prescribing an

additional fee that may not exceed $50 for an applicant to review his or her completed and graded mortgage broker test. The commission may adopt rules regarding the administration of the testing process, including, but not limited to, procedures relating to pretest registration, test security, scoring, content, result notification, retest procedures and fees, postexamination review, and challenge provisions.

The commission may require by rule information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, qualifications and educational and business history, and disciplinary and criminal history.

Section 6. Section 494.0038, Florida Statutes, is amended to read:

494.0038 Mortgage broker disclosures.--

(1)(a)1. A person may not receive a mortgage brokerage fee ~~for acting as a mortgage brokerage business~~ except pursuant to a written mortgage brokerage agreement between the mortgage brokerage business and the borrower that is signed and dated by the business and the borrower.

2. The written mortgage brokerage agreement must describe the services to be provided by the mortgage brokerage business and specify the amount and terms of the mortgage brokerage fee that the mortgage brokerage business is to receive. The written mortgage brokerage agreement must be executed within 3 business days after a mortgage loan application is accepted if the

borrower is present when the application is accepted. If the borrower is not present when the is application accepted, the licensee shall forward the written mortgage brokerage agreement to the borrower within 3 business days after the licensee's acceptance of the application, and the licensee bears the burden of proving that the borrower received and approved the written mortgage brokerage agreement.

(b)1. If the mortgage brokerage business is to receive any payment of any kind from the lender, the maximum total dollar amount of the payment must be disclosed to the borrower in the written mortgage brokerage agreement as described in paragraph (a). The commission may prescribe by rule an acceptable form for disclosure of brokerage fees received from the lender. The mortgage brokerage agreement must state the nature of the relationship with the lender, describe how compensation is paid by the lender, and describe how the mortgage interest rate affects the compensation paid to the mortgage brokerage business. ~~If any of the rates, points, fees, and other terms quoted by or on behalf of the lender are to be received by the mortgage brokerage business, such fact shall be specifically disclosed to the borrower.~~

2. The exact amount of any payment of any kind by the lender to the mortgage brokerage business must be disclosed in writing to the borrower within 3 business days after the mortgage brokerage business is made aware of the exact amount of the payment from the lender but no later than 3 business days prior to the execution of the closing or settlement statement. The licensee bears the burden of proving such notification was

provided to the borrower. ~~If the mortgage brokerage fee is for brokering a loan for a particular program under which the brokerage fee varies according to the terms of the loan, the brokerage fee may be disclosed as a range of fees at the time of application. The mortgage broker shall, in such instance, disclose the nature of the fee arrangement to the borrower, and the exact amount of the fee must be disclosed at settlement or closing.~~

(c) The commission may prescribe by rule the form of disclosure of brokerage fees.

(2) At the time a written mortgage brokerage agreement is executed by the borrower or forwarded to the borrower for execution, or at the time the mortgage brokerage business accepts an application fee, credit report fee, property appraisal fee, or any other third-party fee, but not fewer than 3 business days prior to execution of the closing or settlement statement, the mortgage brokerage business shall disclose in writing to any applicant for a mortgage loan the following information:

(a) That such mortgage brokerage business may not make mortgage loans or commitments. The mortgage brokerage business may make a commitment and may furnish a lock-in of the rate and program on behalf of the lender when the mortgage brokerage business has obtained a written commitment or lock-in for the loan from the lender on behalf of the borrower for the loan. The commitment must be in the same form and substance as issued by the lender.

(b) That such mortgage brokerage business cannot guarantee acceptance into any particular loan program or promise any specific loan terms or conditions.

(c) A good faith estimate, signed and dated by the borrower, that discloses ~~of~~ the total amount of each of the fees that the borrower may reasonably expect to pay if the loan is closed, including, but not limited to, fees earned by the mortgage brokerage business, lender fees, third-party fees, and official fees, together with ~~credit report fee, property appraisal fee, or any other third-party fee and~~ the terms and conditions for obtaining a refund of such fees, if any. Any amount collected in excess of the actual cost shall be returned within 60 days after rejection, withdrawal, or closing. The good faith estimate must identify the recipient of all payments charged the borrower and, except for all fees to be received by the mortgage brokerage business, may be disclosed in generic terms, such as, but not limited to, paid to lender, appraiser, officials, title company, or any other third-party service provider. This requirement does not supplant or is not a substitute for the written mortgage brokerage agreement described in subsection (1).

(3) The disclosures required by this subsection must be furnished in writing at the time an adjustable rate mortgage loan is offered to the borrower and whenever the terms of the adjustable rate mortgage loan offered materially change prior to closing. The broker shall furnish the disclosures relating to adjustable rate mortgages in a format prescribed by ss. 226.18 and 226.19 of Regulation Z of the Board of Governors of the

Federal Reserve System, as amended, its commentary, as amended, and the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., as amended, together with the Consumer Handbook on Adjustable Rate Mortgages, as amended, published by the Federal Reserve Board and the Federal Home Loan Bank Board. The licensee bears the burden of proving such disclosures were provided to the borrower.

(4) ~~(3)~~ If the mortgage brokerage agreement includes a nonrefundable application fee, the following requirements are applicable:

(a) The amount of the application fee, which must be clearly denominated as such, shall be clearly disclosed.

(b) The specific services that will be performed in consideration for the application fee shall be disclosed.

(c) The application fee must be reasonably related to the services to be performed and may not be based upon a percentage of the principal amount of the loan or the amount financed.

(5) ~~(4)~~ A mortgage brokerage business may not accept any fee in connection with a mortgage loan other than an application fee, credit report fee, property appraisal fee, or other third-party fee prior to obtaining a written commitment from a qualified lender.

(6) ~~(5)~~ Any third-party fee entrusted to a mortgage brokerage business shall immediately, upon receipt, be placed into a segregated account with a financial institution located in the state the accounts of which are insured by the Federal Government. Such funds shall be held in trust for the payor and shall be kept in the account until disbursement. Such funds may

be placed in one account if adequate accounting measures are taken to identify the source of the funds.

(7) ~~(6)~~ All mortgage brokerage fees shall be paid to a mortgage brokerage business licensee.

(8) ~~(7)~~ This section does not prohibit a mortgage brokerage business from offering products and services, in addition to those offered in conjunction with the loan origination process, for a fee or commission.

Section 7. Subsection (8) is added to section 494.004, Florida Statutes, to read:

494.004 Requirements of licensees.--

(8)(a) In every mortgage loan transaction, each licensee under ss. 494.003-494.0043 shall notify a borrower of any material changes in the terms of a mortgage loan previously offered to the borrower within 3 business days after being made aware of such changes by the lender but not less than 3 business days before the signing of the settlement or closing statement. The licensee bears the burden of proving such notification was provided and accepted by the borrower.

(b) A borrower may waive the right to receive notice of a material change that is granted under paragraph (a) if the borrower determines that the extension of credit is needed to meet a bona fide personal financial emergency and the right to receive notice would delay the closing of the mortgage loan. The imminent sale of the borrower's home at foreclosure during the 3-day period before the signing of the settlement or closing statement constitutes an example of a bona fide personal financial emergency. In order to waive the borrower's right to

receive notice not less than 3 business days before the signing of the settlement or closing statement of any such material change, the borrower must provide the licensee with a dated written statement that describes the personal financial emergency, waives the right to receive the notice, bears the borrower's signature, and is not on a printed form prepared by the licensee for the purpose of such a waiver.

Section 8. Paragraph (v) is added to subsection (2) of section 494.0041, Florida Statutes, to read:

494.0041 Administrative penalties and fines; license violations.--

(1) Whenever the office finds a person in violation of an act specified in subsection (2), it may enter an order imposing one or more of the following penalties against the person:

(a) Revocation of a license or registration.

(b) Suspension of a license or registration subject to reinstatement upon satisfying all reasonable conditions that the office specifies.

(c) Placement of the licensee, registrant, or applicant on probation for a period of time and subject to all reasonable conditions that the office specifies.

(d) Issuance of a reprimand.

(e) Imposition of a fine in an amount not exceeding $5,000 for each count or separate offense.

(f) Denial of a license or registration.

(2) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (1) may be taken:

(v) In any mortgage transaction, violating any provision of the federal Real Estate Settlement Procedure Act, as amended, 12 U.S.C. ss. 2601 et seq., the federal Truth In Lending Act, as amended, 15 U.S.C. ss. 1601 et seq., or any regulations adopted under such acts.

Section 9. Subsection (1) of section 494.0064, Florida Statutes, is amended to read:

494.0064 Renewal of mortgage lender's license; branch office license renewal.--

(1) ~~(a)~~ The office shall renew a mortgage lender license upon receipt of a completed renewal form, certification from the licensee that the licensee currently meets the minimum net worth requirements of s. 494.0061 or s. 494.0065, certification from the licensee that during the preceding 2 years the licensee's principal representative and loan originators have completed the professional continuing education requirements of s. 494.00295, and the nonrefundable renewal fee of $575. The office shall renew a correspondent lender license upon receipt of a completed renewal form, certification from the licensee that the licensee currently meets the minimum net worth requirements of s. 494.0062, certification from the licensee that during the preceding 2 years the licensee's principal representative and loan originators have completed the professional continuing education requirements of s. 494.00295, and a nonrefundable renewal fee of $475. Each licensee shall pay at the time of renewal a nonrefundable fee of $325 for the renewal of each branch office license.

~~(b) A licensee shall also submit, as part of the renewal form, certification that during the preceding 2 years the licensee's principal representative and loan originators have completed the professional continuing education requirements of s. 494.00295.~~

Section 10. Subsection (8) and paragraph (a) of subsection (10) of section 494.0067, Florida Statutes, are amended, and subsections (11) and (12) are added to that section, to read:

494.0067 Requirements of licensees under ss. 494.006-494.0077.--

(8) Each licensee under ss. 494.006-494.0077 shall provide an applicant for a mortgage loan a good faith estimate of the costs the applicant can reasonably expect to pay in obtaining a mortgage loan. The good faith estimate of costs shall be mailed or delivered to the applicant within a reasonable time after the licensee receives a written loan application from the applicant. The estimate of costs may be provided to the applicant by a person other than the licensee making the loan. The good faith estimate must identify the recipient of all payments charged to the borrower and, except for all fees to be received by the mortgage brokerage business and the mortgage lender or correspondent mortgage lender, may be disclosed in generic terms, such as, but not limited to, paid to appraiser, officials, title company, or any other third-party service provider. The licensee bears the burden of proving such disclosures were provided to the borrower. The commission may adopt rules that set forth the disclosure requirements of this section.

(10)(a) Each mortgage lender or correspondent mortgage lender licensee shall require the principal representative and all loan originators, not currently licensed as mortgage brokers pursuant to s. 494.0033, who perform services for the licensee to complete 14 hours of professional continuing education during each biennial license period. The education shall cover primary and subordinate mortgage financing transactions and the provisions of this chapter and the rules adopted under this chapter.

(11) The disclosures in this subsection must be furnished in writing at the time an adjustable rate mortgage loan is offered to the borrower and whenever the terms of the adjustable rate mortgage loan offered have a material change prior to closing. The lender shall furnish the disclosures relating to adjustable rate mortgages in a format prescribed by ss. 226.18 and 226.19 of Regulation Z of the Board of Governors of the Federal Reserve System, as amended, its commentary, as amended, and the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., as amended, together with the Consumer Handbook on Adjustable Rate Mortgages, as amended, published by the Federal Reserve Board and the Federal Home Loan Bank Board. The licensee bears the burden of proving such disclosures were provided to the borrower.

(12)(a) In every mortgage loan transaction, each licensee under ss. 494.006-494.0077 shall notify a borrower of any material changes in the terms of a mortgage loan previously offered to the borrower within 3 business days after being made aware of such changes by the lender but not less than 3 business

days before the signing of the settlement or closing statement. The licensee bears the burden of proving such notification was provided and accepted by the borrower.

(b) A borrower may waive the right to receive notice of a material change that is granted under paragraph (a) if the borrower determines that the extension of credit is needed to meet a bona fide personal financial emergency and the right to receive notice would delay the closing of the mortgage loan. The imminent sale of the borrower's home at foreclosure during the 3-day period before the signing of the settlement or closing statement constitutes an example of a bona fide personal financial emergency. In order to waive the borrower's right to receive notice not less than 3 business days before the signing of the settlement or closing statement of any such material change, the borrower must provide the licensee with a dated written statement that describes the personal financial emergency, waives the right to receive the notice, bears the borrower's signature, and is not on a printed form prepared by the licensee for the purpose of such a waiver.

Section 11. Paragraph (v) is added to subsection (2) of section 494.0072, Florida Statutes, subsection (3) of that section is amended, and subsection (5) is added to that section, to read:

494.0072 Administrative penalties and fines; license violations.--

(1) Whenever the office finds a person in violation of an act specified in subsection (2), it may enter an order imposing one or more of the following penalties against that person:

(a) Revocation of a license or registration.

(b) Suspension of a license or registration, subject to reinstatement upon satisfying all reasonable conditions that the office specifies.

(c) Placement of the licensee or applicant on probation for a period of time and subject to all reasonable conditions that the office specifies.

(d) Issuance of a reprimand.

(e) Imposition of a fine in an amount not exceeding $5,000 for each count or separate offense.

(f) Denial of a license or registration.

(2) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (1) may be taken:

(v) In any mortgage transaction, violating any provision of the federal Real Estate Settlement Procedure Act, as amended, 12 U.S.C. ss. 2601 et seq., the federal Truth In Lending Act, as amended, 15 U.S.C. ss. 1601 et seq., or any regulations adopted under such acts.

(3) A mortgage lender or correspondent mortgage lender is subject to the disciplinary actions specified in subsection (1) if any officer, member, director, control person, joint venturer, or ultimate equitable owner of a 10-percent or greater interest in the mortgage lender or correspondent mortgage lender, associate, or employee of the mortgage lender or correspondent mortgage lender violates or has violated any provision of subsection (2).

(5) A principal representative of a mortgage lender or correspondent mortgage lender is subject to the disciplinary actions specified in subsection (1) for violations of subsection (2) by associates or employees in the course of an association or employment with the correspondent mortgage lender or the mortgage lender. The principal representative is only subject to suspension or revocation for associate or employee actions if there is a pattern of repeated violations by associates or employees or if the principal broker or principal representative had knowledge of the violations.

Section 12. Section 494.0073, Florida Statutes, is amended to read:

494.0073 Mortgage lender or correspondent mortgage lender when acting as a mortgage brokerage business.--Sections 494.006-494.0077 do not prohibit a mortgage lender or correspondent mortgage lender from acting as a mortgage brokerage business. However, in mortgage transactions in which a mortgage lender or correspondent mortgage lender acts as a mortgage brokerage business, the provisions of ss. 494.0038, 494.0042, 494.004(8), and 494.0043(1), (2), and (3) apply.

Section 13. Section 817.545, Florida Statutes, is created to read:

817.545 Mortgage fraud.--

(1) This section may be cited as the "Florida Mortgage Fraud Act."

(2) For purposes of this section, the term "mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan, including, but not

limited to, solicitation, application or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to, mortgages, deeds, surveys, inspection reports, uniform residential loan applications, or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, credit reports, bank statements, tax returns, and payroll stubs; and any required disclosures.

(3) A person commits the offense of mortgage fraud if, with the intent to defraud, the person knowingly:

(a) Makes any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that the misstatement, misrepresentation, or omission will be relied on by a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process, provided that omissions on a loan application regarding employment, income, or assets for a loan that does not require this information shall not be a material omission for purposes of this paragraph.

(b) Uses or facilitates the use of any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that the material misstatement, misrepresentation, or omission will be relied on by a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process, provided that omissions on a loan application regarding employment, income, or

assets for a loan that does not require this information shall not be a material omission for purposes of this paragraph.

(c) Receives any proceeds or any other funds in connection with the mortgage lending process that the person knew resulted from a violation of paragraph (a) or paragraph (b).

(d) Files or causes to be filed with the clerk of the circuit court for any county of this state a mortgage lending process document that contains a material misstatement, misrepresentation, or omission.

For the purposes of this subsection, a misstatement, misrepresentation, or omission is material if the misstatement, misrepresentation, or omission is an important fact, as distinguished from some unimportant or trivial detail, and has a natural tendency to influence or was capable of influencing.

(4) An offense of mortgage fraud shall not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, or interpretations related to the mortgage lending process.

(5) For the purpose of venue under this section, any violation of this section shall be considered to have been committed:

(a) In the county in which the real property is located; or

(b) In any county in which a material act was performed in furtherance of the violation.

(6) Any person who violates subsection (3) commits a felony of the third degree, punishable as provided in s.

775.082, s. 775.083, or s. 775.084.

Section 14. This act shall take effect October 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1197 Department of Agriculture and Consumer Services
SPONSOR(S): Environment & Natural Resources Council and Nelson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1952

REFERENCE / DIRECTOR	ACTION	ANALYST	STAFF
1) Committee on Agribusiness	7 Y, 0 N	Kaiser	Reese
2) Environment & Natural Resources Council	14 Y, 0 N, As CS	Kaiser	Hamby
3) Policy & Budget Council		Davila	Hansen
4)			
5)			

SUMMARY ANALYSIS

CS/HB 1197 makes provisions under the jurisdiction of the Department of Agriculture and Consumer Services (department).

Effective January 1, 2008, the bill requires persons applying for a private investigator license to pass an examination relating to private investigative, private security and repossession services. Additionally, effective September 1, 2008, those persons applying for a private investigator intern license are required to complete 24 hours of training prior to application for licensure. An additional 16 hours of training and an examination must be completed within 180 days. The department is authorized to establish the content of the course work and examination, as well as the manner of its administration and cost, which may not exceed $100. The bill provides for certain exemptions to the examination requirements. The bill provides for the course work for persons applying for recovery agent or recovery agent intern licensure to be offered through Internet-based training and correspondence training as well as face-to-face training. The department is given spending authority from the Licensing Trust Fund in the amount of $58,559 for the purpose of developing curriculum and administering examinations to applicants for licensure as private investigators.

The bill revises the name of the organization providing the department with standards, definitions and test procedures for the formulation of antifreeze to ASTM International.

CS/HB 1197 amends the registration process to allow non-owners of brake fluid brand names to register said products with the department when the registration is accompanied by a notarized affidavit signed by the owner of the brand name. Additionally, the bill revises the amount of brake fluid required to be submitted for sampling as well as the labeling requirements, and revises requirements that constitute a new brake fluid product.

The bill clarifies that liquefied petroleum (LP) gas company applicants must supply satisfactory evidence that the premium has been paid on a primary policy of bodily injury liability and property damage liability insurance covering the products and operations of said business. The bill amends current law to include removing liquefied petroleum gas from any container as a prohibited act unless performed by the owner or a person authorized by the owner. The bill requires test measures of volumes of more than 500 gallons of petroleum to be calibrated to the National Institute of Standards and Technology standards within 3 years of the date of adjustment rather than every year.

The bill appears to have a positive fiscal impact on state government.

The effective date of this legislation is July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires individuals seeking licensure as a private investigator or private investigator intern to pass an examination demonstrating knowledge of ch. 493, F.S., relating to private investigative, private security and repossession services. Additionally, private investigator interns are required to complete 40 hours of course work relating to ch. 493, F.S., prior to the examination.

Ensure lower taxes: Those individuals seeking licensure as a private investigator or private investigator intern will be assessed a fee for the required examination and/or course work.

B. EFFECT OF PROPOSED CHANGES:

Private Investigative, Private Security and Repossession Services
Under current law, an applicant applying for a license as a private investigator (Class "C" licensee) meets the experience requirement if he/she can verify at least two years of investigative experience. This experience may include work in law enforcement, insurance, corporate, housing, etc. However, there is no requirement that applicants display any knowledge of Chapter 493, F.S., which regulates private investigators in Florida.

Effective January 1, 2008, applicants for a Class "MA," Class "M," or Class "C" [1] license will be required to pass an examination covering the provisions of Chapter 493, F.S., relating to private investigative, private security and repossession services. The examination must be administered by the Department of Agriculture and Consumer Services (department) or its designee, and the administrator of the examination must verify the identity of each applicant taking the exam. The department has the authority to establish the content of the examination, as well as the manner of its administration and cost, which may not exceed $100. Prior to application, persons seeking licenses, as listed above, must provide proof of completion of the examination. The examination requirement does not apply to persons holding valid Class "CC," Class "C," Class "MA," or Class "M" licenses. Persons applying for relicensure, whose license has been invalid for more than 1 year, must take and pass the examination.

Private investigator interns (Class "CC" licensee) are not required to have any formal investigative training. Generally, they are trained by their employers, who are licensed private investigators. The intern period is set at two years with no definitive training guide, curriculum or verifiable standards. Thus, in the absence of standardized entry-level training, many interns are being licensed as private investigators without sufficient training in basic investigative techniques.

Effective September 1, 2008, applicants for a Class "CC" license must have completed at least 24 hours of a 40-hour course pertaining to general investigative techniques and Chapter 493, F.S., relating to private investigative, private security and repossession services, and pass an examination. The course work must be offered by a state university or by a school, community college, college, or university that falls under the purview of the Department of Education. The remaining 16 hours of course work and an examination must be passed within 180 days. Individuals failing to provide documentation of the completed course work within the specified timeframe will automatically have his/her license suspended until such time as proof of completion is provided to the department. The course work may be provided by face-to-face presentation, on-line technology, or a home study course in accordance with standards established by the Department of Education. Upon successful

[1] Class "MA": manager for a private investigate agency or branch office; Class "M": manager for a private investigative agency or security agency branch office; Class "C": private investigator, as defined under chapter 493, F.S.

completion of each part of the required course work, a certificate of completion will be issued to the applicant by the facility providing the training. The department has the authority to establish the content of the course work and the examination. The department is given spending authority from the Licensing Trust Fund for monies to develop curriculum and administer the examinations. Persons applying for relicensure, whose license has been invalid for more than 1 year, must complete any required training and examination.

Currently, recovery agents (Class "E") and recovery agent interns (Class "EE") must pass a 40-hour training course to gain licensure. Florida law requires this training to be "face-to-face." In 2006, approximately 275 recovery agents/interns completed the training. With such a small field of applicants, many public institutions cannot afford to offer the training. Currently, there are only seven schools statewide that offer course work for this program. The bill provides for the course work to be offered through Internet-based training and correspondence training as well, to allow greater flexibility for individuals seeking licensure as recovery agents/interns.

Brake Fluid

Current Florida statute[2] requires an applicant for the registration of a brand of brake fluid to state that he/she owns said brand name of brake fluid. Many applicants applying for registration do not own the brand name being registered and, frequently, the owners of the brake fluid brands contract with other businesses to perform various functions regarding the distribution of their products, including registration. Therefore, these companies cannot state that they own the brand name they are registering. The bill amends the registration process to allow for non-owners of brake fluid brand names to register said products with the department. The bill requires the non-owner to submit a notarized affidavit signed by the owner of the brand name when applying for registration. The affidavit must include all affected brand names, the owner's company or corporate name and address, the applicant's company or corporate name and address, and a statement from the owner authorizing the applicant to register the product with the department. The owner of the brand name will continue to maintain control over products sold under said brand names in the state.

The department currently requires all applicants, both new and renewals, for brake fluid registration to submit a sample (64 fluid ounces) of brake fluid, with an affixed label, to be tested by an independent laboratory. The report from the laboratory is then submitted to the department along with the application for registration. This report provides a complete list of the chemical and physical properties of the formula being registered. Brake fluid product registration can only be renewed if there has been no change to the brand name, formula or composition; therefore, the results from an independent laboratory testing previously submitted are still valid upon renewal. The bill amends current statute to require the independent laboratory testing report only when a new brake fluid brand is being registered. Additionally, the bill amends the amount of the sample to be tested from 64 to 24 fluid ounces, thus reducing the volume of chemical waste to be disposed of by the department. The bill also requires the label to accompany the sample rather than be affixed to the sample.

Liquefied Petroleum Gas

Liquefied petroleum (LP) gas companies must provide proof of insurance coverage or a surety bond to conduct business in the state. Current statutory language focuses mainly on the bond requirements and fails to clarify the insurance requirements. The bill clarifies that LP gas company applicants must supply satisfactory evidence that the premium has been paid on a primary policy of bodily injury liability and property damage liability insurance covering the products and operations of the business. The policy must be issued by an insurer authorized to do business in the state. Proof of insurance may be in the form of an insurance certificate, affidavit, or other satisfactory evidence of acceptable insurance coverage. The department may require new proof of insurance for policies that have been canceled or otherwise terminated.

[2] s. 526.51(1)(a), F.S.

Current statutory language[3] prohibits anyone, other than the owner and those authorized by the owner, from selling, filling, refilling, delivering, or using any propane container for any other product or purpose. The bill amends the statute to include removing gas from any container as one of the prohibited acts. Removing propane from a container, other than through normal use, is a more involved process than simply filling a container. The removal process results in escaping gas vapor requiring additional safety measures to be taken to prevent ignition of the escaped vapor.

Other Issues

Current law [4] requires all persons and service agencies adjusting the accuracy of petroleum measuring devices to have their test measures calibrated to National Institute of Standards and Technology (NIST) standards within 1 year from the date of the adjustment. As a rule, test measures of 500 gallon capacity and larger are immobile or when moved, are not moved over long distances, which can affect accuracy. The bill requires test measures of volumes of more than 500 gallons to be calibrated to the NIST standards within 3 years of the date of adjustment rather than every year, thus reducing inaccurate measurements.

The bill amends current statute[5] to reflect the name change of the American Society for Testing and Materials to ASTM International.

C. SECTION DIRECTORY:

Section 1: Amends s. 493.6203, F.S.; requiring applicants for certain classes of license to pass an examination administered by the Department of Agriculture and Consumer Services (department) or by a provider approved by the department; revising requirements regarding submission of application for licensure; requiring the administrator of the examination to verify the identity of the applicant taking the exam; providing the department the authority to establish criteria and the manner of administration of the examination; requiring applicants for a Class "CC" license to complete a portion of the course work related to ch. 493, F.S., and to pass an examination relating to said course work; requiring the remainder of the course work and the examination, and the documentation thereof, to be completed by a time certain; providing for suspension of license for failure to meet the time requirements of the training and the examination until such time as the documentation is provided; providing criteria for the course work; providing for the certification of completion to be issued upon successful completion of the course work; authorizing the department to establish the content of the course work and examination; and providing criteria for relicensure of the applicant.

Section 2: Amends s. 493.6401, F.S.; requiring persons conducting internet-based training or correspondence courses to possess a Class "RS" license.

Section 3: Amends s. 493.6406, F.S.; providing criteria for training conducted by repossession services school; and revising information required on a licensure application for such school or facility.

Section 4: Amends s. 501.921, F.S.; revising the name of the organization providing the department with standards, definitions and test procedures for the formulation of antifreeze.

Section 5: Amends s. 525.07, F.S.; revising the provisions for testing the accuracy of devices used to measure petroleum fuel.

Section 6: Amends s. 526.51, F.S.; providing criteria for non-owners of brand name brake fluids to register said products with the department; providing for owner of brand name to maintain control over said product sold in the state; revising amount of brake fluid provided to department for testing purposes; and, revising requirements that constitute a new brake fluid product.

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[3] s. 527.07, F.S.
[4] s. 525.07(9), F.S.
[5] s. 501.921, F.S.

Section 7: Amends s. 527.04, F.S.; revising liability insurance requirements for persons licensed under ch. 527, F.S., relating to the sale of liquefied petroleum (LP) gas.

Section 8: Amends s. 527.07, F.S.; revising requirements for removal of LP gas from containers.

Section 9: Provides the department with spending authority from the Licensing Trust Fund for the purpose of developing curriculum and administering examinations to applicants for licensure as private investigators.

Section 10: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	(FY 07-08) Amt/FTE	(FY 08-09) Amt/FTE	(FY 09-10) Amt/FTE
1. Revenues:			
Recurring:			
Class "C" exams	$51,500[6]	$104,000	$105,100
2. Expenditures:			
Recurring:			
Costs involved[7]	$ 8,000	$ 8,000	$ 8,000
Service charge to GR	3,759	7,592	7,762
	$11,759	$15,592	$15,762
Non-recurring:			
Start-up costs:			
Administering tests	$14,400		
Developing curriculum[8]	32,400		
	$46,800		

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

	(FY 07-08) Amt/FTE	(FY 08-09) Amt/FTE	(FY 09-10) Amt/FTE
Costs for Class "C" exam	$51,500	$104,000	$105,100
Costs for Class "CC" applicants	$ 0	$ 67,700	$ 72,300
	$51,500	$171,700	$177,400

[6] Class "C" exam begins January 1, 2008, prorated.
[7] Printing certificates, applications, manuals, etc.
[8] The Department of Agriculture and Consumer Services will use voluntary services provided by members of the existing advisory council training committee who are experts in the private investigative industry. Costs include travel, lodging and meeting room expenses.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill gives the Department of Agriculture and Consumer Services (department) rule-making authority regarding:

- The form upon which applicants for Class "C" licensure submit proof of passage of the examination.
- The content of the examination for Class "C" applicants, as well as the manner and procedure of its administration, and the examination fee.
- The content of the training course and examination criteria for Class "CC" applicants.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

This bill addresses a number of issues under the jurisdiction of DOACS. Specifically, HB 1197 provides for private investigators applying for licensure with the department to pass an examination on the provisions of Ch. 493, FS. Additionally, PI interns will be required to complete 40 hours of training with an examination for licensure. HB 1197 also amends the registration process to allow for non-owners of brake fluid brand names to register said products with the department. It also amends the LP gas statute regarding proof of insurance and persons qualified to remove LP gas from containers. Lastly, the bill revises calibration frequency to once every two years for tanks over 500 gallons.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 28, 2007, the Environment and Natural Resources Council adopted two amendments and reported HB 1197 favorably with CS. The first amendment gives the Department of Agriculture and Consumer Services spending authority from the Licensing Trust Fund for monies to be spent on curriculum development. The second amendment clarifies the coursework to be completed by private investigator interns be offered by an institution that falls under the purview of the Department of Education.

A bill to be entitled

An act relating to relating to the Department of Agriculture and Consumer Services; amending s. 493.6203, F.S.; revising requirements for obtaining a Class "MA," Class "M," or Class "C" license as a private investigator; revising the requirements for Class "CC" licensure as an intern; amending s. 493.6401, F.S.; requiring a person who conducts Internet-based training or correspondence training for repossessor licensees to have a Class "RS" license; amending s. 493.6406, F.S.; providing requirements for training conducted by a repossession services school or training facility; revising the information required on a licensure application relating to such a school or facility; amending s. 501.921, F.S.; revising the name of the organization that provides standards and test procedures used by the department in adopting rules governing the formulation of antifreeze; amending s. 525.07, F.S.; revising a requirement for testing the accuracy of devices used to measure petroleum fuel; amending s. 526.51, F.S.; revising requirements for registering a brand of brake fluid for sale in the state; requiring an applicant that does not own the brand name of a brake fluid to submit a notarized affidavit to the department in order to register that product; revising the amount of the sample of brake fluid required to be submitted to the department; amending s. 527.04, F.S.; revising provisions requiring proof of liability insurance coverage prior to licensure under ch. 527, F.S., relating

to the sale of liquefied petroleum gas; amending s. 527.07, F.S.; prohibiting a person other than the owner or other authorized person from removing gas from a liquefied petroleum gas container or receptacle for any gas or compound; providing an appropriation; providing an effective date.

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

Section 1. Subsection (5) of section 493.6203, Florida Statutes, is renumbered as subsection (6) and amended, present subsection (6) is renumbered as subsection (7), and a new subsection (5) is added to that section, to read:

493.6203 License requirements.--In addition to the license requirements set forth elsewhere in this chapter, each individual or agency shall comply with the following additional requirements:

(5) Effective January 1, 2008, an applicant for a Class "MA," Class "M," or Class "C" license must pass an examination that covers the provisions of this chapter and is administered by the department or by a provider approved by the department. The applicant must pass the examination before applying for licensure and shall submit proof with the license application on a form approved by rule of the department that he or she has passed the examination. The administrator of the examination must verify the identity of each applicant taking the examination.

(a) The examination requirement in this subsection does not apply to an individual who holds a valid Class "CC," Class "C," Class "MA," or Class "M" license.

(b) Notwithstanding the exemption provided in paragraph (a), if the license of an applicant for relicensure has been invalid for more than 1 year, the applicant must take and pass the examination.

(c) The department shall establish by rule the content of the examination, the manner and procedure of its administration, and an examination fee that may not exceed $100.

(6)(a) ~~(5)~~ A Class "CC" licensee shall serve an internship under the direction and control of a designated sponsor, who is a Class "C," Class "MA," or Class "M" licensee.

(b) Effective September 1, 2008, an applicant for a Class "CC" license must have completed at least 24 hours of a 40-hour course pertaining to general investigative techniques and this chapter, which course is offered by a state university or by a school, community college, college, or university under the purview of the Department of Education, and must pass an examination. The certificate evidencing satisfactory completion of at least 24 hours of a 40-hour course must be submitted with the application for a Class "CC" license. The remaining 16 hours must be completed and an examination passed within 180 days. If documentation of completion of the required training is not submitted within the specified timeframe, the individual's license is automatically suspended or his or her authority to work as a Class "CC" pursuant to s. 493.6105(9) is rescinded until such time as proof of certificate of completion is

provided to the department. The training course specified in this paragraph may be provided by face-to-face presentation, on-line technology, or a home study course in accordance with rules and procedures of the Department of Education. The administrator of the examination must verify the identity of each applicant taking the examination.

1. Upon an applicant's successful completion of each part of the approved course and passage of any required examination, the school, community college, college, or university shall issue a certificate of completion to the applicant. The certificates must be on a form established by rule of the department.

2. The department shall establish by rule the general content of the training course and the examination criteria.

3. If the license of an applicant for relicensure has been invalid for more than 1 year, the applicant must complete the required training and pass any required examination.

Section 2. Subsection (7) of section 493.6401, Florida Statutes, is amended to read:

493.6401 Classes of licenses.--

(7) Any person who operates a repossessor school or training facility or who conducts an Internet-based training course or a correspondence training course must ~~shall~~ have a Class "RS" license.

Section 3. Subsection (1) and paragraph (b) of subsection (2) of section 493.6406, Florida Statutes, are amended to read:

493.6406 Repossession services school or training facility.--

(1) Any school, training facility, or instructor who offers the training outlined in s. 493.6403(2) for Class "EE" applicants shall, before licensure of such school, training facility, or instructor, file with the department an application accompanied by an application fee in an amount to be determined by rule, not to exceed $60. The fee shall not be refundable. This training may be offered as face-to-face training, Internet-based training, or correspondence training.

(2) The application shall be signed and notarized and shall contain, at a minimum, the following information:

(b) The street address of the place at which the face-to-face training is to be conducted or the street address of the Class "RS" school offering Internet-based or correspondence training.

Section 4. Section 501.921, Florida Statutes, is amended to read:

501.921 Standards.--The department's rules for standards, definitions, and test procedures for antifreeze may encompass those specified by ASTM International ~~the American Society for Testing and Materials~~. The department may adopt any other specification it considers appropriate to protect consumers from questionable formulations of antifreeze.

Section 5. Subsection (9) of section 525.07, Florida Statutes, is amended to read:

525.07 Powers and duties of department; inspections; unlawful acts.--

(9) All persons and service agencies that adjust the accuracy of a petroleum fuel measuring device must use test

measures that have been calibrated with standards traceable to the National Institute of Standards and Technology within 1 year prior to the date of the adjustment for volumes of less than 500 gallons and within 3 years prior to the date of the adjustment for volumes of 500 gallons or more.

Section 6. Subsection (1) of section 526.51, Florida Statutes, is amended to read:

526.51 Registration; renewal and fees; departmental expenses; cancellation or refusal to issue or renew.--

(1)(a) Application for registration of each brand of brake fluid shall be made on forms to be supplied by the department. The applicant shall give his or her name and address and~~,~~ the brand name of the brake fluid, state that he or she owns the ~~said~~ brand name and has complete control over the product sold thereunder in Florida, and provide the name and address of the resident agent in Florida. If the applicant does not own the brand name but wishes to register the product with the department, a notarized affidavit that gives the applicant full authorization to register the brand name and that is signed by the owner of the brand name must accompany the application for registration. The affidavit must include all affected brand names, the owner's company or corporate name and address, the applicant's company or corporate name and address, and a statement from the owner authorizing the applicant to register the product with the department. The owner of the brand name shall maintain complete control over each product sold under that brand name in this state. All new product applications must ~~Application shall~~ be accompanied by a certified report from ~~of~~

an independent testing laboratory, setting forth the analysis of the ~~said~~ brake fluid, which shall show its quality to be not less than the specifications established by the department for brake fluids. A sample of not less than 24 fluid ounces ~~one-half gallon~~ of brake fluid shall be submitted, in a container or containers, with labels representing ~~labeled~~ exactly how the ~~as~~ containers of brake fluid will be labeled when sold, and such sample and container shall be analyzed and inspected by the Division of Standards in order that compliance with the department's specifications and labeling requirements may be verified. Upon approval of such application, the department shall register the brand name of such brake fluid and issue to the applicant a permit authorizing the registrant to sell such brake fluid in this state during the permit year specified in the permit.

(b) Each applicant shall pay a fee of $100 with each application. A permit may be renewed by application to the department, accompanied by a renewal fee of $50 on or before the last day of the permit year immediately preceding the permit year for which application is made for renewal of registration. To any fee not paid when due, there shall accrue a penalty of $25 which shall be added to the renewal fee. Renewals will be accepted only on brake fluids that ~~which~~ have no change in formula, composition, or brand name. Any change in formula, composition, or brand name of any brake fluid constitutes ~~shall constitute~~ a new product that must ~~which shall~~ be registered in accordance with the provisions of this part.

Section 7. Section 527.04, Florida Statutes, is amended to read:

527.04 Proof of insurance required.--

(1) Before any license is issued, except to a dealer in appliances and equipment for use of liquefied petroleum gas or a category III liquefied petroleum gas cylinder exchange operator, the applicant must deliver to the department satisfactory evidence that the applicant is covered by a primary policy of bodily injury liability and property damage liability insurance that covers the products and operations with respect to such business and is issued by an insurer authorized to do business in this state for an amount not less than $1 million and that the premium on such insurance is paid. An insurance certificate, affidavit, or other satisfactory evidence of acceptable insurance coverage shall be accepted as proof of insurance. In lieu of an insurance policy, the applicant may deliver a good and sufficient bond in the amount of $1 million, payable to the Governor of Florida, with the applicant as principal and a surety company authorized to do business in this state as surety. The bond must be conditioned upon the applicant's ~~principal's~~ compliance with the provisions of this chapter and the rules of the department with respect to the conduct of such business and shall indemnify and hold harmless all persons from loss or damage by reason of the applicant's ~~principal's~~ failure to comply. However, the aggregated liability of the surety may not exceed $1 million. If the insurance policy is canceled or otherwise terminated or the bond becomes insufficient, the department may require new proof of insurance or a new bond to

be filed, and, if the licenseholder ~~principal~~ fails to comply ~~do so~~, the department shall cancel the license issued and give the licenseholder ~~principal~~ written notice that it is unlawful to engage in business without a license. ~~If the applicant furnishes satisfactory evidence that he or she is covered by a primary policy of bodily injury liability and property damage liability insurance covering the products and operations with respect to such business, issued by an insurer authorized to do business in the state, for an amount not less than $1 million and that the premiums on such insurance are paid, an insurance affidavit or other satisfactory evidence of acceptable insurance coverage shall be accepted in lieu of the bond.~~ A new bond is not required as long as the original bond remains sufficient and in force. If the licenseholder's insurance coverage ~~coverages~~ as required by this subsection is ~~are~~ canceled or otherwise terminated, the insurer must notify the department within 30 days after such cancellation or termination.

(2) Before any license is issued to a class III liquefied petroleum gas cylinder exchange operator, the applicant must deliver to the department satisfactory evidence that the applicant is covered by a primary policy of bodily injury liability and property damage liability insurance that covers the products and operations with respect to such business and is issued by an insurer authorized to do business in this state for an amount not less than $300,000 and that the premium on such insurance is paid. An insurance certificate, affidavit, or other satisfactory evidence of acceptable insurance coverage shall be accepted as proof of insurance. In lieu of an insurance policy,

the applicant may deliver a good and sufficient bond in the amount of $300,000, payable to the Governor, with the applicant as principal and a surety company authorized to do business in this state as surety. The bond must be conditioned upon the applicant's ~~principal's~~ compliance with this chapter and the rules of the department with respect to the conduct of such business and must indemnify and hold harmless all persons from loss or damage by reason of the applicant's ~~principal's~~ failure to comply. However, the aggregated liability of the surety may not exceed $300,000. If the insurance policy is canceled or otherwise terminated or the bond becomes insufficient, the department may require new proof of insurance or a new bond to be filed, and, if the licenseholder ~~principal~~ fails to comply ~~do so~~, the department shall cancel the license issued and give the licenseholder ~~principal~~ written notice that it is unlawful to engage in business without a license. ~~If the applicant furnishes satisfactory evidence that he or she is covered by a primary policy of bodily injury liability and property damage liability insurance covering the products and operations with respect to such business, issued by an insurer authorized to do business in the state, for an amount not less than $300,000 and that the premiums on such insurance are paid, an insurance affidavit or other satisfactory evidence of acceptable insurance coverage shall be accepted in lieu of the bond.~~ A new bond is not required as long as the original bond remains sufficient and in force. If the licenseholder's insurance coverage ~~coverages~~ required by this subsection is ~~are~~ canceled or otherwise

terminated, the insurer must notify the department within 30 days after such cancellation or termination.

(3) Any person having a cause of action on such bond may bring suit against the principal and surety, and a copy of such bond duly certified by the department shall be received in evidence in the courts of this state without further proof. The department shall furnish a certified copy of such bond upon payment to it of its lawful fee for making and certifying such copy.

Section 8. Section 527.07, Florida Statutes, is amended to read:

527.07 Restriction on use of containers.--No person, other than the owner and those authorized by the owner, shall sell, fill, refill, remove gas from, deliver, permit to be delivered, or use in any manner any liquefied petroleum gas container or receptacle for any gas or compound, or for any other purpose.

Section 9. The sum of $58,559 is appropriated for the 2007-2008 fiscal year from the Licensing Trust Fund to the Department of Agriculture and Consumer Services for the purpose of developing curriculum and administering examinations to applicants for licensure as private investigators.

Section 10. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1199 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Nelson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Agribusiness	8 Y, 0 N	Kaiser	Reese
2) Environment & Natural Resources Council	12 Y, 0 N	Kaiser	Hamby
3) Policy & Budget Council		Davila	Hansen
4)			
5)			

SUMMARY ANALYSIS

HB 1199 expands current law to include a sales tax exemption for electricity used indirectly in the production or processing of agricultural products on a farm. The bill amends an exemption, enacted during the 2006 legislative session, to apply to other activities indirectly related to agricultural production or processing.

The Revenue Estimating Conference estimates that the provisions of this legislation will result in a negative fiscal impact of $1.7 million to state and local governments in FY 2007-2008 and $0.8 million to state and local governments in FY 2008-2009.

The effective date of this legislation is July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: This bill provides a sales tax exemption for electricity used indirectly in the production or processing of agricultural products on a farm.

B. EFFECT OF PROPOSED CHANGES:

During the 2006 legislative session, HB 7075 was enacted providing a sales tax exemption for electricity used directly and exclusively for the production or processing of agricultural products on a farm, as long as the usage was separately metered. During the implementation of that legislation, it became apparent that the legislation was so narrowly drawn that it failed to encompass all aspects involved in production and processing of certain agricultural products.

HB 1199 provides for the sales tax exemption to apply to electricity used directly or indirectly in the production or processing of agricultural products on a farm. This expansion will allow for the exemption to apply to other agricultural-related activities performed in offices and barns.

C. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S.; expanding the sales tax exemption for electricity used for certain agricultural purposes.
Section 2: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	2007-08	2008-09
General Revenue	(1.5m)	(.6m)
State Trust	(Insignificant)	(Insignificant)

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local Impact	(.2m)	(.2m)

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agricultural producers will save money by not having to pay sales tax on electricity used indirectly in the production or processing of agricultural products on a farm, as long as the usage is separately metered.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant and an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

Last year the Legislature passed a bill which exempted the sales tax on electricity used for agricultural production and processing on a farm. If a barn or office was not exclusively used for production or processing, then it was not exempted. For example, if the computer in the office is also used for payroll, then the office electricity is not exempt and had to be separately metered. This legislation corrects the problem. Electricity used directly or indirectly on a farm will be exempted. The revenue impact is only $700,000.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None

A bill to be entitled

An act relating to tax on sales, use, and other transactions; amending s. 212.08, F.S.; expanding the exemption for electricity used for certain agricultural purposes; providing an effective date.

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

Section 1. Paragraph (e) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(e) Gas or electricity used for certain agricultural purposes.--

1. Butane gas, propane gas, natural gas, and all other forms of liquefied petroleum gases are exempt from the tax imposed by this chapter if used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm and no part of which gas is used in any vehicle or equipment driven or operated on the public highways of this state. This restriction does not apply to the movement of farm vehicles or farm equipment between farms. The transporting of bees by water and the operating of

equipment used in the apiary of a beekeeper is also deemed an exempt use.

2. Electricity used directly or indirectly ~~and exclusively~~ for production or processing of agricultural products on the farm is exempt from the tax imposed by this chapter. This exemption applies only if the electricity used for the exempt purposes is separately metered. If the electricity is not separately metered, it is conclusively presumed that some portion of the electricity is used for a nonexempt purpose, and all of the electricity used for such purposes is taxable.

Section 2. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1269 Infant Mortality
SPONSOR(S): Healthcare Council and Reed
TIED BILLS: **IDEN./SIM. BILLS:** SB 2120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Healthcare Council	13 Y, 0 N, As CS	Guy	Gormley
2) Policy & Budget Council		Leznoff	Hansen
3)			
4)			
5)			

SUMMARY ANALYSIS

CS/HB 1269 creates the black infant health practice initiative ("initiative") and outlines objectives of the initiative to include determining factors that contribute to racial disparity in infant mortality and developing interventions to address that disparity.

The bill:

- authorizes the Department of Health to distribute annual grants to local healthy start coalitions for participation in the initiative subject to a specific appropriation,
- requires the department to distribute at least two grants: one to a coalition that represents an urban county and one to a coalition that represents a rural county,
- specifies infant mortality conditions that must exist in a particular county for which a coalition receives a grant, requires participating coalitions to use specific infant mortality data collection and review methodology as developed by a public university or college with expertise in public health,
- requires the department to annually evaluate and make recommendations to modify the initiative.
- requires all participating coalitions to produce a report of their findings and recommendations to the Governor and Legislature by January 1, 2010.
- clarifies that the participating coalitions, their professional staff, and review team members are immune from civil liability pursuant to section 766.101, F.S.

The bill appropriates $1 million in non-recurring general revenue funds to implement provisions of the bill.

The effective date of the bill is July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families – the bill provides for increased efforts to identify causes of elevated rates of infant mortality in minority populations.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Infant Mortality in Florida and Around the Nation

Infant mortality data serves as an indicator for the overall health of a community and the infrastructure of its public and private health systems.[1] Infant mortality is defined as the death of a child before the age of 1. The leading causes of infant death include congenital abnormalities, pre-term/low birth weight, Sudden Infant Death Syndrome (SIDS), problems related to complications of pregnancy, and respiratory distress syndrome.[2] Although the national rate has declined steadily for the previous 50 years, in 2004 (the most recent data available), the national infant mortality was 6.8 deaths per 1,000 live births. In 2005 in Florida, the infant mortality rate was 7.2 deaths per 1,000 live births. The United States ranked 28th in the world in infant mortality in 1998.[3]

Significant racial disparities exist in infant mortality. Nationally, infant mortality among African-Americans occurred at a rate twice the national average.[4] SIDS deaths among American Indians and Alaska Natives is 2.3 times the rate for non-Hispanic white mothers.[5] Florida also has a rate of twice the average for infant mortality among African-Americans.[6] In Florida, in 2005, the infant mortality rate for nonwhites per 1,000 births was 12.5, while the rate for white births was 5.3.[7] Many factors contribute to this disparity, including higher incidents of low birthweight, little to no prenatal care and geographic racial segregation. Infants with very low birthweight account for approximately two-thirds of the black-white gap in infant mortality.[8]

Healthy Start Programs

Healthy Start is a statewide initiative designed to decrease the risk of pregnancy complications and poor birth outcomes for all pregnant women, and decrease the risk of death or impairment in health, intellect or functional ability for all infants.[9] The primary tasks of Healthy Start are: identify those women who are at high risk; provide professional assessment of their needs; and provide referrals and services.[10] The federal government funds several Healthy Start Projects and a Healthy Start grants program. Florida's Healthy Start Coalitions ("coalitions") provide services to pregnant women and children up to 3 years of age. There are 32 coalitions, organized as non-profit agencies that serve all 67 counties.

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[1] 2006 Florida Healthy Start Annual Report.
[2] Ibid.
[3] Centers for Disease Control and Prevention. http://www.cdc.gov/omh/AMH/factsheets/infant.htm (last viewed on April 2, 2007).
[4] According to the Centers for Disease Control and Prevention, the rate was 14.1 deaths per 1,000 live births in 2000, the year for which the most recent data was available. The national average in 2000 was 6.9 deaths per 1,000 live births. http://www.cdc.gov/omh/AMH/factsheets/infant.htm (last viewed April 2, 2007.
[5] Ibid.
[6] 2006 Florida Healthy Start Annual Report.
[7] 2005 Florida Vital Statistics Annual Report. http://www.flpublichealth.com/VSBOOK/VSBOOK.aspx# (last viewed on April 2, 2007).
[8] MMWR Weekly, April 19, 2002. http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5115a4.htm (last viewed on April 2, 2007).
[9] 2006 Healthy Start Annual Report.
[10] Ibid.

The coalitions are authorized in section 383.216, Florida Statutes, and are overseen by the Department of Health ("department"). Each coalition may receive up to $150,000 in grant from the department provided the coalition has demonstrated a local match of 25 percent.[11]

The coalitions are also required to provide the department with annual data on the number of mothers and children at risk in each service area and services provided by the coalition. In 2005, the Healthy Start screening process identified 120,652 pregnant women and infants at-risk for poor outcomes. The program provided 1,654,997 services to 112,190 pregnant women and 965,848 services to 70,025 infants, which includes families identified prior to 2005.[12]

Fetal and Infant Mortality Review (FIMR)
Fetal and Infant Mortality Review (FIMR) is a process by which a multi-disciplinary community team is brought together to examine individual cases of infant and fetal deaths in an effort to identify critical community strengths and weaknesses as well as unique health and social issues associated with poor outcomes.[13] The process began in the early 1990s as collaboration between the American College of Obstetricians and Gynecologists and the Federal Maternal and Child Health Bureau. The FIMR process is used across the country by city and county health departments, local hospitals, regional perinatal centers and community based maternal and child health coalitions.[14] According to the department, in Florida, 12 coalitions are partially funded to provide FIMR services for 29 counties. Case selection is done randomly and does not specifically target African-American deaths: the proportion of these deaths reviewed is equivalent to the proportion of African-American births in a particular county or coalition.

Perinatal Periods of Risk (PPOR)
While FIMR teams analyze individual cases of infant and fetal deaths, the Perinatal Periods of Risk (PPOR) methodology uses all available infant and fetal death data in a given year in a particular community. The PPOR uses four "cells" to produce fetal-infant mortality data. The cells are: maternal health and prematurity; maternal care; newborn care; and infant care.[15] The PPOR methodology was developed by the World Health Organization for use in many communities, both in the United States and internationally. Many of the larger communities in Florida use the PPOR analysis to identify the influencing factors related to fetal and infant deaths.[16] Data collected from this process is used by the coalitions and public health officials to develop local responses to curb infant mortality. According to the department, the seven largest coalitions have participated in a statewide PPOR collaborative applying this analytic framework to their community data.

Medical Review Committees
Section 766.101, F.S., provides for immunity from liability for medical review committees. Included in this section are reviews of mortality records for a number of entities, and their employees, including healthy start coalitions.

Effect of Proposed Changes

The bill creates the black infant health practice initiative ("initiative") and requires the initiative to be administered through collaboration among the department, federal and state healthy start coalitions, and public universities and colleges that have expertise in public health. The bill outlines objectives of the initiative to include:

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[11] Section 383.216(7), F.S.
[12] 2006 Healthy Start Annual Report.
[13] Sudden, Unexplained Infant Death Initiative (DUDID): Fetal and Infant Mortality Information. http://www.cdc.gov/SIDS/mortality.htm (last viewed on April 2, 2007).
[14] Florida Association of Healthy Start Coalitions. http://www.healthystartflorida.com/work/mortality.asp (last viewed on April 2, 2007).
[15] Perinatal Periods of Risk, An assessment Approach to Understanding Fetal and Infant Deaths in Florida, 1995-1998. Florida Department of Health, 2001.
[16] 2006 Healthy Start Annual Report.

- Determine factors associated with racial disparity in infant mortality using FIMR and PPOR reviews;
- Develop interventions that address the identified factors for use to improve service delivery and community resources;
- Participate in the implementation of those interventions; and
- Assess the progress of those interventions.

The bill authorizes coalitions (defined in the bill as federal or local healthy start coalitions or consortiums) to participate in the initiative and requires the department to develop a grant program for use by the coalitions to implement objectives of the initiative. Subject to a specific appropriation, the department must distribute at least two grants: one to a coalition that represents an urban county and one to a coalition that represents a rural county. The bill specifies infant mortality conditions that must exist in a particular county for which a coalition receives a grant. Participating coalitions must develop an interdisciplinary team to oversee the process and use PPOR when appropriate to examine infant deaths. Participating coalitions must use a modified FIMR to examine infant deaths by:

- Creating a case review FIMR team that includes physicians and other health care practitioners and experts in infant mortality;
- Utilizing professional staff to present individual case reviews to the FIMR team on a quarterly basis; and
- Developing abstracts of sample infant mortalities that also identify factors associated with racial disparity.

The bill requires the department to administer the grant program in a manner that will allow each coalition to begin reviewing cases no later than January 1, 2008.

The bill requires public universities or colleges that have public health expertise to assist the coalitions in developing the review methodology and providing technical assistance to the coalitions. The bill requires each coalition to utilize the same review methodology.

The bill also requires the department to conduct an annual evaluation of the initiative. The evaluation must include, for each coalition, the number of case reviews, grant balances and recommendations to improving the overall initiative. All participating coalitions are required to submit a report to the Governor and Legislature detailing their findings and recommendations by January 1, 2010.

The bill clarifies that the participating coalitions, their professional staff, and review team members are immune from civil liability pursuant to section 766.101, F.S.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of Florida Statutes to create the black infant health practice initiative.

Section 2. Provides for an appropriation of $1 million in non-recurring general revenue funds to implement provisions of the bill.

Section 3. Provides for an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

The bill appropriates $1 million in non-recurring general revenue funds to implement the provisions of the bill.

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 take 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 revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill contains rule-making authority for the department to implement provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 4, 2007, the Healthcare Council adopted three amendments to the bill. One amendment requires the department to distribute at least two grants: one to a coalition that represents an urban county and one to a coalition that represents a rural county, subject to a specific appropriation. The bill specifies infant mortality conditions that must exist in a particular county for which a coalition receives a grant. One amendment removes the requirement that the grant program utilize a request-for-proposal procurement process. The final amendment removes the provision of 1 FTE and clarifies that the appropriation is non-recurring general revenue funds.

The bill was reported favorably as a Council Substitute.

A bill to be entitled

An act relating to infant mortality; providing legislative intent relating to the black infant health practice initiative; providing definitions; providing objectives; providing for administration of the initiative; requiring a local community to develop a team to serve as a part of a statewide practice collaborative; requiring healthy start coalitions to conduct case reviews; requiring certain public universities or colleges to provide technical assistance, to assist in determining certain criteria, and to present findings and make recommendations; requiring the Department of Health to distribute funding to the coalitions; providing duties of each participating coalition; requiring the department to award grants; requiring the department to conduct an annual evaluation of the initiative; requiring each coalition to submit a report to the Governor, the Legislature, and the department; providing immunity from liability to participating coalitions; requiring the department to adopt rules; providing a timeframe for reviewing cases; providing an appropriation; providing an effective date.

WHEREAS, the Legislature recognizes that pregnancy, birth, and infant health outcomes are internationally recognized as measures of health for a community, as these outcomes are indicators of population sustenance, growth, and quality of life, and

WHEREAS, the Legislature also recognizes that infant mortality disproportionately affects African-American infants, as the resident infant mortality rate in 2005 for nonwhites is 12.5 per 1,000 live births, which is more than double the infant mortality rate for whites, which is 5.3 per 1,000 live births, and

WHEREAS, the Legislature recognizes that a continued effort to identify the causes of racial disparities in infant mortality benefits all citizens of Florida, NOW, THEREFORE,

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

Section 1. Black infant health practice initiative.--

(1) LEGISLATIVE INTENT.--It is the intent of the Legislature to create a black infant health practice initiative. The initiative shall include reviews of infant mortality in select counties in this state in order to identify factors in the health and social services systems contributing to higher mortality rates among African-American infants. It is also the intent of the Legislature that the initiative produce recommendations on how to address the factors identified by the reviews as contributing to these higher infant mortality rates.

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

(a) "Coalition" means a federal or local healthy start coalition or consortium.

(b) "Department" means the Department of Health.

(c) "FIMR" means a fetal and infant mortality review committee.

(d) "Infant mortality" means the death of a live-born infant within 364 days after the infant's birth.

(e) "Infant mortality rate" means the number of infant deaths per 1,000 annual live births.

(3) OBJECTIVES.--The objectives of the initiative include:

(a) Determining the significant social, economic, cultural, safety, and health system factors that are associated with racial disparities in infant mortality rates through a practice collaborative approach using perinatal periods of risk and modified fetal infant mortality reviews.

(b) Developing a series of interventions and policies that address these factors to improve the service systems and community resources.

(c) Participating in the implementation of community-based interventions and policies that address racial disparities in infant mortality rates.

(d) Assessing the progress of interventions.

(4) ADMINISTRATION.--The black infant health practice initiative shall be administered through a collaboration among the department, federal and state healthy start coalitions, and public universities or colleges having expertise in public health. A local community shall develop an interdisciplinary team to serve as part of a statewide practice collaborative. Both perinatal periods of risk and fetal infant mortality reviews may be used. A case review shall be conducted by each participating healthy start coalition using professional in-house staff or through contracts with an outside professional. Public universities or colleges having expertise in public

health shall provide technical assistance in developing a standard research methodology based on the fetal and infant mortality review method. Public universities or colleges having expertise in public health shall assist each participating coalition in determining the selection of comparison groups, identifying data collection and housing issues, and presenting findings and recommendations. A single methodology for the reviews conducted through the initiative shall be used by each participating coalition. The department shall distribute funding to each coalition that participates in the initiative through annual grants that are subject to specific appropriations by the Legislature.

(5) FUNCTIONS OF THE INITIATIVE.--Each participating coalition shall:

(a) Develop an interdisciplinary team to oversee the process in its local community.

(b) Use perinatal periods of risk methodology when appropriate to examine infant deaths in its community.

(c) Use a modified FIMR approach to examine infant deaths in its community by:

1. Creating a case review FIMR team that may include obstetricians, neonatologists, perinatalogists, pathologists, registered nurses, social workers, hospital and clinic administrators, social service agencies, researchers, citizens and consumers, and other experts considered necessary to conduct a standardized review of infant mortality.

2. Hiring or contracting with professional staff that may include licensed nurses and social workers to abstract and

present individual case reviews that omit identifying information regarding infant deaths compared to live births to the case review team.

3. Developing abstracts of sample infant mortalities and comparative live births that omit identifying information and that identify social, economic, cultural, safety, and health system factors that are associated with racial disparities in infant mortality rates. The number of abstracted cases that must be conducted by each participating coalition shall be determined by a standard research methodology developed in conjunction with a public university or college having expertise in public health.

4. Presenting abstracts that omit identifying information to its case review team at least quarterly for their review and discussion.

(d) Develop findings and recommendations for interventions and policy changes to reduce racial disparities in infant mortality.

(6) GRANT AWARDS.--The department shall award annual grants, subject to specific appropriations by the Legislature. The department shall award at least one grant to a coalition representing urban counties and at least one grant to a coalition representing rural counties. Priority of grant awards shall be given to those coalitions representing counties having an average nonwhite infant mortality rate at least 1.75 times greater than the white infant mortality rate between 2003 and 2005 and an average of at least 40 nonwhite infant deaths between 2003 and 2005 for urban counties or an average of at

least 5 nonwhite infant deaths between 2003 and 2005 for rural counties.

(7) EVALUATIONS AND REPORTS.--The department shall conduct an annual evaluation of the implementation of the initiative describing which areas are participating in the initiative, the number of reviews conducted by each participating coalition, grant balances, and recommendations for modifying the initiative. All participating coalitions shall produce a report on their collective findings and recommendations by January 1, 2010, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Secretary of Health.

(8) IMMUNITY.--Each participating coalition, its case review team members, and professional staff are immune from liability pursuant to s. 766.101, Florida Statutes.

(9) RULEMAKING.--The department shall adopt rules, pursuant to ss. 120.536(1) and 120.54, Florida Statutes, necessary to implement this section.

(10) IMPLEMENTATION TIMELINE.--The department shall administer grants in a manner that will allow each participating coalition to begin reviewing cases no later than January 1, 2008.

Section 2. The sum of $1 million in nonrecurring revenue is appropriated from the General Revenue Fund to the Department of Health for the 2007-2008 fiscal year to implement the provisions of this act.

Section 3. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1381 Branch Insurance Agencies
SPONSOR(S): Jobs & Entrepreneurship Council and Richter
TIED BILLS: **IDEN./SIM. BILLS:** SB 2702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Insurance	9 Y, 0 N	Davis	Overton
2) Jobs & Entrepreneurship Council	13 Y, 0 N, As CS	Davis	Thorn
3) Policy & Budget Council		Martin	Hansen
4)			
5)			

SUMMARY ANALYSIS

This bill addresses the issue of agent coverage of branch insurance agencies. Currently, the law provides that each insurance branch location must be in the full-time charge of a licensed general lines agent or life or health agent who is appointed to represent one or more insurers. Any entity that has established one or more branch places of business must have at least one licensed general lines agent who is appointed to represent one or more insurers at each agency location, including the headquarters. The agent in charge cannot be in charge of more than one location.

The bill allows the licensed agent in charge of a financial institution, registered securities dealer, or licensed funeral establishment, or an agency affiliated with such an entity, or a branch of such an agency, that is licensed or registered as an insurance agency, to be the agent in charge of branch locations. However, this allowance is subject to certain requirements. A licensed agent may serve as the agent in charge of branch locations as long as no insurance activities requiring licensure as an insurance agent occur at any location when the agent is not physically present, and no unlicensed employee at the location engages in any insurance activities requiring licensure as an insurance agent.

The bill also provides that a licensed insurance agent in charge of an insurance agency that is not affiliated with a financial institution, registered securities dealer, or licensed funeral establishment may also be the agent in charge of branch insurance locations. A licensed agent may serve as the agent in charge of branch locations as long as the same conditions exist as stated above: no insurance activities requiring licensure may take place when the agent is not physically present, and no unlicensed employee may engage in any activities that require agent licensure.

The Department of Financial Services (DFS) Division of Agent and Agency Services estimates that it will incur non-recurring expenses for changes to its computer system. The bill provides an appropriation of $132,000 in nonrecurring funds from the Insurance Regulatory Trust Fund to implement the provisions of the bill.

This bill becomes effective on July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--- The bill allows financial institutions, securities dealers, funeral establishments, their affiliated agencies, agency branches, and all insurance agencies to have a licensed agent in charge to be the agent in charge of other branch locations.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Effective October 1, 2006, section 626.112(7), Florida Statutes (F.S.), requires that entities that act in their own name or under a trade name as an insurance agency obtain an insurance agency license for each place of business at which activity occurs that can only be performed by a licensed insurance agent.

A business establishment that primarily performs tasks that are unrelated to insurance is also subject to this requirement if it engages in any activity that may be performed only by a licensed insurance agent. Examples of such business establishments are financial institutions, securities dealers, and funeral establishments. Among other transactions, financial institutions transact life insurance and annuities, securities dealers transact investment products such as life insurance and annuities, and funeral homes transact pre-need policies.

Additionally, financial institutions, securities dealers, and funeral establishments are not exempt from the branch insurance agency provisions under section 626.747, Florida Statutes. This statute governs general lines insurance agents, and requires that each branch insurance agency be in the active full-time charge of a licensed general lines agent or life or health agent who is appointed to represent one or more insurers.[1] This statute applies to any insurance agent or agency, firm, corporation, or association which has established one or more branches.

PROPOSED CHANGES

Current section 626.747(1), F.S., is changed to section 626.747(1)(a), F.S. The bill adds a new subparagraph (b) which exempts financial institutions, securities dealers, funeral establishments, their affiliated agencies, and agency branches from the requirement that each branch location have its own full-time licensed general lines agent or life or health agent. The result of this subparagraph is to allow the licensed agent in charge of:

- a financial institution as defined in 655.005(1)(h),
- a securities dealer registered pursuant to section 517.12,
- a funeral establishment licensed pursuant to chapter 497, or
- an affiliated agency or a branch of such an agency,

to serve as the agent in charge of branch locations, so long as: (1) no insurance activities that would require a licensed insurance agent take place when the agent is not physically present at the branch location; and (2) no unlicensed employee at the branch location engages in unlicensed activity.

The bill also adds a new subparagraph (c) to section 626.747(1), Florida Statutes, which provides that the licensed agent in charge of an insurance agency not affiliated with a financial institution, a securities dealer, or a funeral establishment may also be the agent in charge of such additional branch office locations if insurance activities requiring licensure as an insurance agent do not occur at any location

[1] Section 626.747(1), F.S.

when the agent is not physically present and unlicensed employees at the location do not engage in any insurance activities requiring licensure as an insurance agent or customer service representative.

The bill also provides that for fiscal year 2007-2008, $132,000 in nonrecurring funds from the Insurance Regulatory Trust Fund is appropriated to DFS for computer system changes necessary to implement the provisions of section 626.747, Florida Statutes.

C. SECTION DIRECTORY:

Section 1: Amends section 626.747, Florida Statutes; provides that subject to certain requirements, the licensed agent in charge of a financial institution, registered securities dealer, or licensed funeral establishment may also be the agent in charge of branch locations; provides that subject to certain requirements, all insurance agencies may have a licensed agent in charge of branch locations.

Section 2: Provides an appropriation of $132,000 to the Department of Financial Services for the 2007-2008 fiscal year.

Section 3: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The DFS Division of Agent and Agency Services estimates the following non-recurring expenditures:

   Cost to make changes to the division's computer systems:

Online application (AALF/MyProfile) -	$44,000
Licensing database (ALIS) -	$88,000
Total cost to change systems -	$132,000

   The bill provides an appropriation of $132,000 in nonrecurring funds from the Insurance Regulatory Trust Fund to implement the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will reduce the economic impact of having to place a licensed agent at each location, or alternatively, having to discontinue offering insurance products at certain locations that may be less productive than others.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In its amended analysis dated April 3, 2007, DFS states that the Division of Agent and Agency Services cannot implement these provisions sooner than January 1, 2008, due to the need for computer system enhancements. The bill currently states that the bill will take effect on July 1, 2007.

D. STATEMENT OF THE SPONSOR:

Prior to 2005, Florida was the only state that did not require insurance agencies to be licensed. During the 2005 Legislative Session, the Legislature passed SB 1912 to bring Florida in line with the other states. The bill and its subsequent interpretations did not account for the ways financial institutions, securities brokers, and funeral homes offer various insurance products to their customers. This bill is a remedy to these unintended consequences while still keeping with the intent of the law. More specifically, the bill allows financial institutions and securities brokers to continue to offer insurance products to their customers at multiple locations as they were currently allowed prior to implementation of the new law. The bill also allows funeral directors who offer pre-need policies to their customers at multiple funeral home locations, which they were previously allowed to do. Financial Institutions, Securities Brokers and funeral homes will still be required to obtain an agency license. Thank you for your consideration of this matter.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to branch insurance agencies; amending s. 626.747, F.S.; authorizing certain licensed agents to be the agent in charge of branch locations under certain circumstances; providing limitations; providing an appropriation; providing an effective date.

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

Section 1. Subsection (1) of section 626.747, Florida Statutes, is amended to read:

626.747 Branch agencies.--

(1)(a) Each branch place of business established by an agent or agency, firm, corporation, or association shall be in the active full-time charge of a licensed general lines agent or life or health agent who is appointed to represent one or more insurers. Any agent or agency, firm, corporation, or association which has established one or more branch places of business shall be required to have at least one licensed general lines agent who is appointed to represent one or more insurers at each location of the agency including its headquarters location.

(b) Notwithstanding paragraph (a), the licensed agent in charge of a financial institution as defined in s. 655.005(1)(h), securities dealer registered pursuant to s. 517.12, or funeral establishment licensed pursuant to chapter 497, or an agency affiliated with such a financial institution, securities dealer, or funeral establishment, or a branch of such an agency, that is licensed or registered as an insurance agency

may also be the agent in charge of branch locations provided no insurance activities requiring licensure as an insurance agent occur at any location when the agent is not physically present and no unlicensed employee at the location engages in any insurance activities requiring licensure as an insurance agent.

(c) Notwithstanding paragraphs (a) and (b), the licensed agent in charge of an insurance agency not affiliated with a financial institution as defined in s. 655.005, a securities dealer registered under s. 517.12, or a funeral establishment licensed under chapter 497 may also be the agent in charge of such additional branch office locations if insurance activities requiring licensure as an insurance agent do not occur at any location when the agent is not physically present and unlicensed employees at the location do not engage in any insurance activities requiring licensure as an insurance agent or customer service representative.

Section 2. For fiscal year 2007-2008, the sum of $132,000 in nonrecurring funds from the Insurance Regulatory Trust Fund is appropriated to the Department of Financial Services for computer system changes necessary to implement the provisions of section 626.747, Florida Statutes.

Section 3. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1381**

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	_____

Council/Committee hearing bill: Policy & Budget Council

Representative(s) Richter offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause, and insert:

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

626.221 Examination requirement; exemptions.--

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

(k) An applicant for license as an independent or company employee adjuster who has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, or Certified Claims Adjuster (CCA) from the Association of Property and Casualty Claims Professionals whose curriculum has been approved by the department and whose curriculum includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard

department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 2. Subsection (2) of section 626.7851, Florida Statutes, is amended to read:

626.7851 Requirement as to knowledge, experience, or instruction.--No applicant for a license as a life agent, except for a chartered life underwriter (CLU), shall be qualified or licensed unless within the 4 years immediately preceding the date the application for a license is filed with the department he or she has:

(2) Successfully completed a correspondence course in insurance, 3 hours of which shall be on the subject matter of ethics, satisfactory to the department and regularly offered by accredited institutions of higher learning in this state or by independent programs of study, approved by the department. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of life insurance by employers to their employees and the regulation thereof;

Section 3. Subsection (2) of section 626.8311, Florida Statutes, is amended to read:

626.8311 Requirement as to knowledge, experience, or instruction.--No applicant for a license as a health agent, except for a chartered life underwriter (CLU), shall be qualified or licensed unless within the 4 years immediately

preceding the date the application for license is filed with the department he or she has:

(2) Successfully completed a correspondence course in insurance, 3 hours of which shall be on the subject matter of ethics, satisfactory to the department and regularly offered by accredited institutions of higher learning in this state or by independent programs of study, approved by the department. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the provision of health insurance by employers to their employees and the regulation thereof;

Section 4. Effective January 1, 2008, subsection (1) of section 626.747, Florida Statutes, is amended to read:

626.747 Branch agencies.--

(1)(a) Each branch place of business established by an agent or agency, firm, corporation, or association shall be in the active full-time charge of a licensed general lines agent or life or health agent who is appointed to represent one or more insurers. Any agent or agency, firm, corporation, or association which has established one or more branch places of business shall be required to have at least one licensed general lines agent who is appointed to represent one or more insurers at each location of the agency including its headquarters location.

(b) Notwithstanding paragraph (a), the licensed agent in charge of an insurance agency may also be the agent in charge of additional branch office locations of the agency if insurance activities requiring licensure as an insurance agent do not

occur at any location when the agent is not physically present and unlicensed employees at the location do not engage in any insurance activities requiring licensure as an insurance agent or customer service representative.

Section 5. Subsection (2) of section 626.865, Florida Statutes, is amended to read:

626.865 Public adjuster's qualifications, bond.--

(2) At the time of application for license as a public adjuster, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact such business in this state, in the amount of $50,000, conditioned for the faithful performance of his or her duties as a public adjuster under the license for which the applicant has applied, and thereafter maintain the bond unimpaired throughout the existence of the license and for at least 1 year after termination of the license ~~for~~. The bond shall be in favor of the department and shall specifically authorize recovery by the department of the damages sustained in case the licensee is guilty of fraud or unfair practices in connection with his or her business as public adjuster. The aggregate liability of the surety for all such damages shall in no event exceed the amount of the bond. Such bond shall not be terminated unless at least 30 days' written notice is given to the licensee and filed with the department.

Section 6. Paragraph (c) of subsection (4) of section 626.869, Florida Statutes, is amended to read:

626.869 License, adjusters.--

(4)

(c) The department shall adopt rules necessary to implement and administer the continuing education requirements

of this subsection. For good cause shown, the department may grant an extension of time during which the requirements imposed by this section may be completed, but such extension of time may not exceed 1 year.

Section 7. Subsection (1) of section 626.8698, Florida Statutes, is amended to read:

626.8698 Disciplinary guidelines for public adjusters.--The department may deny, suspend, or revoke the license of a public adjuster, and administer a fine not to exceed $5,000 per act, for any of the following:

(1) Violating any provision of this chapter or a rule or order of the department ~~office or commission~~;

Section 8. Paragraphs (a) and (c) of section 626.921, Florida Statutes, are amended to read:

626.921 Florida Surplus Lines Service Office.--

(5)(a) The association shall submit to the office a plan of operation, and any amendments thereto, to provide operating procedures for the administration of the service office. The plan of operation and any amendments thereto shall become effective upon approval by order of the office. The association shall submit to the department an agents' manual, and any amendments thereto, which shall provide administrative procedures that surplus lines insurance agents must follow with respect to their duties to the service office. The manual shall be prepared in cooperation with the department, and any changes, updates, or amendments shall be submitted to the department before distribution. The manual shall be approved by order of the department.

(c) All surplus lines agents licensed in this state must comply with the plan of operation and the agent's manual.

Section 9. Section 626.9611, Florida Statutes, is amended to read:

626.9611 Rules.--

(1) The department or commission may, in accordance with chapter 120, adopt reasonable rules as are necessary or proper to identify specific methods of competition or acts or practices which are prohibited by s. 626.9541 or s. 626.9551, but the rules shall not enlarge upon or extend the provisions of ss. 626.9541 and 626.9551.

(2) The department and the commission shall, in accordance with chapter 120, adopt rules to protect members of the United States Armed Forces from dishonest or predatory insurance sales practices by insurers and insurance agents. The rules shall identify specific false, misleading, deceptive, or unfair methods of competition, acts, or practices which are prohibited by s. 626.9541 or s. 626.9551. The rules shall be based upon model rules or model laws adopted by the National Association of Insurance Commissioners which identify certain insurance practices involving the solicitation or sale of insurance and annuities to members of the United States Armed Forces which are false, misleading, deceptive, or unfair.

Section 10. For the 2007-2008 fiscal year, the sum of $132,000 in nonrecurring funds is appropriated from the Insurance Regulatory Trust Fund to the Department of Financial Services for computer system changes necessary to implement the provisions of s. 626.747, Florida Statutes.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2007.

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

Remove the entire title, and insert:

A bill to be entitled

An act relating to insurance representatives; amending s. 626.221, F.S.; providing an exemption from the required written examination to certain applicants for licensure as a claims adjuster; amending s. 626.7851, F.S.; authorizing certain programs to offer correspondence courses to applicants for licensure as a life insurance agent; amending s. 626.8311, F.S.; authorizing certain programs to offer correspondence courses to applicants for licensure as a health insurance agent; amending s. 626.747, F.S.; authorizing certain licensed agents to be the agent in charge of branch locations under certain circumstances; amending s. 626.865, F.S.; requiring public adjusters to maintain their surety bond unimpaired for a certain period; amending s. 626.869, F.S.; authorizing an extension of time to complete continuing education requirements for public adjusters; amending s. 626.8698, F.S.; designating the Department of Financial Services as the appropriate agency responsible for disciplinary action against public adjusters; amending s. 626.921, F.S.; providing that the department is responsible for approval of the surplus lines agent manual; amending s. 626.9611, F.S.; requiring that the department and Financial Services Commission adopt rules prohibiting the use of unfair and deceptive practices in the sale of insurance to members of the United States Armed Forces; providing limitations; providing an appropriation; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1477 Forensic Mental Health Services
SPONSOR(S): Healthcare Council, Ausley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 542

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Healthy Families	8 Y, 0 N	Mitchell	Mitchell
2) Healthcare Council	16 Y, 0 N, As CS	Mitchell	Gormley
3) Policy & Budget Council		Leznoff	Hansen
4)			
5)			

SUMMARY ANALYSIS

CS/HB 1477 creates the Public Safety Mental Health and Substance Abuse Local Matching Grant Program. The bill:

- Provides matching grant awards to local communities to address the needs of persons with serious mental illness and substance abuse problems who are in or at risk of entering the criminal justice and juvenile justice systems.
- Establishes the Criminal Justice Mental Health Policy Council within the Substance Abuse and Mental Health Corporation to align policy initiative and creates the Public Safety, Mental Health, and Substance Abuse Technical Assistance Center to help local communities plan and implement their local efforts.
- Provides grants to communities to bring together key stakeholders to implement programs to serve the mental health population involved in the criminal justice system, and to help reduce the use of state forensic treatment facilities and prisons.
- Requires equal local matching funds except for fiscally constrained counties, which are required to meet half of the required 100 percent local match.

The effective date of the bill is July 1, 2007, subject to specific appropriation. The House version of the General Appropriations Act appropriates $4,000,000 from the General Revenue Fund to provide grants through the Public Safety, Mental Health, and Substance Abuse Matching Grant program and to establish the Public Safety, Mental Health, and Substance Abuse Technical Assistance Center.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill provides grants for local communities to plan and implement programs to better use local resources to serve people with serious mental illnesses and substance use disorders in Florida's criminal justice system, to reduce the number who must be held in state forensic mental health facilities and prisons.

B. EFFECT OF PROPOSED CHANGES:

HB 1477 addresses the high number of people with serious mental illnesses and substance use disorders in Florida's criminal justice and juvenile justice systems.

The bill creates the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program within the Department of Children and Family Services.

It requires the Substance Abuse and Mental Health Corporation to establish a statewide justice and mental health reinvestment grant review committee. The committee includes five members of the corporation and representatives of the Departments of Children and Family Services, Corrections, Juvenile Justice, Elder Affairs, and the State Courts Administrator.

The bill authorizes counties to apply for a one year planning grant, or a three year implementation or expansion grant. Both awards require counties to address systemic changes for identification and treatment of adults and juveniles with mental illnesses and substance abuse disorders, and strategies to divert adults from commitment to the department under s. 916.17, F.S.

The bill requires the local Public Safety Council or other local committee to serve as a planning group for the grants. The planning council is required to include mental health and substance abuse experts and consumers, and representatives of the juvenile justice system, in addition to regular public safety representatives. It requires the planning group to make recommendations to the county board of commissioners regarding local forensic mental health and substance abuse problems of adults and juveniles.

The bill requires the corporation in collaboration with others, to develop criteria for review of grant applications, and selection of county awards. It requires counties to include specific information regarding their local situation and the proposed use of the grant. It prohibits a county from using grant funds to supplant existing funding.

The bill creates the Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center at the Florida Mental Health Institute at the University of South Florida, to assist local communities in preparing grants and providing best practice programs to address local issues. It requires the center to submit an annual report to the Legislature and Governor.

The bill limits the administrative costs a county may charge to the grant funds.

The bill amends s. 394.655, F.S., to create the Criminal Justice, Mental Health, and Substance Abuse Policy Council in the Florida Substance Abuse and Mental Health Corporation to align policy initiatives in the criminal justice, juvenile justice, and mental health systems. The members of the council are the chair of the corporation and Secretaries of the Departments of Children and Family Services, Corrections, Juvenile Justice, and Elder Affairs, and the Secretary of the Agency for Health Care Administration and the State Courts Administrator.

The effective date of the bill is July 1, 2007, subject to a specific appropriation.

PRESENT SITUATION

Currently there is no required planning process that brings together all of the local stakeholders who should be addressing the needs of this population. Local governments, the judiciary, law enforcement, providers of mental health and substance abuse services, advocates, consumers and state agencies should all be working together to address the situation.

According to the Department of Children and Families, as of March 7, 2007, there are 218 persons designated incompetent to proceed to trial or not guilty by reason of insanity, awaiting placement in a state mental health forensic treatment facility. One hundred fifty individuals have been waiting longer than 15 days for admission due to lack of available capacity.

Currently, the Department of Children and Families and the Department of Corrections work to ensure former inmates with severe and persistent mental illnesses receive aftercare follow-up. The department, including its state mental health treatment facilities, works with community mental health providers to identify limited resources to serve forensic individuals in the community who remain under court jurisdiction on conditional release or administrative probation.

Many individuals with mental illnesses and co-occurring substance abuse disorders become involved with the criminal justice system because they lack access to appropriate therapeutic services and medications. Often, they become repeat offenders and eventually serve time in prison. In addition, many individuals with chronic mental illnesses are referred to state mental health treatment facilities due to a lack of local coordination of resources to address their needs. Many of these individuals can receive community-based services that are more appropriate and cost-effective in meeting their needs.

The U. S. Department of Health and Human Services, Substance Abuse, and Mental Health Services Administration, estimates approximately 800,000 persons with serious mental illness are admitted to U.S. jails annually and 72 percent of these individuals meet criteria for co-occurring substance abuse. The Bureau of Justice Statistics reports over 16 percent of adults incarcerated in U.S. jails and prisons have mental illnesses. According to the Florida Commission on Mental Health and Substance Abuse, at least 15,870 inmates in Florida's jails and prisons have mental illnesses. Approximately 16 percent of the adult correctional population has a mental illness (Department of Corrections, 2006).

The Department of Corrections 2005 data indicates approximately 64 percent (54,242) of the inmate prison population (84,895) are identified as being in need of substance abuse treatment. Of those, 17 percent have a co-occurring mental illness needing treatment.

In June 2006, the Department of Children and Families, Department of Juvenile Justice and Department of Corrections applied for a grant from the Bureau of Justice Assistance to implement local, community planning grants for addressing the needs of individuals with mental illnesses involved with the criminal justice system. Although a grant award was not received, community planning and implementation grants with major stakeholder involvement can build on these efforts to help address the problems of persons with mental health and substance abuse problems in Florida's forensic system who are most in need of treatment.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of Florida Statutes to establish the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program within the Department of Children and Family Services.

Section 2. Creates an unnumbered section of Florida Statutes to establish requirements for counties to apply for a planning grant, or an implementation or expansion grant.

Section 3. Creates an unnumbered section of Florida Statutes to require the corporation and others to develop criteria for reviewing grants.

Section 4. Creates an unnumbered section of Florida Statutes to establish the Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center.

Section 4. Creates an unnumbered section of Florida Statutes to limit administrative costs a county may charge to the grant funds

Section 5. Amends s. 394.655, F.S., to create the Criminal Justice, Mental Health, and Substance Abuse Policy Council of Department Secretaries in the Florida Substance Abuse and Mental Health Corporation.

Section 6. Establishes the effective date of the bill as July 1, 2007, subject to a specific appropriation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The House version of the General Appropriations Act (GAA) appropriates $4,000,000 from the General Revenue Fund to provide grants through the Public Safety, Mental Health and Substance Abuse Matching Grant program and to establish the Public Safety, Mental Health, and Substance Abuse Technical Assistance Center. The proviso in the House proposed GAA specifies that $3,850,000 shall be used to provide grants and $150,000 is for the technical assistance center.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill requires local governments to provide equal matching funds in order to receive a grant award.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Estimated expenditures for the Substance Abuse and Mental Health Corporation and the Public Safety, Mental Health, and Substance Abuse Technical Assistance Center are based on the following cost analysis provided by the department:

- First year non-recurring furniture and computer expenses of $4,328.
- Recurring PG 26 equivalent position with travel and expenses, for the Substance Abuse and Mental Health Corporation of $90,251, in the first year and $113,826 in the second year.
- Travel expenses to 12 meetings and meeting space for the Substance Abuse and Mental Health Corporation Review Committee of $20,000 each year.

- The Florida Mental Health Institute Public Safety, Mental Health, and Substance Abuse Technical Assistance Center indicates it will require at least $500,000 each year to perform the legislatively mandated functions. The Institute will hire a Center director and Staff expert in methods for collecting and analyzing data as required by the bill.
- Printing of annual report is estimated to cost $5,000 each year.

The Florida Mental Health Institute indicates it has the technical ability to perform the functions detailed in this bill but it is difficult to predict the cost of performing the required functions. Staff will be required to analyze the utilization of services and to evaluate the performance of the counties.

The bill requires the Department of Children and Families to be the pass-through agent for the grant awards, providing transfer authority to the counties receiving grant awards. According to the department, if the funding level for 3-year implementation grants is increased significantly, the department may need additional contract management staff to cover the increased workload.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The proposed bill requires communities to use the local Public Safety Councils and does not allow for other bodies such as Miami-Dade County Mayor's Task Force that are currently addressing this issue. In discussions with counties, some wish to have flexibility to use existing task forces for this purpose.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2007, the Committee on Healthy Families adopted an amendment by the bill sponsor that is traveling with the bill, and voted the bill favorably.

The amendment provides that the bill takes effect only if a specific appropriation to fund its provisions is made in the General Appropriations Act. The House version of the General Appropriations Act contains an appropriation.

On April 10, 2007, the Healthcare Council adopted a strike-all amendment to the bill and voted the bill favorably as a Council Substitute. The bill analysis is drafted to the Council Substitute.

The strike-all amendment added juvenile justice issues to the grant program, expanded representation on local planning committees, restructured state agency oversight, and allowed for fiscally constrained communities to meet only 50 percent of the required local match. The amendment conforms the bill to language in SB 542.

A bill to be entitled

An act relating to forensic mental health; creating the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program within the Department of Children and Family Services; providing for the purpose of the grant program; requiring the Florida Substance Abuse and Mental Health Corporation, Inc., to establish a statewide grant review committee; providing for membership on the review committee; authorizing counties to apply for a planning grant or an implementation or expansion grant; requiring each county applying for a grant to have a planning council or committee; providing for membership on the planning council or committee; requiring that all records and meetings be open to the public; requiring the corporation, in collaboration with others, to develop criteria to be used in reviewing submitted applications and selecting counties to be awarded a planning, implementation, or expansion grant; requiring counties to include certain specified information when submitting the grant application; prohibiting a county from using grant funds to supplant existing funding; creating the Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center; providing for certain functions to be performed by the technical assistance center; requiring the technical assistance center to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by a specified date; specifying the information to be included in the

annual report; limiting the administrative costs a county may charge to the grant funds; amending s. 394.655, F.S.; creating the Criminal Justice, Mental Health, and Substance Abuse Policy Council within the Florida Substance Abuse and Mental Health Corporation; providing for membership; providing for the purpose of the council; providing a contingent effective date.

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

Section 1. Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program.--

(1) There is created within the Department of Children and Family Services the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program. The purpose of the program is to provide funding to counties with which they can plan, implement, or expand initiatives that increase public safety, avert increased spending on criminal justice, and improve the accessibility and effectiveness of treatment services for adults and juveniles who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders and who are in, or at risk of entering, the criminal or juvenile justice systems.

(2) The Florida Substance Abuse and Mental Health Corporation, Inc., created in s. 394.655, Florida Statutes, shall establish a statewide grant review committee. The committee shall include:

(a) Five current members or appointees of the corporation;

(b) One representative of the Department of Children and Family Services;

(c) One representative of the Department of Corrections;

(d) One representative of the Department of Juvenile Justice;

(e) One representative of the Department of Elderly Affairs; and

(f) One representative of the Office of the State Courts Administrator.

To the extent possible, the members of the committee shall have expertise in grant writing, grant reviewing, and grant application scoring.

(3)(a) A county may apply for a 1-year planning grant or a 3-year implementation or expansion grant. The purpose of the grants is to demonstrate that investment in treatment efforts related to mental illness, substance abuse disorders, or co-occurring mental health and substance abuse disorders results in a reduced demand on the resources of the judicial, corrections, juvenile detention, and health and social services systems.

(b) To be eligible to receive a 1-year planning grant or a 3-year implementation or expansion grant, a county applicant must have a county planning council or committee that is in compliance with the membership requirements set forth in this section.

(4) The grant review committee shall notify the Department of Children and Family Services in writing of the names of the applicants who have been selected by the committee to receive a

grant. Contingent upon the availability of funds and upon notification by the review committee of those applicants approved to receive planning, implementation, or expansion grants, the Department of Children and Family Services may transfer funds appropriated for the grant program to any county awarded a grant.

Section 2. County planning councils or committees.--

(1) Each board of county commissioners shall designate the county public safety coordinating council established under s. 951.26, Florida Statutes, or designate another criminal or juvenile justice mental health and substance abuse council or committee, as the planning council or committee. The public safety coordinating council or other designated criminal or juvenile justice mental health and substance abuse council or committee, in coordination with the county offices of planning and budget, shall make a formal recommendation to the board of county commissioners regarding how the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program may best be implemented within a community. The board of county commissioners may assign any entity to prepare the application on behalf of the county administration for submission to the corporation for review. A county may join with one or more counties to form a consortium and use a regional public safety coordinating council or another county-designated regional criminal or juvenile justice mental health and substance abuse planning council or committee for the geographic area represented by the member counties.

(2)(a) For the purposes of this section, the membership of

a designated planning council or committee must include:

1. The state attorney, or an assistant state attorney designated by the state attorney.

2. A public defender, or an assistant public defender designated by the public defender.

3. A circuit judge designated by the chief judge of the circuit.

4. A county court judge designated by the chief judge of the circuit.

5. The chief correctional officer.

6. The sheriff, if the sheriff is the chief correctional officer, or a person designated by the sheriff.

7. The police chief, or a person designated by the local police chiefs association.

8. The state probation circuit administrator, or a person designated by the state probation circuit administrator.

9. The local court administrator, or a person designated by the local court administrator.

10. The chairperson of the board of county commissioners, or another county commissioner designated by the chairperson, or, if the planning council is a consortium of counties, a county commissioner or designee from each member county.

11. The director of any county probation or pretrial intervention program, if the county has such a program.

12. The director of a local substance abuse treatment program, or a person designated by the director.

13. The director of a community mental health agency, or a person designated by the director.

14. A representative of the substance abuse program office and the mental health program office of the Department of Children and Family Services, selected by the substance abuse and mental health program supervisor of the district in which the county is located.

15. A primary consumer of mental health services, selected by the substance abuse and mental health program supervisor of the district in which the primary consumer resides. If multiple counties apply together, a primary consumer may be selected to represent each county.

16. A primary consumer of substance abuse services, selected by the substance abuse and mental health program supervisor of the district in which the primary consumer resides. If the planning council is a consortium of counties, a primary consumer may be selected to represent each county.

17. A family member of a primary consumer of community-based treatment services, selected by the abuse and mental health program supervisor of the district in which the family member resides.

18. A representative from an area homeless program or a supportive housing program.

19. The director of the detention facility of the Department of Juvenile Justice, or a person designated by the director.

20. The chief probation officer of the Department of Juvenile Justice, or an employee designated by the chief probation officer.

(b) The chairperson of the board of county commissioners

or another county commissioner, if designated, shall serve as the chairperson of the planning council or committee until a chairperson is elected from the membership.

(c) All meetings of the planning council or committee, as well as its records, books, documents, and papers, shall be open and available to the public in accordance with ss. 119.07 and 286.011, Florida Statutes.

(3)(a) If a public safety coordinating council established under s. 951.26, Florida Statutes, acts as the planning council, its membership must include all persons listed in paragraph (2)(a).

(b) A public safety coordinating council that is acting as the planning council must include an assessment of the availability of mental health programs in addition to the assessments required under s. 951.26(2), Florida Statutes.

Section 3. Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program requirements.--

(1) The Substance Abuse and Mental Health Corporation Statewide Grant Review Committee, in collaboration with the Department of Children and Family Services, the Department of Corrections, the Department of Juvenile Justice, the Department of Elderly Affairs, and the Office of the State Courts Administrator, shall establish criteria to be used by the corporation to review submitted applications and to select the county that will be awarded a 1-year planning grant or a 3-year implementation or expansion grant. A planning, implementation, or expansion grant may not be awarded unless the application of the county meets the established criteria.

(a) The application criteria for a 1-year planning grant must include a requirement that the applicant county or counties have a strategic plan to initiate systemic change to identify and treat individuals who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders who are in, or at risk of entering, the criminal or juvenile justice systems. The 1-year planning grant must be used to develop effective collaboration efforts among participants in affected governmental agencies, including the criminal, juvenile, and civil justice systems, mental health and substance abuse treatment service providers, transportation programs, and housing assistance programs. The collaboration efforts shall be the basis for developing a problem-solving model and strategic plan for treating adults and juveniles who are in, or at risk of entering, the criminal or juvenile justice system and doing so at the earliest point of contact, taking into consideration public safety. The planning grant shall include strategies to divert individuals from judicial commitment to community-based service programs offered by the Department of Children and Family Services in accordance with ss. 916.13 and 916.17, Florida Statutes.

(b) The application criteria for a 3-year implementation or expansion grant shall require information from a county that demonstrates its completion of a well-established collaboration plan that includes public-private partnership models and the application of evidence-based practices. The implementation or expansion grants may support programs and diversion initiatives that include, but need not be limited to:

1. Mental health courts;

2. Diversion programs;

3. Alternative prosecution and sentencing programs;

4. Crisis intervention teams;

5. Treatment accountability services;

6. Specialized training for criminal justice, juvenile justice, and treatment services professionals;

7. Service delivery of collateral services such as housing, transitional housing, and supported employment; and

8. Reentry services to create or expand mental health and substance abuse services and supports for affected persons.

(c) Each county application must include the following information:

1. An analysis of the current population of the jail and juvenile detention center in the county, which includes:

a. The screening and assessment process that the county uses to identify an adult or juvenile who has a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders;

b. The percentage of each category of persons admitted to the jail and juvenile detention center that represents people who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders; and

c. An analysis of observed contributing factors that affect population trends in the county jail and juvenile detention center.

2. A description of the strategies the county intends to use to serve one or more clearly defined subsets of the

population of the jail and juvenile detention center who have a mental illness or to serve those at risk of arrest and incarceration. The proposed strategies may include identifying the population designated to receive the new interventions, a description of the services and supervision methods to be applied to that population, and the goals and measurable objectives of the new interventions. The interventions a county may use with the target population may include, but are not limited to:

a. Specialized responses by law enforcement agencies;

b. Centralized receiving facilities for individuals evidencing behavioral difficulties;

c. Post-booking alternatives to incarceration;

d. New court programs, including pretrial services and specialized dockets;

e. Specialized diversion programs;

f. Intensified transition services that are directed to the designated populations while they are in jail or juvenile detention to facilitate their transition to the community;

g. Specialized probation processes;

h. Day-reporting centers;

i. Linkages to community-based, evidence-based treatment programs for adults and juveniles who have mental illness or substance abuse disorders; and

j. Community services and programs designed to prevent high-risk populations from becoming involved in the criminal or juvenile justice system.

3. The projected effect the proposed initiatives will have

on the population and the budget of the jail and juvenile detention center. The information must include:

a. The county's estimate of how the initiative will reduce the expenditures associated with the incarceration of adults and the detention of juveniles who have a mental illness;

b. The methodology that the county intends to use to measure the defined outcomes and the corresponding savings or averted costs;

c. The county's estimate of how the cost savings or averted costs will sustain or expand the mental health and substance abuse treatment services and supports needed in the community; and

d. How the county's proposed initiative will reduce the number of individuals judicially committed to a state mental health treatment facility.

4. The proposed strategies that the county intends to use to preserve and enhance its community mental health and substance abuse system, which serves as the local behavioral health safety net for low-income and uninsured individuals.

5. The proposed strategies that the county intends to use to continue the implemented or expanded programs and initiatives that have resulted from the grant funding.

(2)(a) As used in this subsection, the term "available resources" includes in-kind contributions from participating counties.

(b) A 1-year planning grant may not be awarded unless the applicant county makes available resources in an amount equal to the total amount of the grant. A planning grant may not be used

to supplant funding for existing programs. For fiscally constrained counties, the available resources may be at 50 percent of the total amount of the grant.

(c) A 3-year implementation or expansion grant may not be awarded unless the applicant county or consortium of counties makes available resources equal to the total amount of the grant. For fiscally constrained counties, the available resources may be at 50 percent of the total amount of the grant. This match shall be used for expansion of services and may not supplant existing funds for services. An implementation or expansion grant must support the implementation of new services or the expansion of services and may not be used to supplant existing services.

(3) Using the criteria adopted by rule, the county designated or established criminal justice, juvenile justice, mental health, and substance abuse planning council or committee shall prepare the county or counties' application for the 1-year planning or 3-year implementation or expansion grant. The county shall submit the completed application to the statewide grant review committee.

Section 4. Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center.--

(1) There is created a Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center at the Louis de la Parte Florida Mental Health Institute at the University of South Florida, which shall:

(a) Provide technical assistance to counties in preparing a grant application.

(b) Assist an applicant county in projecting the effect of the proposed intervention on the population of the county detention facility.

(c) Assist an applicant county in monitoring the effect of a grant award on the criminal justice system in the county.

(d) Disseminate and share evidence-based practices and best practices among grantees.

(e) Act as a clearinghouse for information and resources related to criminal justice, juvenile justice, mental health, and substance abuse.

(f) Coordinate and organize the process of the state interagency justice, mental health, and substance abuse work group with the outcomes of the local grant projects for state and local policy and budget developments and system planning.

(2) The Substance Abuse and Mental Health Corporation and the Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1 of each year, beginning on January 1, 2009. The report must include:

(a) A detailed description of the progress made by each grantee in meeting the goals described in the application;

(b) A description of the effect the grant-funded initiatives have had on meeting the needs of adults and juveniles who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders, thereby reducing the number of forensic commitments to state mental health treatment facilities;

(c) A summary of the effect of the grant program on the growth and expenditures of the jail, juvenile detention center, and prison;

(d) A summary of the initiative's effect on the availability and accessibility of effective community-based mental health and substance abuse treatment services for adults and juveniles who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders. The summary must describe how the expanded community diversion alternatives have reduced incarceration and commitments to state mental health treatment facilities; and

(e) A summary of how the local matching funds provided by the county or consortium of counties leveraged additional funding to further the goals of the grant program.

Section 5. Administrative costs and number of grants awarded.--

(1) The administrative costs for each applicant county or consortium of counties may not exceed 10 percent of the total funding received for any grant.

(2) The number of grants awarded shall be based on funding appropriated for that purpose.

Section 6. Subsection (11) of section 394.655, Florida Statutes, is renumbered as subsection (12), and a new subsection (11) is added to that section, to read:

394.655 The Substance Abuse and Mental Health Corporation; powers and duties; composition; evaluation and reporting requirements.--

(11)(a) There is established a Criminal Justice, Mental

Health, and Substance Abuse Policy Council within the Florida Substance Abuse and Mental Health Corporation. The members of the council are:

1. The chairperson of the corporation;

2. The Secretary of Children and Family Services;

3. The Secretary of Corrections;

4. The Secretary of Health Care Administration;

5. The Secretary of Juvenile Justice;

6. The Secretary of Elderly Affairs; and

7. The State Courts Administrator.

(b) The purpose of the council shall be to align policy initiatives in the criminal justice, juvenile justice, and mental health systems to ensure the most effective use of resources and to coordinate the development of legislative proposals and budget requests relating to the shared needs of adults and juveniles who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders who are in, or at risk of entering, the criminal justice system.

(c) The council shall work in conjunction with counties that have been awarded a Criminal Justice, Mental Health, and Substance Abuse Reinvestment grant to ensure that effective strategies identified by those counties are disseminated statewide and to establish a dialogue for purposes of policy and budget development and system change and improvement. The council shall coordinate its efforts with the Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center.

(d) Each member agency of the council shall designate an

agency liaison to assist in the work of the council.

Section 7. This act shall take effect July 1, 2007, only if a specific appropriation to fund the provisions of the act is made in the General Appropriations Act for fiscal year 2007-2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. CS/HB 1477

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	_____

Council/Committee hearing bill: Policy and Budget Council Representative(s) Ausley offered the following:

Amendment (with title amendments)

Between lines 385 and 386 insert:

Section 6. Subsection (6)(a) of Section 394.655, Florida Statutes, is amended to read:

(6)(a) The corporation shall be comprised of 12 members, each appointed to a 2-year term, with not more than three subsequent reappointments, except that initial legislative appointments shall be for 3-year terms. Four members shall be appointed by the Governor, four members shall be appointed by the President of the Senate, and four members shall be appointed by the Speaker of the House of Representatives.

1. The four members appointed by the Governor must be prominent community or business leaders, two of whom must have experience and interest in substance abuse and two of whom must have experience and interest in mental health.

2. Of the four members appointed by the President of the Senate, one member must represent the perspective of community-based care under chapter 409, one member must be a primary

consumer or family member of a primary consumer of mental health services, and two members must be prominent community or business leaders, one of whom must have experience and interest in substance abuse and one of whom must have experience and interest in mental health.

3. Of the four members appointed by the Speaker of the House of Representatives, one member must be a primary consumer or family member of a primary consumer of substance abuse services, one member must represent the perspective of the criminal justice system, and two members must be prominent community or business leaders, one of whom must have experience and interest in substance abuse and one of whom must have experience and interest in mental health. The Secretary of Children and Family Services, or his or her designee, the Secretary of Elderly Affairs, or his or her designee, the Secretary of Health Care Administration, or his or her designee, and a representative of local government designated by the Florida Association of Counties shall serve as ex officio members of the corporation.

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

Remove line(s) 30 and insert:

may charge to the grant funds; amending s. 394.655, F.S.; expanding the ex officio membership of the corporation; creating a new subsection (11) of s. 394.655, F.S.;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. CS/HB 1477

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	_____

Council/Committee hearing bill: Policy & Budget

Representative(s) Seiler offered the following:

Amendment (with title amendments)

Between lines 421 and 422 insert:

Section 7. Subsection (9) of section 947.005, Florida Statutes, is amended to read:

947.005 Definitions.--As used in this chapter, unless the context clearly indicates otherwise:

(9) "Qualified practitioner" means a psychiatrist licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a social worker, a mental health counselor, or a marriage and family therapist licensed under chapter 491 who practices in accordance with his or her respective practice act~~, as determined by rule of the respective boards, has the coursework, training, qualifications, and experience to evaluate and treat sex offenders~~.

Section 8. Subsection (6) of section 948.001, Florida Statutes, is amended to read:

948.001 Definitions.--As used in this chapter, the term:

(6) "Qualified practitioner" means a psychiatrist licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a social worker, a mental health counselor, or a marriage and family therapist licensed under chapter 491 who practices in accordance with his or her respective practice act~~, as determined by rule of the respective boards, has the coursework, training, qualifications, and experience to evaluate and treat sex offenders~~.

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

In between lines 34 and 35 insert:

amending s. 947.005 F.S.; redefining the term "qualified practitioner"; amending s. 948.001 F.S.; redefining the term "qualified practitioner"

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7103 PCB SSC 07-08 High-Risk Offenders
SPONSOR(S): Safety & Security Council; Dean
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Safety & Security Council	11 Y, 0 N	Kramer	Havlicak
1) Policy & Budget Council		Leznoff	Hansen
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

During the 2005 session, HB 1877, known as the Jessica Lunsford Act, passed the legislature and was signed by the Governor on May 2, 2005. The bill had an effective date of September 1, 2005. Section 21 of the act amended section 1012.465, F.S. to require non-instructional contractual personnel who are permitted access on school grounds when students are present to meet level 2 screening requirements. The bill modifies these requirements. Most significantly, the bill:

- Requires that a fingerprint-based background screening be performed of non-instructional contractors who: (1) are permitted access to school grounds when students are present; (2) are not anticipated to have direct contact with students in performing their contract; and (3) would have only unanticipated contact with students that is infrequent and incidental.
- Provides a list of offenses that disqualify a non-instructional contractor from having access to school grounds when students are present.
- Exempts specified non-instructional contractors from fingerprint-based background checks. Exempt contractors are subject to a search of the state and national registry of sexual predators and sexual offenders with no charge to the contractor.
- Exempts instructional personnel who work with children with developmental disabilities or who are child care personnel from fingerprint-based background checks if they are required to undergo a level 2 background screening, have done so in the previous five years and meet level 2 standards, and have fingerprints retained by FDLE.
- Limits fees charged to a contractor to no more than 30 percent of the total cost charged by FDLE and the FBI.

Also, the bill requires that all driver's licenses or identification cards issued or reissued to sexual predators or sexual offenders must have markings on the front of the card indicating the section of statute under which they are registered. The bill will make it unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings are not displayed or have been altered. A violation of this provision will be a third degree felony. Though this bill has not been evaluated by the Criminal Justice Impact Conference, conference staff has indicated that the prison bed impact would likely be insignificant as the felony created is an unranked, third degree felony.

The bill has a fiscal impact of $74,727 to the Department of Highway Safety and Motor Vehicles and $79,996 to the Department of law Enforcement. It appears both impacts can be absorbed within each agency's existing resources.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill may reduce the number of individuals who are required to undergo a state and national criminal history check.

Safeguard individual liberty/Promote personal responsibility: The bill will require sexual predators and sexual offenders to have a marking on their driver's license or identification card indicating the section of statute under which they are registered.

B. EFFECT OF PROPOSED CHANGES:

Background

Legislative History on School Criminal History Background Checks: In three of the last four legislative sessions, the Legislature has increasingly required individuals who come in contact with students to submit to Level 2 background checks conducted by FDLE and the FBI.

Section 1012.32, F.S., created in 2002, requires all instructional and non-instructional personnel hired to fill positions having direct contact with students to submit fingerprints for criminal background checks conducted by the FDLE and the FBI. The new law included a provision that persons "found through fingerprint processing to have been convicted of a crime involving moral turpitude shall not be employed, engaged to provide services, or serve in any position requiring direct contact with students." The Department of Education interpreted the term "personnel" to include contractors. Accordingly, contractors having direct contact with students would have to meet state and federal Level 2 background checks and could not be employed if they had been convicted of a crime involving moral turpitude. In 2004, the Legislature created s. 1012.465, F.S., which codified the Department of Education's interpretation of "personnel" by specifically requiring school district contractors with direct student contact to undergo state and federal Level 2 criminal history records checks.

During the 2005 session, HB 1877, known as the Jessica Lunsford Act, passed the legislature and was signed by the Governor on May 2, 2005. [Ch. 2005-28, Laws of Fla.] The bill had an effective date of September 1, 2005. The bill amended several statutes relating to sexual predators and sexual offenders, required electronic monitoring of certain probationers who had committed a sexual offense and mandated lifetime imprisonment or lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under the age of 12. Section 21 amended s. 1012.465, F.S., to require Level 2 background checks not only for contractors with direct student contact (as required by the 2004 law), but also for those who are on school grounds when students are present. The bill defined the term "contractual personnel" to include "any vendor, individual or entity under contract with the school board."

The Jessica Lunsford Act does not impose requirements on volunteers or parents who visit school to pick up their children – school districts adopt their own policies for screening visitors. Section 943.04351, F.S., passed in 2004, does require government entities that use volunteers at places where children regularly congregate to conduct a search against the sex offender registry maintained by FDLE.

A screening required under the Jessica Lunsford Act is accomplished by the contractor submitting his or her fingerprints to school district personnel who submits the fingerprints to FDLE. FDLE then submits the fingerprints to the FBI for the national check. FDLE sends the results of the state and national check back to the school district. The school district then determines whether the results indicate that the contractor has been convicted of a crime involving moral turpitude.

After the passage of the Jessica Lunsford Act, the district school boards, DOE, and FDLE experienced implementation problems associated with the unexpected volume of contractors who needed Level 2 background checks. Numerous complaints arose from school officials, vendors, charter bus drivers, athletic officials, photographers, visiting performers, class ring sales personnel, engineers, architects, utility workers, food and health service personnel, and other impacted contractors. The complaints included the following:

- School districts expressed concerns about the volume of fingerprinting/background screenings that were required under the new law.[1]
- School districts expressed liability concerns about sharing criminal history information and about failing to identify every possible person who is required to be fingerprinted.
- Contractors who work in multiple school districts opposed the costs for redundant Level 2 background checks. Although school districts are authorized to share screening results with other school districts, initially there was no central database to facilitate sharing of the results.
- Contractors and school officials questioned whether Level 2 background checks were necessary for those contractors (for example, the express mail delivery person or person who refilled the soda machine) who go on school grounds for short or incidental visits or who are directly supervised for the duration of their visit.
- Contractors opposed the additional processing fees imposed by the school districts as well as the wide variability in the Level 2 background check fees charged by the different school districts.[2]
- Contractors who are already required to undergo a Level 2 background screening for the purpose of their employment, certification, or licensure expressed frustration and thought that to undergo another Level 2 background check was redundant and burdensome.

Contractors expressed frustration over the different screening standards and moral turpitude standard.[3] Because there is no statutory definition of moral turpitude, each school district determines whether or not a contractor with a criminal history should be allowed on school grounds. Contractors claim that this school district discretion results in inconsistency in banning a contractor from school grounds – a situation that could be particularly burdensome for contractors who work in multiple districts. Complaints also arose about contractors being banned from school grounds for minor crimes or for crimes committed decades ago.

In August 2005, DOE issued a technical assistance paper to help the school districts in implementing the provisions of the Jessica Lunsford Act. [4] The paper encouraged districts to share Level 2 background check results with other public school districts to reduce the time and fiscal impact on contractors who provide services in multiple districts. Also, FDLE was asked by the Speaker of the House of Representatives and the President of the Senate to implement a system to allow for criminal history information provided to a school district to be shared with other school districts. FDLE developed the Florida Shared School Results (FSSR) system which became available to school districts on September 30, 2005. After a school district requests a criminal history check from FDLE, the department posts the results on a secure website that is accessible to the school districts. Other school districts can then access the results and view the same criminal history record that was received by the original school district. The information is searchable by name, social security number or submitting agency.

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[1] FDLE experienced a 196 percent increase for the month of September, and a 178 percent increase for the month of October for fingerprint submissions from school districts compared to 2004.

[2] According to a survey of school districts conducted by the Joint Committee on Intergovernmental Relations (JCIR) in December of 2005, 16 school districts charged contractors $67 or higher for the background screenings – representing a fee in excess of 30 percent of actual costs. Four districts charged over $90. School districts reported that these fees were used to cover district administrative costs and contractor identification badges.

[3] According to a JCIR survey, 31 districts reported the use of Level 2 screening standards (19 using only Level 2 screening standards and 12 using a combination of Level 2 standards, a moral turpitude standard, and possibly another standard), 7 districts reported using only a moral turpitude standard, and 5 districts reported use of another standard.

[4] See http://info.fldoe.org/docushare/dsweb/Get/Document-3151/k12%2005-107a

Instructional Personnel: Section 1012.32, F.S., subjects instructional employees and contractors to Level 2 background checks upon employment or engagement to provide services and every five years thereafter. Instructional personnel are defined by s. 1012.01(2), F.S., to include kindergarten through grade 12 staff members whose functions include the provision of direct instructional services to students or who provide direct support in the learning process of students (e.g., classroom teachers, student personnel services personnel, other instructional staff, and education paraprofessionals).

Direct Services Providers and Child Care Personnel: Section 393.0655, F.S., relating to persons with developmental disabilities, requires direct service providers to undergo Level 2 background screening, employment history checks, and local criminal history records checks. Direct service providers are individuals who are unrelated to their clients, including support coordinators, and managers and supervisors of residential facilities or comprehensive transitional education programs licensed under s. 393.067, F.S., and any other person, including volunteers, who provide care or services. The term also includes individuals who have access to a client's living areas or who have access to a client's funds or personal property.

Section 435.05, F.S., provides that every individual employed in a position for which employment screening is required must submit complete information necessary to conduct a screening to the employer within five working days after beginning employment. The law is silent on the frequency of screenings for direct service providers under s. 393.0655, F.S.

Section 402.305, F.S., provides licensure standards that are applicable to child care facilities, regardless of the origin or source of fees used to operate the facility or the type of children served. Child care personnel are subject to Level 2 background screening. The term is defined in Section 402.302(3), F.S., to include owners, operators, employees, and volunteers working in a child care facility, along with persons who work in child care programs that provide care for children 15 hours or more each week in public or nonpublic schools, summer day camps, family day care homes, or programs otherwise exempted under s. 402.316, F.S. It does not include public or nonpublic school personnel who are providing care during regular school hours or during after hours programs for grades kindergarten through 12.

Screening is valid for five years, at which time a statewide re-screening must be conducted, including an FDLE criminal history records check and a local criminal records check. In addition, child care personnel must be re-screened following a break in employment in the child care industry that exceeds 90 days.[5]

Effect of Bill:

Driver's licenses and identification cards: The bill amends s. 322.141, F.S., effective August 1, 2007, to provide that all driver's licenses or identification cards issued or reissued to sexual predators or sexual offenders must have the following markings on the front of the card:

- For a person designated as a sexual predator under s. 775.21, F.S., the marking "775.21, F.S."
- For a person subject to registration as a sexual offender under s. 943.0435, F.S. or s. 944.607, F.S., the marking "943.0435, F.S."

The bill amends s. 322.212, F.S., effective February 1, 2008, to provide that it is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings required by s. 322.141, F.S., are not displayed or have been altered. Currently, sexual predators and sexual offenders are required to report in person each year during the month of the sexual predator's birthday and during the sixth month following the sexual predator or sexual offenders birth month to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. The bill requires a sexual predator or sexual offender to report to

[5] Rule 65C-22.006(5)(d), F.A.C., relating to child care standards.

the DHSMV to obtain a marked driver's license or identification card during the month of their re-registration unless he or she previously secured such a marked driver's license or identification card.

Currently, a sexual predator or sexual offender must register at a driver's license office of the DHSMV and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This bill amends the sexual predator and sexual offender statutes to specify that the driver's license or identification card a predator or offender is required to secure must comply with s. 322.141(3), F.S.

Background screenings: The bill retains the language in s. 1012.465, F.S. that was added as part of the Jessica Lunsford Act. The bill also clarifies that the category of contractual personnel includes those who contract directly with a *school*. Current law specifies that contractual personnel include a vendor, individual, or entity under contract with a *school district.* This amendment clarifies that contractors who contract directly with schools, such as athletic officials, are required to undergo background screening unless otherwise exempted.

The bill creates a new section of statute governing access by non-instructional contractors to school grounds when students are present. The term "non-instructional contractor" is defined as a vendor, individual, or entity under contract with a school or school board who is compensated for services performed for the school or district, but who is not considered to be an employee. Employees and subcontractors of the vendor, individual or entity under contract are also included within the definition. The bill defines the terms "convicted" and "school grounds[6]."

The bill requires that a fingerprint-based background screening be performed of non-instructional contractors who: (1) are permitted access to school grounds when students are present; (2) are not anticipated to have direct contact with students in performing their contract; and (3) would have only unanticipated contact with students that is infrequent and incidental. The bill requires state and federal criminal history checks to be performed at least every five years. The fingerprints may be taken by either an authorized law enforcement agency or an employee of a school district, school, or private company who is trained to take fingerprints. The school districts are required to submit the fingerprints to FDLE for state processing, and FDLE must submit the prints to the FBI for national processing. Results are returned to the school board and entered into the FDLE secure Internet shared system that is codified in the bill. The school board must check the results of the criminal history check against the disqualifying offenses specified below. The cost of the criminal history check may be borne by the district school boards, the school, or the contractor. The fee charged to a contractor cannot exceed 30 percent of the total amount charged by FDLE and the FBI.

The bill requires FDLE to enter fingerprints submitted by school districts into the statewide automated fingerprint identification system. The information is then available for all authorized law enforcement purposes, and is required to be compared with all arrest fingerprint cards. Fingerprints taken pursuant to the bill's requirements must be purged from the system after five years. School district use of the

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[6] The term "school grounds" is defined by the bill as follows:

"School grounds" means the buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school, or any combination of grades prekindgarten through grade 12, together with the school district land on which the buildings are located. The term does not include:

1. Any other facility or location where school classes or activities may be located or take place;
2. The buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school or any combination of grades prekindergarten through grade 12, or contiguous school district land, during any time period in which students are not permitted access; or
3. Any building described in this paragraph during any period in which it is used solely as a career or technical center under part IV of chapter 1004 for postsecondary or adult education.

screening process will be based upon an annual fee set by FDLE, whose director has discretion to reduce or waive the fee for good cause.

The bill requires a non-instructional contractor subject to this section to inform a school district that he or she has had a criminal history check in another school district within the last five years. The school district must verify the results of the previous criminal history check using the shared system, and may not charge the contractor for doing so.

Disqualifying offenses: The bill requires that a contractor who has been convicted of one of the following disqualifying offenses be immediately suspended from having access to school grounds and remain suspended unless the conviction has been set aside:

- Any offense that would require registration as a sexual offender.
- Sexual misconduct with certain developmentally disabled clients and reporting thereof.
- Sexual misconduct with certain mental health patients and reporting thereof.
- Terrorism.
- Murder.
- Kidnapping.
- Lewdness and indecent exposure.
- Incest.
- Child abuse, aggravated child abuse, or neglect of a child.

A contractor who has been convicted of a disqualifying offense is prohibited from being on school grounds when students are present unless he or she has received a full pardon or had civil rights restored. Violation of this prohibition is a 3rd degree felony.

The bill requires the school district to notify the contractor in writing when access to school grounds is denied, stating the specific record upon which the denial is based. The only two bases for contesting the denial are mistaken identity or misinterpretation of an offense from another jurisdiction as being similar to a disqualifying Florida offense.

The bill requires the contractor to inform his or her employer (or the party to whom he or she is under contract) and the school district within 48 hours of being arrested for any disqualifying offense. Willful failure to make this report constitutes a 3rd degree felony. It is also a 3rd degree felony for an employer (or the party to whom he or she is under contract) to authorize a contractor to be on school grounds when students are present if the employer has knowledge that the contractor has been arrested for a disqualifying offense. It should be noted that the bill does not prohibit the contractor who has been arrested for a disqualifying offense from being on school grounds when children are present. The prohibition only applies upon conviction for the offense.

The bill provides FDLE with rulemaking authority and provides immunity from civil and criminal liability for a public school employee (defined as an employee of a school district, a charter school, a lab school, a charter lab school, or the Florida School for the Deaf and the Blind) who shares criminal history information in good faith.

Exemptions: The bill creates a new section of statute that exempts the following non-institutional contractors from the fingerprint-based background screening requirements:

- Contractors who are under the direct supervision of a school district employee or contractor who meets the screening requirements. The term direct supervision means that a school district employee or contractor is physically present with a non-instructional contractor is physically present with a non-instructional contractor when the contractor has access to a student and the access remains in the school district employee's or the contractor's line of sight;
- Contractors who are required to undergo a Level 2 background screening process for licensure, employment, certification, or other purposes, who submit evidence that they meet the standard, were screened within the previous 5 years, and who are in good standing in their field;

- Law enforcement officers who are assigned to or dispatched to school grounds by their employer;
- Employees and medical directors of ambulance providers who are on school grounds in the scope of their duties;
- Contractors who remain at a site where students are not permitted and that is separated from the rest of the school grounds by a six-foot high chain link fence; and
- Contractors who provide pick-up and delivery services involving brief visits to school grounds when students are present.

Non-instructional contractors who are exempt from fingerprint-based criminal history background checks are subject to a search of the state and national registry of sexual predators and sexual offenders without charge to the contractor. Contractors identified as a registered sexual predator or sexual offender may not be on school grounds when students are present. The school district must notify the vendor, individual, or entity under contract of an adverse determination within 3 business days.

A contractor may not be subjected to additional criminal history checks by the school district after the evidence supporting an exemption is presented to and verified by the school district.

The section also provides that s. 1012.465 and the newly created ss.1012.467 and 1012.468, F.S., are not intended to create a private cause of action or to create a new duty of care or basis of liability.

Instructional personnel: The bill exempts instructional personnel who work with children with disabilities and who have already undergone and meet Level 2 background screening requirements from the screening requirements of s. 1012.32, F.S. In order to be exempt, these persons must have completed the criminal history check within five years of having direct contact with students, be re-screened every 5 years, meet the Level 2 standards and have their fingerprints retained by FDLE.

C. SECTION DIRECTORY:

Section 1. Amends s. 322.141, F.S. relating to color or markings of certain licenses or identification cards.

Section 2. Amends s. 322.212, relating to unauthorized possession of, and other unlawful acts in relation to driver's licenses or identification cards.

Section 3. Amends s. 775.21, F.S. relating to the Florida Sexual Predators Act.

Section 4. Amends s. 943.0435, F.S. relating to sexual offender registration.

Section 5. Amends s. 944.607, F.S. relating to sexual offender registration

Section 6. Amends s. 1012.465, F.S.; relating to background screening requirements for certain non-instructional school district employees and contractors.

Section 7. Creates s. 1012.467, F.S.; relating to background screening requirements for non-instructional contractors who are permitted access to school grounds when students are present.

Section 8. Creates s. 1012.468, F.S.; relating to exceptions to certain fingerprinting and criminal history checks.

Section 9. Creates s. 1012.321, F.S.; relating to exceptions for certain instructional personnel from background screening requirements.

Section 10. Provides that except as otherwise provided, the act shall take effect July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill's exemptions and improved efficiency of the screening process may reduce revenue received by the Department of Law Enforcement (FDLE) for processing the criminal history background checks.

According to the Department of Highway Safety and Motor Vehicles (DHSMV), implementation of this bill may generate additional revenue associated with the issuance of a license, but, additional revenue is expected to be minimal.

2. Expenditures:

The DHSMV is estimates that implementing the bill would cost $74,727 during the first year. This is based upon a cost of $1.56 for a card for each of the 28,671 registered sexual offenders and sexual predators, and programming costs of $30,000.

FDLE estimates that the bill will require an expenditure of $79,996 during 2007-2008 for notification and documentation to sexual offender/predator registrants of the changes made by the bill and for updating and distribution of forms to local law enforcement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

In general, this bill reduces costs for school districts by clarifying requirements and increasing the efficiency of the background screening process for non-instructional contractors who work on school grounds.

The provision in the bill that exempts contractors who are directly supervised from undergoing the background screening should reduce the volume of cases for school districts that are required to process criminal history background checks. School districts may also experience a workload reduction from the exemption for instructional personnel who meet the background screening requirements of ss. 393.0655 or 402.305, F.S.

The bill limits the amount of fees that a school district is permitted to charge for a federal and state criminal history check of a contractor required under the newly created s. 1012.467, F.S., to 30 percent of the total fees charged by FDLE and the FBI. The current charges are $23 by FDLE and $24 for the FBI, for a total of $47.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Non-instructional contractors who work on school grounds can expect to experience a reduction in costs because of provisions in the bill that exempt contractors who are directly supervised from background screenings, establish a fee cap and prohibit redundant screenings by requiring school districts to share results.

D. FISCAL COMMENTS:

The current House version of the FY 2007-08 General Appropriations Act does not contain increased appropriations to cover the expenditure requirements estimated by the FDLE and the DHSMV

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes FDLE to adopt rules regarding the system which allows the results of a criminal history check provided to a school district to be shared with other school districts through a secure Internet website or other electronic means.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to high-risk offenders; amending s. 322.141, F.S.; requiring distinctive markings for driver's licenses and identification cards issued to persons who are designated as sexual predators or subject to registration as sexual offenders; amending s. 322.212, F.S.; prohibiting the alteration of sexual predator or sexual offender markings on driver's licenses or identification cards, for which there are criminal penalties; requiring sexual predators and sexual offenders to obtain an updated or renewed driver's license or identification card; amending s. 775.21, F.S.; requiring sexual predators to obtain a distinctive driver's license or identification card; amending s. 943.0435, F.S.; requiring sexual offenders to obtain a distinctive driver's license or identification card; amending s. 944.607, F.S.; requiring specified offenders who are under the supervision of the Department of Corrections but are not incarcerated to obtain a distinctive driver's license or identification card; amending s. 1012.465, F.S.; revising background screening requirements for certain noninstructional school district employees and contractors; creating s. 1012.467, F.S.; adding noninstructional contractors to those who must meet the screening requirements; defining the terms "noninstructional contractor," "convicted," and "school grounds"; providing for the submission of fingerprints; requiring school districts to screen results of criminal

records checks; requiring the cost of background screening requirements to be borne by certain parties; providing a cap on fees that may be charged; authorizing the retention of fingerprints; providing a list of violations that such persons must not have committed if they are to satisfy the screening requirements; providing penalties; providing grounds for contesting denial of access to school grounds; providing reporting requirements; providing penalties for the failure to meet certain requirements; authorizing the Department of Law Enforcement to adopt rules; providing immunity from civil or criminal liability; creating s. 1012.468, F.S.; specifying exemptions for contractors; providing criteria and conditions; providing that exempted contractors are subject to a search of certain databases that list sexual predators and sexual offenders; providing consequences of a failure to meet the screening requirements; prohibiting school districts from conducting additional criminal history checks; specifying that the act does not create a private cause of action or a new duty of care or basis of liability; creating s. 1012.321, F.S.; creating an exception for certain instructional personnel; providing criteria; providing effective dates.

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

Section 1. Effective August 1, 2007, section 322.141, Florida Statutes, is amended to read:

322.141 Color <u>or markings</u> of <u>certain</u> licenses <u>or</u>

identification cards.--

(1) All licenses originally issued or reissued by the department to persons under the age of 21 years for the operation of motor vehicles shall have markings or color which shall be obviously separate and distinct from all other licenses issued by the department for the operation of motor vehicles.

(2)(a) All licenses for the operation of motor vehicles originally issued or reissued by the department to persons who have insulin-dependent diabetes may, at the request of the applicant, have distinctive markings separate and distinct from all other licenses issued by the department.

(b) At the time of application for original license or reissue, the department shall require such proof as it deems appropriate that a person has insulin-dependent diabetes.

(3) All licenses for the operation of motor vehicles or identification cards originally issued or reissued by the department to persons who are designated as sexual predators under s. 775.21 or subject to registration as sexual offenders under s. 943.0435 or s. 944.607 shall have on the front of the license or identification card the following:

(a) For a person designated as a sexual predator under s. 775.21, the marking "775.21, F.S."

(b) For a person subject to registration as a sexual offender under s. 943.0435 or s. 944.607, the marking "943.0435, F.S."

(4) Unless previously secured or updated, each sexual offender and sexual predator shall report to the department during the month of his or her reregistration requirement as

required under s. 775.21(8), s. 943.0435(14), or s. 944.607(13) in order to obtain an updated or renewed driver's license or identification card containing the markings required by subsection (3).

Section 2. Effective February 1, 2008, paragraphs (c) is added to subsection (5) of section 322.212, Florida Statutes, to read:

322.212 Unauthorized possession of, and other unlawful acts in relation to, driver's license or identification card.--

(5)

(c) It is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings required by s. 322.141 are not displayed or have been altered.

Section 3. Paragraph (f) of subsection (6) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.--

(6) REGISTRATION.--

(f) Within 48 hours after the registration required under paragraph (a) or paragraph (e), a sexual predator who is not incarcerated and who resides in the community, including a sexual predator under the supervision of the Department of Corrections, shall register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles and shall present proof of registration. At the driver's license office the sexual predator shall:

1. If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an

identification card. The sexual predator shall identify himself or herself as a sexual predator who is required to comply with this section, provide his or her place of permanent or temporary residence, including a rural route address and a post office box, and submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual predators. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section. The driver's license or identification card issued to the sexual predator must be in compliance with s. 322.141(3).

3. Provide, upon request, any additional information necessary to confirm the identity of the sexual predator, including a set of fingerprints.

The sheriff shall promptly provide to the department the information received from the sexual predator.

Section 4. Subsection (3) of section 943.0435, Florida Statutes, is amended to read:

943.0435 Sexual offenders required to register with the department; penalty.--

(3) Within 48 hours after the report required under subsection (2), a sexual offender shall report in person at a driver's license office of the Department of Highway Safety and Motor Vehicles, unless a driver's license or identification card that complies with the requirements of s. 322.141(3) was previously secured or updated under s. 944.607. At the driver's license office the sexual offender shall:

(a) If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual offender shall identify himself or herself as a sexual offender who is required to comply with this section and shall provide proof that the sexual offender reported as required in subsection (2). The sexual offender shall provide any of the information specified in subsection (2), if requested. The sexual offender shall submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual offenders.

(b) Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section. The driver's license or identification card issued must be in compliance with s. 322.141(3).

(c) Provide, upon request, any additional information necessary to confirm the identity of the sexual offender, including a set of fingerprints.

Section 5. Subsection (9) of section 944.607, Florida Statutes, is amended to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.--

(9) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register and obtain a distinctive driver's license or identification card in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register and obtain a distinctive driver's license or identification card as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(9).

Section 6. Subsection (1) of section 1012.465, Florida Statutes, is amended to read:

1012.465 Background screening requirements for certain noninstructional school district employees and contractors.--

(1) Except as provided in s. 1012.467 or s. 1012.468,

noninstructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds must meet level 2 screening requirements as described in s. 1012.32. Contractual personnel shall include any vendor, individual, or entity under contract with a school or the school board.

Section 7. Section 1012.467, Florida Statutes, is created to read:

1012.467 Noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.--

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

(a) "Noninstructional contractor" means any vendor, individual, or entity under contract with a school or with the school board who receives remuneration for services performed for the school district or a school, but who is not otherwise considered an employee of the school district. The term also includes any employee of a contractor who performs services for the school district or school under the contract and any subcontractor and its employees.

(b) "Convicted" has the same meaning as in s. 943.0435.

(c) "School grounds" means the buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school, or any combination of grades prekindergarten through grade 12, together with the school district land on which the buildings are located. The term does not include:

1. Any other facility or location where school classes or activities may be located or take place;

2. The buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school, or any combination of grades prekindergarten through grade 12, or contiguous school district land, during any time period in which students are not permitted access; or

3. Any building described in this paragraph during any period in which it is used solely as a career or technical center under part IV of chapter 1004 for postsecondary or adult education.

(2)(a) A fingerprint-based criminal history check shall be performed on each noninstructional contractor who is permitted access to school grounds when students are present, whose performance of the contract with the school or school board is not anticipated to result in direct contact with students, and for whom any unanticipated contact would be infrequent and incidental. Criminal history checks shall be performed at least once every 5 years. For the initial criminal history check, each noninstructional contractor who is subject to the criminal history check shall file with the Department of Law Enforcement a complete set of fingerprints taken by an authorized law enforcement agency or an employee of a school district, a public school, or a private company who is trained to take fingerprints. The fingerprints shall be electronically submitted for state processing to the Department of Law Enforcement, which shall in turn submit the fingerprints to the Federal Bureau of

Investigation for national processing. The results of each criminal history check shall be reported to the school district in which the individual is seeking access and entered into the shared system described in subsection (7). The school district shall screen the results using the disqualifying offenses in paragraph (g). The cost of the criminal history check may be borne by the district school board, the school, or the contractor. A fee that is charged by a district school board for such checks may not exceed 30 percent of the total amount charged by the Department of Law Enforcement and the Federal Bureau of Investigation.

(b) As authorized by law, the Department of Law Enforcement shall retain the fingerprints submitted by the school districts pursuant to this subsection to the Department of Law Enforcement for a criminal history background screening in a manner provided by rule and enter the fingerprints in the statewide automated fingerprint identification system authorized by s. 943.05(2)(b). The fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint cards entered into the statewide automated fingerprint identification system under s. 943.051.

(c) As authorized by law, the Department of Law Enforcement shall search all arrest fingerprint cards received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (b).

(d) School districts may participate in the search process described in this subsection by paying an annual fee to the

Department of Law Enforcement.

(e) A fingerprint retained pursuant to this subsection shall be purged from the automated fingerprint identification system 5 years following the date the fingerprint was initially submitted. The Department of Law Enforcement shall set the amount of the annual fee to be imposed upon each participating agency for performing these searches and establishing the procedures for retaining fingerprints and disseminating search results. The fee may be borne as provided by law. Fees may be waived or reduced by the executive director of the Department of Law Enforcement for good cause shown.

(f) A noninstructional contractor who is subject to a criminal history check under this section shall inform a school district that he or she has completed a criminal history check in another school district within the last 5 years. The school district shall verify the results of the contractor's criminal history check using the shared system described in subsection (7). The school district may not charge the contractor a fee for verifying the results of his or her criminal history check.

(g) A noninstructional contractor for whom a criminal history check is required under this section may not have been convicted of any of the following offenses designated in the Florida Statutes, any similar offense in another jurisdiction, or any similar offense committed in this state which has been redesignated from a former provision of the Florida Statutes to one of the following offenses:

1. Any offense listed in s. 943.0435(1)(a)1., relating to the registration of an individual as a sexual offender.

2. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and the reporting of such sexual misconduct.

3. Section 394.4593, relating to sexual misconduct with certain mental health patients and the reporting of such sexual misconduct.

4. Section 775.30, relating to terrorism.

5. Section 782.04, relating to murder.

6. Section 787.01, relating to kidnapping.

7. Any offense under chapter 800, relating to lewdness and indecent exposure.

8. Section 826.04, relating to incest.

9. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

(3) If it is found that a noninstructional contractor has been convicted of any of the offenses listed in paragraph (2)(g), the individual shall be immediately suspended from having access to school grounds and shall remain suspended unless and until the conviction is set aside in any postconviction proceeding.

(4) A noninstructional contractor who has been convicted of any of the offenses listed in paragraph (2)(g) may not be permitted on school grounds when students are present unless the contractor has received a full pardon or has had his or her civil rights restored. A noninstructional contractor who is present on school grounds in violation of this subsection commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(5) If a school district has reasonable cause to believe that grounds exist for the denial of a contractor's access to school grounds when students are present, it shall notify the contractor in writing, stating the specific record that indicates noncompliance with the standards set forth in this section. It is the responsibility of the affected contractor to contest his or her denial. The only basis for contesting the denial is proof of mistaken identity or that an offense from another jurisdiction is not disqualifying under paragraph (2)(g).

(6) Each contractor who is subject to the requirements of this section shall agree to inform his or her employer or the party to whom he or she is under contract and the school district within 48 hours if he or she is arrested for any of the disqualifying offenses in paragraph (2)(g). A contractor who willfully fails to comply with this subsection commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. If the employer of a contractor or the party to whom the contractor is under contract knows the contractor has been arrested for any of the disqualifying offenses in paragraph (2)(g) and authorizes the contractor to be present on school grounds when students are present, such employer or such party commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(7)(a) The Department of Law Enforcement shall implement a system that allows for the results of a criminal history check provided to a school district to be shared with other school districts through a secure Internet website or other secure

electronic means. The Department of Law Enforcement may adopt rules under ss. 120.536(1) and 120.54 to implement this paragraph.

(b) An employee of a school district, a charter school, a lab school, a charter lab school, or the Florida School for the Deaf and the Blind who requests or shares criminal history information under this section is immune from civil or criminal liability for any good-faith conduct that occurs during the performance of and within the scope of responsibilities related to the record check.

Section 8. Section 1012.468, Florida Statutes, is created to read:

1012.468 Exceptions to certain fingerprinting and criminal history checks.--

(1) As used in this section, the term "noninstructional contractor" means any vendor, individual, or entity under contract with a school or with the school board who receives remuneration for services performed for the school district or a school, but who is not otherwise considered an employee of the school district. The term also includes any employee of a contractor who performs services for the school district or school under the contract and any subcontractor and its employees.

(2) A district school board shall exempt from the screening requirements set forth in ss. 1012.465 and 1012.467 the following noninstructional contractors:

(a)1. Noninstructional contractors who are under the direct supervision of a school district employee or contractor

who has had a criminal history check and meets the screening requirements under s. 1012.32, s. 1012.465, s. 1012.467, or s. 1012.56. For purposes of this paragraph, the term "direct supervision" means that a school district employee or contractor is physically present with a noninstructional contractor when the contractor has access to a student and the access remains in the school district employee's or the contractor's line of sight.

2. If a noninstructional contractor who is exempt under this subsection is no longer under direct supervision as specified in subparagraph 1., the contractor may not be permitted on school grounds when students are present until the contractor meets the screening requirements in s. 1012.465 or s. 1012.467.

(b) Noninstructional contractors who are required by law to undergo a level 2 background screening pursuant to s. 435.04 for licensure, certification, employment, or other purposes and who submit evidence of meeting the following criteria:

1. The contractor meets the screening standards in s. 435.04;

2. The contractor's license or certificate is active and in good standing, if the contractor is a licensee or certificateholder; and

3. The contractor completed the criminal history check within 5 years prior to seeking access to school grounds when students are present.

(c) A law enforcement officer, as defined in s. 943.10, who is assigned or dispatched to school grounds by his or her

employer.

(d) An employee or medical director of an ambulance provider, licensed pursuant to chapter 401, who is providing services within the scope of part III of chapter 401 on behalf of such ambulance provider.

(e) Noninstructional contractors who remain at a site where students are not permitted if the site is separated from the remainder of the school grounds by a single chain-link fence of 6 feet in height.

(f) A noninstructional contractor who provides pick-up or delivery services and those services involve brief visits on school grounds when students are present.

(3)(a) A noninstructional contractor who is exempt under this section from the screening requirements set forth in s. 1012.465 or s. 1012.467 is subject to a search of his or her name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement under s. 943.043 and the national sex offender public registry maintained by the United States Department of Justice. The school district shall conduct the search required under this subsection without charge or fee to the contractor.

(b) A noninstructional contractor who is identified as a sexual predator or sexual offender in the registry search required in paragraph (a) may not be permitted on school grounds when students are present. Upon determining that a noninstructional contractor may not be permitted on school grounds pursuant to this subsection, the school district shall

notify the vendor, individual, or entity under contract within 3 business days.

(4) A school district may not subject a contractor who meets the requirements in subsection (2) to an additional criminal history check. Upon submission of evidence and verification by the school district, the school district must accept the results of the criminal history check for the contractor.

(5) This section and ss. 1012.465 and 1012.467 do not create or imply any private cause of action for a violation of these sections and do not create any new duty of care or basis of liability.

Section 9. Section 1012.321, Florida Statutes, is created to read:

1012.321 Exceptions for certain instructional personnel from background screening requirements.--Instructional personnel who are required to undergo level 2 background screening under s. 393.0655 or s. 402.305 and who meet the level 2 screening standards in s. 435.04 are not required to be rescreened in order to satisfy the screening requirements in s. 1012.32 if the instructional personnel:

(1) Have completed the criminal history check within 5 years prior to having direct contact with students;

(2) Are rescreened every 5 years and meet the level 2 screening standards; and

(3) Have their fingerprints retained by the Department of Law Enforcement.

Section 10. Except as otherwise expressly provided in this

act, this act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7105 PCB GEAC 07-03 Institute of Food & Agricultural Sciences Supplemental Retirement Program
SPONSOR(S): Government Efficiency & Accountability Council and Attkisson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	12 Y, 0 N	Camara	Cooper
1) Policy & Budget Council		Leznoff	Hansen
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7105 consolidates the supplemental retirement benefit program of the Institute of Food and Agricultural Sciences into the Florida Retirement System (FRS). The bill:

- requires the transfer of assets and the assumption of liabilities and obligations,
- provides that these participants are not members of the Florida Retirement System,
- makes conforming changes to the supplemental benefit program,
- sets the required employer contribution rate,
- removes an investment limitation,
- makes a legislative finding about fulfilling an important state interest.

The bill is fiscally neutral to the state. Any additional costs to the FRS are offset by elimination of the need to subsidize IFAS supplemental retirement benefit with General Revenue funds. It does not have a fiscal impact on the revenues or expenditures of local governments.

The bill has an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – Government cost savings are anticipated from the consolidation of this supplemental retirement benefit program into the Florida Retirement System.

B. EFFECT OF PROPOSED CHANGES:

Florida Retirement System

Chapter 121, F.S., is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.[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 158 cities and 192 independent special districts in Florida that have elected to join the system.[2]

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over 600,000 active members and over 252,000 retirees, surviving beneficiaries, and over 31,000 Deferred Retirement Option Program participants.[3] Members of the FRS belong to one of five membership classes:

1. Regular Class[4]	583,213 members	87.73% of membership
2. Special Risk Class[5]	72,078 members	10.84% of membership
3. Special Risk Administrative Support Class[6]	74 members	0.01% of membership
4. Elected Officers' Class[7]	2,195 members	0.33% of membership
5. Senior Management Service Class[8]	7,259 members	1.09% of membership[9]

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

Background on the Institute of Food and Agricultural Science

The Institute of Food and Agricultural Sciences ("IFAS") is a federal-state-county partnership at the University of Florida that was created in 1964 and is "dedicated to developing knowledge in agriculture, human and natural resources, and the life sciences, and enhancing and sustaining the quality of human life by making that information accessible."[11]

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[1] Section 121.025, F.S.
[2] FL Dept. of Mgmt Svcs., *Florida Division of Retirement Main Page* (visited Feb. 12, 2007) <www.frs.state.fl.us>
[3] *Id.*
[4] Section 121.021(12), F.S.
[5] Section 121.0515(2), F.S.
[6] Section 121.0515(7), F.S.
[7] Section 121.052, F.S.
[8] Section 121.055(12), F.S.
[9] FL Dept. of Mgmt Svcs., *Florida Division of Retirement Main Page* (visited Feb. 12, 2007) <www.frs.state.fl.us>
[10] *See, e.g.,* s 121.055(3)(a)1., F.S.
[11] Univ. of Fla., Inst. of Food and Ag. Sci., *IFAS Facts*, available at http://analysis2001.ifas.ufl.edu/facts150.htm (last updated Jan. 18, 2007; last visited Mar. 2, 2007) (IFAS was created by the then governing body for higher education through the reorganization of existing programs).

- IFAS has 13 research and education centers with a total of 19 locations (including demonstration sites) throughout Florida.[12] IFAS also has Florida Cooperative Extension Service offices in all 67 counties that the counties operate and maintain.[13]

- For Fiscal Year 2005-2006, IFAS had a budget of $273 million. Approximately 53 percent or $142.8 million of that budget was General Revenue.[14]

- As of November 29, 2006, IFAS had approximately 2,262 full-time equivalent employees:

	On Campus	Off-Campus	County	Total
State Supported				
Faculty	352	171	266	789
Staff	586	424	19	1029
Totals	938	595	285	1818
Grant Supported				
Faculty	153	50	31	234
Staff	184	54	9	247
Totals	337	104	40	481

Supplemental Retirement Benefits Program: Background and Eligibility

IFAS operates a supplemental pension plan separate from the FRS for designated cooperative extension employees who are retired from the federal civil service. The IFAS Supplemental Retirement Benefits Program (IFAS SRBP) plan, created by the Legislature in 1984,[15] is closed to new entrants but retains a participant census of about 81 active employees and 109 retired participants.[16] The Legislature enacted this IFAS Supplemental Retirement Act to "provide a supplement to the monthly retirement benefits being paid under the federal Civil Service Retirement System to certain retired employees of the Institute of Food and Agricultural Sciences at the University of Florida, whose positions were ineligible for coverage under a state-supported retirement system."[17]

There are six eligibility requirements for participation in the IFAS SRBP:

(1) The person must have held both state and federal appointments while employed at the institute, and have completed 10 years of creditable service with the institute, subsequent to December 1, 1970.

(2) The person must be participating in the federal Civil Service Retirement System based on service at the institute.

(3) The person must have retired from the institute on or after January 1, 1985, and must have been eligible for benefits under the federal Civil Service Retirement System commencing immediately upon the termination of service with the institute.

(4) The person must have attained the age of 62.

[12] *Id.* (IFAS has 1,255 buildings, 3,190,448 gross square feet, and 16,591 acres throughout the state.).
[13] *Id.*
[14] *Id.* (This is the General Revenue breakdown: 22 percent for teaching (pass through), 46 percent for research, 24 percent for extension and 8 percent is for other.).
[15] Ch. 84-358, Laws of Fla.
[16] Milliman, Inc., Actuarial Valuation of the IFAS Supplemental Retirement Program as of July 1, 2006 (Jan. 17, 2007) (on file with the Div. of Ret., Fla. Dep't of Mgmt. Serv, and the Committee on State Affairs) [hereafter Milliman, 2006 IFAS Valuation].
[17] Section 121.40(1) and (2), F.S.

(5) The person must not be entitled to any benefit from a state-supported retirement system or from social security based upon service as a cooperative extension employee of the institute.

(6) The person must have been employed with the institute prior to, and on, July 1,1983.[18]

It is this sixth criterion (IFAS employment prior/on July 1, 1983) which "closes" participation in the IFAS SRBP. In addition to the 81 active employees, there are about 109 retired participants.

IFAS SRBP: Calculation and Funding

The amount of the IFAS SRBP benefit is the deficiency between the amount earned by the employee under the federal Civil Service Retirement System and the amount the employee would have received under the Florida Retirement System[19] and the primary insurance under Social Security at age 62.[20]

The IFAS SRBP is funded from two sources: a monthly contribution by IFAS of a specified percentage of an employee's gross monthly salary[21] and returns on investments. Yet, since 2002, these sources have been insufficient to fund the required supplemental benefits. This funding insufficiency can be attributed to three factors:

(1) *The closed nature of the plan.* With a closed plan, as more participants retire, there are a smaller number of active employees to bear the burden of any increased costs for the program.[22]

(2) *The nature of the benefit.* Because part of the IFAS supplemental benefit payment is based on Social Security, it "varies inversely as a percentage of pay."[23] That is, it has higher costs, as a percentage of pay, at lower salary levels than at higher salary levels.

(3) *More limited returns on investments.* Returns on investments are more limited than those of the Florida Retirement System because the State Board of Administration is required to "consider investment techniques...which are directed toward developing minimum risk procedures supporting a prescribed liability schedule."[24] This has resulted in "underlying investments that are not diversified and simply not able to satisfy the benefit demands."[25]

With limited investment returns, only one other funding mechanism was available to address the increased benefit demands: increase the employer payroll contributions. From July 1, 2003 to July 1, 2005, the employer contribution rate was set at 13.83 percent – almost double the previous amounts of 6.96 percent and 7.17 percent.[26] Based on the actuarial valuation of the IFAS SRBP, the employer contribution rate was set at 20.23 percent for the period between July 1, 2005 through June 30, 2006.[27]

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[18] Section 121.40(4), F.S.
[19] Section 121.40(5)(a), F.S. ("An amount equal to the option one retirement benefit that the employee would have been entitled to receive at his or her normal retirement age under the Florida Retirement System, attributable only to creditable service after December 1, 1970, as a cooperative extension employee of the institute, excluding any past or prior service credit, had such employee been a member of the Florida Retirement System.").
[20] Section 121.40(5)(b), F.S.
[21] Section 121.40(12), F.S.
[22] There are currently 81 active participants who can fund program insufficiencies through contributions for the 109 retired participants. This is in contrast to the Florida Retirement System which has three active employees for each person receiving a benefit. Fla. Senate, Comm. on Gov't Ops., *Interim Project Report 2007-127: The Supplemental Retirement Program of the Institute of Food and Agricultural Sciences at the University of Florida*, (Oct. 2006) (available at http://www.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-127go.pdf) (last visited Mar. 2, 2007) [hereafter Interim Project Report].
[23] Milliman, 2006 IFAS Valuation at 2.
[24] Section 121.40(13), F.S.
[25] Interim Project Report at 2.
[26] Section 121.40(12), F.S.
[27] Ch. 2005-93, L.O.F.

The Legislature, however, appropriated $500,000 from the General Revenue Fund to fund the increased employer contribution for the IFAS SRBP.[28]

IFAS SRBP: Going Forward

The increased benefit demands on the IFAS SRBP are expected to continue. In fact, in the biennial valuation performed on the IFAS plan released January 17, 2007 for the plan year ending July 1, 2006, the consulting actuary noted that employer contribution rates compensating for the negative cash flow and immunized portfolio would have to rise from 20.23 percent to 28.23 percent.[29] In its consideration of this issue, the staff of the Senate Committee on Governmental Operations noted three methods for addressing the recurring funding imbalance: (1) continue to raise the employer contribution rate as required; (2) place a limit on the employer contribution rate and provide annual supplemental appropriations to cover the increased costs; or (3) merge the IFAS SRBP with the Florida Retirement System.[30] Merging the IFAS SRBP with the Florida Retirement System was the recommended option:

> "Active and retired members and beneficiaries would not notice a change as their benefits would not be compromised. Due to the small asset and liability base of IFAS, its incorporation within the FRS would condition only a small adverse dollar impact. The FRS has more than $112 billion in assets and includes a $10 billion actuarial surplus. Under this option, no additional payroll costs would be passed along to its 900 member employers...
>
> ...Unlike the two other options that provide only annual or biennial relief, this alternative will permanently address the IFAS funding imbalance. After such transfer, the employer payroll costs will decline significantly and reflect the rates charged for the Regular Class in the FRS."[31]

Proposed Changes: Transferring the IFAS SRBP to the Florida Retirement System

This proposed committee bill implements the recommendation to transfer the IFAS SRBP to the Florida Retirement System.

The bill consolidates the IFAS SRBP into the Florida Retirement System. The bill requires the transfer of assets and the assumption of all liabilities related to the payment of supplemental monthly benefits to retired employees of the IFAS and their surviving beneficiaries as well as all obligations in regard to funding and administering benefits accrued for the benefit of retired employees of the IFAS and their surviving beneficiaries.

The bill provides that participation in the IFAS SRBP does not constitute membership in the Florida Retirement System.

The bill makes conforming changes to the IFAS Supplemental Retirement Act, reduces the required contribution rate to 18.75 percent, and removes the investment limitation.

The bill provides a legislative finding that it fulfills an important state interest.

The bill takes effect July 1, 2007.

C. SECTION DIRECTORY:

Section 1 creates s. 121.047, F.S., to consolidate the IFAS SRBP with the Florida Retirement System.

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[28] Ch. 2005-70, L.O.F., s 8(5) ("From the funds in Specific Appropriation 2091, $500,000 is appropriated from the General Revenue Fund to the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida to fund the increased employer contribution for the IFAS retirement plan.").

[29] Milliman, 2006 IFAS Valuation at 1. The statutory rates do not correspond to the rates contained in the valuation report due to the use of cash subsidies provided separately in the General Appropriations Act(s) for the years specified.

[30] Interim Project Report at 2.

[31] *Id.*

Section 2 amends s. 121.40, F.S., to make conforming changes and remove investment limitations.

Section 3 makes a legislative finding of important state interest.

Section 4 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill amends the contribution rate for participants of the IFAS SRBP, which is designed to fund the program in a way that is cost-neutral to the Florida Retirement System. The bill reduces the employer contribution rate from 20.23 percent to 18.75 percent effective July 1, 2007. Implementation will no longer necessitate the appropriation of $300,000 or more annually to subsidize the insufficient payroll revenues flowing into the IFAS plan. Absent this change, the payroll contribution rate for the succeeding plan year will be 28.23 percent of covered payroll.

   The Division of Retirement advises that there will be a slight additional cost to the FRS Trust Fund after the consolidation but the effect will not result in any change to the payroll contribution rate charged all other plan members. The additional liability represents the difference between the plan assets and obligations for current and future salaries.[32]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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 enrolled actuary states that the IFAS employer contribution rate could be reduced to 18.75 percent of payroll and not impact the FRS unfunded actuarial liability if the IFAS assets and liabilities are incorporated into the Regular Class of the FRS.[33]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[32] CS/SB1488 (2007) Senate Staff Analysis and Economic Impact Statement at 5. (on file with the Committee on State Affairs)
[33] Milliman, 2006 IFAS Valuation at 4.

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. 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 counties or municipalities have to raise revenue.

2. Other:

Retirement System Benefit Changes

Benefit increases to publicly funded retirement systems are governed by section 14 of article X of the Florida Constitution:

> SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

This bill does not increase the benefits to the members or beneficiaries; therefore, this bill complies with the requirements of section 14 of article X of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR:

No statement submitted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to the Florida Retirement System; creating s. 121.047, F.S.; consolidating the operation of the Institute of Food and Agricultural Sciences Supplemental Retirement Program under the Florida Retirement System; providing for assumption of program liabilities and obligations; abolishing the Institute of Food and Agricultural Sciences Supplemental Retirement Trust Fund; barring program participants from membership in the Florida Retirement System; amending s. 121.40, F.S., relating to the establishment and administration of the Institute of Food and Agricultural Sciences Supplemental Retirement Program; conforming provisions; redefining the term "trust fund" for purposes of administering the program; providing a rate of monthly contributions; removing provisions relating to investments of the program trust fund; providing a declaration of important state interest; providing an effective date.

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

Section 1. Section 121.047, Florida Statutes, is created to read:

121.047 Consolidation of liabilities and assets; Institute of Food and Agricultural Sciences Supplemental Retirement Program; restriction.--

(1) Effective July 1, 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program, as

established under s. 121.40, shall be consolidated under the Florida Retirement System and the system shall assume:

(a) All liabilities related to the payment of supplemental monthly benefits to retired employees of the institute and their surviving beneficiaries; and

(b) All obligations in regard to funding and administering benefits accrued for the benefit of retired employees of the institute and their surviving beneficiaries.

(2) The administrator shall, as of July 1, 2007, cause to be transferred to the trust fund of the Florida Retirement System all assets of the Institute of Food and Agricultural Sciences Supplemental Retirement Trust Fund, including moneys, securities, and other property accumulated to date, as well as all liabilities and obligations connected therewith. Upon such transfer of assets, liabilities, and obligations, the Institute of Food and Agricultural Sciences Supplemental Retirement Trust Fund shall be abolished and the administrator shall become the trustee of any funds transferred to the Florida Retirement System.

(3) Participation in the Institute of Food and Agricultural Sciences Supplemental Retirement Program does not constitute membership in the Florida Retirement System.

Section 2. Section 121.40, Florida Statutes, is amended to read:

121.40 Cooperative extension personnel at the Institute of Food and Agricultural Sciences; supplemental retirement benefits.--

(1) SHORT TITLE.--This section shall be known and may be

cited as the "Institute of Food and Agricultural Sciences Supplemental Retirement Act."

(2) PURPOSE.--The purpose of this act is to provide a supplement to the monthly retirement benefits being paid under the federal Civil Service Retirement System to, or with respect to, certain retired employees of the Institute of Food and Agricultural Sciences at the University of Florida, whose positions were ineligible for coverage under a state-supported retirement system.

(3) DEFINITIONS.--The definitions provided in s. 121.021 shall not apply to this program ~~section~~ except when specifically cited. For the purposes of this section, the following words or phrases have the respective meanings set forth:

(a) "Institute" means the Institute of Food and Agricultural Sciences of the University of Florida.

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

(c) "Participant" means any employee of the institute who is eligible to receive a supplemental benefit under this program as provided in subsection (4).

(d) "Trust fund" means the Florida Retirement System ~~Institute of Food and Agricultural Sciences Supplemental Retirement~~ Trust Fund.

(e) "Creditable service" means any service subsequent to December 1, 1970, with the institute as a cooperative extension employee holding both state and federal appointments, that is credited for retirement purposes by the institute toward a federal Civil Service Retirement System annuity.

(4) ELIGIBILITY FOR SUPPLEMENT.--To be eligible for a benefit under this program pursuant to the provisions of this section, a person must meet all of the following eligibility criteria:

(a) The person must have held both state and federal appointments while employed at the institute, and have completed 10 years of creditable service with the institute, subsequent to December 1, 1970.

(b) The person must be participating in the federal Civil Service Retirement System based on service at the institute.

(c) The person must have retired from the institute on or after January 1, 1985, and must have been eligible for benefits under the federal Civil Service Retirement System commencing immediately upon the termination of service with the institute.

(d) The person must have attained the age of 62.

(e) The person must not be entitled to any benefit from a state-supported retirement system or from social security based upon service as a cooperative extension employee of the institute. Participation in the Institute of Food and Agricultural Sciences Supplemental Retirement Program shall not constitute membership in the Florida Retirement System.

(f) The person must have been employed with the institute prior to, and on, July 1, 1983.

(5) SUPPLEMENT AMOUNT.--The supplemental payment shall provide a benefit to the retiree equal to the amount by which the retirement annuity, without a survivor benefit, earned by the employee under the federal Civil Service Retirement System with respect to service as a cooperative extension employee of

the institute after December 1, 1970, is inferior to:

(a) An amount equal to the option one retirement benefit that the employee would have been entitled to receive at his or her normal retirement age under the Florida Retirement System, attributable only to creditable service after December 1, 1970, as a cooperative extension employee of the institute, excluding any past or prior service credit, had such employee been a member of the Florida Retirement System; plus

(b) An amount equal to the primary insurance amount that the individual employee would have been entitled to receive under social security at age 62 had he or she been covered for such employment, such amount to be computed in accordance with the Social Security Act only with respect to employment as a cooperative extension employee of the institute after December 1, 1970.

(6) PAYMENT OF SUPPLEMENT.--Any participant who retires on or after January 1, 1985, from the federal Civil Service Retirement System as a cooperative extension employee of the institute at the University of Florida and who satisfies all of the eligibility criteria specified in subsection (4) shall be entitled to receive a supplemental benefit under this program computed in accordance with subsection (5), to begin July 1, 1985, or the month of retirement, or the month in which the participant becomes age 62, whichever is later. Upon application to the administrator, the participant shall receive a monthly supplemental benefit which shall commence on the last day of the month of retirement and shall be payable on the last day of the month thereafter during his or her lifetime. A participant may

have federal income tax and health insurance premiums deducted from his or her monthly supplemental benefit in the same manner as provided in s. 121.091(14)(a) and (b) for monthly retirement benefits under the Florida Retirement System.

(7) OPTIONAL FORMS OF SUPPLEMENTAL RETIREMENT BENEFITS.--Prior to the receipt of the first monthly supplemental retirement payment under this program, a participant shall elect to receive the supplemental retirement benefits to which he or she is entitled under subsection (6) in accordance with s. 121.091(6).

(8) DEATH BENEFITS.--

(a) If the employment of a participant of this program is terminated by reason of his or her death subsequent to the completion of 10 years of creditable service with the institute but prior to his or her actual retirement, such 10-year period having commenced on or after December 1, 1970, it shall be assumed that the participant had met all of the eligibility requirements under this section and had retired from the federal Civil Service Retirement System and under this section as of the date of death, having elected, in accordance with subsection (7), the optional form of supplemental payment most favorable to his or her beneficiary, as determined by the administrator. The monthly supplemental benefit provided in this paragraph shall be paid to the participant's beneficiary (spouse or other financial dependent) upon such beneficiary's attaining the age of 62 and shall be paid thereafter for the beneficiary's lifetime.

(b) If a participant of this program dies subsequent to his or her actual retirement under the federal Civil Service

Retirement System but prior to attaining age 62, and such participant was otherwise eligible for supplemental benefits under this section, it shall be assumed that the participant had met all of the eligibility requirements under this section and had retired as of the date of death, having elected, in accordance with subsection (7), the optional form of supplemental payment most favorable to his or her beneficiary, as determined by the administrator. The monthly supplemental benefit provided in this paragraph shall be paid to the participant's beneficiary (spouse or other financial dependent) upon such beneficiary's attaining the age of 62 and shall be paid thereafter for the beneficiary's lifetime.

(9) DESIGNATION OF BENEFICIARIES.--Each participant of this program may designate beneficiaries in accordance with s. 121.091(8).

(10) COST-OF-LIVING ADJUSTMENT OF SUPPLEMENTAL BENEFITS.--On each July 1, the supplemental benefit of each retired participant of this program and each annuitant thereof shall be adjusted as provided in s. 121.101.

(11) EMPLOYMENT AFTER RETIREMENT: LIMITATION.--Any person who is receiving a supplemental retirement benefit under this program ~~section~~ may be reemployed by any private or public employer after retirement and receive supplemental retirement benefits pursuant to this section and compensation from his or her employer, without any limitations. However, if a retired participant who is receiving a supplemental retirement benefit under this section is reemployed at the institute in a position as a cooperative extension employee of the institute, he or she

shall forfeit all rights to supplemental retirement benefits in accordance with the eligibility provisions of paragraph (4)(e).

(12) CONTRIBUTIONS.--

(a) For the purpose ~~purposes~~ of funding the supplemental benefits provided by this section, the institute is authorized and required to pay, commencing July 1, 1985, the necessary monthly contributions from its appropriated budget. These amounts shall be paid into the Florida Retirement System ~~Institute of Food and Agricultural Sciences Supplemental Retirement~~ Trust Fund~~, which is hereby created~~.

(b) The monthly contributions required to be paid pursuant to paragraph (a) on the gross monthly salaries, from all sources with respect to such employment, paid to those employees of the institute who hold both state and federal appointments and who participate in the federal Civil Service Retirement System shall be as follows:

Dates of Contribution Rate Changes	Percentage Due
July 1, 1985, through December 31, 1988	6.68%
January 1, 1989, through December 31, 1993	6.35%
January 1, 1994, through	6.69%

December 31, 1994	
January 1, 1995, through June 30, 1996	6.82%
July 1, 1996, through June 30, 1998	5.64%
July 1, 1998, through June 30, 2001	7.17%
July 1, 2001, through June 30, 2003	6.96%
July 1, 2003, through June 30, 2005	13.83%
~~Effective~~ July 1, 2005, through June 30, 2007	20.23%
Effective July 1, 2007	18.75%

~~(13) INVESTMENT OF THE TRUST FUND.~~

~~(a) The State Board of Administration shall invest and reinvest available funds of the trust fund in accordance with the provisions of ss. 215.44-215.53. The board shall consider investment techniques, such as contingent immunization or the development of a dedicated portfolio, which are directed toward~~

~~developing minimum risk procedures for supporting a prescribed liability schedule.~~

~~(b) Costs incurred in carrying out the provisions of this section shall be deducted from the interest earnings accruing to the trust fund.~~

(13)~~(14)~~ ADMINISTRATION OF PROGRAM ~~SYSTEM~~.--

(a) The department shall make such rules as are necessary for the effective and efficient administration of this program ~~system~~. The secretary of the department shall be the administrator of the program ~~system~~. The funds to pay the expenses for such administration shall be appropriated from the interest earned on investments made for the Florida Retirement System Trust Fund.

(b) The department may ~~is authorized to~~ require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its duties and responsibilities under this section.

~~(c) The administrator shall cause an actuarial study of the system to be made at least once every 2 years and shall report the results of such study to the next session of the Legislature following completion of the study.~~

Section 3. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions and the dependents, survivors, and beneficiaries of such employees and retirees are extended the basic protections afforded by governmental retirement systems that provide fair and adequate benefits that are managed, administered, and funded in an actuarially sound

manner, as required by s. 14, Art. X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 4. This act shall take effect July 1, 2007.