

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAAC 10-02 Sunset Review, Dept. of State
SPONSOR(S): Government Accountability Act Council
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Government Accountability Act Council		Jones	Mahler
1)				
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SUMMARY ANALYSIS

The Government Accountability Act requires each agency and related advisory councils to be reviewed by the Legislature according to a prescribed ten-year schedule. If the Legislature does not take action, the agency will continue to be subject to an annual sunset review each year until the Legislature enacts legislation that continues, modifies, or terminates the agency. The Department of State (DOS) is scheduled to be reviewed by July1, 2010

PCB GAAC 10-02 (bill) makes a number of changes based upon the review and recommendations that occurred during the sunset review process. The bill:

- Reenacts the Department of State.
- Consolidates the processing of notary applications, educating and assisting notaries public, and investigating complaints against notaries within the Department of State. The Executive Office of the Governor will continue to issue commissions and process suspensions.
- Transfers, from s. 668.50 to 117.01, F.S., the requirement for notary public applicants to submit proof that he or she has completed a three-hour training course within one year prior to appointment.
- Changes the allocation of the \$4 notary public application surcharge. \$3 will be apportioned to the Executive Office of the Governor’s Grants and Donations Trust Fund to issue commissions and process suspensions. The remaining \$1 will be apportioned to the Department of State for processing applications, educating and assisting notaries public, and investigating complaints against notaries public.
- Abolishes the Florida Library Network Council and consolidates its functions into the State Library Council. The State Library Council is renamed the Library Information Services Council.
- Amends s. 267.0612, F.S., regarding the Florida Historical Commission to include the functions of the Great Floridians Ad Hoc Selection Committee and the State Historical Marker Council.
- Abolishes the Grove Advisory Council and turns over the management of The Grove to the Division of Historical Resources within the Department of State. The bill also allows the Division of Historical Resources to establish a citizen support organization (CSO) for the benefit of The Grove.
- Abolishes the Florida Folklife Apprenticeship Advisory Council and amends s. 267.16, F.S., to include folklife apprenticeship programs into the statutory responsibility of the Florida Folklife Program.
- Amends the definition of the term “unmarked human burial”, to exclude the portions of human remains that are shed naturally by living persons including teeth and hair.

The bill provides an effective date of January 1, 2011 for all notary provisions, and an effective date of July 1, 2010 for all other provisions.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview

Sections 11.901-11.920, F.S., the "Florida Government Accountability Act", create an agency sunset review process to determine if a public need exists for the continuation of a state agency, its advisory committees, or its programs. The act requires each agency and related advisory councils to be reviewed by the Legislature according to a prescribed ten-year schedule. If the Legislature does not take action before the scheduled review date to reenact the agency or its advisory committees, the agency will continue to be subjected to an annual sunset review until the Legislature enacts legislation relating to the agency's abolition, continuation, or reorganization.

Sunset Review Process

The act requires the appointment of a Joint Legislative Sunset Committee to oversee the review process, obtain public input, and make recommendations to abolish, continue, or reorganize the agency under review.

Two reports are required prior to an agency's review date:

- No later than two years preceding the year in which an agency and its advisory committees are scheduled to be reviewed, the agency must provide the Legislature with a preliminary report detailing its programs and activities. Upon receipt of the agency's report, the sunset review committees of the Senate and the House of Representatives are required to conduct independent reviews of the agency and its advisory committees. The Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Auditor General are required to assist the Senate and House of Representatives in the review process.
- No later than March 1 of the year in which the agency is scheduled to be reviewed, the sunset committees of the Senate and House of Representatives are required to provide the President of the Senate and Speaker of the House of Representatives with recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees, and on the need for the performance of the functions of the agency and its advisory committees.

After reviewing the Department of State's sunset report, the Senate Committee on Commerce, in coordination with the House sunset committees, directed OPPAGA to research a number of issues that

were identified during the review process. Below is a listing of research memorandums that were reviewed by the Government Accountability Act Council in reviewing the Department of State.

Senate Committee on Commerce – October 2008 – Division of Corporations

- Provided background information to assist in the examination of the Division of Corporations.

Senate Committee on Ethics and Elections – October 2008 – Division of Elections

- Provided information on the Division of Elections.

Senate Committee on Governmental Oversight and Accountability – October 2008

- Provided background information to the Division of Historical Resources, Library and Information Services, Cultural Affairs, and administration of the Department of State.

OPPAGA Reports on the Department of State –November 2008

- Provided an overview of the Department of State from 2000 to 2007.

OPPAGA Sunset Review of the Department of State – December 2008

- Provided an overview of the agency responsibilities and agency organization of the Department of State.

OPPAGA Sunset Review – Advisory Committees Assessment – December 2008

- Provided an overview, assessment, and suggestions for the Department of State's advisory committees.

Senate Committee on Commerce – December 2009

- Examined the notary functions within the Division of Corporations and evaluated moving part of the notary function from the Executive Office of the Governor to the DOS.

PCB GAAC 10-02

Overview of the DOS

The Department of State (DOS) is created in section 20.10, F.S. The DOS is headed by the Secretary of State who is appointed by the Governor and confirmed by the Senate. The Secretary of State performs the functions conferred by the State Constitution upon the custodian of state records. The Department of State's mission is to facilitate public access to government and enhance the quality of life for Floridians and their communities by:

- Helping ensure the integrity of the business community;
- Providing oversight to assure fair and accurate elections;
- Preserving and promoting Florida's rich historical and cultural heritage, including serving as the official custodian of the State Seal;
- Supporting local libraries; and
- Gathering and providing public access to state records and information.

The DOS is divided into the Division of Corporations, Division of Elections, Division of Cultural Affairs, Division of Historical Resources, and Division of Library and Information services to help accomplish its mission.

The Division of Corporations maintains and makes available to the public information on corporations operating in Florida and financial transactions that take place in the state. This data includes corporate filings of business entities, trade and service marks, judgment liens, notary applications, and fictitious name registrations.

The Division of Elections sets the standard designed to ensure fair and accurate elections in Florida. The Division is the state's centralized organization that facilitates coordination and interpretation of

election laws, is responsible for uniform compliance with Florida's election laws, and promotes public awareness and participation in the electoral process.

The Division of Cultural Affairs promotes programs with cultural and artistic significance that may also have a positive economic impact on the state and encourage cultural tourism. This includes administering cultural grants and the Museum of Florida History.

The Division of Historical Resources sustains Florida's unique heritage by promoting programs with historical significance that also encourage public access and heritage tourism. This includes encouraging the preservation of historic buildings, historic collections, conservation of archaeological sites, and preservation of Florida's folklife heritage.

The Division of Library and Information Services provides services to improve local libraries throughout the state, including administering grants and providing consultative and training services. The Division also maintains the state library and archives, which includes providing library services to state government and public access to state records, and provides records management services for state and local government.

Effects of the bill

The bill reenacts the DOS.

Notary Division within the Division of Corporations

Current Situation

A notary public is a public officer who verifies the identities of individuals involved in legal transactions and is the gatekeeper for preventing fraudulent transactions. In Florida, there are two types of notaries: notaries public and civil-law notaries. Section 117, F.S., provides for the appointment and commissioning of notaries public, and section 118, F.S., provides for the appointment of civil-law notaries. The main distinction between notaries public and civil-law notaries are that civil-law notaries must be attorneys, and the Department of State is solely responsible for the civil-law notary division. The administration of notaries public is currently shared between the Department of State's Division of Corporations and the Executive Office of the Governor.

The Executive Office of the Governor's notary section is responsible for appointing, investigating, and educating notary public applicants. The power to appoint notaries public is vested in the Governor in accordance with Article II, Section 5 of the Florida Constitution. The Executive Office of the Governor also has the discretion to suspend notary public commissions, which is another constitutional power granted to the Governor.¹

The DOS's Division of Corporations is responsible for processing notary public applications, approving and recording a required \$7,500 bond, issuing notary public commissions and certificates of notarial authority, and recording the results of actions taken by the Executive Office of the Governor against a notary public.

The Florida Senate Committee on Commerce issued a report to evaluate consolidating the responsibilities related to administration of the notary public commissioning process within the DOS's Division of Corporations or within the Executive Office of the Governor.² The report found that there may be gains in efficiency if the responsibilities of the Executive Office of the Governor are transferred to the DOS's Division of Corporations because applicants, current notaries, and the public would have one point of contact for all inquiries or complaints.

Effects of the Bill

The bill amends s. 117, F.S., by transferring the education and investigation responsibilities from the Executive Office of the Governor to the DOS's Division of Corporations. As such, the Executive Office of the Governor will retain disciplining, commissioning, and suspension responsibilities and the DOS's Division of Corporations will be responsible for processing applications, educating applicants, assisting notaries, and investigating complaints against notaries.

¹ Art. IV, § 7(a), Fla. Const., provides that the Governor may suspend from office any state officer.

² Agency Sunset review of the Division of Corporation of the Department of State [2010-212]

To compensate the Division of Corporations newfound notary responsibilities, the bill amends the allocation of the \$4 notary surcharge fee. Previously, all \$4 went to the Executive Office of the Governor. The bill allocates \$3 to the Executive Office of the Governor and the remaining \$1 to the DOS.

The bill also transfers the requirement for notary public applicants to submit proof that he or she has completed a three-hour training course within one year prior to appointment of a notary public, from s. 668.50 to 117.01, F.S.

The bill provides an effective date for all notary provisions to be January 1, 2011.

Library Information Services Council

Current Situation

The State Library Council is made up of nine members who advise and assist the Division of Library and Information Services on its programs and activities. The council is one of several entities that provide advice about state library programs, but it is the only one authorized by Florida law.

The Florida Library Network Council was created by a managerial initiative to provide advice to the State Library on matters related to interlibrary cooperation and resource sharing. The Florida Library Network Council represents the library entities in the state including public libraries, school media centers, academic libraries, special libraries, library networks, and library cooperatives.

Effects of the Bill

The bill amends s. 257.02, F.S., consolidating the functions of the Florida Library Network Council into the State Library Council. The bill also renames s. 257.02, F.S., the Library Information Services Council.

Florida Historical Commission

Current Situation

The Florida Historical Commission advises the director of the Division of Historical Resources on the preservation and protection of Florida's historic and archaeological sites and properties, makes recommendations for historic grants and awards, and identifies public goals for historic preservation.

The Great Floridians Ad Hoc Selection Committee reviews nominations, and recommends to the Secretary of State individuals for designation as a "Great Floridian". This designation is to recognize individuals who distinguished themselves through their philanthropy, public service or personal or professional service, and who have enhanced the lives of Florida's citizens. The purpose of the Great Floridians program is to honor men and women who have made significant contributions to the history and culture of Florida.

The State Historical Marker Council identifies goals for the State Historical Marker Program and evaluates proposals for historic markers to be placed throughout Florida. The Florida Historical Marker Program recognizes historic resources, persons and events that are significant in the areas of architecture, archaeology, Florida history and traditional culture by promoting the placing of historic markers and plaques at sites of historical and visual interest to visitors. The purpose of the program is to increase public awareness of the cultural heritage of Florida and to enhance the enjoyment of historic sites in Florida by citizens and tourists.

Effects of the Bill

The bill amends s. 267.0612, F.S., to include the State Historical Marker Program and the Great Floridians Program within the Florida Historical Commission.

Management of The Grove

Current Situation

The purpose of The Grove Advisory Council is to advise the Department of State on the operation, maintenance, preservation, and protection of the Collins House in Tallahassee, commonly known as The Grove. This includes the grounds, cemetery, structures, and furnishings. Due to the death of Mrs. LeRoy Collins, the council cannot operate as proscribed in s. 267.075, F.S.

Effects of the Bill

The bill amends s. 267.075, F.S., by abolishing The Grove Advisory Council and providing for the management of The Grove property. The bill provides for care and maintenance of The Grove's physical structure and allows the DOS's Division of Historical Resources to adopt rules to manage The Grove. The bill also allows the Division of Historical Resources to operate a museum, charge fees for visitation, establish an endowment for the benefit of The Grove, conduct fundraising activities, and support the establishment and operation of a citizen support organization to support The Grove.

Florida Folklife Council

Current Situation

The Florida Folklife Council is statutorily created in s. 267.161, F.S., and helps the Division of Historical Resources preserve Florida's cultural heritage by providing advice on the development and promotion of Florida folk artists, performers, festivals, folklife projects, and folk resources. The DOS relies on the Florida Folklife Council, whose members have demonstrated knowledge of Florida's folklife and its interpretation, to provide advice on the development of folklife programs. The council also makes recommendations for Florida Folk Heritage Awards, a recognition program that recognizes outstanding folk artists and folk culture advocates.

The Folklife Apprenticeship Ad Hoc Advisory Committee helps determine the teams of applicants selected to participate in the Department of State's federally funded folklife apprenticeship program, which helps maintain folk art as a vital part of Florida's heritage.

Effects of the Bill

The bill amends s. 267.16 and 267.161, F.S., adding folklife apprenticeship programs to the responsibilities of Florida Folklife Programs. The bill also authorizes the Florida Folklife Council to provide assistance and recommendations to the DOS's Division of Historical Resources when evaluating applications for folklife apprenticeship programs.

Unmarked Human Burial

Current Situation

The definition of the term "Unmarked Human Burial" refers to any human skeletal remains or associated burial artifacts or any location, where human skeletal remains or associated burial artifacts are discovered or believed to exist on the basis of archaeological or historical evidence. The current definition of the term includes any skeletal remains, including skeletal remains that have been naturally shed by an individual, such as teeth and hair. As a result, the State Archaeologist has been forced to treat finds of teeth and hair as unmarked human burials because of the definition even though finds of teeth and hair are not likely of any historical or archaeological significance. This has been a costly problem for the DOS's Division of Historical Resources and the State Archaeologist because they have had to investigate all finds of human skeletal remains.

Effects of the Bill

The bill amends s. 872.05 (2) (f), F.S., to exclude from the definition of "Unmarked Human Burial", the portions of human remains that are shed naturally by an individual. The change in the definition should result in fewer unnecessary "Unmarked Human Burial" cases referred to the DOS.

B. SECTION DIRECTORY:

Section 1. Reenacts s. 20.10, F.S., relating to the Department of State.

Section 2. Amends s. 117.01, F.S., relating to the appointment, application, suspension, and application fee for notaries.

Section 3. Amends s. 117.021, F.S., relating to electronic notarization.

Section 4. Amends s. 117.05, F.S., relating to use of notary commissions.

Section 5. Amends s. 117.103, F.S., relating to the certification of a notary's authority.

Section 6. Amends s. 117.107, F.S., relating to prohibited acts for notaries.

Section 7. Amends s. 257.02, F.S., relating to the structure of the Library Information Services Council.

Section 8. Amends s. 257.031, F.S., relating to the appointment and duties of the State Librarian.

Section 9. Amends s. 267.0612, F.S., relating to the creation, membership, and duties of the Florida Historical Commission.

Section 10. Amends s. 267.075, F.S., relating to the management of The Grove.

Section 11. Amends s. 267.16, F.S., relating to the duties of the Florida Folklife Programs.

Section 12. Amends s. 267.161, F.S., relating to the duties of the Florida Folklife Council.

Section 13. Amends s. 668.50, F.S., relating to the education requirement for notary public applicants.

Section 14. Amends s. 872.05, F.S., relating to the definition of the term "unmarked human burial".

Section 15. Repeals s. 267.0731 and 267.0743, F.S.

Section 16. Provides for an effective date of July 1, 2010 for all sections unless expressly provided otherwise.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Currently, the entire \$4 notary surcharge fee goes to the Executive Office of the Governor. As a result of the notary surcharge fee allocation change in the bill, the DOS will receive \$1 per application and the remaining \$3 per application will remain with the Executive Office of the Governor. In Fiscal year 2008-2009, there were 101,848 notary public applications. Although no new revenue is created, the DOS should receive \$100,000 annually from the change in the allocation of the notary application surcharge fee.

2. Expenditures:
None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None

2. Expenditures:
None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill gives the DOS's Division of Historical Resources authority to adopt rules for the purpose of managing The Grove.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES