



Governmental Affairs Policy Committee

**Wednesday, March 17, 2010
9:00 AM – 12:00 PM
306 House Office Building**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Governmental Affairs Policy Committee

Start Date and Time: Wednesday, March 17, 2010 09:00 am
End Date and Time: Wednesday, March 17, 2010 12:00 pm
Location: 306 HOB
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 1235 Enforcement of Traffic Laws by Schenck

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

PCS for HB 1059 -- Public records
PCS for HB 1537 -- Administrative procedures of the Department of the Lottery

Consideration of the following proposed committee bill(s):

PCB GAP 10-16 -- OGSR Domestic Violence Fatality Review Teams
PCB GAP 10-21 -- OGSR Commission for Independent Education
PCB GAP 10-24 -- Procurement
PCB GAP 10-25 -- Review of the Department of Management Services under the Florida Government Accountability Act
PCB GAP 10-26 -- Claims for Collections Due the State
PCB GAP 10-28 -- Open Government Sunset Review Act
PCB GAP 10-30 -- State-owned real property

NOTICE FINALIZED on 03/15/2010 16:15 by Ellinor.Martha

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1059 Public records
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson <i>Law</i>	Williamson <i>Law</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Florida Securities and Investor Protection Act (Act) governs the regulation of securities transactions in Florida. The Office of Financial Regulation (OFR) is designated as the regulator to enforce the Act. OFR may make investigations and examinations within our outside of Florida as it deems necessary.

Current law provides a public record exemption for certain information related to investigations and examinations conducted by OFR pursuant to the Act. The exemption expires once the investigation or examination is completed or ceases to be active; however, certain information remains confidential and exempt, including information that would disclose investigative techniques or procedures. Protection is not provided for information that would reveal examination techniques or procedures.

The bill creates a public record exemption for information that would reveal examination techniques or procedures used by OFR pursuant to the Act. It provides for retroactive application of the exemption. Information that would reveal such examination techniques or procedures may be provided by OFR to another governmental entity having oversight or regulatory or law enforcement authority.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.

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:

Background

Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

Florida Securities and Investor Protection Act³

The Florida Securities and Investor Protection Act (Act) governs the regulation of securities transactions in Florida. The Office of Financial Regulation (OFR) is designated as the regulator to enforce the Act. OFR may make investigations and examinations within or outside of Florida as it deems necessary to:

- Determine whether a person has violated or is about to violate any provision of the Act or a rule or order under the Act; or

¹ Section 24(c), Art. I of the State Constitution.

² Section 119.15, F.S.

³ The Florida Securities and Investor Protection Act is codified at chapter 517, F.S.

- Aid in the enforcement of the Act.⁴

Investigations and Examinations

Current law provides a public record exemption for certain information related to investigations and examinations conducted by OFR pursuant to the Act.⁵ Information relative to an investigation or examination by OFR, including any consumer complaint, is confidential and exempt⁶ from public records requirements until the investigation or examination is completed or ceases to be active. However, the information remains confidential and exempt if OFR submits it to any law enforcement or administrative agency or regulatory organization for further investigation.⁷ In addition, certain information remains confidential and exempt after the investigation or examination is completed or ceases to be active,⁸ including information that would disclose investigative techniques or procedures.⁹ Protection is not provided for information that would reveal examination techniques or procedures.

Effect of the Bill

The bill creates a public record exemption for information that would reveal examination techniques or procedures¹⁰ used by OFR pursuant to the Act. It provides for retroactive application of the exemption.¹¹ Information that would reveal such examination techniques or procedures may be provided by OFR to another governmental entity having oversight or regulatory or law enforcement authority.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹²

B. SECTION DIRECTORY:

Section 1 creates s. 517.2016, F.S., to create a public record exemption for information that would reveal examination techniques or procedures used by the Office of Financial Regulation.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁴ Section 517.207(1)(a), F.S.

⁵ Section 517.2015, F.S.

⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

⁷ Section 517.2015(1)(a), F.S.

⁸ For purposes of the exemption, an investigation or examination is considered “active” so long as OFR or any law enforcement or administrative agency or regulatory organization is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license, registration, or permit. Section 517.2015(1)(a), F.S.

⁹ Section 517.2015(1)(b), F.S.

¹⁰ The bill defines “examination techniques and procedures” to mean the methods, processes, and guidelines used to evaluate regulatory compliance and to collect and analyze data, records, and testimony for the purpose of documenting violations of the Act and rules promulgated under the Act.

¹¹ In 2001, the Supreme Court of Florida ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. See *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

¹² Section 24(c), Art. I of the State Constitution.

1. Revenues:

None.

2. Expenditures:

The bill likely could create a minimal fiscal impact on the Office of Financial Regulation, because staff responsible for complying with public records requests could require training related to creation of the public record exemption. In addition, the office could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the office.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to public records; creating s. 517.2016,
 3 F.S.; providing an exemption from public records
 4 requirements for information that would reveal examination
 5 techniques and procedures used by the Office of Financial
 6 Regulation pursuant to the Florida Securities and Investor
 7 Protection Act; providing a definition; providing for
 8 retroactive application of the public record exemption;
 9 providing an exception to the exemption for other
 10 governmental entities having oversight or regulatory or
 11 law enforcement authority; providing for future review and
 12 repeal of the exemption; providing a statement of public
 13 necessity; providing an effective date.

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

16
 17 Section 1. Section 517.2016, Florida Statutes, is created
 18 to read:

19 517.2016 Public record exemption; examination techniques
 20 and procedures.—

21 (1) For purposes of this section, "examination techniques
 22 and procedures" are the methods, processes, and guidelines used
 23 to evaluate regulatory compliance and to collect and analyze
 24 data, records, and testimony for the purpose of documenting
 25 violations of this chapter and the rules promulgated thereunder.

26 (2) Information that would reveal examination techniques
 27 or procedures used by the office pursuant to this chapter is
 28 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

BILL

ORIGINAL

YEAR

29 of the State Constitution. This exemption applies to such
 30 information held by the office before, on, or after the
 31 effective date of this exemption.

32 (3) Confidential and exempt information that would reveal
 33 examination techniques or procedures may be provided by the
 34 office to another governmental entity having oversight or
 35 regulatory or law enforcement authority.

36 (4) This section is subject to the Open Government Sunset
 37 Review Act in accordance with s. 119.15 and shall stand repealed
 38 on October 2, 2015, unless reviewed and saved from repeal
 39 through reenactment by the Legislature.

40 Section 2. (1) It is the finding of the Legislature that
 41 it is a public necessity that information that would reveal
 42 examination techniques or procedures used by the Office of
 43 Financial Regulation pursuant to chapter 517, Florida Statutes,
 44 the Florida Securities and Investor Protection Act, be made
 45 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 46 of the State Constitution. This exemption is necessary to ensure
 47 the effective and efficient administration of the examination
 48 program administered by the Office of Financial Regulation under
 49 chapter 517, Florida Statutes, which would be significantly
 50 impaired without the exemption.

51 (2) Examinations are an essential component of securities
 52 regulation. The mere existence of an examination program fosters
 53 regulatory compliance and deters fraud and abuse by industry
 54 participants. Examinations often detect violations in their
 55 early stages. This early detection allows corrective action to
 56 be taken before significant harm can be done to investors. Due

BILL

ORIGINAL

YEAR

57 to the importance of such examinations, state regulators devote
 58 extensive resources to devising effective examination techniques
 59 and procedures.

60 (3) Allowing access to information revealing examination
 61 techniques or procedures would undermine the examination process
 62 and facilitate evasion of the law. Any advance notice of the
 63 areas of inquiry to be explored during an examination might
 64 prompt a person to conceal evidence of deficiencies or fabricate
 65 evidence of compliance. Without the exemption, the Office of
 66 Financial Regulation's ability to uncover misconduct and
 67 evaluate policies and procedures through the examination process
 68 would be significantly impaired.

69 (4) Additionally, without such an exemption the Office of
 70 Financial Regulation's ability to participate in joint
 71 examinations with other securities regulators would be impaired
 72 as release of this information would compromise the integrity of
 73 such joint examinations. The office also would not be able to
 74 accept or use confidential examination techniques and procedures
 75 developed by other regulators. Thus, the absence of an exemption
 76 would create a situation that reduces the office's ability to
 77 leverage its limited resources.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1235

Enforcement of Traffic Laws

SPONSOR(S): Schenck

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Affairs Policy Committee		Haug	Williamson <i>Raw</i>
2) Military & Local Affairs Policy Committee			
3) Economic Development & Community Affairs Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Current law requires that traffic citations be issued when an officer observes the commission of a traffic infraction. A 1997 Attorney General opinion concluded that nothing precludes the use of unmanned cameras to record traffic violations, but a photographic record of a vehicle violating traffic control laws may not be used as the basis for issuing a citation for such violations. A 2005 Attorney General opinion also reached the same conclusion providing that legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices as collected from a photographic record from unmanned cameras monitoring intersections. The 2005 opinion also concluded that it was within a local government's scope of authority to enact an ordinance authorizing it to:

- Monitor violations of traffic signals within the city and to use unmanned cameras to monitor intersections and record traffic violations;
- Monitor violations of traffic signals within the city and to use unmanned cameras to record the license tag numbers of cars involved in such violations; and
- Advise a car owner that his or her license tag number has been recorded in a violation of the traffic laws.

Several local governments have participated in the use of red light camera enforcement of red light violations. Due to the Attorney General's advisory opinions, the majority of local governments have used the cameras in pilot projects solely for data collection purposes or as a warning system to motorists, by sending a letter and attaching no penalty. In 2005, the city of Gulf Breeze passed a local ordinance allowing use of red light cameras. It provided that a violation by any motor vehicle running a red light that is recorded by a traffic enforcement photographic system is a civil code violation and a \$100 civil fee is assessed against the motor vehicle owner.

As such, the bill prohibits the use of traffic infraction detectors and cameras by counties and municipalities to enforce traffic laws and preempts to the state the use of traffic infraction detectors to enforce traffic laws.

This bill could have a negative fiscal impact on those local governments having installed red light cameras and on those local governments using such cameras to generate revenue through the collection of civil fees or fines.

The bill is effective upon becoming a law.

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:

Background

According to the Department of Highway Safety and Motor Vehicles, in 2008 there were 76 Florida fatalities related to motor vehicle drivers who disregarded a traffic signal.¹ This represents approximately 3 percent of all fatal accidents in 2008, the sixth-highest cause of traffic fatalities.² Injuries related to motor vehicle drivers disregarding a red light in Florida were 5,607 in 2008, which represented 4.36 percent of all injury accidents.³ Injuries from disregarding traffic signals have steadily decreased since 1998,⁴ as have property damage-only crashes which were less than 3 percent in 2008.⁵ The rate of decrease has been fairly uniform during that period and had decreased to 30 injury-related accidents per 100,000 in 2008.

Red Light Camera use in Florida

Current law requires that traffic citations be issued when an officer observes the commission of a traffic infraction.⁶ A 1997 Attorney General opinion concluded that nothing precludes the use of unmanned cameras to record traffic violations, but a photographic record of a vehicle violating traffic control laws may not be used as the basis for issuing a citation for such violations.⁷ A 2005 Attorney General opinion also reached the same conclusion providing that legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices as collected from a photographic record from unmanned cameras monitoring intersections.⁸ The 2005 opinion also concluded that it was within a local government's scope of authority to enact an ordinance authorizing it to:

- Monitor violations of traffic signals within the city and to use unmanned cameras to monitor intersections and record traffic violations;

¹ *Florida Traffic Crash Statistics Report 2008*, Department of Highway Safety and Motor Vehicles, June 30, 2009 at 37 (on file with the Governmental Affairs Policy Committee).

² Careless driving represented 20 percent of 2008 traffic fatalities; DUI, 17 percent; excessive speed, 6 percent; driving left-of-center, 6 percent; and failure to yield right of way, 6 percent.

³ *Florida Traffic Crash Statistics Report 2008*, Department of Highway Safety and Motor Vehicles, June 30, 2009 at 37.

⁴ *Red Light Running Cameras: Would Crashes, Injuries and Automobile Insurance Rates Increase if They are Used in Florida?*, Florida Public Health Review, 2008 5:1-7 at 2.

⁵ *Id.*

⁶ Section 316.640(5)(a), F.S.

⁷ Attorney General Opinion 97-06.

⁸ Attorney General Opinion 05-41.

- Monitor violations of traffic signals within the city and to use unmanned cameras to record the license tag numbers of cars involved in such violations; and
- Advise a car owner that his or her license tag number has been recorded in a violation of the traffic laws.

Several local governments have participated in the use of red light camera enforcement of red light violations. Due to the Attorney General's advisory opinions, the majority of local governments have used the cameras in pilot projects solely for data collection purposes or as a warning system to motorists, by sending a letter and attaching no penalty. Sarasota County, Manatee County, Palm Beach County, Polk County, and the cities of Orlando and Melbourne are examples of local governments that have at one time participated in a red light camera pilot project.

In 2005, the city of Gulf Breeze passed a local ordinance allowing use of red light cameras. It provided that a violation by any motor vehicle running a red light that is recorded by a traffic enforcement photographic system is a civil code violation⁹ and a \$100 civil fee is assessed against the motor vehicle owner. The Gulf Breeze City Council adopted the ordinance despite the opinion issued by the Attorney General.

From 2008 to the present, approximately 50 municipalities have joined Gulf Breeze in enacting red light camera ordinances and placing cameras at intersections. The ordinances are broadly similar, and vary only in the amount of the fine (from \$50 to \$150, with some jurisdictions enacting multiple-offense increases up to \$500), the nature of required signage (none, at the entrance to the city, or at the intersection), whether or not to engage in education before "going live," the notice requirements sent to the motor vehicle owner, and the process whereby a motor vehicle owner may challenge the violation.

Federal Guidelines and Countermeasures

Currently there are no recognized independent standards or certifications for the red light camera industry. The Federal Highway Administration and the National Highway Traffic Safety Administration have only developed guidelines for use by state and local agencies. These guidelines were updated in January 2005.¹⁰ Although not a regulatory requirement, the guidance is intended to provide critical information for state and local agencies on relevant aspects of red light camera systems in order to promote consistency and proper implementation and operation. The guidelines present research that suggests engineering improvements,¹¹ safety education and increased enforcement by law enforcement officers can significantly reduce red light violations.

Red Light Cameras

Traffic infraction detectors, or "red light cameras," are used to enforce traffic laws by automatically photographing vehicles whose drivers run red lights. A red light camera is connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system continuously monitors the traffic signal, and the camera is triggered by any vehicle entering the intersection above a pre-set minimum speed and following a specified time after the signal has turned red. A second photograph typically shows the red light violator in the intersection. In some cases video cameras are used. Cameras record the license plate number, the date and time of day, the time elapsed since the beginning of the red signal, and the vehicle speed. Over 110 cities and towns in 20 states across the

⁹ Section 18-113, Code of Ordinances, City of Gulf Breeze, Florida.

¹⁰ U.S. Department of Transportation, *Red Light Camera Systems Operational Guidelines*, Publication No. FHWA-SA-05-002, January 2005.

¹¹ The suggested engineering improvements that have been recommended to reduce red light running include: improve signal head visibility by increasing size or adding signal heads; address signal interference from the sun by adding back plates to enhance visibility; set appropriate yellow light time intervals that allow vehicles to clear the intersection or safely stop; add a brief all-red light clearance interval to allow traffic in the intersection to clear before cross traffic is released; add intersection warning signs, yellow flashing lights or reduce the approach speed to intersections; improve coordination of traffic signals to optimize traffic flow; remove on-street parking near intersections to increase visibility; and repair malfunctioning lights. See http://safety.fhwa.dot.gov/intersection/redlight/rlr_report/rlrbook.pdf (last visited March 13, 2010).

country currently participate in a red light camera program.¹² Red light cameras have been used in at least 33 foreign countries since the 1970s.¹³

Studies Regarding Red Light Cameras

Numerous studies have been conducted regarding the impact of red light cameras on safety and the findings have been inconsistent. A 2003 Insurance Institute for Highway Safety review of international red light camera studies concluded that cameras reduce red light violations by 40 to 50 percent and also reduce injury crashes by 25 to 30 percent.¹⁴ In contrast, a 2005 study of seven metropolitan area red light camera programs by the U.S. Federal Highway Administration concluded that there was a 25 percent reduction in right-angle collisions, but a 15 percent increase in rear-end collisions.¹⁵ Increased rear-end crashes have been associated with red light cameras. Drivers have been observed stopping abruptly when approaching a monitored intersection to avoid triggering a ticket from a red light camera.

Evaluations of red light cameras have been conducted in Virginia,¹⁶ Greensboro,¹⁷ North Carolina and Ontario, Canada.¹⁸ These evaluations were conducted over multiple years and data was gathered from intersections with and without red light cameras during the same time periods. The data showed that the intersections with cameras were associated with a significant increase in crashes. Rear-end crashes were a particular problem with many occurring as drivers attempt to stop abruptly before entering the intersection. The studies also documented that intersections with cameras were associated with increased injury crashes or crashes with possible injuries.¹⁹

Other studies, including a 2004 U.S Department of Transportation-funded study by the Urban Transit Institute at North Carolina Agriculture & Technical State University, suggests that there has been no demonstrable benefit from the red light camera program in terms of safety. In many ways, the evidence points toward the installation of red light cameras as a detriment to safety.²⁰

¹² National Campaign to Stop Red Light Running, <http://www.stopedlightrunning.com/index.html> (last visited March 13, 2010).

¹³ Insurance Institute for Highway Safety website (www.iihs.org/research/qanda/rlr.html) citing Blackburn, R.R. and Glibert, D.T., *Photographic enforcement of traffic laws*. Washington, DC, National Academy Press, 1995.

¹⁴ *Id.*, citing Retting, R.A. et al., *Effects of Red Light Cameras on Violations and Crashes: A Review of the International Literature*, *Traffic Injury Prevention* 4:17-23, 2003.

¹⁵ *Safety Evaluation of Red-Light Cameras*, Federal Highway Administration, Publication No. FHWA-HRT-05-048, <http://www.tfhr.gov/safety/pubs/05048/>

¹⁶ The evaluation in Virginia was conducted by the Virginia Transportation Research Council which analyzed red light camera operations in five jurisdictions utilizing seven years of data. The study concluded that the data "cannot be used to justify the widespread installation of cameras because they are not universally effective." The study found that cameras were associated with:

- A significant increase (29 percent) in total crashes;
- A significant increase in injury crashes (18 percent), with the impact on injury severity reported as "too close to call"; and
- Increases in crash costs.

¹⁷ The Greensboro evaluation was conducted by the Urban Transit Institute at the North Carolina Agricultural & Technical State University using 57 months of data. The study concluded that in many ways "the evidence points toward the installation of RLCs [red light cameras] as a detriment to safety." This evaluation found that cameras were associated with:

- A significant increase (40 percent) in accident rates;
- A significant increase (40 to 50 percent) in possible injury crashes; and
- No decrease in severe crashes.

¹⁸ The Ministry of Transportation in Ontario retained Synectics Transportation Consultants in 2003 to evaluate red light cameras in six jurisdictions. The findings showed that intersections with red light cameras had a:

- Sixteen percent increase in crashes, compared to an 8 percent increase at comparison intersections; and
- Two percent increase in injury or fatal crashes, compared to 10 percent and 12 percent decreases respectively at stepped-up police enforcement and comparison intersections.

¹⁹ *Red Light Running Cameras: Would Crashes, Injuries and Automobile Insurance Rates Increase if They are Used in Florida?* Florida Public Health Review, 2008; 5:1-7 at 2.

²⁰ *Id.* at 46

Effect of Proposed Changes

The bill prohibits the use of traffic infraction detectors and cameras by counties and municipalities to enforce traffic laws and preempts to the state the use of traffic infraction detectors to enforce traffic laws.

B. SECTION DIRECTORY:

Section 1: Creates s. 316.0082, F.S., prohibiting the use of traffic infraction detectors and cameras by counties and municipalities to enforce traffic laws and preempts to the state the use of traffic infraction detectors to enforce traffic laws.

Section 2: Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill could have a negative fiscal impact on those local governments having installed red light cameras and on those local governments using such cameras to generate revenue through the collection of civil fees or fines.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some local governments may have contracted with private sector vendors to install and operate red light cameras and any such vendors may experience a loss of revenue. Also, there may be an economic impact on the private sector to remove such cameras.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

It is uncertain whether this bill would create a mandate for local governments. There currently is legal uncertainty regarding the authority of local governments to operate red light cameras for the purpose of issuing fines for traffic violations under chapter 316, F.S.²¹ If the use of such cameras is

²¹ The authority of local government to use red light cameras to issue violations is unclear. There are numerous pending lawsuits on this issue and one circuit court has found the use of red light cameras to impose traffic fines illegal. "West Palm Beach attorney

illegal then the bill would not create a local government mandate. On February 22, 2010, the Eleventh Circuit Court in Miami-Dade County ruled, in the case of *Richard Masone v. City of Aventura*,²² that the City of Aventura could not use red light cameras to issue fines under chapter 316, F.S.²³ Inasmuch as this ruling is from a state circuit court the application of the ruling is jurisdictionally limited.

If it is judicially determined, however, that local governments have the authority to operate red light cameras for the purpose of issuing fines for traffic violations then this bill could create a mandate on local governments if the annual revenue loss exceeds the exempted 1.9 million dollars or some other exception or exemption. If the revenue loss exceeds 1.9 million dollars and the bill does not appear to qualify for another exemption or exception then the legislature must determine that the bill fulfills an important state interest and the bill must have a two-thirds vote of the membership of each house for passage.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Yellow Light Timing

An often overlooked but critical element in improving intersection safety is the time interval for the yellow light. The U.S. Department of Transportation, Federal Highway Administration, points out how dramatically the timing of the yellow light effects safety:

The purpose of the yellow interval is to warn approaching traffic of the imminent change in the assignment of right-of-way. The length of the yellow interval is determined in such a way that it provides enough time for a vehicle to travel at its prevailing speed through the intersection before the traffic signal turns red or to allow a driver to stop at a comfortable average deceleration before entering the intersection. Therefore, the likelihood of a motorist running a red light increases as the yellow interval is shortened. Lengthening the yellow interval, within appropriate guidelines, has been shown to significantly reduce the number of inadvertent red light violations. On the other hand too long of a yellow clearance interval decreases capacity of the intersection and increases delay to motorists. This in turn can cause driver frustration and may result in motorists entering the intersection later intentionally violating the red light.²⁴

According to the U.S. Department of Transportation, the interval for the yellow light should be set in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways in conjunction with state and local agency policies.²⁵

Jason Weisser [will] sue the city. It would be the lawyer's ninth such suit against cities throughout Florida using red-light cameras, including Orlando, Miami Gardens and Aventura." *Bradenton Facing Red-light Camera Lawsuit*, Bradenton Herald, August 25, 2009. See also, *Pembroke Pines Sued Over Red Light Cameras*, Sun-Sentinel, November 14, 2009 (A class-action suit with "roughly two dozen drivers," also represented by Weisser); *Lawsuit Filed Against City's Red-light Camera Program*, Tampa Tribune, Aug. 7, 2009 (driver suing Temple Terrace).

²² Eleventh Judicial Circuit of Florida case number 2009-12736-CA-01.

²³ The court's ruling was oral and a written order has not yet been issued. The case was reported by the media including the following: *Red-Light Cameras in Aventura Get Stop Sign*, The Miami Herald, February 22, 2010.

²⁴ http://safety.fhwa.dot.gov/intersection/redlight/redl_faq.cfm (last visited March 13, 2010).

²⁵ <http://mutcd.fhwa.dot.gov/pdfs/2003r1/pdf-index.htm> (last visited March 13, 2010).

There have been reports on the subject of yellow light timing and red light camera revenues. Some describe situations where the duration of the yellow light interval was shortened in conjunction with the installation of red light cameras.²⁶

Drafting Issues

The term "traffic infraction detector" is not defined in the bill or Florida Statutes. It is recommended that the bill be amended to include a definition.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

²⁶ <http://www.thenewspaper.com/news/26/2650.asp> (last visited March 13, 2010).

1 A bill to be entitled
2 An act relating to enforcement of traffic laws; creating
3 s. 316.0082, F.S.; prohibiting the use of traffic
4 infraction detectors and cameras by a county or
5 municipality to enforce traffic laws or regulate traffic
6 unless expressly authorized by general law; preempts to
7 the state the authority to use traffic infraction
8 detectors to enforce traffic laws; providing an effective
9 date.

10

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

12

13 Section 1. Section 316.0082, Florida Statutes, is created
14 to read:

15 316.0082 Use of traffic infraction detectors or cameras by
16 county or municipality prohibited.—Unless expressly authorized
17 by general law, a county or municipality shall not use any type
18 of traffic infraction detector or camera to enforce s.
19 316.075(1)(c) or to otherwise regulate traffic through the
20 issuance of a traffic citation or through the use of a local
21 code enforcement process. The authority of a public body to use
22 traffic infraction detectors or cameras to enforce traffic laws
23 or to otherwise regulate traffic is expressly preempted to the
24 state.

25 Section 2. This act shall take effect upon becoming a law.

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:

Background

Executive Agency Authority

Agencies are “creatures of statute” that have only those powers that the Legislature delegates to them¹ and can only perform as authorized by the Legislature.² Administrative agencies may not expand their authority beyond that provided in a statutory grant or amend such provision.³ They have no inherent⁴ or common law powers.⁵ When an agency acts outside the scope of its delegated authority, it acts illegally.⁶ Statutory delegations probably cannot express every permissible act required to perform a function; however, authority is *implied* because the Legislature intended performance when delegating the duty.⁷ Implied powers, however, must be necessary, may not be extended beyond the fair inferences of specific cases,⁸ and may not be “in violation of law or public policy.”⁹ Florida case law has long restricted implied agency powers.¹⁰ “If any doubt exists as to whether a particular power has been statutorily granted, such doubt must be resolved against the employment of that power.”¹¹

The Administrative Procedure Act¹²

The Administrative Procedure Act (APA) “presumptively governs the exercise of all authority statutorily vested in the executive branch of state government,”¹³ and allows persons substantially affected by the preliminary decisions of administrative agencies to challenge those decisions.¹⁴

¹ *Ocampo v. Department of Health*, 806 So.2d 633 (1st DCA 2002).

² *Ocampo* at 634.

³ *Department of Environmental Regulation v. Falls Chase Special Taxing District*, 424 So.2d 787 (1st DCA 1984); *Seitz v. Duval County School Board*, 366 So.2d 119 (1st DCA 1979); *Department of Transportation v. James*, 403 So.2d 1066 (4th DCA 1981).

⁴ *East Central Regional Wastewater Facilities Operation Board v. City of West Palm Beach*, 659 So.2d 402, 20 F.L.W. D1772 (4th DCA 1995); *Grove Isle, Ltd. v. Department of Environmental Regulation*, 454 So.2d 571 (1st DCA 1984).

⁵ *Florida Indus. Commission ex rel. Special Disability Fund v. National Trucking Co.*, 107 So.2d 397 (1st DCA 1958); *State ex rel. Greenberg v. Florida State Bd. of Dentistry*, 297 So.2d 628 (1st DCA 1974), cert. dismissed, 300 So.2d 900 (Fla. 1974).

⁶ *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (5th DCA).

⁷ Am. Jur. 2d, *Public Officers and Employees*, s. 232.

⁸ *White v. Crandon*, 116 Fla. 162, 156 So. 303 (1934); see also, AGO 079-47.

⁹ Fla. Jur. 2d, *Civil Servants and Other Public Officers and Employees*, s. 63, citing *In re Advisory Opinion to the Governor*, 60 So.2d 285 (Fla. 1952); *Peters v. Hansen*, 157 So.2d 103 (2nd DCA 1963).

¹⁰ *Edgerton v. International Company*, 89 So.2d 488 (Fla. 1956); *State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So.2d 628 (1st DCA 1974); *Gardinier, Inc. v. Florida Dept. of Pollution Control*, 300 So.2d 75 (1st DCA 1974).

¹¹ Op. Atty. Gen 85-66, quoting from *State v. Atlantic Coast Line R. Co.*, 47 So. 969 (Fla. 1908).

¹² The Administrative Procedure Act is codified at chapter 120, F.S.

For purposes of the APA, the term “agency” is defined as each:

- State officer and state department, and each departmental unit described in s. 20.04, F.S.
- Regional water supply authority.
- Board and commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.
- Regional planning agency.
- Multicounty special district with a majority of its governing board comprised of nonelected persons.
- Educational unit.
- Entity described in chapters 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.
- Other units of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.¹⁵

The definition also includes the Governor in the exercise of all executive powers other than those derived from the State Constitution. It expressly includes a regional water supply authority.¹⁶

APA: Rulemaking

The APA provides general provisions applicable to all rules,¹⁷ other than emergency rules.¹⁸ Rulemaking is not a matter of agency discretion.¹⁹ A grant of rulemaking authority²⁰ is necessary but not sufficient to allow an agency to adopt a rule. A specific law to be implemented also is required.²¹

The APA also provides a process for adopting “emergency rules.” If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action then the agency may adopt any rule necessitated by the immediate danger.²² An emergency rule is not effective for a period longer

¹³ *Gopman v. Department of Education*, 908 So.2d 1118, 1120 (Fla. 1st DCA 2005).

¹⁴ Judge Linda M. Rigot, *Administrative Law: A Meaningful Alternative to Circuit Court Litigation*, The Florida Bar Journal, Jan. 2001, at 14.

¹⁵ Section 120.52(1), F.S.

¹⁶ The definition of agency expressly excludes any legal entity or agency created in whole or in part pursuant to chapter 361, F.S., part II (Joint Electric Power Supply Projects); any metropolitan planning organization created under s. 339.175, F.S., or any separate legal or administrative agency of which a metropolitan planning organization is a member; an expressway authority pursuant to chapter 348, F.S.; any legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), F.S., unless any party to such agreement is otherwise an agency as defined in the section; or any multicounty special district with a majority of its governing board comprised of elected persons.

¹⁷ Section 120.52(16), F.S., defines “rule” to mean each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include: internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum; legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action; or the preparation or modification of:

- Agency budgets.
- Statements, memoranda, or instructions to state agencies issued by the Chief Financial Officer or Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Chief Financial Officer or Comptroller.
- Contractual provisions reached as a result of collective bargaining.
- Memoranda issued by the Executive Office of the Governor relating to information resources management.

¹⁸ Section 120.54(1), F.S.

¹⁹ Section 120.54(1)(a), F.S.

²⁰ Section 120.52(17), F.S., defines “rulemaking authority” to mean statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term “rule.”

²¹ Section 120.536(1), F.S.

²² Section 120.54(4)(a), F.S.

than 90 days. In addition, it is not renewable, except during the pendency of a challenge to proposed rules addressing the subject of the emergency rule.²³

APA: Bid Protests

Chapter 287, F.S., governs agency²⁴ procurement of commodities and contractual services. The Department of Management Services is statutorily designated as the central procurement authority for executive agencies.

Bid protests are conducted in accordance with the APA. Current law provides detailed provisions relating to bid protests.²⁵ It requires that the public be notified of agency actions regarding protests²⁶ and that a 72-hour window of opportunity be provided for affected entities to file a notice of intent to protest.²⁷ Upon receipt of such notice, the agency typically is required to stop the procurement process until the protest is resolved.²⁸ If the protest is not resolved informally, it must be referred to the Division of Administrative Hearings if there are disputed issues of material fact or to an agency hearing officer if there are no disputes over material facts.²⁹

Department of the Lottery

In 1987, the Legislature enacted chapter 87-65, L.O.F.,³⁰ to implement a voter-approved constitutional amendment³¹ allowing the State of Florida to operate a lottery. The Department of the Lottery (department) was established for the purpose of operating the state lottery "so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens."³²

In 1987, the Legislature recognized that the operation of the lottery was a unique activity for state government and that structures and procedures appropriate to the performance of other governmental functions were not necessarily appropriate to the operation of a state lottery.³³ As such, the Legislature granted the department authorities not typically afforded other agencies. This allowed the department to respond as quickly as possible to changing market conditions and to maximize additional funding for education.³⁴ In addition, this broad range of authority allowed the department to establish itself and the games it promotes and to address any immediate issues or concerns; however, that was over 20 years ago and the department is now fully operational.

Department of the Lottery: Rulemaking Authority

As part of its powers and duties,³⁵ the Legislature provided the department with multiple grants of rulemaking authority, including a general grant for emergency rules. The department may:

- Adopt rules governing the establishment and operation of the state lottery.³⁶

²³ Section 120.54(4)(c), F.S.

²⁴ Section 287.012(1), F.S., defines "agency" to mean any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

²⁵ See s. 120.57(3), F.S.

²⁶ Section 120.57(3)(a), F.S.

²⁷ Section 120.57(3)(b), F.S.

²⁸ Section 120.57(3)(c), F.S.

²⁹ Section 120.57(3)(d), F.S.

³⁰ Codified as chapter 24, F.S.

³¹ Section 15, Art. X of the State Constitution.

³² Section 24.104, F.S.

³³ Section 24.102(2)(b), F.S.

³⁴ See s. 24.109(1), F.S.

³⁵ See s. 24.105, F.S.

³⁶ Pursuant to s. 24.105(9), F.S., such rules include:

- The type of lottery games to be conducted with certain exceptions.
- The sales price of tickets; the number and sizes of prizes.
- The method of selecting winning tickets. However, if a lottery game involves a drawing, the drawing shall be public and witnessed by an accountant employed by an independent certified public accounting firm. The equipment used in the drawing shall be inspected before and after the drawing.
- The manner of payment of prizes to holders of winning tickets.
- The frequency of drawings or selections of winning tickets.

- Determine by rule information relating to the operation of the lottery that is confidential and exempt from public records requirements.^{37, 38}
- Perform any of the functions of the Department of Management Services under chapter 255,³⁹ chapter 273,⁴⁰ chapter 281,⁴¹ chapter 283,⁴² or chapter 287,⁴³ F.S. The department must find, by rule, that compliance with any such chapter would impair or impede the effective or efficient operation of the lottery.⁴⁴
- Adopt by rule a code of ethics for officers and employees of the department that supplements the standards of conduct for public officers and employees.⁴⁵

The Legislature also authorized the department to, at any time, adopt emergency rules; however, the department is not required to make a finding that an immediate danger to the public health, safety, or welfare requires emergency action. In addition, emergency rules adopted by the department do not expire unless replaced by other emergency rules or by rules adopted under the nonemergency rulemaking procedures of the APA.⁴⁶

In the last five years, the department has adopted 404 emergency rules.⁴⁷ Most of the emergency rules pertain to instant ticket games offered by the department; however it has adopted by emergency rule provisions relating to Powerball, Lotto, retailer bonus commissions for certain games, retailer accountability, retailer responsibility, retailer contracts, a code of ethics for non-reporting individuals and non-procurement employees, a code of ethics for reporting individuals and procurement employees, overtime compensation, procurement of commodities and contractual services, and facility leases.

In the last five years, the department has used the nonemergency rulemaking process on five occasions.⁴⁸ According to the department, nonemergency rulemaking was chosen in those five instances because “non-emergency, or so-called ‘permanent’ rules were being amended . . .”⁴⁹

Department of the Lottery: Bid Protests

Current law specifies that the procurement provisions of s. 120.57(3), F.S., apply to the department’s contracting process with three exceptions:

- A *formal* written protest of a department action that is subject to protest must be filed within 72 hours after receipt of notice of agency action;⁵⁰ whereas, the timeframe for a formal written protest of other agency actions is set at 10 days.⁵¹

- The number and type of locations at which tickets may be purchased.
- The method to be used in selling tickets.
- The manner and amount of compensation of retailers.
- Such other matters necessary or desirable for the efficient or economical operation of the lottery or for the convenience of the public.

³⁷ Section 24.105(12)(a), F.S.

³⁸ As of 1993, the department no longer has the authority to adopt by rule information that should be made confidential and exempt from public records requirements. Section 24(c), Art. I of the State Constitution, vests that authority in the Legislature only; however, s. 24(d) grandfathers in all exemptions in effect on July 1, 1993. As such, the protections codified in rule 53-1.005, F.A.C., confidential information, remains confidential and exempt so long as the protections were in place on or before July 1, 1993.

³⁹ Chapter 255, F.S., relates to public property and publicly owned buildings.

⁴⁰ Chapter 273, F.S., relates to state-owned tangible personal property.

⁴¹ Chapter 281, F.S., relates to safety and security services.

⁴² Chapter 283, F.S., relates to public printing.

⁴³ Chapter 287, F.S., relates to procurement of personal property and services.

⁴⁴ Section 24.105(13), F.S.

⁴⁵ Section 24.105(20), F.S.

⁴⁶ Section 24.109(1), F.S.

⁴⁷ The department adopted 97 emergency rules in 2005, 63 in 2006, 76 in 2007, 89 in 2008, 74 in 2009, and five for the first two months of 2010.

⁴⁸ E-mail from Ken Hart, General Counsel, Department of the Lottery, November 12, 2009 (on file with the Governmental Affairs Policy Committee).

⁴⁹ E-mail from Ken Hart, General Counsel, Department of the Lottery, November 16, 2009 (on file with the Governmental Affairs Policy Committee).

⁵⁰ Section 24.109(2)(a), F.S.

- The department is afforded a higher standard of review for protests of procurements. Bid decisions are reviewed by an administrative law judge; however, such judge may not substitute his or her procurement decision for the agency's procurement decision.⁵²
- The department may proceed with a bid, solicitation, or contract award process notwithstanding the filing of a notice of intent to protest. Such procedure is permitted when the secretary of the department sets forth in writing "particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process" in order to avoid a "substantial loss of funding to the state or to avoid substantial disruption of the timetable for any scheduled lottery game."⁵³

Effect of Bill

The bill revises and tightens the grant of rulemaking authority provided to the Department of the Lottery.

The bill removes the authority of the department to adopt by rule a code of ethics for its officers and employees. In addition, it no longer exempts personnel actions from chapter 120, F.S.

The bill removes the authority of the department to perform any of the functions of the Department of Management Services under chapters 255, 273, 281, 283, or 287, F.S. As such, the department no longer has the authority to adopt rules creating different processes from those authorized under such chapters.

The bill requires the department to adopt rules governing the operation of games offered by the department. The department may adopt emergency rules for the purpose of implementing instant ticket games. Such rules remain in effect until expiration of the specific instant ticket game which is the subject of the emergency rule. The bill, however, removes the general grant of emergency rulemaking authority afforded the department.

The bill also removes the three exceptions from s. 120.57(3), F.S., afforded the department but not granted other administrative agencies. As a result, bid protest standards should be applied consistently among all administrative agencies.

Finally, the bill requires the department to repeal all rules in existence on July 1, 2010, that were adopted in a manner no longer authorized by this act. The intent is to ensure the department repeals emergency rules related to topics like procurement and leasing of facilities, while retaining rules specific to instant ticket games.

B. SECTION DIRECTORY:

Section 1 amends s. 24.105, F.S., to revise the rulemaking authority granted the Department of the Lottery.

Section 2 repeals s. 24.109, F.S., relating to administrative procedure.

Section 3 requires the department to repeal certain rules in existence as of July 1, 2010.

Section 4 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁵¹ See s. 120.57(3)(b), F.S.

⁵² Section 24.109(2)(b), F.S.

⁵³ Section 24.109(2)(c), F.S.

1. Revenues:

None.

2. Expenditures:

The Department of the Lottery could incur expenditures associated with the promulgation of new rules.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill revises and narrows the grant of rulemaking authority provided by the Legislature to the Department of the Lottery. It eliminates the department's general grant of emergency rulemaking authority and provides that the department may only adopt emergency rules for the purpose of implementing instant ticket games. In addition, the bill requires the department to repeal all rules in existence on July 1, 2010, that were adopted in a manner no longer authorized by this act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to administrative procedures of the
 3 Department of the Lottery; amending s. 24.105, F.S.;
 4 revising the rulemaking authority of the Department of the
 5 Lottery; authorizing the department to adopt rules
 6 governing the operation of games offered by the
 7 department; authorizing the department to adopt emergency
 8 rules for the specific purpose of implementing instant
 9 ticket games; removing the authority of the department to
 10 perform any of the functions of the Department of
 11 Management Services under chapter 255, chapter 273,
 12 chapter 281, chapter 283, or chapter 287, F.S.; removing
 13 the exemption from chapter 120, F.S., related to personnel
 14 actions; removing the authority of the department to adopt
 15 by rule a code of ethics for its officers and employees;
 16 repealing s. 24.109(1) and (2)(a), (b), and (c), F.S.,
 17 relating to administrative procedure; requiring the
 18 department to repeal certain rules in existence as of a
 19 specified date; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Subsections (9) and (13) - (20) of section
 24 24.105, Florida Statutes, are amended to read:
 25 24.105 Powers and duties of department.—The department
 26 shall:
 27 (9) (a) Adopt rules governing the ~~establishment and~~
 28 operation of games offered by the department ~~the state lottery,~~

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29 including:

30 1.(a) The type of lottery games to be conducted, except
31 that:

32 a.1. No name of an elected official shall appear on the
33 ticket or play slip of any lottery game or on any prize or on
34 any instrument used for the payment of prizes, unless such prize
35 is in the form of a state warrant.

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

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

42 d.4. The only player-activated machine which may be
43 utilized is a machine which dispenses instant lottery game
44 tickets following the insertion of a coin or currency by a
45 ticket purchaser. To be authorized a machine must: be under the
46 supervision and within the direct line of sight of the lottery
47 retailer to ensure that the machine is monitored and only
48 operated by persons at least 18 years of age; be capable of
49 being electronically deactivated by the retailer to prohibit use
50 by persons less than 18 years of age through the use of a
51 lockout device that maintains the machine's deactivation for a
52 period of no less than 5 minutes; and be designed to prevent its
53 use or conversion for use in any manner other than the
54 dispensing of instant lottery tickets. Authorized machines may
55 dispense change to players purchasing tickets but may not be
56 utilized for paying the holders of winning tickets of any kind.

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57 At least one clerk must be on duty at the lottery retailer while
 58 the machine is in operation. However, at least two clerks must
 59 be on duty at any lottery location which has violated s.
 60 24.1055.

61 ~~2.(b)~~ The sales price of tickets.

62 ~~3.(c)~~ The number and sizes of prizes.

63 ~~4.(d)~~ The method of selecting winning tickets. However, if
 64 a lottery game involves a drawing, the drawing shall be public
 65 and witnessed by an accountant employed by an independent
 66 certified public accounting firm. The equipment used in the
 67 drawing shall be inspected before and after the drawing.

68 ~~5.(e)~~ The manner of payment of prizes to holders of
 69 winning tickets.

70 ~~6.(f)~~ The frequency of drawings or selections of winning
 71 tickets.

72 ~~7.(g)~~ The number and type of locations at which tickets
 73 may be purchased.

74 ~~8.(h)~~ The method to be used in selling tickets.

75 ~~9.(i)~~ The manner and amount of compensation of retailers.

76 (b) The department may at any time adopt emergency rules
 77 pursuant to s. 120.54 for the purpose of implementing instant
 78 ticket games. The Legislature finds that, from time to time, the
 79 department must respond as quickly as is practicable to changes
 80 in the marketplace when creating and promoting instant ticket
 81 games. Therefore, in adopting emergency rules for the purpose of
 82 implementing such games, the department need not make the
 83 findings required by s. 120.54(4)(a). Emergency rules adopted
 84 under this subsection are exempt from s. 120.54(4)(c) and shall

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85 remain in effect until expiration of the specific instant ticket
 86 game which is the subject of the emergency rule.

87 ~~(j) Such other matters necessary or desirable for the~~
 88 ~~efficient or economical operation of the lottery or for the~~
 89 ~~convenience of the public.~~

90 ~~(13) Have the authority to perform any of the functions of~~
 91 ~~the Department of Management Services under chapter 255, chapter~~
 92 ~~273, chapter 281, chapter 283, or chapter 287, or any rules~~
 93 ~~adopted under any such chapter, and may grant approvals provided~~
 94 ~~for under any such chapter or rules. If the department finds, by~~
 95 ~~rule, that compliance with any such chapter would impair or~~
 96 ~~impede the effective or efficient operation of the lottery, the~~
 97 ~~department may adopt rules providing alternative procurement~~
 98 ~~procedures. Such alternative procedures shall be designed to~~
 99 ~~allow the department to evaluate competing proposals and select~~
 100 ~~the proposal that provides the greatest long-term benefit to the~~
 101 ~~state with respect to the quality of the products or services,~~
 102 ~~dependability and integrity of the vendor, dependability of the~~
 103 ~~vendor's products or services, security, competence, timeliness,~~
 104 ~~and maximization of gross revenues and net proceeds over the~~
 105 ~~life of the contract.~~

106 (13)~~(14)~~ Have the authority to acquire real property and
 107 make improvements thereon. The title to such property shall be
 108 vested in the Board of Trustees of the Internal Improvement
 109 Trust Fund. The board shall give the department preference in
 110 leasing state-owned lands under the board's control and may not
 111 exercise any jurisdiction over lands purchased or leased by the
 112 department while such lands are actively used by the department.

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113 Actions of the department under this subsection are exempt from
 114 the time limitations and deadlines of chapter 253.

115 (14)~~(15)~~ Have the authority to charge fees to persons
 116 applying for contracts as vendors or retailers, which fees are
 117 reasonably calculated to cover the costs of investigations and
 118 other activities related to the processing of the application.

119 (15)~~(16)~~ Enter into contracts for the purchase, lease, or
 120 lease-purchase of such goods and services as are necessary for
 121 the operation and promotion of the state lottery, including
 122 assistance provided by any governmental agency.

123 (16)~~(17)~~ In accordance with the provisions of this act,
 124 enter into contracts with retailers so as to provide adequate
 125 and convenient availability of tickets to the public for each
 126 game.

127 (17)~~(18)~~ Have the authority to enter into agreements with
 128 other states for the operation and promotion of a multistate
 129 lottery if such agreements are in the best interest of the state
 130 lottery. The authority conferred by this subsection is not
 131 effective until 1 year after the first day of lottery ticket
 132 sales.

133 (18)~~(19)~~ Employ division directors and other staff as may
 134 be necessary to carry out the provisions of this act; however:

135 (a) No person shall be employed by the department who has
 136 been convicted of, or entered a plea of guilty or nolo
 137 contendere to, a felony committed in the preceding 10 years,
 138 regardless of adjudication, unless the department determines
 139 that:

140 1. The person has been pardoned or his or her civil rights

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141 have been restored; or

142 2. Subsequent to such conviction or entry of plea the
 143 person has engaged in the kind of law-abiding commerce and good
 144 citizenship that would reflect well upon the integrity of the
 145 lottery.

146 (b) No officer or employee of the department having
 147 decisionmaking authority shall participate in any decision
 148 involving any vendor or retailer with whom the officer or
 149 employee has a financial interest. No such officer or employee
 150 may participate in any decision involving any vendor or retailer
 151 with whom the officer or employee has discussed employment
 152 opportunities without the approval of the secretary or, if such
 153 officer is the secretary, without the approval of the Governor.
 154 Any officer or employee of the department shall notify the
 155 secretary of any such discussion or, if such officer is the
 156 secretary, he or she shall notify the Governor. A violation of
 157 this paragraph is punishable in accordance with s. 112.317.

158 (c) No officer or employee of the department who leaves
 159 the employ of the department shall represent any vendor or
 160 retailer before the department regarding any specific matter in
 161 which the officer or employee was involved while employed by the
 162 department, for a period of 1 year following cessation of
 163 employment with the department. A violation of this paragraph is
 164 punishable in accordance with s. 112.317.

165 (19)~~(d)~~ The department shall establish and maintain a
 166 personnel program for its employees, including a personnel
 167 classification and pay plan which may provide any or all of the
 168 benefits provided in the Senior Management Service or Selected

BILL ORIGINAL YEAR

169 Exempt Service.

170 (a) Each officer or employee of the department shall be a
 171 member of the Florida Retirement System. The retirement class of
 172 each officer or employee shall be the same as other persons
 173 performing comparable functions for other agencies.

174 (b) Employees of the department shall serve at the
 175 pleasure of the secretary and shall be subject to suspension,
 176 dismissal, reduction in pay, demotion, transfer, or other
 177 personnel action at the discretion of the secretary. ~~Such~~
 178 ~~personnel actions are exempt from the provisions of chapter 120.~~

179 (c) All employees of the department are exempt from the
 180 Career Service System provided in chapter 110 and,
 181 notwithstanding the provisions of s. 110.205(5), are not
 182 included in either the Senior Management Service or the Selected
 183 Exempt Service. However, all employees of the department are
 184 subject to all standards of conduct adopted by rule for career
 185 service and senior management employees pursuant to chapter 110.
 186 In the event of a conflict between standards of conduct
 187 applicable to employees of the Department of the Lottery the
 188 more restrictive standard shall apply. Interpretations as to the
 189 more restrictive standard may be provided by the Commission on
 190 Ethics upon request of an advisory opinion pursuant to s.
 191 112.322(3)(a), for purposes of this subsection the opinion shall
 192 be considered final action.

193 ~~(20) Adopt by rule a code of ethics for officers and~~
 194 ~~employees of the department which supplements the standards of~~
 195 ~~conduct for public officers and employees imposed by law.~~

196 Section 2. Section 24.109, Florida Statutes, is repealed.

BILL

ORIGINAL

YEAR

197 Section 3. The Department of the Lottery shall repeal all
198 rules, or portions thereof, in existence on July 1, 2010, that
199 were adopted in a manner no longer authorized by this act.
200 Section 4. This act shall take effect on July 1, 2010.

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:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

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

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Domestic Violence Fatality Review Teams

Current law allows a domestic violence fatality review team (team or teams)⁴ to be established at a local, regional, or state level. The purpose of the team is to learn how to prevent domestic violence by

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

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

⁴ Section 741.316(1), F.S., defines "domestic violence fatality review team" to mean an organization that includes, but is not limited to, representatives from the following agencies or organizations: law enforcement agencies; the state attorney; the medical examiner;

intervening early and improving the response of an individual and the system to domestic violence. In accomplishing this purpose, teams may review events leading up to a domestic violence incident, available community resources, current laws and policies, actions taken by the systems and individuals related to the incident and the parties, and any information or action deemed relevant by the team.⁵

The structure and activities of teams are determined at the local level. Each team may determine the number and type of incidents it wishes to review. It must make policy and other recommendations as to how incidents of domestic violence may be prevented.⁶

There are 19 active teams in Florida.⁷ In addition, the Department of Children and Family Services in partnership with the Florida Coalition Against Domestic Violence created a statewide team that is funded by a federal grant. The goals of the statewide team are to identify gaps in service delivery to domestic violence victims, promote training, and coordinate activities among agencies involved in domestic violence issues.⁸

Exemptions under Review

Current law provides a public record and public meeting exemption for domestic violence fatality review teams.⁹

Any confidential or exempt¹⁰ information obtained by a team retains its confidential or exempt status.¹¹ In addition, any information that identifies a victim of domestic violence or the victim's children is confidential and exempt from public records requirements when contained in a record created by a team.¹²

Those portions of meetings of a team regarding domestic violence fatalities and their prevention, during which confidential or exempt information is discussed, are exempt from public meetings requirements.¹³ Current law does not require a recording of the closed portions of meetings. As such, one could argue the public has no assurance that the team actually discusses confidential or exempt information during those closed meetings.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.¹⁴

certified domestic violence centers; child protection service providers; the office of court administration; the clerk of the court; victim services programs; child death review teams; members of the business community; county probation or corrections agencies; any other persons who have knowledge regarding domestic violence fatalities, nonlethal incidents of domestic violence, or suicide, including research, policy, law, and other matters connected with fatal incidents; or other representatives as determined by the review team.

⁵ Section 741.316(2), F.S.

⁶ *Id.*

⁷ As of June 19, 2009, there were active teams in the following counties: Alachua, Brevard, Broward, Columbia, Duval, Escambia, Hillsborough, Lee, Manatee, Miami-Dade, Orange, Palm Beach, Pasco, Pinellas, Polk/Highlands, Santa Rosa, Sarasota, Seminole, and St. John's. See Senate Bill Analysis and Fiscal Impact Statement for SB 884 (February 2, 2010) at 3.

⁸ See Senate Bill Analysis and Fiscal Impact Statement for SB 884 (February 2, 2010) at 3.

⁹ Section 741.3165, F.S.

¹⁰ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹¹ Section 741.3165(1)(a), F.S.

¹² Section 741.3165(1)(b), F.S.

¹³ Section 741.3165(2), F.S.

¹⁴ Section 741.3165(3), F.S.

Effect of Bill

The bill reenacts the public record and public meeting exemptions. In addition, any portion of a closed meeting must be recorded and maintained by the team. No portion of the closed meeting may be off the record.

The bill creates a public record exemption for the recording of a closed portion of a meeting. As such, the bill extends the repeal date for the exemptions from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.¹⁵

B. SECTION DIRECTORY:

Section 1 amends s. 741.3165, F.S., to reenact and expand the public record and public meeting exemptions for domestic violence fatality review teams.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Domestic violence fatality review teams could incur costs associated with recording closed portions of meetings; however, those costs should be minimal.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

¹⁵ Section 24(c), Art. I of the State Constitution.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands the current exemptions under review; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemptions under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 741.3165, F.S., which
 4 provides an exemption from public records and public
 5 meetings requirements for domestic violence fatality
 6 review teams; requiring a recording of any portion of a
 7 closed meeting; providing a public record exemption for
 8 the recording of the closed meeting; providing for future
 9 legislative review and repeal of the exemption under the
 10 Open Government Sunset Review Act; providing a statement
 11 of public necessity; providing an effective date.

12

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

14

15 Section 1. Section 741.3165, Florida Statutes, is amended
 16 to read:

17 741.3165 Certain information exempt from disclosure.—

18 (1)(a) Any information that is confidential or exempt from
 19 s. 119.07(1) and s. 24(a), Art. I of the State Constitution and
 20 that is obtained by a domestic violence fatality review team
 21 conducting activities as described in s. 741.316 shall retain
 22 its confidential or exempt status when held by a domestic
 23 violence fatality review team.

24 (b) Any information ~~contained~~ in a record created by a
 25 domestic violence fatality review team pursuant to s. 741.316
 26 that reveals the identity of a victim of domestic violence or
 27 the identity of the children of the victim is confidential and
 28 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

BILL

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29 Constitution.

30 (2) (a) Portions of meetings of any domestic violence
 31 fatality review team regarding domestic violence fatalities and
 32 their prevention, during which confidential or exempt
 33 information, the identity of the victim, or the identity of the
 34 children of the victim is discussed, are exempt from s. 286.011
 35 and s. 24(b), Art. I of the State Constitution. The closed
 36 portion of a meeting must be recorded and no portion of the
 37 closed meeting may be off the record. The recording shall be
 38 maintained by the domestic violence fatality review team.

39 (b) The recording of a closed portion of a meeting is
 40 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 41 Constitution.

42 (3) This section is subject to the Open Government Sunset
 43 Review Act in accordance with s. 119.15, and shall stand
 44 repealed on October 2, 2015 ~~2010~~, unless reviewed and saved from
 45 repeal through reenactment by the Legislature.

46 Section 2. The Legislature finds that it is a public
 47 necessity to make exempt from public records requirements
 48 recordings of any portion of a closed meeting of a domestic
 49 violence fatality review team. Release of such recordings would
 50 compromise those discussions of the team members which took
 51 place during a closed meeting and negates the public meeting
 52 exemption.

53 Section 3. This act shall take effect October 1, 2010.

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:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

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

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Commission for Independent Education

The Commission for Independent Education (commission) is established in the Department of Education.⁴ It is a seven member commission that functions in matters concerning independent

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

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

⁴ Section 1005.21(1), F.S.

postsecondary educational institutions in consumer protection, program improvement, and licensure for institutions under its purview.⁵

The commission currently licenses more than 820 private postsecondary institutions serving more than 275,000 students. Approximately 38 percent of the licensed institutions are degree-granting institutions.⁶ The commission must adopt rules for the establishment and operation of the postsecondary educational institutions it licenses and must submit the rules to the State Board of Education for approval.⁷

The commission may conduct disciplinary proceedings through an investigation of any suspected violation of chapter 1005, F.S., related to nonpublic postsecondary education.⁸ It may deny, place on probation, or revoke the license of an institution or may fine an institution up to \$5000, for a violation of the commission's rules.⁹

Exemptions under Review

Current law provides a public record and public meeting exemption for the Commission for Independent Education.¹⁰

All investigatory records held by the commission, in conjunction with an investigation conducted pursuant to a suspected violation of chapter 1005, F.S., or commission rule, are exempt¹¹ from public records requirements. The exemption expires 10 days after a probable cause panel makes a determination regarding probable cause.¹²

Those portions of meetings of a probable cause panel at which exempt records are discussed are exempt from public meetings requirements.¹³ In addition, minutes and findings of an exempt probable cause panel meeting are exempt from public records requirements for a period not to exceed 10 days after the panel makes a determination regarding probable cause.¹⁴

Current law does not require a recording of the closed portions of meetings. As such, one could argue the public has no assurance that the commission actually discusses exempt records during those closed meetings.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.¹⁵

Effect of Bill

The bill reenacts the public record and public meeting exemptions. In addition, any portion of a closed meeting must be recorded and the recording must be maintained by the commission. No portion of the closed meeting may be off the record.

⁵ Section 1005.21(2), F.S.

⁶ Senate Bill Analysis and Fiscal Impact Statement for SB 1676 (February 24, 2010) at 3.

⁷ Section 1005.22(1)(e)1., F.S.

⁸ Section 1005.38(6), F.S.

⁹ Section 1005.38(1), F.S.

¹⁰ Section 1005.38(6)(b), F.S.

¹¹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

¹² Section 1005.38(6)(b)1., F.S.

¹³ Section 1005.38(6)(b)2., F.S.

¹⁴ Section 1005.38(6)(b)1., F.S.

¹⁵ Section 1005.38(6)(b)3., F.S.

The bill creates a temporary public record exemption for the recording of a closed portion of a meeting. The exemption for the recording also expires 10 days after a probable cause panel makes a determination regarding probable cause.

Because the bill creates a temporary public record exemption for the recordings of closed panel meetings, the bill extends the repeal date for the exemptions from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.¹⁶

B. SECTION DIRECTORY:

Section 1 amends s. 1005.38, F.S., to reenact and expand the public record and public meeting exemptions for the Commission for Independent Education.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Commission for Independent Education could incur costs associated with recording closed portions of meetings; however, those costs should be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

¹⁶ Section 24(c), Art. I of the State Constitution.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands the current exemptions under review; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemptions under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 1005.38, F.S., which
 4 provides an exemption from public records requirements for
 5 investigatory records held by the Commission for
 6 Independent Education and an exemption from public
 7 meetings requirements for a probable cause panel wherein
 8 exempt information is discussed; requiring a recording for
 9 any portion of a closed probable cause panel meeting;
 10 providing a public record exemption for the recording of a
 11 closed probable cause panel meeting; providing for future
 12 legislative review and repeal of the exemptions;
 13 reorganizing the section; providing a statement of public
 14 necessity; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Paragraph (b) of subsection (6) of section
 19 1005.38, Florida Statutes, is amended to read:

20 1005.38 Actions against a licensee and other penalties.--

21 (6) The commission may conduct disciplinary proceedings
 22 through an investigation of any suspected violation of this
 23 chapter or any rule of the commission, including a finding of
 24 probable cause and making reports to any law enforcement agency
 25 or regulatory agency.

26 (b)1. All investigatory records held by the commission in
 27 conjunction with an investigation conducted pursuant to this
 28 subsection, ~~including minutes and findings of an exempt probable~~

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29 | ~~cause panel meeting convened in conjunction with such~~
 30 | ~~investigation,~~ are exempt from s. 119.07(1) and s. 24(a), Art. I
 31 | of the State Constitution for a period not to exceed 10 days
 32 | after the panel makes a determination regarding probable cause.

33 | 2.a. Those portions of meetings of the probable cause
 34 | panel at which records made exempt pursuant to subparagraph 1.
 35 | are discussed are exempt from s. 286.011 and s. 24(b), Art. I of
 36 | the State Constitution. The closed portion of a meeting must be
 37 | recorded and no portion of the closed meeting may be off the
 38 | record. The recording shall be maintained by the commission.

39 | b. The recording of a closed portion of a meeting and the
 40 | minutes and findings of such meeting are exempt from s.
 41 | 119.07(1) and s. 24(a), Art. I of the State Constitution for a
 42 | period not to exceed 10 days after the panel makes a
 43 | determination regarding probable cause.

44 | 3. This paragraph is subject to the Open Government Sunset
 45 | Review Act in accordance with s. 119.15 and shall stand repealed
 46 | on October 2, 2015 ~~2010~~, unless reviewed and saved from repeal
 47 | through reenactment by the Legislature.

48 | Section 2. The Legislature finds that it is a public
 49 | necessity to make exempt from public records requirements
 50 | recordings of any portion of a closed meeting of the probable
 51 | cause panel of the Commission for Independent Education. Release
 52 | of such recordings would compromise those discussions of the
 53 | commission members which took place during a closed meeting and
 54 | negates the public meeting exemption. In addition, the public
 55 | records exemption for the recording of closed probable cause

BILL

ORIGINAL

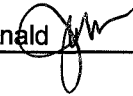
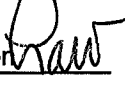
YEAR

56 | panel meetings is temporary; thus, ensuring public oversight is
57 | provided.

58 | Section 3. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-24 Procurement
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		McDonald 	Williams 
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Department of Management Services (DMS) is responsible for overseeing state purchasing activity including professional and construction services as well as commodities needed to support agency activities. The Division of State Purchasing in DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power. Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include, but are not limited to, single source contracts, invitations to bid, requests for proposals, and invitations to negotiate. Purchasing categories with threshold amounts have been established in law to guide procedures for the procurement method to be used, type of review and evaluation required and method of contract award. Finally, many services that state agencies procure are exempted from competitive solicitation requirements.

The Council on Efficient Government is responsible for reviewing and issuing advisory reports on agency business cases to outsource and for developing standards for use by agencies in evaluating such business cases. Business case requirements for outsourcing and related contracts are provided in law. A business case may be submitted in the form prescribed in s. 216.023, F.S.

The bill addresses the state competitive solicitation and procurement system established under chapter 287, F.S., by doing the following:

- Clarifying procurement processes by rewording language to make it more reader friendly and by consolidating the following provisions into one section of law:
 - detailed substantive language included in definitions;
 - availability and content of a competitive solicitation; and
 - content and process requirements for each procurement method.
- Increasing the threshold limits for purchasing categories.
- Removing from competitive solicitation exemptions services provided to persons with mental or physical disabilities provided by specified corporations meeting specific requirements and for specified prevention services related to mental health offered by not-for-profit corporations; amending an exemption related to specified health services and one related to Medicaid services; and adding a limited exemption for renewal of a contract for an agency providing child protective services, providing certain requirements are met.
- Revising definitions.
- Repealing the Council on Efficient Government.
- Retaining requirements for business cases for outsourcing for projects exceeding \$10 million and requiring submission through the s. 216.023, F.S., process and retaining contract requirements but strengthening those requirements for intellectual property.
- Repealing outdated provisions.
- Requiring coordination of contract management for health and human services by specified agencies.

The bill has an indeterminate fiscal impact. See "Fiscal Comments".

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:

Present Situation

Department of Management Services -- Procurement

The Department of Management Services is responsible for overseeing state purchasing activity including professional and construction services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology. In addition to overseeing the state's electronic procurement system, MyFloridaMarketPlace, the Division of State Purchasing in the department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.¹

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors.

These include the following:

- "single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "requests for proposal," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.²

Prior to using one of these methods, an agency might use a "request for information." This is used when an agency wants to solicit information from vendors for information concerning commodities or contractual services.

¹ Chapter 287, F.S., provides requirements for the procurement of personal property and services. Part I of that chapter pertains to commodities, insurance, and contractual services and Part II pertains to motor vehicles.

² See ss. 287.012 and 287.057, F.S.

Also, by using the procurement methods described above, state term contracts and state purchasing agreements are created and used when multiple purchases of standard commodities and services are anticipated.³

Purchasing categories with threshold amounts have been established in law to guide the procedures for the procurement method to be used, the type of review and evaluation required, and the method for the award of any contract. The categories, which have not been changed since 1999, are as follows:

- Category One: \$15,000.
- Category Two: \$25,000.
- Category Three: \$50,000.
- Category Four: \$150,000.
- Category Five: \$250,000.

The department has authority to adopt rules to adjust the amounts "based upon the rate of change of a nationally recognized price index."⁴ No rules have ever been adopted to adjust the levels.

Many services procured by state agencies are exempt from competitive solicitation requirements. Thirteen types of non-construction services are exempt from such requirements, regardless of whether the purchase exceeds the applicable cost threshold, including health, auditing, and legal services.⁵ Also, agencies are not required to use the competitive solicitation requirements when emergency situations exist that preclude the use of such required solicitation processes.⁶

Florida Efficient Government Act⁷

Council on Efficient Government⁸

The Council on Efficient Government (CEG or council) was created in 2006 to employ a standard process for reviewing agency business cases to outsource, review and issue advisory reports on such business cases, and develop standards for use by agencies in evaluating business cases to outsource in compliance with the "Florida Efficient Government Act." The council was created in reaction to various audits and reports that raised legislative concerns about agency attempts to outsource or privatize state functions.⁹ The council consists of seven members appointed by the Governor; the DMS secretary, who serves as chair; one cabinet member other than the Governor, or designee; two heads of executive branch agencies; and three members from the private sector subject to confirmation by the Senate and who, collectively, have experience with purchasing, increasing operational efficiency, and implementing complex projects in the private-sector business environment. In FY 2006-07, the council developed business case standards for agencies as defined in statute; evaluated 27 agency business cases totaling \$62 million; drafted the 2007 CEG Annual Report; and established Project Management Professional training for state agency purchasing staff.¹⁰ In FY 2008-09, council staff reviewed 23 business cases with a total value of approximately \$225 million and provided training on the development and submission of business cases.¹¹

Business Case to Outsource¹²

The Florida Efficient Government Act requires a business case to outsource a service or activity that has a projected cost of more than \$10 million in any fiscal year. The business case must provide

³ These purchases could include such things as office supplies, uniforms, vehicles, and consulting services.

⁴ The categories and thresholds as well as the authorization for rulemaking are found in s. 287.017, F.S.

⁵ See s. 287.057(5)(f), F.S.

⁶ See s. 287.057(5)(a), F.S.

⁷ See ss. 287.0571 - 287.0574, F.S.

⁸ See s. 287.0573, F.S.

⁹ For background on audit reports on agency outsourcing efforts through 2005, see Senate Staff Analysis by the General Government Appropriations Committee on CS/CS/SB 1146 from the 2005 Regular Session.

¹⁰ Department of Management Services' Sunset Review Report, p. 14.

¹¹ Council on Efficient Government, 2009 Annual Report, p. 5.

¹² See s. 287.0574, F.S.

certain information and specified information must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives prior to the solicitation and prior to the execution of a contract. Requirements for business plans for other levels of outsourcing are delineated.¹³ Business cases for outsourcing at other levels of funding are delineated. The outsource business case for a state agency may be submitted in the form required by the budget instructions issued under s. 216.023(4)(a)7., F.S., augmented with additional information, if needed.

Procurement of Products with Recycled Content¹⁴

In 1988, requirements were placed in law for the Department of Management Services, in cooperation with the Department of Environmental Protection, to review and revise existing procurement procedures and specifications for the purchase of products and materials to eliminate procedures and specifications that explicitly discriminated against products and materials with recycled content unless they were needed to protect public health, safety, and welfare. The law created a price preference for a vendor who used recycled materials. When enacted, five positions were provided and annual funding of approximately \$600,000 was provided to conduct necessary research and bid specification review. The funding for the program was stopped approximately eight years ago and as a result the Department of Management Services stopped most activities associated with the provision in law. The testing lab that was established to handle the required testing is no longer in place at the Department of Agriculture and Consumer Services. The State Negotiated Agreement Price Schedule (SNAPS) program was implemented to achieve greater efficiencies in the recycled content program and to help meet the need for review. The SNAPS program assisted in the approval of approximately 600 agreements. According to the Department of Management Services, the majority of the agreements were never used. The SNAPS program was phased out in 2004.¹⁵

Effect of Proposed Changes

Department of Management Services -- Procurement

The bill amends definitions of the methods of procurement to relocate substantive, detailed provisions to a section pertaining to procurement processes. By doing this clarity is added to the law regarding these provisions. The definition of "commodity" is amended to remove an outdated exception to certain prescribed drugs, medical supplies, or devices. The definition of "artist" is deleted. Other definitions are clarified as to the meaning and to conform to other requirements in the provisions relating to procurement and to Administrative Procedure Act¹⁶ requirements. Also, the bill relocates the definition for "outsource" from the Florida Efficient Government Efficient Act.

The purchasing category threshold amounts are updated.¹⁷ The amounts are increased based upon changes in the Consumer Price Index from 1999 to present and then rounding the amounts to the nearest \$5,000. The bill also removes rulemaking authority for the department for updating the threshold amounts. It has never been used by the department.

The procurement processes are clarified by adding substantive provisions that had previously been included in definitions with provisions relating to the availability and content of a competitive solicitation. The content and process requirements for each procurement method are combined with these other provisions to place all of the language in one comprehensive subsection of law. Finally, the provisions are made more reader friendly.

The bill removes two exemptions from competitive solicitation, amends two, and adds one. The exemption from competitive solicitation for services provided to persons with mental or physical disabilities provided by specified corporations meeting specific requirements and for specified

¹³ See s. 287.0574, F.S.

¹⁴ See s. 287.045, F.S.

¹⁵ Information obtained from a Department of Management Analysis of HB 59 in 2009, dated February 27, 2009.

¹⁶ Ch. 120, F.S.

¹⁷ According to the Department of Management Services, the thresholds were last updated in 1999 or 2000. Information received from staff of the Department of Management Services in a telephone call on March 12, 2010.

prevention services related to mental health offered by not-for-profit corporations are removed. The exemption relating to health services is amended to specify that the services must be offered to eligible individuals participating in a program that qualifies multiple providers and utilizes standard payment methodology. Administration is removed from inclusion as a health service. The exemption for Medicaid services delivered to Medicaid recipients is amended to provide that it applies unless the agency is directed otherwise in law. The bill provides for the renewal of a contract once for a term of 5 years for a community-based lead agency with which the Department of Children and Family Services contracts to provide child protective services. The renewal is contingent upon compliance with specified requirements and requires the department to make a determination that renewal without a competitive solicitation is in the best interest of persons served.

Florida Efficient Government Act

Council on Efficient Government

The Council on Efficient Government is repealed.

Business Case to Outsource

Provisions relating specifically to the requirements for business cases for outsourcing and for contracts are retained and moved to a revised s. 278.0571, F.S. The business case to outsource must be submitted when an outsourcing project is expected to cost in excess of \$10 million within a single fiscal year. It must be submitted as required in s. 216.023, F.S., the legislative budget review process.

The required provisions of the business case are the same as current law. The required additional contract provisions are identical with one exception. Provisions relating to protection of the state's interest regarding intellectual property are clarified and strengthened.

Coordination of Contracted Services¹⁸

The Department of Children and Family Services, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, the Florida Department of Veteran Affairs, and service providers under contract with those agencies are required to follow certain actions to coordinate contract management by specified times.

Contractors with health and human services contracts with multiple agencies are required to notify the state agencies with information regarding all of the contracts. State agency contract managers of the same provider of services are to choose a lead administrative coordinator. The lead administrative coordinator must establish coordinated administrative and fiscal monitoring, a unified schedule for updates of information, and maintain certain accessible information electronically.

This does not preclude an agency from conducting program performance monitoring or from responding to concerns regarding client health or safety.

Reports must be provided annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives to determine the effectiveness of the coordination in improving efficiency and reducing redundant monitoring activities of state agencies and their providers.

Procurement of Products with Recycled Content

The provisions of s. 287.045, F.S., are repealed.

¹⁸ This section of the bill is a new approach to coordination of administrative and fiscal monitoring of contracted health and human services providers

B. SECTION DIRECTORY:

Section 1. Amends s. 287.012, F.S., clarifying and updating certain definitions, deleting unnecessary definitions, and adding a definition for the term "outsource."

Section 2. Amends s. 287.017, F.S., increasing purchasing category thresholds and removing certain rulemaking authority.

Section 3. Repeals s. 287.045, F.S., relating to procurement of products and materials with recycled content.

Section 4. Amends s. 287.057, F.S., creating a new provision on procurement processes which combines other provisions of law relating to such processes; revising qualifications for certain services that are exempt from competitive-solicitation requirements; removing certain exempt status from certain services; and permitting renewal of contracts for community-based lead agency services without competitive-solicitation provided certain requirements are met.

Section 5. Amends s. 287.0571, F.S., changing the section to pertain to business case to outsource; retaining intent language; requiring a business case for projects in excess of \$10 million; requiring agency submission of a business case through the legislative budget request process; providing requirements for the business case; and delineating contract requirements for a proposed outsourcing.

Section 6. Repeals s. 287.05721, F.S., eliminating definitions.

Section 7. Creates s. 287.0575, F.S., relating to coordination of contracted services.

Section 8. Repeals s. 287.0573, F.S., relating to the creation, membership and duties of the Council on Efficient Government.

Section 9. Repeals s. 287.0574, F.S., relating to business cases to outsource.

Section 10. Amends s. 283.32, F.S., conforming language to the repeal of s. 287.045, F.S.

Section 11. Amends s. 403.7065, F.S., conforming language to the repeal of s. 287.045, F.S.

Sections 12 through 38. Corrects cross-references.

Section 39. Provides a July 1, 2010 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

The repeal of the Council on Efficient Government will result in a decrease in expenditures related to staff of the council, expenses related to the operation of the council, and any expenses related to Members of the Council. The amount is not known at this time.

The coordination of contracted services fiscal and administrative monitoring as required in section 7 of the bill could have a positive impact on the state agencies listed by having one person designated as the lead administrative coordinator for all agencies when they have contracts with the same contract provider. There also could be some costs associated with the requirement to develop and maintain an accessible electronic file of up-to-date administrative and fiscal documents. There could be a positive impact on service providers through the reduction in redundant monitoring by state agencies and provision of duplicative information to multiple agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 2 of the bill removes the authority of the Department of Management Services to adopt rules related to purchasing category thresholds.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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1 A bill to be entitled
 2 An act relating to procurement; amending s. 287.012, F.S.;
 3 revising, eliminating, and providing definitions; amending
 4 s. 287.017, F.S.; revising the threshold amounts for state
 5 purchasing categories; eliminating a requirement that the
 6 Department of Management Services adopt rules to adjust
 7 the threshold amounts; repealing s. 287.045, F.S.,
 8 relating to procurement of products and materials with
 9 recycled content; amending s. 287.057, F.S.; revising and
 10 organizing provisions relating to the procurement of
 11 commodities and contractual services by the state;
 12 specifying authorized uses for competitive solicitation
 13 processes; providing procedures and requirements with
 14 respect to competitive solicitation; specifying types of
 15 procurements for which invitations to bid, requests for
 16 proposals, and invitations to negotiate are to be utilized
 17 and providing procedures and requirements with respect
 18 thereto; revising contractual services and commodities
 19 that are not subject to competitive-solicitation
 20 requirements; prohibiting an agency from dividing the
 21 solicitation of commodities or contractual services in
 22 order to avoid specified requirements; authorizing a
 23 renewal of contracts for community-based care lead agency
 24 services for a specified term under certain conditions;
 25 eliminating eligibility of persons who receive specified
 26 contracts that were not subject to competitive procurement
 27 to contract with an agency for any other contracts dealing
 28 with the specific subject matter of the original contract;

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29 | amending s. 287.0571, F.S.; revising applicability of ss.
 30 | 287.0571-287.0574, F.S.; specifying procurements and
 31 | contracts to which s. 287.0571, F.S., relating to agency
 32 | business cases for outsourcing of specified projects, does
 33 | not apply; requiring an agency to complete a business case
 34 | for any outsourcing project with an expected cost in
 35 | excess of a specified amount within a single fiscal year;
 36 | providing for the submission of the business case in
 37 | accordance with provisions governing the submission of
 38 | agency legislative budget requests; providing that a
 39 | business case is not subject to challenge; providing
 40 | required components of a business case; specifying
 41 | required provisions for a contract for a proposed
 42 | outsourcing; repealing s. 287.05721, F.S.; eliminating
 43 | definitions; creating s. 287.0575, F.S.; establishing
 44 | duties and responsibilities of the Department of Children
 45 | and Family Services, the Agency for Persons with
 46 | Disabilities, the Department of Health, the Department of
 47 | Elderly Affairs, and the Florida Department of Veterans
 48 | Affairs, and service providers under contract to those
 49 | agencies, with respect to coordination of contracted
 50 | services; requiring state agencies contracting for health
 51 | and human services to notify their contract service
 52 | providers of certain requirements by a specified date or
 53 | upon entering into any new contract for health and human
 54 | services; requiring service providers that have more than
 55 | one contract with one or more state agencies to provide
 56 | health and human services to provide each of their

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57 | contract managers with a comprehensive list of their
 58 | health and human services contracts by a specified date;
 59 | specifying information to be contained in the list;
 60 | providing for assignment, by a specified date, of a single
 61 | lead administrative coordinator for each service provider
 62 | from among agencies having multiple health and human
 63 | services contracts; requiring the lead administrative
 64 | coordinator to provide notice of his or her designation to
 65 | the service provider and to the agency contract managers
 66 | for each affected contract; providing the method of
 67 | selection of lead administrative coordinator; providing
 68 | responsibilities of the designated lead administrative
 69 | coordinator; providing duties of contract managers for
 70 | agency contracts; providing nonapplicability; requiring
 71 | annual performance evaluations of designated lead
 72 | administrative coordinators by each agency contracting for
 73 | health and human services; providing for a report;
 74 | repealing s. 287.0573, F.S., which establishes the Council
 75 | on Efficient Government and provides membership and duties
 76 | thereof; repealing s. 287.0574, F.S.; eliminating
 77 | provisions relating to business cases to outsource, review
 78 | and analysis conducted thereunder, and requirements
 79 | thereof that are relocated in other sections of Florida
 80 | Statutes set forth in this act; amending ss. 283.32 and
 81 | 403.7065, F.S.; conforming provisions to the repeal of s.
 82 | 287.045, F.S.; relating to procurement of products and
 83 | materials with recycled content; amending ss. 14.204,
 84 | 43.16, 61.1826, 112.3215, 255.25, 283.33, 286.0113,

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85 287.022, 287.058, 287.059, 295.187, 394.457, 394.47865,
 86 402.40, 402.7305, 408.045, 427.0135, 445.024, 481.205,
 87 570.07, 627.311, 627.351, 765.5155, 893.055, and 1013.38,
 88 F.S., s. 21, ch. 2009-55, Laws of Florida, and s. 31, ch.
 89 2009-223, Laws of Florida; conforming cross-references;
 90 providing an effective date.

91
 92 Be It Enacted by the Legislature of the State of Florida:

93
 94 Section 1. Section 287.012, Florida Statutes, is amended
 95 to read:

96 287.012 Definitions.—As used in this part, the term:

97 (1) "Agency" means any of the various state officers,
 98 departments, boards, commissions, divisions, bureaus, and
 99 councils and any other unit of organization, however designated,
 100 of the executive branch of state government. "Agency" does not
 101 include the university and college boards of trustees or the
 102 state universities and colleges.

103 (2) "Agency head" means, with respect to an agency headed
 104 by a collegial body, the executive director or chief
 105 administrative officer of the agency.

106 ~~(3) "Artist" means an individual or group of individuals~~
 107 ~~who profess and practice a demonstrated creative talent and~~
 108 ~~skill in the area of music, dance, drama, folk art, creative~~
 109 ~~writing, painting, sculpture, photography, graphic arts, craft~~
 110 ~~arts, industrial design, costume design, fashion design, motion~~
 111 ~~pictures, television, radio, or tape and sound recording or in~~
 112 ~~any other related field.~~

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113 | ~~(3)-(4)~~ "Best value" means the highest overall value to the
 114 | state based on objective factors that include, but are not
 115 | limited to, price, quality, design, and workmanship.

116 | ~~(4)-(5)~~ "Commodity" means any of the various supplies,
 117 | materials, goods, merchandise, food, equipment, information
 118 | technology, and other personal property, including a mobile
 119 | home, trailer, or other portable structure with floor space of
 120 | less than 5,000 square feet, purchased, leased, or otherwise
 121 | contracted for by the state and its agencies. "Commodity" also
 122 | includes interest on deferred-payment commodity contracts
 123 | approved pursuant to s. 287.063 entered into by an agency for
 124 | the purchase of other commodities. However, commodities
 125 | purchased for resale are excluded from this definition. ~~Further,~~
 126 | ~~a prescribed drug, medical supply, or device required by a~~
 127 | ~~licensed health care provider as a part of providing health~~
 128 | ~~services involving examination, diagnosis, treatment,~~
 129 | ~~prevention, medical consultation, or administration for clients~~
 130 | ~~at the time the service is provided is not considered to be a~~
 131 | ~~"commodity."~~ Printing of publications shall be considered a
 132 | commodity when let upon contract pursuant to s. 283.33, whether
 133 | purchased for resale or not.

134 | ~~(5)-(6)~~ "Competitive solicitation sealed bids,"
 135 | ~~"competitive sealed proposals," or "competitive sealed replies"~~
 136 | means the process of requesting and receiving two or more sealed
 137 | bids, proposals, or replies submitted by responsive vendors in
 138 | accordance with the terms of a competitive process, regardless
 139 | of the method of procurement ~~and includes bids, proposals, or~~
 140 | ~~replies transmitted by electronic means in lieu of or in~~

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141 | ~~addition to written bids, proposals, or replies.~~

142 | ~~(7) "Competitive solicitation" or "solicitation" means an~~
 143 | ~~invitation to bid, a request for proposals, or an invitation to~~
 144 | ~~negotiate.~~

145 | (6)~~(8)~~ "Contractor" means a person who contracts to sell
 146 | commodities or contractual services to an agency.

147 | (7)~~(9)~~ "Contractual service" means the rendering by a
 148 | contractor of its time and effort rather than the furnishing of
 149 | specific commodities. The term applies only to those services
 150 | rendered by individuals and firms who are independent
 151 | contractors, and such services may include, but are not limited
 152 | to, evaluations; consultations; maintenance; accounting;
 153 | security; management systems; management consulting; educational
 154 | training programs; research and development studies or reports
 155 | on the findings of consultants engaged thereunder; and
 156 | professional, technical, and social services. "Contractual
 157 | service" does not include any contract for the furnishing of
 158 | labor or materials for the construction, renovation, repair,
 159 | modification, or demolition of any facility, building, portion
 160 | of building, utility, park, parking lot, or structure or other
 161 | improvement to real property entered into pursuant to chapter
 162 | 255 and rules adopted thereunder.

163 | (8)~~(10)~~ "Department" means the Department of Management
 164 | Services.

165 | (9)~~(11)~~ "Electronic posting" or "electronically post"
 166 | means the noticing ~~posting~~ of solicitations, agency decisions or
 167 | intended decisions, or other matters relating to procurement on
 168 | a centralized Internet website designated by the department for

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169 | this purpose.

170 | (10)~~(12)~~ "Eligible user" means any person or entity
 171 | authorized by the department pursuant to rule to purchase from
 172 | state term contracts or to use the online procurement system.

173 | (11)~~(13)~~ "Exceptional purchase" means any purchase of
 174 | commodities or contractual services excepted by law or rule from
 175 | the requirements for competitive solicitation, including, but
 176 | not limited to, purchases from a single source; purchases upon
 177 | receipt of less than two responsive bids, proposals, or replies;
 178 | purchases made by an agency, after receiving approval from the
 179 | department, from a contract procured, pursuant to s. 287.057(1),
 180 | ~~(2), or (3),~~ or by another agency; and purchases made without
 181 | advertisement in the manner required by s. 287.042(3)(b).

182 | (12)~~(14)~~ "Extension" means an increase in the time allowed
 183 | for the contract period due to circumstances which, without
 184 | fault of either party, make performance impracticable or
 185 | impossible, or which prevent a new contract from being executed,
 186 | with or without a proportional increase in the total dollar
 187 | amount, with any increase to be based on the method and rate
 188 | previously established in the contract.

189 | (13)~~(15)~~ "Information technology" has the meaning ascribed
 190 | in s. 282.0041.

191 | (14)~~(16)~~ "Invitation to bid" means a written or
 192 | electronically posted solicitation for competitive sealed bids.
 193 | ~~The invitation to bid is used when the agency is capable of~~
 194 | ~~specifically defining the scope of work for which a contractual~~
 195 | ~~service is required or when the agency is capable of~~
 196 | ~~establishing precise specifications defining the actual~~

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197 ~~commodity or group of commodities required. A written~~
 198 ~~solicitation includes a solicitation that is electronically~~
 199 ~~posted.~~

200 (15)~~(17)~~ "Invitation to negotiate" means a written or
 201 electronically posted solicitation for competitive sealed
 202 replies to select one or more vendors with which to commence
 203 negotiations for the procurement of commodities or contractual
 204 services. ~~The invitation to negotiate is used when the agency~~
 205 ~~determines that negotiations may be necessary for the state to~~
 206 ~~receive the best value. A written solicitation includes a~~
 207 ~~solicitation that is electronically posted.~~

208 (16)~~(18)~~ "Minority business enterprise" has the meaning
 209 ascribed in s. 288.703.

210 (17)~~(19)~~ "Office" means the Office of Supplier Diversity
 211 of the Department of Management Services.

212 (18) "Outsource" means the process of contracting with a
 213 vendor to provide a service as defined in s. 216.011(1)(f), in
 214 whole or in part, or an activity as defined in s.
 215 216.011(1)(rr), while a state agency retains the responsibility
 216 and accountability for the service or activity and there is a
 217 transfer of management responsibility for the delivery of
 218 resources and the performance of those resources.

219 (19)~~(20)~~ "Renewal" means contracting with the same
 220 contractor for an additional contract period after the initial
 221 contract period, only if pursuant to contract terms specifically
 222 providing for such renewal.

223 (20)~~(21)~~ "Request for information" means a written or
 224 electronically posted request made by an agency to vendors for

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225 information concerning commodities or contractual services.
 226 Responses to these requests are not offers and may not be
 227 accepted by the agency to form a binding contract.

228 (21)~~(22)~~ "Request for proposals" means a written or
 229 electronically posted solicitation for competitive sealed
 230 proposals. ~~The request for proposals is used when it is not~~
 231 ~~practicable for the agency to specifically define the scope of~~
 232 ~~work for which the commodity, group of commodities, or~~
 233 ~~contractual service is required and when the agency is~~
 234 ~~requesting that a responsible vendor propose a commodity, group~~
 235 ~~of commodities, or contractual service to meet the~~
 236 ~~specifications of the solicitation document. A written~~
 237 ~~solicitation includes a solicitation that is electronically~~
 238 ~~posted.~~

239 (22)~~(23)~~ "Request for a quote" means an oral or written
 240 request for written pricing or services information from a state
 241 term contract vendor for commodities or contractual services
 242 available on a state term contract from that vendor.

243 (23)~~(24)~~ "Responsible vendor" means a vendor who has the
 244 capability in all respects to fully perform the contract
 245 requirements and the integrity and reliability that will assure
 246 good faith performance.

247 (24)~~(25)~~ "Responsive bid," "responsive proposal," or
 248 "responsive reply" means a bid, or proposal, or reply submitted
 249 by a responsive and responsible vendor that conforms in all
 250 material respects to the solicitation.

251 (25)~~(26)~~ "Responsive vendor" means a vendor that has
 252 submitted a bid, proposal, or reply that conforms in all

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253 material respects to the solicitation.

254 ~~(26)~~(27) "State term contract" means a term contract that
 255 is competitively procured by the department pursuant to s.
 256 287.057 and that is used by agencies and eligible users pursuant
 257 to s. 287.056.

258 ~~(27)~~(28) "Term contract" means an indefinite quantity
 259 contract to furnish commodities or contractual services during a
 260 defined period.

261 Section 2. Section 287.017, Florida Statutes, is amended
 262 to read:

263 287.017 Purchasing categories, threshold amounts,
 264 ~~procedures for automatic adjustment by department.-~~

265 ~~(1)~~ The following purchasing categories are hereby
 266 created:

267 ~~(1)~~(a) CATEGORY ONE: \$20,000 ~~\$15,000~~.

268 ~~(2)~~(b) CATEGORY TWO: \$35,000 ~~\$25,000~~.

269 ~~(3)~~(c) CATEGORY THREE: \$65,000 ~~\$50,000~~.

270 ~~(4)~~(d) CATEGORY FOUR: \$195,000 ~~\$150,000~~.

271 ~~(5)~~(e) CATEGORY FIVE: \$325,000 ~~\$250,000~~.

272 ~~(2)~~ The department shall adopt rules to adjust the amounts
 273 provided in subsection (1) based upon the rate of change of a
 274 nationally recognized price index. Such rules shall include, but
 275 not be limited to, the following:

276 ~~(a)~~ Designation of the nationally recognized price index
 277 or component thereof used to calculate the proper adjustment
 278 authorized in this section.

279 ~~(b)~~ The procedure for rounding results.

280 ~~(c)~~ The effective date of each adjustment based upon the

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281 | ~~previous calendar year data.~~
 282 | Section 3. Section 287.045, Florida Statutes, is repealed.
 283 | Section 4. Section 287.057, Florida Statutes, is amended
 284 | to read:
 285 | 287.057 Procurement of commodities or contractual
 286 | services.—
 287 | (1) PROCUREMENT PROCESSES.—The competitive solicitation
 288 | processes authorized in this section shall be used for
 289 | procurement of commodities or contractual services in excess of
 290 | the threshold amount provided for CATEGORY TWO in s. 287.017.
 291 | Any competitive solicitation shall be made available
 292 | simultaneously to all vendors, must include the time and date
 293 | for the receipt of bids, proposals, or replies and of the public
 294 | opening, and must include all contractual terms and conditions
 295 | applicable to the procurement, including the criteria to be used
 296 | in determining acceptability and relative merit of the bid,
 297 | proposal, or reply.
 298 | (a) Invitation to bid.—The invitation to bid shall be used
 299 | when the agency is capable of specifically defining the scope of
 300 | work for which a contractual service is required or when the
 301 | agency is capable of establishing precise specifications
 302 | defining the actual commodity or group of commodities required.
 303 | 1. All invitations to bid must include:
 304 | a. A detailed description of the commodities or
 305 | contractual services sought; and
 306 | b. If the agency contemplates renewal of the contract, a
 307 | statement to that effect.
 308 | 2. Bids submitted in response to an invitation to bid in

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309 which the agency contemplates renewal of the contract must
 310 include the price for each year for which the contract may be
 311 renewed.

312 3. Evaluation of bids shall include consideration of the
 313 total cost for each year of the contract, including renewal
 314 years, as submitted by the vendor.

315 (b) Request for proposals.—An agency shall use a request
 316 for proposals when the purposes and uses for which the
 317 commodity, group of commodities, or contractual service being
 318 sought can be specifically defined and the agency is capable of
 319 identifying necessary deliverables. Various combinations or
 320 versions of commodities or contractual services may be proposed
 321 by a responsive vendor to meet the specifications of the
 322 solicitation document.

323 1. Before issuing a request for proposals, the agency must
 324 determine and specify in writing the reasons that procurement by
 325 invitation to bid is not practicable.

326 2. All requests for proposals must include:

327 a. A statement describing the commodities or contractual
 328 services sought;

329 b. The relative importance of price and other evaluation
 330 criteria; and

331 c. If the agency contemplates renewal of the contract, a
 332 statement to that effect.

333 3. Criteria that will be used for evaluation of proposals
 334 shall include, but are not limited to:

335 a. Price, which must be specified in the proposal;

336 b. If the agency contemplates renewal of the contract, the

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337 | price for each year for which the contract may be renewed; and

338 | c. Consideration of the total cost for each year of the
 339 | contract, including renewal years, as submitted by the vendor.

340 | 4. The contract shall be awarded by written notice to the
 341 | responsible and responsive vendor whose proposal is determined
 342 | in writing to be the most advantageous to the state, taking into
 343 | consideration the price and other criteria set forth in the
 344 | request for proposals. The contract file shall contain
 345 | documentation supporting the basis on which the award is made.

346 | (c) Invitation to negotiate.—The invitation to negotiate
 347 | is a solicitation used by an agency intended to determine the
 348 | best method for achieving a specific goal or solving a
 349 | particular problem and that identifies one or more responsive
 350 | vendors with which the agency may negotiate in order to receive
 351 | the best value.

352 | 1. Before issuing an invitation to negotiate, the head of
 353 | an agency must determine and specify in writing the reasons that
 354 | procurement by either an invitation to bid or a request for
 355 | proposal is not practicable.

356 | 2. The invitation to negotiate must describe the questions
 357 | being explored, the facts being sought, and the specific goals
 358 | or problems that are the subject of the solicitation.

359 | 3. The criteria that will be used for determining the
 360 | acceptability of the reply and guiding the selection of the
 361 | vendors with which the agency will negotiate must be specified.

362 | 4. The agency shall evaluate and rank responsive replies
 363 | against all evaluation criteria set forth in the invitation to
 364 | negotiate and shall, based on the ranking, select one or more

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365 vendors with which to commence negotiations. After negotiations
 366 are conducted, the agency shall award the contract to the
 367 responsible and responsive vendor that the agency determines
 368 will provide the best value to the state.

369 5. The contract file for a vendor selected through an
 370 invitation to negotiate must contain a short plain statement
 371 that explains the basis for the selection of the vendor and that
 372 sets forth the vendor's deliverables and price, pursuant to the
 373 contract, with an explanation of how these deliverables and
 374 price provide the best value to the state.

375 ~~(1) (a) Unless otherwise authorized by law, all contracts~~
 376 ~~for the purchase of commodities or contractual services in~~
 377 ~~excess of the threshold amount provided in s. 287.017 for~~
 378 ~~CATEGORY TWO shall be awarded by competitive sealed bidding. An~~
 379 ~~invitation to bid shall be made available simultaneously to all~~
 380 ~~vendors and must include a detailed description of the~~
 381 ~~commodities or contractual services sought; the time and date~~
 382 ~~for the receipt of bids and of the public opening; and all~~
 383 ~~contractual terms and conditions applicable to the procurement,~~
 384 ~~including the criteria to be used in determining acceptability~~
 385 ~~of the bid. If the agency contemplates renewal of the contract,~~
 386 ~~that fact must be stated in the invitation to bid. The bid shall~~
 387 ~~include the price for each year for which the contract may be~~
 388 ~~renewed. Evaluation of bids shall include consideration of the~~
 389 ~~total cost for each year as submitted by the vendor. Criteria~~
 390 ~~that were not set forth in the invitation to bid may not be used~~
 391 ~~in determining acceptability of the bid.~~

392 ~~(b) The contract shall be awarded with reasonable~~

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393 ~~promptness by written notice to the responsible and responsive~~
 394 ~~vendor that submits the lowest responsive bid. This bid must be~~
 395 ~~determined in writing to meet the requirements and criteria set~~
 396 ~~forth in the invitation to bid.~~

397 ~~(2) (a) If an agency determines in writing that the use of~~
 398 ~~an invitation to bid is not practicable, commodities or~~
 399 ~~contractual services shall be procured by competitive sealed~~
 400 ~~proposals. A request for proposals shall be made available~~
 401 ~~simultaneously to all vendors, and must include a statement of~~
 402 ~~the commodities or contractual services sought; the time and~~
 403 ~~date for the receipt of proposals and of the public opening; and~~
 404 ~~all contractual terms and conditions applicable to the~~
 405 ~~procurement, including the criteria, which shall include, but~~
 406 ~~need not be limited to, price, to be used in determining~~
 407 ~~acceptability of the proposal. The relative importance of price~~
 408 ~~and other evaluation criteria shall be indicated. If the agency~~
 409 ~~contemplates renewal of the commodities or contractual services~~
 410 ~~contract, that fact must be stated in the request for proposals.~~
 411 ~~The proposal shall include the price for each year for which the~~
 412 ~~contract may be renewed. Evaluation of proposals shall include~~
 413 ~~consideration of the total cost for each year as submitted by~~
 414 ~~the vendor.~~

415 ~~(b) The contract shall be awarded to the responsible and~~
 416 ~~responsive vendor whose proposal is determined in writing to be~~
 417 ~~the most advantageous to the state, taking into consideration~~
 418 ~~the price and the other criteria set forth in the request for~~
 419 ~~proposals. The contract file shall contain documentation~~
 420 ~~supporting the basis on which the award is made.~~

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421 ~~(3)(a) If the agency determines in writing that the use of~~
 422 ~~an invitation to bid or a request for proposals will not result~~
 423 ~~in the best value to the state, the agency may procure~~
 424 ~~commodities and contractual services by competitive sealed~~
 425 ~~replies. The agency's written determination must specify reasons~~
 426 ~~that explain why negotiation may be necessary in order for the~~
 427 ~~state to achieve the best value and must be approved in writing~~
 428 ~~by the agency head or his or her designee prior to the~~
 429 ~~advertisement of an invitation to negotiate. An invitation to~~
 430 ~~negotiate shall be made available to all vendors simultaneously~~
 431 ~~and must include a statement of the commodities or contractual~~
 432 ~~services sought; the time and date for the receipt of replies~~
 433 ~~and of the public opening; and all terms and conditions~~
 434 ~~applicable to the procurement, including the criteria to be used~~
 435 ~~in determining the acceptability of the reply. If the agency~~
 436 ~~contemplates renewal of the contract, that fact must be stated~~
 437 ~~in the invitation to negotiate. The reply shall include the~~
 438 ~~price for each year for which the contract may be renewed.~~

439 ~~(b) The agency shall evaluate and rank responsive replies~~
 440 ~~against all evaluation criteria set forth in the invitation to~~
 441 ~~negotiate and shall select, based on the ranking, one or more~~
 442 ~~vendors with which to commence negotiations. After negotiations~~
 443 ~~are conducted, the agency shall award the contract to the~~
 444 ~~responsible and responsive vendor that the agency determines~~
 445 ~~will provide the best value to the state. The contract file must~~
 446 ~~contain a short plain statement that explains the basis for~~
 447 ~~vendor selection and that sets forth the vendor's deliverables~~
 448 ~~and price, pursuant to the contract, with an explanation of how~~

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449 | ~~these deliverables and price provide the best value to the~~
 450 | ~~state.~~

451 | (2)~~(4)~~ Prior to the time for receipt of bids, proposals,
 452 | or replies, an agency may conduct a conference or written
 453 | question and answer period for purposes of assuring the vendor's
 454 | full understanding of the solicitation requirements. The vendors
 455 | shall be accorded fair and equal treatment.

456 | (3)~~(5)~~ When the purchase price of commodities or
 457 | contractual services exceeds the threshold amount provided in s.
 458 | 287.017 for CATEGORY TWO, no purchase of commodities or
 459 | contractual services may be made without receiving competitive
 460 | sealed bids, competitive sealed proposals, or competitive sealed
 461 | replies unless:

462 | (a) The agency head determines in writing that an
 463 | immediate danger to the public health, safety, or welfare or
 464 | other substantial loss to the state requires emergency action.
 465 | After the agency head makes such a written determination, the
 466 | agency may proceed with the procurement of commodities or
 467 | contractual services necessitated by the immediate danger,
 468 | without receiving competitive sealed bids, competitive sealed
 469 | proposals, or competitive sealed replies. However, such
 470 | emergency procurement shall be made by obtaining pricing
 471 | information from at least two prospective vendors, which must be
 472 | retained in the contract file, unless the agency determines in
 473 | writing that the time required to obtain pricing information
 474 | will increase the immediate danger to the public health, safety,
 475 | or welfare or other substantial loss to the state. The agency
 476 | shall furnish copies of all written determinations certified

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477 | under oath and any other documents relating to the emergency
 478 | action to the department. A copy of the statement shall be
 479 | furnished to the Chief Financial Officer with the voucher
 480 | authorizing payment. The individual purchase of personal
 481 | clothing, shelter, or supplies which are needed on an emergency
 482 | basis to avoid institutionalization or placement in a more
 483 | restrictive setting is an emergency for the purposes of this
 484 | paragraph, and the filing with the department of such statement
 485 | is not required in such circumstances. In the case of the
 486 | emergency purchase of insurance, the period of coverage of such
 487 | insurance shall not exceed a period of 30 days, and all such
 488 | emergency purchases shall be reported to the department.

489 | (b) The purchase is made by an agency from a state term
 490 | contract procured, pursuant to this section, by the department
 491 | or by an agency, after receiving approval from the department,
 492 | from a contract procured, pursuant to subsection (1), ~~subsection~~
 493 | ~~(2), or subsection (3),~~ by another agency.

494 | (c) Commodities or contractual services available only
 495 | from a single source may be excepted from the competitive-
 496 | solicitation requirements. When an agency believes that
 497 | commodities or contractual services are available only from a
 498 | single source, the agency shall electronically post a
 499 | description of the commodities or contractual services sought
 500 | for a period of at least 7 business days. The description must
 501 | include a request that prospective vendors provide information
 502 | regarding their ability to supply the commodities or contractual
 503 | services described. If it is determined in writing by the
 504 | agency, after reviewing any information received from

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505 prospective vendors, that the commodities or contractual
 506 services are available only from a single source, the agency
 507 shall:

508 1. Provide notice of its intended decision to enter a
 509 single-source purchase contract in the manner specified in s.
 510 120.57(3), if the amount of the contract does not exceed the
 511 threshold amount provided in s. 287.017 for CATEGORY FOUR.

512 2. Request approval from the department for the single-
 513 source purchase, if the amount of the contract exceeds the
 514 threshold amount provided in s. 287.017 for CATEGORY FOUR. The
 515 agency shall initiate its request for approval in a form
 516 prescribed by the department, which request may be
 517 electronically transmitted. The failure of the department to
 518 approve or disapprove the agency's request for approval within
 519 21 days after receiving such request shall constitute prior
 520 approval of the department. If the department approves the
 521 agency's request, the agency shall provide notice of its
 522 intended decision to enter a single-source contract in the
 523 manner specified in s. 120.57(3).

524 (d) When it is in the best interest of the state, the
 525 secretary of the department or his or her designee may authorize
 526 the Support Program to purchase insurance by negotiation, but
 527 such purchase shall be made only under conditions most favorable
 528 to the public interest.

529 (e) Prescriptive assistive devices for the purpose of
 530 medical, developmental, or vocational rehabilitation of clients
 531 are excepted from competitive-solicitation requirements and
 532 shall be procured pursuant to an established fee schedule or by

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533 any other method which ensures the best price for the state,
 534 taking into consideration the needs of the client. Prescriptive
 535 assistive devices include, but are not limited to, prosthetics,
 536 orthotics, and wheelchairs. For purchases made pursuant to this
 537 paragraph, state agencies shall annually file with the
 538 department a description of the purchases and methods of
 539 procurement.

540 (f) The following contractual services and commodities are
 541 not subject to the competitive-solicitation requirements of this
 542 section:

543 1. Artistic services. For the purposes of this subsection,
 544 the term "artistic services" does not include advertising. As
 545 used in this subparagraph, the term "advertising" means the
 546 making of a representation in any form in connection with a
 547 trade, business, craft, or profession in order to promote the
 548 supply of commodities or services by the person promoting the
 549 commodities or contractual services.

550 2. Academic program reviews.

551 3. Lectures by individuals.

552 4. Auditing services.

553 5. Legal services, including attorney, paralegal, expert
 554 witness, appraisal, or mediator services.

555 6. Health services involving examination, diagnosis,
 556 treatment, prevention, or medical consultation, when such
 557 services are offered to eligible individuals participating in a
 558 specific program that qualifies multiple providers and utilizes
 559 a standard payment methodology ~~or administration.~~

560 ~~7. Services provided to persons with mental or physical~~

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561 ~~disabilities by not-for-profit corporations which have obtained~~
 562 ~~exemptions under the provisions of s. 501(c)(3) of the United~~
 563 ~~States Internal Revenue Code or when such services are governed~~
 564 ~~by the provisions of Office of Management and Budget Circular A-~~
 565 ~~122. However, in acquiring such services, the agency shall~~
 566 ~~consider the ability of the vendor, past performance,~~
 567 ~~willingness to meet time requirements, and price.~~

568 7.8. Medicaid services delivered to an eligible Medicaid
 569 recipient unless the agency is directed otherwise in law by a
 570 ~~health care provider who has not previously applied for and~~
 571 ~~received a Medicaid provider number from the Agency for Health~~
 572 ~~Care Administration. However, this exception shall be valid for~~
 573 ~~a period not to exceed 90 days after the date of delivery to the~~
 574 ~~Medicaid recipient and shall not be renewed by the agency.~~

575 8.9. Family placement services.

576 ~~10.~~ Prevention services related to mental health,
 577 ~~including drug abuse prevention programs, child abuse prevention~~
 578 ~~programs, and shelters for runaways, operated by not-for-profit~~
 579 ~~corporations. However, in acquiring such services, the agency~~
 580 ~~shall consider the ability of the vendor, past performance,~~
 581 ~~willingness to meet time requirements, and price.~~

582 9.11. Training and education services provided to injured
 583 employees pursuant to s. 440.491(6).

584 10.12. Contracts entered into pursuant to s. 337.11.

585 11.13. Services or commodities provided by governmental
 586 agencies.

587 (g) Continuing education events or programs that are
 588 offered to the general public and for which fees have been

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589 collected that pay all expenses associated with the event or
 590 program are exempt from requirements for competitive
 591 solicitation.

592 (4)~~(6)~~ If less than two responsive bids, proposals, or
 593 replies for commodity or contractual services purchases are
 594 received, the department or other agency may negotiate on the
 595 best terms and conditions. The department or other agency shall
 596 document the reasons that such action is in the best interest of
 597 the state in lieu of resoliciting competitive sealed bids,
 598 proposals, or replies. Each agency shall report all such actions
 599 to the department on a quarterly basis, in a manner and form
 600 prescribed by the department.

601 (5)~~(7)~~ Upon issuance of any solicitation, an agency shall,
 602 upon request by the department, forward to the department one
 603 copy of each solicitation for all commodity and contractual
 604 services purchases in excess of the threshold amount provided in
 605 s. 287.017 for CATEGORY TWO. An agency shall also, upon request,
 606 furnish a copy of all competitive-solicitation tabulations. The
 607 Office of Supplier Diversity may also request from the agencies
 608 any information submitted to the department pursuant to this
 609 subsection.

610 (6)~~(8)~~(a) In order to strive to meet the minority business
 611 enterprise procurement goals set forth in s. 287.09451, an
 612 agency may reserve any contract for competitive solicitation
 613 only among certified minority business enterprises. Agencies
 614 shall review all their contracts each fiscal year and shall
 615 determine which contracts may be reserved for solicitation only
 616 among certified minority business enterprises. This reservation

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617 | may only be used when it is determined, by reasonable and
 618 | objective means, before the solicitation that there are capable,
 619 | qualified certified minority business enterprises available to
 620 | submit a bid, proposal, or reply on a contract to provide for
 621 | effective competition. The Office of Supplier Diversity shall
 622 | consult with any agency in reaching such determination when
 623 | deemed appropriate.

624 | (b) Before a contract may be reserved for solicitation
 625 | only among certified minority business enterprises, the agency
 626 | head must find that such a reservation is in the best interests
 627 | of the state. All determinations shall be subject to s.
 628 | 287.09451(5). Once a decision has been made to reserve a
 629 | contract, but before sealed bids, proposals, or replies are
 630 | requested, the agency shall estimate what it expects the amount
 631 | of the contract to be, based on the nature of the services or
 632 | commodities involved and their value under prevailing market
 633 | conditions. If all the sealed bids, proposals, or replies
 634 | received are over this estimate, the agency may reject the bids,
 635 | proposals, or replies and request new ones from certified
 636 | minority business enterprises, or the agency may reject the
 637 | bids, proposals, or replies and reopen the bidding to all
 638 | eligible vendors.

639 | (c) All agencies shall consider the use of price
 640 | preferences of up to 10 percent, weighted preference formulas,
 641 | or other preferences for vendors as determined appropriate
 642 | pursuant to guidelines established in accordance with s.
 643 | 287.09451(4) to increase the participation of minority business
 644 | enterprises.

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645 (d) All agencies shall avoid any undue concentration of
 646 contracts or purchases in categories of commodities or
 647 contractual services in order to meet the minority business
 648 enterprise purchasing goals in s. 287.09451.

649 (7)~~(9)~~ An agency may reserve any contract for competitive
 650 solicitation only among vendors who agree to use certified
 651 minority business enterprises as subcontractors or subvendors.
 652 The percentage of funds, in terms of gross contract amount and
 653 revenues, which must be expended with the certified minority
 654 business enterprise subcontractors and subvendors shall be
 655 determined by the agency before such contracts may be reserved.
 656 In order to bid on a contract so reserved, the vendor shall
 657 identify those certified minority business enterprises which
 658 will be utilized as subcontractors or subvendors by sworn
 659 statement. At the time of performance or project completion, the
 660 contractor shall report by sworn statement the payments and
 661 completion of work for all certified minority business
 662 enterprises used in the contract.

663 (8)~~(10)~~ An agency shall not divide the solicitation
 664 ~~procurement~~ of commodities or contractual services so as to
 665 avoid the requirements of subsections (1)-(3) ~~(1) through (5)~~.

666 (9)~~(11)~~ A contract for commodities or contractual services
 667 may be awarded without competition if state or federal law
 668 prescribes with whom the agency must contract or if the rate of
 669 payment is established during the appropriations process.

670 (10)~~(12)~~ If two equal responses to a solicitation or a
 671 request for quote are received and one response is from a
 672 certified minority business enterprise, the agency shall enter

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673 into a contract with the certified minority business enterprise.

674 (11)~~(13)~~ Extension of a contract for contractual services
 675 shall be in writing for a period not to exceed 6 months and
 676 shall be subject to the same terms and conditions set forth in
 677 the initial contract. There shall be only one extension of a
 678 contract unless the failure to meet the criteria set forth in
 679 the contract for completion of the contract is due to events
 680 beyond the control of the contractor.

681 (12)~~(14)~~(a) Contracts for commodities or contractual
 682 services may be renewed for a period that may not exceed 3 years
 683 or the term of the original contract, whichever period is
 684 longer. Renewal of a contract for commodities or contractual
 685 services shall be in writing and shall be subject to the same
 686 terms and conditions set forth in the initial contract. If the
 687 commodity or contractual service is purchased as a result of the
 688 solicitation of bids, proposals, or replies, the price of the
 689 commodity or contractual service to be renewed shall be
 690 specified in the bid, proposal, or reply. A renewal contract may
 691 not include any compensation for costs associated with the
 692 renewal. Renewals shall be contingent upon satisfactory
 693 performance evaluations by the agency and subject to the
 694 availability of funds. Exceptional purchase contracts pursuant
 695 to paragraphs (3)~~(5)~~(a) and (c) may not be renewed. With the
 696 exception of subsection (11)~~(13)~~, if a contract amendment
 697 results in a longer contract term or increased payments, a state
 698 agency may not renew or amend a contract for the outsourcing of
 699 a service or activity that has an original term value exceeding
 700 the sum of \$10 million before submitting a written report

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701 concerning contract performance to the Governor, the President
 702 of the Senate, and the Speaker of the House of Representatives
 703 at least 90 days before execution of the renewal or amendment.

704 (b) The Department of Health shall enter into an
 705 agreement, not to exceed 20 years, with a private contractor to
 706 finance, design, and construct a hospital, of no more than 50
 707 beds, for the treatment of patients with active tuberculosis and
 708 to operate all aspects of daily operations within the facility.
 709 The contractor may sponsor the issuance of tax-exempt
 710 certificates of participation or other securities to finance the
 711 project, and the state may enter into a lease-purchase agreement
 712 for the facility. The department shall begin the implementation
 713 of this initiative by July 1, 2008. This paragraph expires July
 714 1, 2009.

715 (c) In addition to any renewal authorized under paragraph
 716 (a), contracts for community-based care lead agency services in
 717 accordance with s. 409.1671(1)(e) may be renewed once for a term
 718 not to exceed 5 years, provided that the lead agency currently
 719 under contract is in compliance with the performance, fiscal,
 720 and administrative standards established by the Department of
 721 Children and Family Services and the agency head determines that
 722 renewal of the contract without a competitive solicitation is in
 723 the best interests of the children and families served.

724 ~~(13)-(15)~~ For each contractual services contract, the
 725 agency shall designate an employee to function as contract
 726 manager who shall be responsible for enforcing performance of
 727 the contract terms and conditions and serve as a liaison with
 728 the contractor. The agency shall establish procedures to ensure

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729 | that contractual services have been rendered in accordance with
 730 | the contract terms prior to processing the invoice for payment.

731 | ~~(14)-(16)~~ Each agency shall designate at least one employee
 732 | who shall serve as a contract administrator responsible for
 733 | maintaining a contract file and financial information on all
 734 | contractual services contracts and who shall serve as a liaison
 735 | with the contract managers and the department.

736 | ~~(15)-(17)~~ For a contract in excess of the threshold amount
 737 | provided in s. 287.017 for CATEGORY FOUR, the agency head shall
 738 | appoint:

739 | (a) At least three persons to evaluate proposals and
 740 | replies who collectively have experience and knowledge in the
 741 | program areas and service requirements for which commodities or
 742 | contractual services are sought.

743 | (b) At least three persons to conduct negotiations during
 744 | a competitive sealed reply procurement who collectively have
 745 | experience and knowledge in negotiating contracts, contract
 746 | procurement, and the program areas and service requirements for
 747 | which commodities or contractual services are sought. When the
 748 | value of a contract is in excess of \$1 million in any fiscal
 749 | year, at least one of the persons conducting negotiations must
 750 | be certified as a contract negotiator based upon rules adopted
 751 | by the Department of Management Services in order to ensure that
 752 | certified contract negotiators are knowledgeable about effective
 753 | negotiation strategies, capable of successfully implementing
 754 | those strategies, and involved appropriately in the procurement
 755 | process. At a minimum, the rules must address the qualifications
 756 | required for certification, the method of certification, and the

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757 procedure for involving the certified negotiator. If the value
 758 of a contract is in excess of \$10 million in any fiscal year, at
 759 least one of the persons conducting negotiations must be a
 760 Project Management Professional, as certified by the Project
 761 Management Institute.

762 (16)~~(18)~~ A person who receives a contract that was not
 763 subject to competitive procurement ~~has not been procured~~
 764 ~~pursuant to subsections (1) through (5):~~

765 (a) To perform a feasibility study of the potential
 766 implementation of a subsequent contract;;

767 (b) Who participates in the drafting of a solicitation;

768 (c) To develop a business case for any outsourcing
 769 project, as provided in s. 287.0571; or

770 (d) Who develops a program for future implementation;

771
 772 is not eligible to contract with the agency for any other
 773 contracts dealing with that specific subject matter. Moreover,
 774 ~~and~~ any firm in which such person has any interest is not
 775 eligible to receive such contract. However, this prohibition
 776 does not prevent a vendor who responds to a request for
 777 information from being eligible to contract with an agency.

778 (17)~~(19)~~ Each agency shall establish a review and approval
 779 process for all contractual services contracts costing more than
 780 the threshold amount provided for in s. 287.017 for CATEGORY
 781 THREE which shall include, but not be limited to, program,
 782 financial, and legal review and approval. Such reviews and
 783 approvals shall be obtained before the contract is executed.

784 (18)~~(20)~~ In any procurement that costs more than the

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785 threshold amount provided for in s. 287.017 for CATEGORY TWO and
 786 is accomplished without competition, the individuals taking part
 787 in the development or selection of criteria for evaluation, the
 788 evaluation process, and the award process shall attest in
 789 writing that they are independent of, and have no conflict of
 790 interest in, the entities evaluated and selected.

791 (19)~~(21)~~ Nothing in this section shall affect the validity
 792 or effect of any contract in existence on October 1, 1990.

793 (20)~~(22)~~ An agency may contract for services with any
 794 independent, nonprofit college or university which is located
 795 within the state and is accredited by the Southern Association
 796 of Colleges and Schools, on the same basis as it may contract
 797 with any state university and college.

798 (21)~~(23)~~ The department, in consultation with the Agency
 799 for Enterprise Information Technology and the Comptroller, shall
 800 develop a program for online procurement of commodities and
 801 contractual services. To enable the state to promote open
 802 competition and to leverage its buying power, agencies shall
 803 participate in the online procurement program, and eligible
 804 users may participate in the program. Only vendors prequalified
 805 as meeting mandatory requirements and qualifications criteria
 806 may participate in online procurement.

807 (a) The department, in consultation with the agency, may
 808 contract for equipment and services necessary to develop and
 809 implement online procurement.

810 (b) The department, in consultation with the agency, shall
 811 adopt rules, pursuant to ss. 120.536(1) and 120.54, to
 812 administer the program for online procurement. The rules shall

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813 include, but not be limited to:

814 1. Determining the requirements and qualification criteria

815 for prequalifying vendors.

816 2. Establishing the procedures for conducting online

817 procurement.

818 3. Establishing the criteria for eligible commodities and

819 contractual services.

820 4. Establishing the procedures for providing access to

821 online procurement.

822 5. Determining the criteria warranting any exceptions to

823 participation in the online procurement program.

824 (c) The department may impose and shall collect all fees

825 for the use of the online procurement systems.

826 1. The fees may be imposed on an individual transaction

827 basis or as a fixed percentage of the cost savings generated. At

828 a minimum, the fees must be set in an amount sufficient to cover

829 the projected costs of the services, including administrative

830 and project service costs in accordance with the policies of the

831 department.

832 2. If the department contracts with a provider for online

833 procurement, the department, pursuant to appropriation, shall

834 compensate the provider from the fees after the department has

835 satisfied all ongoing costs. The provider shall report

836 transaction data to the department each month so that the

837 department may determine the amount due and payable to the

838 department from each vendor.

839 3. All fees that are due and payable to the state on a

840 transactional basis or as a fixed percentage of the cost savings

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841 generated are subject to s. 215.31 and must be remitted within
 842 40 days after receipt of payment for which the fees are due. For
 843 fees that are not remitted within 40 days, the vendor shall pay
 844 interest at the rate established under s. 55.03(1) on the unpaid
 845 balance from the expiration of the 40-day period until the fees
 846 are remitted.

847 4. All fees and surcharges collected under this paragraph
 848 shall be deposited in the Operating Trust Fund as provided by
 849 law.

850 ~~(22)~~(24) Each solicitation for the procurement of
 851 commodities or contractual services shall include the following
 852 provision: "Respondents to this solicitation or persons acting
 853 on their behalf may not contact, between the release of the
 854 solicitation and the end of the 72-hour period following the
 855 agency posting the notice of intended award, excluding
 856 Saturdays, Sundays, and state holidays, any employee or officer
 857 of the executive or legislative branch concerning any aspect of
 858 this solicitation, except in writing to the procurement officer
 859 or as provided in the solicitation documents. Violation of this
 860 provision may be grounds for rejecting a response."

861 Section 5. Section 287.0571, Florida Statutes, is amended
 862 to read:

863 287.0571 Business case to outsource; applicability of ss.
 864 ~~287.0571-287.0574.~~

865 ~~(1) Sections 287.0571-287.0574 may be cited as the~~
 866 ~~"Florida Efficient Government Act."~~

867 (1)~~(2)~~ It is the intent of the Legislature that each state
 868 agency focus on its core mission and deliver services

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869 | effectively and efficiently by leveraging resources and
 870 | contracting with private sector vendors whenever vendors can
 871 | more effectively and efficiently provide services and reduce the
 872 | cost of government.

873 | ~~(2)-(3)~~ It is further the intent of the Legislature that
 874 | business cases to outsource be evaluated for feasibility, cost-
 875 | effectiveness, and efficiency before a state agency proceeds
 876 | with any outsourcing of services.

877 | ~~(3)-(4)~~ This section does Sections 287.0571-287.0574 do not
 878 | apply to:

879 | (a) A procurement of commodities and contractual services
 880 | listed in s. 287.057~~(3)-(5)-(e)~~, (f), and (g) and ~~(20)-(22)~~.

881 | (b) A procurement of contractual services subject to s.
 882 | 287.055.

883 | (c) A contract in support of the planning, development,
 884 | implementation, operation, or maintenance of the road, bridge,
 885 | and public transportation construction program of the Department
 886 | of Transportation.

887 | (d) A procurement of commodities or contractual services
 888 | which does not constitute an outsourcing of services or
 889 | activities.

890 | ~~(4)~~ An agency shall complete a business case for any
 891 | outsourcing project with an expected cost in excess of \$10
 892 | million within a single fiscal year. The business case shall be
 893 | submitted pursuant to s. 216.023. The business case shall be
 894 | available as part of the solicitation but is not subject to
 895 | challenge and shall include the following:

896 | ~~(a)~~ A detailed description of the service or activity for

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897 which the outsourcing is proposed.

898 (b) A description and analysis of the state agency's
 899 current performance, based on existing performance metrics if
 900 the state agency is currently performing the service or
 901 activity.

902 (c) The goals desired to be achieved through the proposed
 903 outsourcing and the rationale for such goals.

904 (d) A citation to the existing or proposed legal authority
 905 for outsourcing the service or activity.

906 (e) A description of available options for achieving the
 907 goals. If state employees are currently performing the service
 908 or activity, at least one option involving maintaining state
 909 provision of the service or activity shall be included.

910 (f) An analysis of the advantages and disadvantages of
 911 each option, including, at a minimum, potential performance
 912 improvements and risks.

913 (g) A description of the current market for the
 914 contractual services that are under consideration for
 915 outsourcing.

916 (h) A cost-benefit analysis documenting the direct and
 917 indirect specific baseline costs, savings, and qualitative and
 918 quantitative benefits involved in or resulting from the
 919 implementation of the recommended option or options. Such
 920 analysis must specify the schedule that, at a minimum, must be
 921 adhered to in order to achieve the estimated savings. All
 922 elements of cost must be clearly identified in the cost-benefit
 923 analysis, described in the business case, and supported by
 924 applicable records and reports. The state agency head shall

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925 attest that, based on the data and information underlying the
 926 business case, to the best of his or her knowledge, all
 927 projected costs, savings, and benefits are valid and achievable.
 928 As used in this section, the term "cost" means the reasonable,
 929 relevant, and verifiable cost, which may include, but is not
 930 limited to, elements such as personnel, materials and supplies,
 931 services, equipment, capital depreciation, rent, maintenance and
 932 repairs, utilities, insurance, personnel travel, overhead, and
 933 interim and final payments. The appropriate elements shall
 934 depend on the nature of the specific initiative. As used in this
 935 section, the term "savings" means the difference between the
 936 direct and indirect actual annual baseline costs compared to the
 937 projected annual cost for the contracted functions or
 938 responsibilities in any succeeding state fiscal year during the
 939 term of the contract.

940 (i) A description of differences among current state
 941 agency policies and processes and, as appropriate, a discussion
 942 of options for or a plan to standardize, consolidate, or revise
 943 current policies and processes, if any, to reduce the
 944 customization of any proposed solution that would otherwise be
 945 required.

946 (j) A description of the specific performance standards
 947 that must, at a minimum, be met to ensure adequate performance.

948 (k) The projected timeframe for key events from the
 949 beginning of the procurement process through the expiration of a
 950 contract.

951 (l) A plan to ensure compliance with the public records
 952 law.

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953 | (m) A specific and feasible contingency plan addressing
 954 | contractor nonperformance and a description of the tasks
 955 | involved in and costs required for its implementation.

956 | (n) A state agency's transition plan for addressing
 957 | changes in the number of agency personnel, affected business
 958 | processes, employee transition issues, and communication with
 959 | affected stakeholders, such as agency clients and the public.
 960 | The transition plan must contain a reemployment and retraining
 961 | assistance plan for employees who are not retained by the state
 962 | agency or employed by the contractor.

963 | (o) A plan for ensuring access by persons with
 964 | disabilities in compliance with applicable state and federal
 965 | law.

966 | (5) In addition to the contract requirements provided in
 967 | s. 287.058, each contract for a proposed outsourcing, pursuant
 968 | to this section, must include, but need not be limited to, the
 969 | following contractual provisions:

970 | (a) A scope-of-work provision that clearly specifies each
 971 | service or deliverable to be provided, including a description
 972 | of each deliverable or activity that is quantifiable,
 973 | measurable, and verifiable. This provision must include a clause
 974 | that states if a particular service or deliverable is
 975 | inadvertently omitted or not clearly specified but determined to
 976 | be operationally necessary and verified to have been performed
 977 | by the agency within the 12 months before the execution of the
 978 | contract, such service or deliverable will be provided by the
 979 | contractor through the identified contract-amendment process.

980 | (b) A service-level-agreement provision describing all

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981 services to be provided under the terms of the agreement, the
 982 state agency's service requirements and performance objectives,
 983 specific responsibilities of the state agency and the
 984 contractor, and the process for amending any portion of the
 985 service-level agreement. Each service-level agreement must
 986 contain an exclusivity clause that allows the state agency to
 987 retain the right to perform the service or activity, directly or
 988 with another contractor, if service levels are not being
 989 achieved.

990 (c) A provision that identifies all associated costs,
 991 specific payment terms, and payment schedules, including
 992 provisions governing incentives and financial disincentives and
 993 criteria governing payment.

994 (d) A provision that identifies a clear and specific
 995 transition plan that will be implemented in order to complete
 996 all required activities needed to transfer the service or
 997 activity from the state agency to the contractor and operate the
 998 service or activity successfully.

999 (e) A performance-standards provision that identifies all
 1000 required performance standards, which must include, at a
 1001 minimum:

1002 1. Detailed and measurable acceptance criteria for each
 1003 deliverable and service to be provided to the state agency under
 1004 the terms of the contract which document the required
 1005 performance level.

1006 2. A method for monitoring and reporting progress in
 1007 achieving specified performance standards and levels.

1008 3. The sanctions or disincentives that shall be imposed

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1009 | for nonperformance by the contractor or state agency.
 1010 | (f) A provision that requires the contractor and its
 1011 | subcontractors to maintain adequate accounting records that
 1012 | comply with all applicable federal and state laws and generally
 1013 | accepted accounting principles.
 1014 | (g) A provision that authorizes the state agency to have
 1015 | access to and to audit all records related to the contract and
 1016 | subcontracts, or any responsibilities or functions under the
 1017 | contract and subcontracts, for purposes of legislative
 1018 | oversight, and a requirement for audits by a service
 1019 | organization in accordance with professional auditing standards,
 1020 | if appropriate.
 1021 | (h) A provision that requires the contractor to interview
 1022 | and consider for employment with the contractor each displaced
 1023 | state employee who is interested in such employment.
 1024 | (i) A contingency-plan provision that describes the
 1025 | mechanism for continuing the operation of the service or
 1026 | activity, including transferring the service or activity back to
 1027 | the state agency or successor contractor if the contractor fails
 1028 | to perform and comply with the performance standards and levels
 1029 | of the contract and the contract is terminated.
 1030 | (j) A provision that requires the contractor and its
 1031 | subcontractors to comply with public records laws, specifically
 1032 | to:
 1033 | 1. Keep and maintain the public records that ordinarily
 1034 | and necessarily would be required by the state agency in order
 1035 | to perform the service or activity.
 1036 | 2. Provide the public with access to such public records

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1037 on the same terms and conditions that the state agency would
 1038 provide the records and at a cost that does not exceed that
 1039 provided in chapter 119 or as otherwise provided by law.

1040 3. Ensure that records that are exempt or records that are
 1041 confidential and exempt are not disclosed except as authorized
 1042 by law.

1043 4. Meet all requirements for retaining records and
 1044 transfer to the state agency, at no cost, all public records in
 1045 possession of the contractor upon termination of the contract
 1046 and destroy any duplicate public records that are exempt or
 1047 confidential and exempt. All records stored electronically must
 1048 be provided to the state agency in a format that is compatible
 1049 with the information technology systems of the state agency.

1050 (k)1. A provision that provides that any copyrightable or
 1051 patentable intellectual property produced as a result of work or
 1052 services performed under the contract, or in any way connected
 1053 with the contract, shall be the property of the state, with only
 1054 such exceptions as are clearly expressed and reasonably valued
 1055 in the contract.

1056 2. A provision that provides that, if the primary purpose
 1057 of the contract is the creation of intellectual property, the
 1058 state shall retain an unencumbered right to use such property.

1059 (l) If applicable, a provision that allows the agency to
 1060 purchase from the contractor, at its depreciated value, assets
 1061 used by the contractor in the performance of the contract. If
 1062 assets have not depreciated, the agency shall retain the right
 1063 to negotiate to purchase at an agreed-upon cost.

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1064 Section 6. Section 287.05721, Florida Statutes, is
 1065 repealed.

1066 Section 7. Section 287.0575, Florida Statutes, is created
 1067 to read:

1068 287.0575 Coordination of contracted services.—The
 1069 following duties and responsibilities of the Department of
 1070 Children and Family Services, the Agency for Persons with
 1071 Disabilities, the Department of Health, the Department of
 1072 Elderly Affairs, and the Florida Department of Veterans Affairs,
 1073 and service providers under contract to those agencies, are
 1074 established:

1075 (1) No later than August 1, 2010, or upon entering into
 1076 any new contract for health and human services, state agencies
 1077 contracting for health and human services must notify their
 1078 contract service providers of the requirements of this section.

1079 (2) No later than October 1, 2010, contract service
 1080 providers that have more than one contract with one or more
 1081 state agencies to provide health and human services must provide
 1082 to each of their contract managers a comprehensive list of their
 1083 health and human services contracts. The list must include the
 1084 following information:

1085 (a) The name of each contracting state agency and the
 1086 applicable office or program issuing the contract.

1087 (b) The identifying name and number of each contract.

1088 (c) The starting and ending date of each contract.

1089 (d) The amount of each contract.

1090 (e) A brief description of the purpose of the contract and
 1091 the types of services provided under each contract.

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1092 (f) The name and contact information of the contract
 1093 manager.

1094 (3) With respect to contracts entered into after August 1,
 1095 2010, effective November 1, 2010, or 30 days after receiving the
 1096 list provided under subsection (2), a single lead administrative
 1097 coordinator for each contract service provider shall be
 1098 designated as provided in this subsection from among the
 1099 agencies having multiple contracts as provided in subsection
 1100 (2). On or before the date such responsibilities are assumed,
 1101 the designated lead administrative coordinator shall provide
 1102 notice of his or her designation to the contract service
 1103 provider and to the agency contract managers for each affected
 1104 contract. Unless another lead administrative coordinator is
 1105 selected by agreement of all affected contract managers, the
 1106 designated lead administrative coordinator shall be the agency
 1107 contract manager of the contract with the highest dollar value
 1108 over the term of the contract, provided the term of the contract
 1109 remaining at the time of designation exceeds 24 months. If the
 1110 remaining terms of all contracts are 24 months or less, the
 1111 designated lead administrative coordinator shall be the contract
 1112 manager of the contract with the latest end date. A designated
 1113 lead administrative coordinator, or his or her successor as
 1114 contract manager, shall continue as lead administrative
 1115 coordinator until another lead administrative coordinator is
 1116 selected by agreement of all affected contract managers or until
 1117 the end date of the contract for which the designated lead
 1118 administrative coordinator serves as contract manager, at which

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1119 time a new lead administrative coordinator shall be designated
 1120 pursuant to this subsection if applicable.

1121 (4) The designated lead administrative coordinator shall
 1122 be responsible for:

1123 (a) Establishing a coordinated schedule for administrative
 1124 and fiscal monitoring;

1125 (b) Consulting with other case managers to establish a
 1126 single unified set of required administrative and fiscal
 1127 documentation;

1128 (c) Consulting with other case managers to establish a
 1129 single unified schedule for periodic updates of administrative
 1130 and fiscal information; and

1131 (d) Maintaining an accessible electronic file of up-to-
 1132 date administrative and fiscal documents, including, but not
 1133 limited to, corporate documents, membership records, audits, and
 1134 monitoring reports.

1135 (5) Contract managers for agency contracts other than the
 1136 designated lead administrative coordinator must conduct
 1137 administrative and fiscal monitoring activities in accordance
 1138 with the coordinated schedule and must obtain any necessary
 1139 administrative and fiscal documents from the designated lead
 1140 administrative coordinator's electronic file.

1141 (6) This section does not apply to routine program
 1142 performance monitoring or prohibit a contracting agency from
 1143 directly and immediately contacting the service provider when
 1144 the health or safety of clients is at risk.

1145 (7) Annually, each agency contracting for health and human
 1146 services shall evaluate the performance of its designated lead

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1147 administrative coordinator in establishing coordinated systems,
 1148 improving efficiency, and reducing redundant monitoring
 1149 activities for state agencies and their service providers. The
 1150 report shall be submitted to the Governor, the President of the
 1151 Senate and the Speaker of the House of Representatives.

1152 Section 8. Section 287.0573, Florida Statutes, is
 1153 repealed.

1154 Section 9. Section 287.0574, Florida Statutes, is
 1155 repealed.

1156 Section 10. Subsections (2) and (3) of section 283.32,
 1157 Florida Statutes, are amended to read:

1158 283.32 Recycled paper to be used by each agency; printing
 1159 bids certifying use of recycled paper; percentage preference in
 1160 awarding contracts.—

1161 (2) Each agency shall require a vendor that submits a bid
 1162 for a contract for printing ~~and that wishes to be considered for~~
 1163 ~~the price preference described in s. 287.045~~ to certify in
 1164 writing the percentage of recycled content of the material used
 1165 for such printing. Such vendor may certify that the material
 1166 contains no recycled content.

1167 (3) Upon evaluation of bids for each printing contract,
 1168 the agency shall identify the lowest responsive bid and any
 1169 other responsive bids in which it has been certified that the
 1170 materials used in printing contain at least the minimum
 1171 percentage of recycled content that is set forth by the
 1172 department. ~~In awarding a contract for printing, the agency may~~
 1173 ~~allow up to a 10-percent price preference, as provided in s.~~
 1174 ~~287.045, to a responsible and responsive vendor that has~~

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1175 | ~~certified that the materials used in printing contain at least~~
 1176 | ~~the minimum percentage of recycled content established by the~~
 1177 | ~~department.~~ If no vendors offer materials for printing that
 1178 | contain the minimum prescribed recycled content, the contract
 1179 | shall be awarded to the responsible vendor that submits the
 1180 | lowest responsive bid.

1181 | Section 11. Subsection (1) of section 403.7065, Florida
 1182 | Statutes, is amended to read:

1183 | 403.7065 Procurement of products or materials with
 1184 | recycled content.—

1185 | (1) ~~Except as provided in s. 287.045,~~ Any state agency or
 1186 | agency of a political subdivision of the state which is using
 1187 | state funds, or any person contracting with any such agency with
 1188 | respect to work performed under contract, is required to procure
 1189 | products or materials with recycled content when the Department
 1190 | of Management Services determines that those products or
 1191 | materials are available. A decision not to procure such items
 1192 | must be based on the Department of Management Services'
 1193 | determination that such procurement is not reasonably available
 1194 | within an acceptable period of time, fails to meet the
 1195 | performance standards set forth in the applicable
 1196 | specifications, or fails to meet the performance standards of
 1197 | the agency. ~~When the requirements of s. 287.045 are met,~~
 1198 | ~~agencies shall be subject to the procurement requirements of~~
 1199 | ~~that section for procuring products or materials with recycled~~
 1200 | ~~content.~~

1201 | Section 12. Paragraph (d) of subsection (4) of section
 1202 | 14.204, Florida Statutes, is amended to read:

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1203 14.204 Agency for Enterprise Information Technology.—The
 1204 Agency for Enterprise Information Technology is created within
 1205 the Executive Office of the Governor.

1206 (4) The agency shall have the following duties and
 1207 responsibilities:

1208 (d) Plan and establish policies for managing proposed
 1209 statutorily authorized enterprise information technology
 1210 services, which includes:

- 1211 1. Developing business cases that, when applicable,
 1212 include the components identified in s. 287.0571 ~~287.0574~~;
- 1213 2. Establishing and coordinating project-management teams;
- 1214 3. Establishing formal risk-assessment and mitigation
 1215 processes; and
- 1216 4. Providing for independent monitoring of projects for
 1217 recommended corrective actions.

1218 Section 13. Subsection (1) of section 43.16, Florida
 1219 Statutes, is amended to read:

1220 43.16 Justice Administrative Commission; membership,
 1221 powers and duties.—

1222 (1) There is hereby created a Justice Administrative
 1223 Commission, with headquarters located in the state capital. The
 1224 necessary office space for use of the commission shall be
 1225 furnished by the proper state agency in charge of state
 1226 buildings. For purposes of the fees imposed on agencies pursuant
 1227 to s. 287.057 (21) ~~(23)~~, the Justice Administrative Commission
 1228 shall be exempt from such fees.

1229 Section 14. Paragraph (e) of subsection (1) of section
 1230 61.1826, Florida Statutes, is amended to read:

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1231 61.1826 Procurement of services for State Disbursement
 1232 Unit and the non-Title IV-D component of the State Case
 1233 Registry; contracts and cooperative agreements; penalties;
 1234 withholding payment.—

1235 (1) LEGISLATIVE FINDINGS.—The Legislature finds that the
 1236 clerks of court play a vital role, as essential participants in
 1237 the establishment, modification, collection, and enforcement of
 1238 child support, in securing the health, safety, and welfare of
 1239 the children of this state. The Legislature further finds and
 1240 declares that:

1241 (e) The potential loss of substantial federal funds poses
 1242 a direct and immediate threat to the health, safety, and welfare
 1243 of the children and citizens of the state and constitutes an
 1244 emergency for purposes of s. 287.057 (3) ~~(5)~~ (a).

1245
 1246 For these reasons, the Legislature hereby directs the Department
 1247 of Revenue, subject to the provisions of subsection (5), to
 1248 contract with the Florida Association of Court Clerks and each
 1249 depository to perform duties with respect to the operation and
 1250 maintenance of a State Disbursement Unit and the non-Title IV-D
 1251 component of the State Case Registry as further provided by this
 1252 section.

1253 Section 15. Paragraph (h) of subsection (1) of section
 1254 112.3215, Florida Statutes, is amended to read:

1255 112.3215 Lobbying before the executive branch or the
 1256 Constitution Revision Commission; registration and reporting;
 1257 investigation by commission.—

1258 (1) For the purposes of this section:

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1259 (h) "Lobbyist" means a person who is employed and receives
 1260 payment, or who contracts for economic consideration, for the
 1261 purpose of lobbying, or a person who is principally employed for
 1262 governmental affairs by another person or governmental entity to
 1263 lobby on behalf of that other person or governmental entity.

1264 "Lobbyist" does not include a person who is:

1265 1. An attorney, or any person, who represents a client in
 1266 a judicial proceeding or in a formal administrative proceeding
 1267 conducted pursuant to chapter 120 or any other formal hearing
 1268 before an agency, board, commission, or authority of this state.

1269 2. An employee of an agency or of a legislative or
 1270 judicial branch entity acting in the normal course of his or her
 1271 duties.

1272 3. A confidential informant who is providing, or wishes to
 1273 provide, confidential information to be used for law enforcement
 1274 purposes.

1275 4. A person who lobbies to procure a contract pursuant to
 1276 chapter 287 which contract is less than the threshold for
 1277 CATEGORY ONE as provided in s. 287.017-~~(1)~~(a).

1278 Section 16. Paragraph (h) of subsection (3) of section
 1279 255.25, Florida Statutes, is amended to read:

1280 255.25 Approval required prior to construction or lease of
 1281 buildings.—

1282 (3)

1283 (h) The Department of Management Services may, pursuant to
 1284 s. 287.042(2)(a), procure a term contract for real estate
 1285 consulting and brokerage services. A state agency may not
 1286 purchase services from the contract unless the contract has been

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1287 procured under s. 287.057(1), ~~(2), or (3)~~ after March 1, 2007,
 1288 and contains the following provisions or requirements:

1289 1. Awarded brokers must maintain an office or presence in
 1290 the market served. In awarding the contract, preference must be
 1291 given to brokers that are licensed in this state under chapter
 1292 475 and that have 3 or more years of experience in the market
 1293 served. The contract may be made with up to three tenant brokers
 1294 in order to serve the marketplace in the north, central, and
 1295 south areas of the state.

1296 2. Each contracted tenant broker shall work under the
 1297 direction, supervision, and authority of the state agency,
 1298 subject to the rules governing lease procurements.

1299 3. The department shall provide training for the awarded
 1300 tenant brokers concerning the rules governing the procurement of
 1301 leases.

1302 4. Tenant brokers must comply with all applicable
 1303 provisions of s. 475.278.

1304 5. Real estate consultants and tenant brokers shall be
 1305 compensated by the state agency, subject to the provisions of
 1306 the term contract, and such compensation is subject to
 1307 appropriation by the Legislature. A real estate consultant or
 1308 tenant broker may not receive compensation directly from a
 1309 lessor for services that are rendered under the term contract.
 1310 Moneys paid to a real estate consultant or tenant broker are
 1311 exempt from any charge imposed under s. 287.1345. Moneys paid by
 1312 a lessor to the state agency under a facility leasing
 1313 arrangement are not subject to the charges imposed under s.
 1314 215.20. All terms relating to the compensation of the real

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1315 | estate consultant or tenant broker shall be specified in the
 1316 | term contract and may not be supplemented or modified by the
 1317 | state agency using the contract.

1318 | 6. The department shall conduct periodic customer-
 1319 | satisfaction surveys.

1320 | 7. Each state agency shall report the following
 1321 | information to the department:

1322 | a. The number of leases that adhere to the goal of the
 1323 | workspace-management initiative of 180 square feet per FTE.

1324 | b. The quality of space leased and the adequacy of tenant-
 1325 | improvement funds.

1326 | c. The timeliness of lease procurement, measured from the
 1327 | date of the agency's request to the finalization of the lease.

1328 | d. Whether cost-benefit analyses were performed before
 1329 | execution of the lease in order to ensure that the lease is in
 1330 | the best interest of the state.

1331 | e. The lease costs compared to market rates for similar
 1332 | types and classifications of space according to the official
 1333 | classifications of the Building Owners and Managers Association.

1334 | Section 17. Subsection (1) of section 283.33, Florida
 1335 | Statutes, is amended to read:

1336 | 283.33 Printing of publications; lowest bidder awards.—

1337 | (1) Publications may be printed and prepared in-house, by
 1338 | another agency or the Legislature, or purchased on bid,
 1339 | whichever is more economical and practicable as determined by
 1340 | the agency. An agency may contract for binding separately when
 1341 | more economical or practicable, whether or not the remainder of
 1342 | the printing is done in-house. A vendor may subcontract for

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1343 binding and still be considered a responsible vendor,
 1344 notwithstanding s. 287.012 (23) ~~(24)~~.

1345 Section 18. Paragraph (a) of subsection (2) of section
 1346 286.0113, Florida Statutes, is amended to read:

1347 286.0113 General exemptions from public meetings.—

1348 (2) (a) A meeting at which a negotiation with a vendor is
 1349 conducted pursuant to s. 287.057 (1) ~~(3)~~ is exempt from s. 286.011
 1350 and s. 24(b), Art. I of the State Constitution.

1351 Section 19. Subsection (1) of section 287.022, Florida
 1352 Statutes, is amended to read:

1353 287.022 Purchase of insurance.—

1354 (1) Insurance, while not a commodity, nevertheless shall
 1355 be purchased for all agencies by the department, except that
 1356 agencies may purchase title insurance for land acquisition and
 1357 may make emergency purchases of insurance pursuant to s.
 1358 287.057 (3) ~~(5)~~ (a). The procedures for purchasing insurance,
 1359 whether the purchase is made by the department or by the
 1360 agencies, shall be the same as those set forth herein for the
 1361 purchase of commodities.

1362 Section 20. Paragraph (f) of subsection (1) and subsection
 1363 (5) of section 287.058, Florida Statutes, are amended to read:

1364 287.058 Contract document.—

1365 (1) Every procurement of contractual services in excess of
 1366 the threshold amount provided in s. 287.017 for CATEGORY TWO,
 1367 except for the providing of health and mental health services or
 1368 drugs in the examination, diagnosis, or treatment of sick or
 1369 injured state employees or the providing of other benefits as
 1370 required by the provisions of chapter 440, shall be evidenced by

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1371 a written agreement embodying all provisions and conditions of
 1372 the procurement of such services, which provisions and
 1373 conditions shall, where applicable, include, but shall not be
 1374 limited to:

1375 (f) A provision specifying that the contract may be
 1376 renewed for a period that may not exceed 3 years or the term of
 1377 the original contract, whichever period is longer, specifying
 1378 the renewal price for the contractual service as set forth in
 1379 the bid, proposal, or reply, specifying that costs for the
 1380 renewal may not be charged, and specifying that renewals shall
 1381 be contingent upon satisfactory performance evaluations by the
 1382 agency and subject to the availability of funds. Exceptional
 1383 purchase contracts pursuant to s. 287.057 (3) ~~(5)~~ (a) and (c) may
 1384 not be renewed.

1385
 1386 In lieu of a written agreement, the department may authorize the
 1387 use of a purchase order for classes of contractual services, if
 1388 the provisions of paragraphs (a)-(f) are included in the
 1389 purchase order or solicitation. The purchase order must include,
 1390 but need not be limited to, an adequate description of the
 1391 services, the contract period, and the method of payment. In
 1392 lieu of printing the provisions of paragraphs (a)-(f) in the
 1393 contract document or purchase order, agencies may incorporate
 1394 the requirements of paragraphs (a)-(f) by reference.

1395 (5) Unless otherwise provided in the General
 1396 Appropriations Act or the substantive bill implementing the
 1397 General Appropriations Act, the Chief Financial Officer may
 1398 waive the requirements of this section for services which are

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1399 included in s. 287.057 (3) ~~(5)~~ (f).

1400 Section 21. Subsection (14) of section 287.059, Florida
 1401 Statutes, is amended to read:

1402 287.059 Private attorney services.—

1403 (14) The office of the Attorney General is authorized to
 1404 competitively bid and contract with one or more court reporting
 1405 services, on a circuitwide basis, on behalf of all state
 1406 agencies in accordance with s. 287.057 ~~(2)~~. The office of the
 1407 Attorney General shall develop requests for proposal for court
 1408 reporter services in consultation with the Florida Court
 1409 Reporters Association. All agencies shall utilize the contracts
 1410 for court reporting services entered into by the office of the
 1411 Attorney General where in force, unless otherwise ordered by a
 1412 court or unless an agency has a contract for court reporting
 1413 services executed prior to May 5, 1993.

1414 Section 22. Paragraph (b) of subsection (4) of section
 1415 295.187, Florida Statutes, is amended to read:

1416 295.187 Florida Service-Disabled Veteran Business
 1417 Enterprise Opportunity Act.—

1418 (4) VENDOR PREFERENCE.—

1419 (b) Notwithstanding s. 287.057 (10) ~~(12)~~, if a service-
 1420 disabled veteran business enterprise entitled to the vendor
 1421 preference under this section and one or more businesses
 1422 entitled to this preference or another vendor preference
 1423 provided by law submit bids, proposals, or replies for
 1424 procurement of commodities or contractual services that are
 1425 equal with respect to all relevant considerations, including
 1426 price, quality, and service, then the state agency shall award

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1427 | the procurement or contract to the business having the smallest
 1428 | net worth.
 1429 | Section 23. Subsection (3) of section 394.457, Florida
 1430 | Statutes, is amended to read:
 1431 | 394.457 Operation and administration.—
 1432 | (3) POWER TO CONTRACT.—The department may contract to
 1433 | provide, and be provided with, services and facilities in order
 1434 | to carry out its responsibilities under this part with the
 1435 | following agencies: public and private hospitals; receiving and
 1436 | treatment facilities; clinics; laboratories; departments,
 1437 | divisions, and other units of state government; the state
 1438 | colleges and universities; the community colleges; private
 1439 | colleges and universities; counties, municipalities, and any
 1440 | other governmental unit, including facilities of the United
 1441 | States Government; and any other public or private entity which
 1442 | provides or needs facilities or services. Baker Act funds for
 1443 | community inpatient, crisis stabilization, short-term
 1444 | residential treatment, and screening services must be allocated
 1445 | to each county pursuant to the department's funding allocation
 1446 | methodology. Notwithstanding the provisions of s.
 1447 | 287.057 (3) ~~(5)~~ (f), contracts for community-based Baker Act
 1448 | services for inpatient, crisis stabilization, short-term
 1449 | residential treatment, and screening provided under this part,
 1450 | other than those with other units of government, to be provided
 1451 | for the department must be awarded using competitive sealed bids
 1452 | when the county commission of the county receiving the services
 1453 | makes a request to the department's district office by January
 1454 | 15 of the contracting year. The district shall not enter into a

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1455 competitively bid contract under this provision if such action
 1456 will result in increases of state or local expenditures for
 1457 Baker Act services within the district. Contracts for these
 1458 Baker Act services using competitive sealed bids will be
 1459 effective for 3 years. The department shall adopt rules
 1460 establishing minimum standards for such contracted services and
 1461 facilities and shall make periodic audits and inspections to
 1462 assure that the contracted services are provided and meet the
 1463 standards of the department.

1464 Section 24. Paragraph (a) of subsection (1) of section
 1465 394.47865, Florida Statutes, is amended to read:

1466 394.47865 South Florida State Hospital; privatization.—

1467 (1) The Department of Children and Family Services shall,
 1468 through a request for proposals, privatize South Florida State
 1469 Hospital. The department shall plan to begin implementation of
 1470 this privatization initiative by July 1, 1998.

1471 (a) Notwithstanding s. 287.057(12)~~(14)~~, the department may
 1472 enter into agreements, not to exceed 20 years, with a private
 1473 provider, a coalition of providers, or another agency to
 1474 finance, design, and construct a treatment facility having up to
 1475 350 beds and to operate all aspects of daily operations within
 1476 the facility. The department may subcontract any or all
 1477 components of this procurement to a statutorily established
 1478 state governmental entity that has successfully contracted with
 1479 private companies for designing, financing, acquiring, leasing,
 1480 constructing, and operating major privatized state facilities.

1481 Section 25. Paragraph (c) of subsection (5) and subsection
 1482 (8) of section 402.40, Florida Statutes, are amended to read:

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1483	402.40 Child welfare training.—	
1484	(5) CORE COMPETENCIES.—	
1485	(c) Notwithstanding s. 287.057 (3)(5) and (20)(22) , the	
1486	department shall competitively solicit and contract for the	
1487	development, validation, and periodic evaluation of the training	
1488	curricula for the established single integrated curriculum. No	
1489	more than one training curriculum may be developed for each	
1490	specific subset of the core competencies.	
1491	(8) ESTABLISHMENT OF TRAINING ACADEMIES.—The department	
1492	shall establish child welfare training academies as part of a	
1493	comprehensive system of child welfare training. In establishing	
1494	a program of training, the department may contract for the	
1495	operation of one or more training academies to perform one or	
1496	more of the following: to offer one or more of the training	
1497	curricula developed under subsection (5); to administer the	
1498	certification process; to develop, validate, and periodically	
1499	evaluate additional training curricula determined to be	
1500	necessary, including advanced training that is specific to a	
1501	region or contractor, or that meets a particular training need;	
1502	or to offer the additional training curricula. The number,	
1503	location, and timeframe for establishment of training academies	
1504	shall be approved by the Secretary of Children and Family	
1505	Services who shall ensure that the goals for the core	
1506	competencies and the single integrated curriculum, the	
1507	certification process, the trainer qualifications, and the	
1508	additional training needs are addressed. Notwithstanding s.	
1509	287.057 (3)(5) and (20)(22) , the department shall competitively	
1510	solicit all training academy contracts.	

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1511 Section 26. Paragraphs (a) and (b) of subsection (2) and
 1512 subsection (3) of section 402.7305, Florida Statutes, are
 1513 amended to read:

1514 402.7305 Department of Children and Family Services;
 1515 procurement of contractual services; contract management.-

1516 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.-

1517 (a) Notwithstanding s. 287.057(3)(f)11. ~~s.~~
 1518 ~~287.057(5)(f)13.~~, whenever the department intends to contract
 1519 with a public postsecondary institution to provide a service,
 1520 the department must allow all public postsecondary institutions
 1521 in this state that are accredited by the Southern Association of
 1522 Colleges and Schools to bid on the contract. Thereafter,
 1523 notwithstanding any other provision to the contrary, if a public
 1524 postsecondary institution intends to subcontract for any service
 1525 awarded in the contract, the subcontracted service must be
 1526 procured by competitive procedures.

1527 (b) When it is in the best interest of a defined segment
 1528 of its consumer population, the department may competitively
 1529 procure and contract for systems of treatment or service that
 1530 involve multiple providers, rather than procuring and
 1531 contracting for treatment or services separately from each
 1532 participating provider. The department must ensure that all
 1533 providers that participate in the treatment or service system
 1534 meet all applicable statutory, regulatory, service quality, and
 1535 cost control requirements. If other governmental entities or
 1536 units of special purpose government contribute matching funds to
 1537 the support of a given system of treatment or service, the
 1538 department shall formally request information from those funding

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1539 entities in the procurement process and may take the information
 1540 received into account in the selection process. If a local
 1541 government contributes matching funds to support the system of
 1542 treatment or contracted service and if the match constitutes at
 1543 least 25 percent of the value of the contract, the department
 1544 shall afford the governmental match contributor an opportunity
 1545 to name an employee as one of the persons required by s.
 1546 287.057 (15) ~~(17)~~ to evaluate or negotiate certain contracts,
 1547 unless the department sets forth in writing the reason why the
 1548 inclusion would be contrary to the best interest of the state.
 1549 Any employee so named by the governmental match contributor
 1550 shall qualify as one of the persons required by s.
 1551 287.057 (15) ~~(17)~~. A governmental entity or unit of special
 1552 purpose government may not name an employee as one of the
 1553 persons required by s. 287.057 (15) ~~(17)~~ if it, or any of its
 1554 political subdivisions, executive agencies, or special
 1555 districts, intends to compete for the contract to be awarded.
 1556 The governmental funding entity or contributor of matching funds
 1557 must comply with all procurement procedures set forth in s.
 1558 287.057 when appropriate and required.

1559 (3) CONTRACT MANAGEMENT REQUIREMENTS AND PROCESS.—The
 1560 Department of Children and Family Services shall review the time
 1561 period for which the department executes contracts and shall
 1562 execute multiyear contracts to make the most efficient use of
 1563 the resources devoted to contract processing and execution.
 1564 Whenever the department chooses not to use a multiyear contract,
 1565 a justification for that decision must be contained in the
 1566 contract. Notwithstanding s. 287.057 (13) ~~(15)~~, the department is

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1567 responsible for establishing a contract management process that
 1568 requires a member of the department's Senior Management or
 1569 Selected Exempt Service to assign in writing the responsibility
 1570 of a contract to a contract manager. The department shall
 1571 maintain a set of procedures describing its contract management
 1572 process which must minimally include the following requirements:

1573 (a) The contract manager shall maintain the official
 1574 contract file throughout the duration of the contract and for a
 1575 period not less than 6 years after the termination of the
 1576 contract.

1577 (b) The contract manager shall review all invoices for
 1578 compliance with the criteria and payment schedule provided for
 1579 in the contract and shall approve payment of all invoices before
 1580 their transmission to the Department of Financial Services for
 1581 payment.

1582 (c) The contract manager shall maintain a schedule of
 1583 payments and total amounts disbursed and shall periodically
 1584 reconcile the records with the state's official accounting
 1585 records.

1586 (d) For contracts involving the provision of direct client
 1587 services, the contract manager shall periodically visit the
 1588 physical location where the services are delivered and speak
 1589 directly to clients receiving the services and the staff
 1590 responsible for delivering the services.

1591 (e) The contract manager shall meet at least once a month
 1592 directly with the contractor's representative and maintain
 1593 records of such meetings.

1594 (f) The contract manager shall periodically document any

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1595 | differences between the required performance measures and the
 1596 | actual performance measures. If a contractor fails to meet and
 1597 | comply with the performance measures established in the
 1598 | contract, the department may allow a reasonable period for the
 1599 | contractor to correct performance deficiencies. If performance
 1600 | deficiencies are not resolved to the satisfaction of the
 1601 | department within the prescribed time, and if no extenuating
 1602 | circumstances can be documented by the contractor to the
 1603 | department's satisfaction, the department must terminate the
 1604 | contract. The department may not enter into a new contract with
 1605 | that same contractor for the services for which the contract was
 1606 | previously terminated for a period of at least 24 months after
 1607 | the date of termination. The contract manager shall obtain and
 1608 | enforce corrective action plans, if appropriate, and maintain
 1609 | records regarding the completion or failure to complete
 1610 | corrective action items.

1611 | (g) The contract manager shall document any contract
 1612 | modifications, which shall include recording any contract
 1613 | amendments as provided for in this section.

1614 | (h) The contract manager shall be properly trained before
 1615 | being assigned responsibility for any contract.

1616 | Section 27. Subsection (2) of section 408.045, Florida
 1617 | Statutes, is amended to read:

1618 | 408.045 Certificate of need; competitive sealed
 1619 | proposals.—

1620 | (2) The agency shall make a decision regarding the
 1621 | issuance of the certificate of need in accordance with the
 1622 | provisions of s. 287.057 (15) ~~(17)~~, rules adopted by the agency

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1623 relating to intermediate care facilities for the developmentally
 1624 disabled, and the criteria in s. 408.035, as further defined by
 1625 rule.

1626 Section 28. Subsection (3) of section 427.0135, Florida
 1627 Statutes, is amended to read:

1628 427.0135 Purchasing agencies; duties and
 1629 responsibilities.—Each purchasing agency, in carrying out the
 1630 policies and procedures of the commission, shall:

1631 (3) Not procure transportation disadvantaged services
 1632 without initially negotiating with the commission, as provided
 1633 in s. 287.057(3)(f)11. ~~s. 287.057(5)(f)13.~~, or unless otherwise
 1634 authorized by statute. If the purchasing agency, after
 1635 consultation with the commission, determines that it cannot
 1636 reach mutually acceptable contract terms with the commission,
 1637 the purchasing agency may contract for the same transportation
 1638 services provided in a more cost-effective manner and of
 1639 comparable or higher quality and standards. The Medicaid agency
 1640 shall implement this subsection in a manner consistent with s.
 1641 409.908(18) and as otherwise limited or directed by the General
 1642 Appropriations Act.

1643 Section 29. Paragraph (c) of subsection (5) of section
 1644 445.024, Florida Statutes, is amended to read:

1645 445.024 Work requirements.—

1646 (5) USE OF CONTRACTS.—Regional workforce boards shall
 1647 provide work activities, training, and other services, as
 1648 appropriate, through contracts. In contracting for work
 1649 activities, training, or services, the following applies:

1650 (c) Notwithstanding the exemption from the competitive

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1651 sealed bid requirements provided in s. 287.057~~(3)~~(5)(f) for
 1652 certain contractual services, each contract awarded under this
 1653 chapter must be awarded on the basis of a competitive sealed
 1654 bid, except for a contract with a governmental entity as
 1655 determined by the regional workforce board.

1656 Section 30. Paragraph (b) of subsection (3) of section
 1657 481.205, Florida Statutes, is amended to read:

1658 481.205 Board of Architecture and Interior Design.—
 1659 (3)

1660 (b) The board shall contract with a corporation or other
 1661 business entity pursuant to s. 287.057~~(3)~~ to provide
 1662 investigative, legal, prosecutorial, and other services
 1663 necessary to perform its duties.

1664 Section 31. Subsection (41) of section 570.07, Florida
 1665 Statutes, is amended to read:

1666 570.07 Department of Agriculture and Consumer Services;
 1667 functions, powers, and duties.—The department shall have and
 1668 exercise the following functions, powers, and duties:

1669 (41) Notwithstanding the provisions of s. 287.057~~(21)~~(23)
 1670 that require all agencies to use the online procurement system
 1671 developed by the Department of Management Services, the
 1672 department may continue to use its own online system. However,
 1673 vendors utilizing such system shall be prequalified as meeting
 1674 mandatory requirements and qualifications and shall remit fees
 1675 pursuant to s. 287.057~~(21)~~(23), and any rules implementing s.
 1676 287.057.

1677 Section 32. Paragraph (c) of subsection (5) of section
 1678 627.311, Florida Statutes, is amended to read:

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1679 627.311 Joint underwriters and joint reinsurers; public
 1680 records and public meetings exemptions.-
 1681 (5)
 1682 (c) The operation of the plan shall be governed by a plan
 1683 of operation that is prepared at the direction of the board of
 1684 governors and approved by order of the office. The plan is
 1685 subject to continuous review by the office. The office may, by
 1686 order, withdraw approval of all or part of a plan if the office
 1687 determines that conditions have changed since approval was
 1688 granted and that the purposes of the plan require changes in the
 1689 plan. The plan of operation shall:
 1690 1. Authorize the board to engage in the activities
 1691 necessary to implement this subsection, including, but not
 1692 limited to, borrowing money.
 1693 2. Develop criteria for eligibility for coverage by the
 1694 plan, including, but not limited to, documented rejection by at
 1695 least two insurers which reasonably assures that insureds
 1696 covered under the plan are unable to acquire coverage in the
 1697 voluntary market.
 1698 3. Require notice from the agent to the insured at the
 1699 time of the application for coverage that the application is for
 1700 coverage with the plan and that coverage may be available
 1701 through an insurer, group self-insurers' fund, commercial self-
 1702 insurance fund, or assessable mutual insurer through another
 1703 agent at a lower cost.
 1704 4. Establish programs to encourage insurers to provide
 1705 coverage to applicants of the plan in the voluntary market and
 1706 to insureds of the plan, including, but not limited to:

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1707 a. Establishing procedures for an insurer to use in
 1708 notifying the plan of the insurer's desire to provide coverage
 1709 to applicants to the plan or existing insureds of the plan and
 1710 in describing the types of risks in which the insurer is
 1711 interested. The description of the desired risks must be on a
 1712 form developed by the plan.

1713 b. Developing forms and procedures that provide an insurer
 1714 with the information necessary to determine whether the insurer
 1715 wants to write particular applicants to the plan or insureds of
 1716 the plan.

1717 c. Developing procedures for notice to the plan and the
 1718 applicant to the plan or insured of the plan that an insurer
 1719 will insure the applicant or the insured of the plan, and notice
 1720 of the cost of the coverage offered; and developing procedures
 1721 for the selection of an insuring entity by the applicant or
 1722 insured of the plan.

1723 d. Provide for a market-assistance plan to assist in the
 1724 placement of employers. All applications for coverage in the
 1725 plan received 45 days before the effective date for coverage
 1726 shall be processed through the market-assistance plan. A market-
 1727 assistance plan specifically designed to serve the needs of
 1728 small, good policyholders as defined by the board must be
 1729 reviewed and updated periodically.

1730 5. Provide for policy and claims services to the insureds
 1731 of the plan of the nature and quality provided for insureds in
 1732 the voluntary market.

1733 6. Provide for the review of applications for coverage
 1734 with the plan for reasonableness and accuracy, using any

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1735 available historic information regarding the insured.

1736 7. Provide for procedures for auditing insureds of the
 1737 plan which are based on reasonable business judgment and are
 1738 designed to maximize the likelihood that the plan will collect
 1739 the appropriate premiums.

1740 8. Authorize the plan to terminate the coverage of and
 1741 refuse future coverage for any insured that submits a fraudulent
 1742 application to the plan or provides fraudulent or grossly
 1743 erroneous records to the plan or to any service provider of the
 1744 plan in conjunction with the activities of the plan.

1745 9. Establish service standards for agents who submit
 1746 business to the plan.

1747 10. Establish criteria and procedures to prohibit any
 1748 agent who does not adhere to the established service standards
 1749 from placing business with the plan or receiving, directly or
 1750 indirectly, any commissions for business placed with the plan.

1751 11. Provide for the establishment of reasonable safety
 1752 programs for all insureds in the plan. All insureds of the plan
 1753 must participate in the safety program.

1754 12. Authorize the plan to terminate the coverage of and
 1755 refuse future coverage to any insured who fails to pay premiums
 1756 or surcharges when due; who, at the time of application, is
 1757 delinquent in payments of workers' compensation or employer's
 1758 liability insurance premiums or surcharges owed to an insurer,
 1759 group self-insurers' fund, commercial self-insurance fund, or
 1760 assessable mutual insurer licensed to write such coverage in
 1761 this state; or who refuses to substantially comply with any
 1762 safety programs recommended by the plan.

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1763 13. Authorize the board of governors to provide the goods
 1764 and services required by the plan through staff employed by the
 1765 plan, through reasonably compensated service providers who
 1766 contract with the plan to provide services as specified by the
 1767 board of governors, or through a combination of employees and
 1768 service providers.

1769 a. Purchases that equal or exceed \$2,500 but are less than
 1770 or equal to \$25,000, shall be made by receipt of written quotes,
 1771 telephone quotes, or informal bids, whenever practical. The
 1772 procurement of goods or services valued over \$25,000 is subject
 1773 to competitive solicitation, except in situations in which the
 1774 goods or services are provided by a sole source or are deemed an
 1775 emergency purchase, or the services are exempted from
 1776 competitive-solicitation requirements under s. 287.057 (3) ~~(5)~~ (f).
 1777 Justification for the sole-sourcing or emergency procurement
 1778 must be documented. Contracts for goods or services valued at or
 1779 over \$100,000 are subject to board approval.

1780 b. The board shall determine whether it is more cost-
 1781 effective and in the best interests of the plan to use legal
 1782 services provided by in-house attorneys employed by the plan
 1783 rather than contracting with outside counsel. In making such
 1784 determination, the board shall document its findings and shall
 1785 consider the expertise needed; whether time commitments exceed
 1786 in-house staff resources; whether local representation is
 1787 needed; the travel, lodging, and other costs associated with in-
 1788 house representation; and such other factors that the board
 1789 determines are relevant.

1790 14. Provide for service standards for service providers,

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1791 methods of determining adherence to those service standards,
 1792 incentives and disincentives for service, and procedures for
 1793 terminating contracts for service providers that fail to adhere
 1794 to service standards.

1795 15. Provide procedures for selecting service providers and
 1796 standards for qualification as a service provider that
 1797 reasonably assure that any service provider selected will
 1798 continue to operate as an ongoing concern and is capable of
 1799 providing the specified services in the manner required.

1800 16. Provide for reasonable accounting and data-reporting
 1801 practices.

1802 17. Provide for annual review of costs associated with the
 1803 administration and servicing of the policies issued by the plan
 1804 to determine alternatives by which costs can be reduced.

1805 18. Authorize the acquisition of such excess insurance or
 1806 reinsurance as is consistent with the purposes of the plan.

1807 19. Provide for an annual report to the office on a date
 1808 specified by the office and containing such information as the
 1809 office reasonably requires.

1810 20. Establish multiple rating plans for various
 1811 classifications of risk which reflect risk of loss, hazard
 1812 grade, actual losses, size of premium, and compliance with loss
 1813 control. At least one of such plans must be a preferred-rating
 1814 plan to accommodate small-premium policyholders with good
 1815 experience as defined in sub-subparagraph 22.a.

1816 21. Establish agent commission schedules.

1817 22. For employers otherwise eligible for coverage under
 1818 the plan, establish three tiers of employers meeting the

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1819 criteria and subject to the rate limitations specified in this
 1820 subparagraph.

1821 a. Tier One.—

1822 (I) Criteria; rated employers.—An employer that has an
 1823 experience modification rating shall be included in Tier One if
 1824 the employer meets all of the following:

1825 (A) The experience modification is below 1.00.

1826 (B) The employer had no lost-time claims subsequent to the
 1827 applicable experience modification rating period.

1828 (C) The total of the employer's medical-only claims
 1829 subsequent to the applicable experience modification rating
 1830 period did not exceed 20 percent of premium.

1831 (II) Criteria; non-rated employers.—An employer that does
 1832 not have an experience modification rating shall be included in
 1833 Tier One if the employer meets all of the following:

1834 (A) The employer had no lost-time claims for the 3-year
 1835 period immediately preceding the inception date or renewal date
 1836 of the employer's coverage under the plan.

1837 (B) The total of the employer's medical-only claims for
 1838 the 3-year period immediately preceding the inception date or
 1839 renewal date of the employer's coverage under the plan did not
 1840 exceed 20 percent of premium.

1841 (C) The employer has secured workers' compensation
 1842 coverage for the entire 3-year period immediately preceding the
 1843 inception date or renewal date of the employer's coverage under
 1844 the plan.

1845 (D) The employer is able to provide the plan with a loss
 1846 history generated by the employer's prior workers' compensation

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1847 insurer, except if the employer is not able to produce a loss
 1848 history due to the insolvency of an insurer, the receiver shall
 1849 provide to the plan, upon the request of the employer or the
 1850 employer's agent, a copy of the employer's loss history from the
 1851 records of the insolvent insurer if the loss history is
 1852 contained in records of the insurer which are in the possession
 1853 of the receiver. If the receiver is unable to produce the loss
 1854 history, the employer may, in lieu of the loss history, submit
 1855 an affidavit from the employer and the employer's insurance
 1856 agent setting forth the loss history.

1857 (E) The employer is not a new business.

1858 (III) Premiums.—The premiums for Tier One insureds shall
 1859 be set at a premium level 25 percent above the comparable
 1860 voluntary market premiums until the plan has sufficient
 1861 experience as determined by the board to establish an
 1862 actuarially sound rate for Tier One, at which point the board
 1863 shall, subject to paragraph (e), adjust the rates, if necessary,
 1864 to produce actuarially sound rates, provided such rate
 1865 adjustment shall not take effect prior to January 1, 2007.

1866 b. Tier Two.—

1867 (I) Criteria; rated employers.—An employer that has an
 1868 experience modification rating shall be included in Tier Two if
 1869 the employer meets all of the following:

1870 (A) The experience modification is equal to or greater
 1871 than 1.00 but not greater than 1.10.

1872 (B) The employer had no lost-time claims subsequent to the
 1873 applicable experience modification rating period.

1874 (C) The total of the employer's medical-only claims

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1875 subsequent to the applicable experience modification rating
 1876 period did not exceed 20 percent of premium.

1877 (II) Criteria; non-rated employers.—An employer that does
 1878 not have any experience modification rating shall be included in
 1879 Tier Two if the employer is a new business. An employer shall be
 1880 included in Tier Two if the employer has less than 3 years of
 1881 loss experience in the 3-year period immediately preceding the
 1882 inception date or renewal date of the employer's coverage under
 1883 the plan and the employer meets all of the following:

1884 (A) The employer had no lost-time claims for the 3-year
 1885 period immediately preceding the inception date or renewal date
 1886 of the employer's coverage under the plan.

1887 (B) The total of the employer's medical-only claims for
 1888 the 3-year period immediately preceding the inception date or
 1889 renewal date of the employer's coverage under the plan did not
 1890 exceed 20 percent of premium.

1891 (C) The employer is able to provide the plan with a loss
 1892 history generated by the workers' compensation insurer that
 1893 provided coverage for the portion or portions of such period
 1894 during which the employer had secured workers' compensation
 1895 coverage, except if the employer is not able to produce a loss
 1896 history due to the insolvency of an insurer, the receiver shall
 1897 provide to the plan, upon the request of the employer or the
 1898 employer's agent, a copy of the employer's loss history from the
 1899 records of the insolvent insurer if the loss history is
 1900 contained in records of the insurer which are in the possession
 1901 of the receiver. If the receiver is unable to produce the loss
 1902 history, the employer may, in lieu of the loss history, submit

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1903 an affidavit from the employer and the employer's insurance
 1904 agent setting forth the loss history.

1905 (III) Premiums.—The premiums for Tier Two insureds shall
 1906 be set at a rate level 50 percent above the comparable voluntary
 1907 market premiums until the plan has sufficient experience as
 1908 determined by the board to establish an actuarially sound rate
 1909 for Tier Two, at which point the board shall, subject to
 1910 paragraph (e), adjust the rates, if necessary, to produce
 1911 actuarially sound rates, provided such rate adjustment shall not
 1912 take effect prior to January 1, 2007.

1913 c. Tier Three.—

1914 (I) Eligibility.—An employer shall be included in Tier
 1915 Three if the employer does not meet the criteria for Tier One or
 1916 Tier Two.

1917 (II) Rates.—The board shall establish, subject to
 1918 paragraph (e), and the plan shall charge, actuarially sound
 1919 rates for Tier Three insureds.

1920 23. For Tier One or Tier Two employers which employ no
 1921 nonexempt employees or which report payroll which is less than
 1922 the minimum wage hourly rate for one full-time employee for 1
 1923 year at 40 hours per week, the plan shall establish actuarially
 1924 sound premiums, provided, however, that the premiums may not
 1925 exceed \$2,500. These premiums shall be in addition to the fee
 1926 specified in subparagraph 26. When the plan establishes
 1927 actuarially sound rates for all employers in Tier One and Tier
 1928 Two, the premiums for employers referred to in this paragraph
 1929 are no longer subject to the \$2,500 cap.

1930 24. Provide for a depopulation program to reduce the

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1931 number of insureds in the plan. If an employer insured through
 1932 the plan is offered coverage from a voluntary market carrier:
 1933 a. During the first 30 days of coverage under the plan;
 1934 b. Before a policy is issued under the plan;
 1935 c. By issuance of a policy upon expiration or cancellation
 1936 of the policy under the plan; or
 1937 d. By assumption of the plan's obligation with respect to
 1938 an in-force policy,
 1939
 1940 that employer is no longer eligible for coverage through the
 1941 plan. The premium for risks assumed by the voluntary market
 1942 carrier must be no greater than the premium the insured would
 1943 have paid under the plan, and shall be adjusted upon renewal to
 1944 reflect changes in the plan rates and the tier for which the
 1945 insured would qualify as of the time of renewal. The insured may
 1946 be charged such premiums only for the first 3 years of coverage
 1947 in the voluntary market. A premium under this subparagraph is
 1948 deemed approved and is not an excess premium for purposes of s.
 1949 627.171.
 1950 25. Require that policies issued and applications must
 1951 include a notice that the policy could be replaced by a policy
 1952 issued from a voluntary market carrier and that, if an offer of
 1953 coverage is obtained from a voluntary market carrier, the
 1954 policyholder is no longer eligible for coverage through the
 1955 plan. The notice must also specify that acceptance of coverage
 1956 under the plan creates a conclusive presumption that the
 1957 applicant or policyholder is aware of this potential.
 1958 26. Require that each application for coverage and each

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1959 renewal premium be accompanied by a nonrefundable fee of \$475 to
 1960 cover costs of administration and fraud prevention. The board
 1961 may, with the prior approval of the office, increase the amount
 1962 of the fee pursuant to a rate filing to reflect increased costs
 1963 of administration and fraud prevention. The fee is not subject
 1964 to commission and is fully earned upon commencement of coverage.

1965 Section 33. Paragraph (e) of subsection (6) of section
 1966 627.351, Florida Statutes, is amended to read:

1967 627.351 Insurance risk apportionment plans.—

1968 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1969 (e) Purchases that equal or exceed \$2,500, but are less
 1970 than \$25,000, shall be made by receipt of written quotes,
 1971 written record of telephone quotes, or informal bids, whenever
 1972 practical. The procurement of goods or services valued at or
 1973 over \$25,000 shall be subject to competitive solicitation,
 1974 except in situations where the goods or services are provided by
 1975 a sole source or are deemed an emergency purchase; the services
 1976 are exempted from competitive solicitation requirements under s.
 1977 287.057 (3) ~~(5)~~ (f); or the procurement of services is subject to
 1978 s. 627.3513. Justification for the sole-sourcing or emergency
 1979 procurement must be documented. Contracts for goods or services
 1980 valued at or over \$100,000 are subject to approval by the board.

1981 Section 34. Subsection (2) of section 765.5155, Florida
 1982 Statutes, is amended to read:

1983 765.5155 Donor registry; education program.—

1984 (2) The agency and the department shall jointly contract
 1985 for the operation of a donor registry and education program. The
 1986 contractor shall be procured by competitive solicitation

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1987 pursuant to chapter 287, notwithstanding any exemption in s.
 1988 287.057(3)~~(5)~~(f). When awarding the contract, priority shall be
 1989 given to existing nonprofit groups that are based within the
 1990 state, have expertise working with procurement organizations,
 1991 have expertise in conducting statewide organ and tissue donor
 1992 public education campaigns, and represent the needs of the organ
 1993 and tissue donation community in the state.

1994 Section 35. Subsection (10) of section 893.055, Florida
 1995 Statutes, is amended to read:

1996 893.055 Prescription drug monitoring program.—

1997 (10) All costs incurred by the department in administering
 1998 the prescription drug monitoring program shall be funded through
 1999 federal grants or private funding applied for or received by the
 2000 state. The department may not commit funds for the monitoring
 2001 program without ensuring funding is available. The prescription
 2002 drug monitoring program and the implementation thereof are
 2003 contingent upon receipt of the nonstate funding. The department
 2004 and state government shall cooperate with the direct-support
 2005 organization established pursuant to subsection (11) in seeking
 2006 federal grant funds, other nonstate grant funds, gifts,
 2007 donations, or other private moneys for the department so long as
 2008 the costs of doing so are not considered material. Nonmaterial
 2009 costs for this purpose include, but are not limited to, the
 2010 costs of mailing and personnel assigned to research or apply for
 2011 a grant. Notwithstanding the exemptions to competitive-
 2012 solicitation requirements under s. 287.057(3)~~(5)~~(f), the
 2013 department shall comply with the competitive-solicitation
 2014 requirements under s. 287.057 for the procurement of any goods

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2015 or services required by this section.

2016 Section 36. Subsection (3) of section 1013.38, Florida
 2017 Statutes, is amended to read:

2018 1013.38 Boards to ensure that facilities comply with
 2019 building codes and life safety codes.—

2020 (3) The Department of Management Services may, upon
 2021 request, provide facilities services for the Florida School for
 2022 the Deaf and the Blind, the Division of Blind Services, and
 2023 public broadcasting. As used in this section, the term
 2024 "facilities services" means project management, code and design
 2025 plan review, and code compliance inspection for projects as
 2026 defined in s. 287.017 (5) ~~(1)(e)~~.

2027 Section 37. Section 21 of chapter 2009-55, 2009 Laws of
 2028 Florida, is amended to read:

2029 Section 21. The Agency for Health Care Administration
 2030 shall develop and implement a home health agency monitoring
 2031 pilot project in Miami-Dade County by January 1, 2010. The
 2032 agency shall contract with a vendor to verify the utilization
 2033 and the delivery of home health services and provide an
 2034 electronic billing interface for such services. The contract
 2035 must require the creation of a program to submit claims for the
 2036 home health services electronically. The program must verify
 2037 visits for the delivery of home health services telephonically
 2038 using voice biometrics. The agency may seek amendments to the
 2039 Medicaid state plan and waivers of federal law, as necessary, to
 2040 implement the pilot project. Notwithstanding s.
 2041 287.057 (3) ~~(5)~~ (f), Florida Statutes, the agency must award the
 2042 contract through the competitive solicitation process. The

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2043 | agency shall submit a report to the Governor, the President of
 2044 | the Senate, and the Speaker of the House of Representatives
 2045 | evaluating the pilot project by February 1, 2011.

2046 | Section 38. Section 31 of chapter 2009-223, Laws of
 2047 | Florida, is amended to read:

2048 | Section 31. Pilot project to monitor home health
 2049 | services.—The Agency for Health Care Administration shall
 2050 | develop and implement a home health agency monitoring pilot
 2051 | project in Miami-Dade County by January 1, 2010. The agency.
 2052 | shall contract with a vendor to verify the utilization and
 2053 | delivery of home health services and provide an electronic
 2054 | billing interface for home health services. The contract must
 2055 | require the creation of a program to submit claims
 2056 | electronically for the delivery of home health services. The
 2057 | program must verify telephonically visits for the delivery of
 2058 | home health services using voice biometrics. The agency may seek
 2059 | amendments to the Medicaid state plan and waivers of federal
 2060 | laws, as necessary, to implement the pilot project.
 2061 | Notwithstanding s. 287.057(3)~~(5)~~(f), Florida Statutes, the
 2062 | agency must award the contract through the competitive
 2063 | solicitation process. The agency shall submit a report to the
 2064 | Governor, the President of the Senate, and the Speaker of the
 2065 | House of Representatives evaluating the pilot project by
 2066 | February 1, 2011.

2067 | Section 39. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-25 Review of the Department of Management Services under the Florida Government Accountability Act
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Tait <i>MCT</i>	Williamson <i>Law</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

This bill is a result of the review of the Department of Management Services under the Florida Government Accountability Act.

The bill establishes the Governor and the Cabinet as the head of the Department of Management Services. It repeals the State Employee Wellness Council, which was created to advise the Department of Management of Services on health care education for employees.

The bill requires parties represented by attorneys in hearings held under the Division of Administrative Hearings (DOAH) Adjudication of Disputes Program and in the Worker's Compensation Appeals Program to file documents electronically. Parties not represented by attorneys are encouraged, but not required, to file documents electronically.

The bill creates statewide standards for agencies to use in determining employee assignment of wireless communication devices. It requires agencies to procure for wireless devices and services using a state term contract or SUNCOM services, and provides an exception process. The bill requires state agencies to submit, as part of their legislative budget request, an inventory of all wireless devices and expenditures.

The bill directs the Department of Management Services to create, administer, and maintain a centralized fleet of all state-owned motor vehicles and requires the department to submit a plan to centralize the fleet.

The bill could create a positive fiscal impact on state government. It does not create a fiscal impact on local governments.

The bill has an effective date of July 1, 2010.

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:

Department of Management Services

Currently, the secretary of the department is appointed by the Governor and confirmed by the Senate.¹ The bill places the Department of Management Services under the Governor and Cabinet with the authority to appoint an executive director, upon confirmation by the Senate.

Florida State Employee Wellness Council

In 2006, the Florida State Employee Wellness Council was created to advise DMS on health care education for employees and to assist in developing minimum benefits for all health care providers when providing age- and gender-based wellness benefits. The council is composed of nine members appointed by the Governor.

As part of the Department of Management Services Sunset Review, the Office of Program Policy Analysis and Government Accountability recommended abolishing the council because the council does not appear to be fulfilling its statutory mission.² Additionally, council duties related to wellness programs have been assigned to other state entities. For example, the Department of Health is required to collaborate with other state agencies to promote healthy lifestyles of state employees, and the Governor's Council on Physical Fitness was established in 2007 with the goal of developing a state plan of action to increase the physical activity of Floridians.

The bill repeals the Florida State Employee Wellness Council.

Electronic Filing and Service at Division of Administrative Hearings

The Division of Administrative Hearings (DOAH) is made up of the Office of Administrative Law Judges (ALJs) and the Office of the Judges of Compensation Claims (OJCCs). ALJs hear administrative disputes under ss. 120.56 and 120.57, F.S. JCCs mediate workers compensation disputes pursuant to s. 440.192, F.S.

Both the OJCCs and the ALJs currently allow electronic filing and traditional paper and fax filing. The number of electronically filed documents has grown steadily since the implementation of electronic filing. The ALJs received 18,230 electronically filed documents, and the JCCs received 430,548

¹ See s. 20.22, F.S.

² Department of Management Services Advisory Committees Assessment, Office of Program Policy Analysis and Government Accountability, Report No. 08-S11, December 2008.

electronically filed documents in fiscal year 2008-09.³ All documents received by DOAH are stored in an electronic database; and paper documents received by DOAH are scanned by employees and uploaded to the database.⁴

Internal policy at the Adjudication of Disputes Program dictates that only parties who specifically have signed up for the electronic filing program will be served documents electronically. As a result, a relatively low number of documents (approximately 26 percent) are e-served by the ALJs. Conversely, approximately 99 percent of documents are e-served by the OJCC because this program electronically serves to any party who has provided an e-mail address to the judge's staff.

Under s. 120.53(1)(a)2.b., F.S., agencies must maintain and make available for the public an index of all final orders and agency rules. As an alternative, the statute allows agencies to electronically transmit those documents to DOAH for indexing on its electronic database. The Department of Agriculture and Consumer Services and the Department of Environmental Protection currently use DOAH to comply with mandates of s. 120.53(1)(a)2.b., F.S.

The bill creates section 120.585, F.S., to require any document filed with DOAH by an attorney to be submitted through electronic means. Any party not represented by an attorney is encouraged to file any document through the division's website. The bill amends ss. 57.111, 120.54, 120.56, 120.569, 120.57, 440.192, 440.25, 440.29, 440.45, 552.40, 553.73, and 961.03, F.S., to provide for electronic procedures in administrative proceedings. There is no charge to register for DOAH's electronic filing service.

Statewide Wireless Communication Utilization

Chapter 2009-15, L.O.F., directed the Office of Program Policy Analysis and Government Accountability (OPPAGA), in consultation with the Department of Management Services (DMS), to develop recommendations regarding the prudent issuance of state-owned wireless communication devices, including telephones, personal digital assistants, and other electronic devices. OPPAGA found that there was no single-source of information regarding state-owned wireless devices and, after interviewing executive agencies, found that agencies currently have more than 40,000 wireless devices and spend approximately \$17 million annually for their operation.⁵

DMS has established state term contracts for the purchase of wireless devices and services, as well as an alternative source contract with a different provider. The state term contract enables agencies to take advantage of free cellular phones and pay only for the minutes used. The alternative source contract provides an across the board discount of 25 percent for wireless services. OPPAGA found that state agencies with the highest cellular telephone expenditures were making limited purchases using DMS cellular phone contracts.⁶

OPPAGA made several recommendations to ensure prudent management of wireless communication devices including recommending that the Legislature:

- Establish statewide policies to limit the use of wires devices to employees with job responsibilities that match device capabilities.
- Require agencies to monitor employee use and obtain cost effective services plans.
- Ensure procurement practices use the most cost effective service.
- Direct agencies to report wireless device costs via agency legislative budget requests.

This bill requires agencies to limit assignment of wireless communication devices to only those employees who, as part of their job responsibility, must:

- Be immediately available to citizens, supervisors, or subordinates;
- Be available to respond to emergency situations;

³ Division of Administrative Hearings, *Thirty-Sixth Annual Report*, p.7 (Feb. 1, 2010).

⁴ Ibid.

⁵ Options for Reducing State Agency Costs for Cellular Telephones and Other Wireless Devices, Office of Program Policy Analysis and Government Accountability, March 3, 2009.

⁶ Ibid.

- Be available to receive calls outside of regular working hours;
- Have access to the technology in order to productively perform job duties in the field; or
- Have limited or no access to a standard phone, or have no ability to use a personal cell phone if needed.

The bill provides that procurement for devices and services must be through a state term contract or SUNCOM services, unless otherwise approved by DMS. Agencies that wish to procure services through an alternative method must provide a cost benefit analysis and reason for deviating from the state term contract and submit the analysis to DMS for approval.

The bill requires agencies to audit wireless communication devices for personal use and requires reimbursement from employees. It also requires agencies to submit as part of the legislative budget request an annual inventory of wireless communication devices and expenditures, a list of job classifications assigned a wireless device, and the steps the agency has taken to contain costs.

Centralized Fleet of State-owned Motor Vehicles

Each state agency operates an individual pool of state-owned motor vehicles. The majority of these vehicles remain in an agency pool that is available for general use by agency employees. Section 287.17, F.S., provides for agency heads to assign state-owned vehicles to employees who are projected to drive a minimum of 10,000 miles annually for official business.

Data from the Department of Management Services' Equipment Management Information System for calendar year 2009 showed that agencies own approximately 18,237 cars and light trucks. Of these, approximately 30 percent were used for law enforcement purposes—leaving 12,687 vehicles operated for general agency use. A review of these vehicles by OPPAGA showed that 63 percent of these vehicles were driven less than 10,000 miles during the year. In addition, 2,939 of these vehicles were assigned to an individual, but nearly 45 percent of assigned vehicles were not driven the statutorily required 10,000 miles.⁷ In contrast, 654 employees were reimbursed for driving personal vehicles more than 10,000 miles on state business during fiscal year 2008-09.⁸

Several states have implemented a centralized fleet of state-owned motor vehicles in an effort to provide cost savings through efficiencies and disposal of surplus vehicles. This bill directs DMS to create, administer, and maintain a centralized fleet of motor vehicles and requires the department to prepare a plan to centralize state-owned motor vehicles. The plan must include information related to: a method for assigning and administering vehicles to state agencies and employees, a method for managing a pool of vehicles for short-term use, a method for charging state agencies for use, a method for purchasing necessary vehicles, a method for repairing and maintaining vehicles, a method for monitoring the use of vehicles, a method for maintaining records, and a method for determining when it is cost-efficient to use a third party vehicle rather than a state-owned car. In developing the plan, the department is required to compare the costs and benefits of contracting with a third party vendor for the operation of a centralized fleet. The report is due to the President of the Senate, the Speaker of the House of Representatives, and the Governor and the Cabinet by November 1, 2010.

B. SECTION DIRECTORY:

Section 1. Amends section 20.22, F.S., to establish the Governor and the Cabinet as the head of the Department of Management Services.

Section 2. Amends section 57.111, F.S., to provide for electronic procedures in administrative proceedings.

Section 3. Repeals section 110.123(13), F.S., relating to the creation and duties of the Florida State Employee Wellness Council.

⁷ Vehicle Use by State Agency, Office of Program Policy Analysis and Government Accountability, March 11, 2010.

⁸ Ibid.

Section 4. Amends section 120.54, F.S., to provide for electronic procedures in administrative proceedings.

Section 5. Amends section 120.56, F.S., to provide for electronic procedures in administrative proceedings.

Section 6. Amends section 120.569, F.S., to provide for electronic procedures in administrative proceedings.

Section 7. Amends section 120.57, F.S., to provide for electronic procedures in administrative proceedings.

Section 8. Creates section 120.585, F.S., to provide for electronic procedures in administrative proceedings.

Section 9. Amends section 216.023, F.S., to require agencies to submit certain information in the Legislative Budget Request.

Section 10. Creates section 282.712, F.S., to establish statewide wireless device utilization standards.

Section 11. Requires the Department of Management Services to create a centralized motor vehicle fleet.

Section 12. Amends section 440.192, F.S., to provide for electronic procedures in administrative proceedings.

Section 13. Amends section 440.25, F.S., to provide for electronic procedures in administrative proceedings.

Section 14. Amends section 440.29, F.S., to provide for electronic procedures in administrative proceedings.

Section 15. Amends section 440.45, F.S., to provide for electronic procedures in administrative proceedings.

Section 16. Amends section 552.40, F.S., to provide for electronic procedures in administrative proceedings.

Section 17. Amends section 553.73, F.S., to provide for electronic procedures in administrative proceedings.

Section 18. Amends section 961.03, F.S., to provide for electronic procedures in administrative proceedings.

Section 19. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See *Fiscal Comments*.

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 bill implements several policies that have the potential of generating revenue savings for the state.

DOAH estimates it will save at least \$9,500 per year on electronic services of documents. DOAH also notes that electronic receipt and service of documents will save incalculable processing and filing time.

Statewide policies for the utilization of wireless communication devices may reduce individual agency costs associated with these services.

Centralization of state-owned vehicles will provide the opportunity for cost savings resulting from more efficient use and disposal of motor vehicles, as well as decreased agency administrative costs within each agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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1 A bill to be entitled
 2 An act relating to review of the Department of Management
 3 Services under the Florida Government Accountability Act;
 4 amending s. 20.22, F.S.; changing the governance of the
 5 department; amending ss. 57.111, 120.56, 120.569, 120.57,
 6 553.73, and 961.03, F.S.; providing for electronic filing
 7 and transmission procedures for certain actions,
 8 proceedings, and petitions; conforming provisions to
 9 changes made by the act; repealing s. 110.123(13), F.S.,
 10 relating to creation and duties of the Florida State
 11 Employee Wellness Council; amending s. 120.54, F.S.;
 12 requiring a petitioner requesting an administrative
 13 hearing to include the petitioner's e-mail address;
 14 requiring the request for administrative hearing by a
 15 respondent to include the e-mail address of the party's
 16 counsel or qualified representative; creating s. 120.585,
 17 F.S.; requiring an attorney to use electronic means when
 18 filing a document with the Division of Administrative
 19 Hearings; encouraging a party not represented by an
 20 attorney to file documents whenever possible by electronic
 21 means through the division's website; amending s. 216.023,
 22 F.S.; requiring a wireless device report; creating s.
 23 282.712, F.S.; creating requirements for the use of
 24 wireless devices; requiring the Department of Management
 25 Services to prepare a plan to centralize the fleet of
 26 state-owned motor vehicles; requiring a report to the
 27 Governor and the Legislature; amending s. 440.192 and
 28 440.25, F.S.; providing procedures for filing petitions

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29 for benefits and other documents in workers' compensation
30 benefits proceedings; amending s. 440.29 and 440.45, F.S.;
31 authorizing the Office of the Judges of Compensation
32 Claims to adopt rules for certain purposes; providing an
33 effective date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. Subsection (1) of section 20.22, Florida
38 Statutes, is amended to read:

39 20.22 Department of Management Services.—There is created
40 a Department of Management Services.

41 (1) The head of the department is the Governor and
42 Cabinet. The executive director of the department shall be
43 appointed by the Governor with the approval of each member of
44 the Cabinet and subject to confirmation by the Senate. The
45 executive director shall serve at the pleasure of the Governor
46 and Cabinet. ~~The head of the Department of Management Services~~
47 ~~is the Secretary of Management Services, who shall be appointed~~
48 ~~by the Governor, subject to confirmation by the Senate, and~~
49 ~~shall serve at the pleasure of the Governor.~~

50 Section 2. Paragraph (b) of subsection (4) of section
51 57.111, Florida Statutes, is amended to read:

52 57.111 Civil actions and administrative proceedings
53 initiated by state agencies; attorneys' fees and costs.—

54 (4)

55 (b)1. To apply for an award under this section, the
56 attorney for the prevailing small business party must submit an

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57 itemized affidavit to the court which first conducted the
 58 adversarial proceeding in the underlying action, or by
 59 electronic means through the division's website to the Division
 60 of Administrative Hearings, which shall assign an administrative
 61 law judge, in the case of a proceeding pursuant to chapter 120,
 62 which affidavit shall reveal the nature and extent of the
 63 services rendered by the attorney as well as the costs incurred
 64 in preparations, motions, hearings, and appeals in the
 65 proceeding.

66 2. The application for an award of attorney's fees must be
 67 made within 60 days after the date that the small business party
 68 becomes a prevailing small business party.

69 Section 3. Subsection (13) of section 110.123, Florida
 70 Statutes, is repealed.

71 Section 4. Paragraph (b) of subsection (5) of section
 72 120.54, Florida Statutes, is amended to read:

73 120.54 Rulemaking.—

74 (5) UNIFORM RULES.—

75 (b) The uniform rules of procedure adopted by the
 76 commission pursuant to this subsection shall include, but are
 77 not limited to:

78 1. Uniform rules for the scheduling of public meetings,
 79 hearings, and workshops.

80 2. Uniform rules for use by each state agency that provide
 81 procedures for conducting public meetings, hearings, and
 82 workshops, and for taking evidence, testimony, and argument at
 83 such public meetings, hearings, and workshops, in person and by
 84 means of communications media technology. The rules shall

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85 provide that all evidence, testimony, and argument presented
 86 shall be afforded equal consideration, regardless of the method
 87 of communication. If a public meeting, hearing, or workshop is
 88 to be conducted by means of communications media technology, or
 89 if attendance may be provided by such means, the notice shall so
 90 state. The notice for public meetings, hearings, and workshops
 91 utilizing communications media technology shall state how
 92 persons interested in attending may do so and shall name
 93 locations, if any, where communications media technology
 94 facilities will be available. Nothing in this paragraph shall be
 95 construed to diminish the right to inspect public records under
 96 chapter 119. Limiting points of access to public meetings,
 97 hearings, and workshops subject to the provisions of s. 286.011
 98 to places not normally open to the public shall be presumed to
 99 violate the right of access of the public, and any official
 100 action taken under such circumstances is void and of no effect.
 101 Other laws relating to public meetings, hearings, and workshops,
 102 including penal and remedial provisions, shall apply to public
 103 meetings, hearings, and workshops conducted by means of
 104 communications media technology, and shall be liberally
 105 construed in their application to such public meetings,
 106 hearings, and workshops. As used in this subparagraph,
 107 "communications media technology" means the electronic
 108 transmission of printed matter, audio, full-motion video,
 109 freeze-frame video, compressed video, and digital video by any
 110 method available.

111 3. Uniform rules of procedure for the filing of notice of
 112 protests and formal written protests. The Administration

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113 Commission may prescribe the form and substantive provisions of
 114 a required bond.

115 4. Uniform rules of procedure for the filing of petitions
 116 for administrative hearings pursuant to s. 120.569 or s. 120.57.
 117 Such rules shall require the petition to include:

118 a. The identification of the petitioner, including the
 119 petitioner's e-mail address, if any, for the transmittal of
 120 subsequent documents by electronic means.

121 b. A statement of when and how the petitioner received
 122 notice of the agency's action or proposed action.

123 c. An explanation of how the petitioner's substantial
 124 interests are or will be affected by the action or proposed
 125 action.

126 d. A statement of all material facts disputed by the
 127 petitioner or a statement that there are no disputed facts.

128 e. A statement of the ultimate facts alleged, including a
 129 statement of the specific facts the petitioner contends warrant
 130 reversal or modification of the agency's proposed action.

131 f. A statement of the specific rules or statutes that the
 132 petitioner contends require reversal or modification of the
 133 agency's proposed action, including an explanation of how the
 134 alleged facts relate to the specific rules or statutes.

135 g. A statement of the relief sought by the petitioner,
 136 stating precisely the action petitioner wishes the agency to
 137 take with respect to the proposed action.

138 5. Uniform rules for the filing of request for
 139 administrative hearing by a respondent in agency enforcement and
 140 disciplinary actions. Such rules shall require a request to

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141 include:

142 a. The name, address, e-mail address, and telephone number
 143 of the party making the request and the name, address, e-mail
 144 address, and telephone number of the party's counsel or
 145 qualified representative upon whom service of pleadings and
 146 other papers shall be made;

147 b. A statement that the respondent is requesting an
 148 administrative hearing and disputes the material facts alleged
 149 by the petitioner, in which case the respondent shall identify
 150 those material facts that are in dispute, or that the respondent
 151 is requesting an administrative hearing and does not dispute the
 152 material facts alleged by the petitioner; and

153 c. A reference by file number to the administrative
 154 complaint that the party has received from the agency and the
 155 date on which the agency pleading was received.

156
 157 The agency may provide an election-of-rights form for the
 158 respondent's use in requesting a hearing, so long as any form
 159 provided by the agency calls for the information in sub-
 160 subparagraphs a. through c. and does not impose any additional
 161 requirements on a respondent in order to request a hearing,
 162 unless such requirements are specifically authorized by law.

163 6. Uniform rules of procedure for the filing and prompt
 164 disposition of petitions for declaratory statements. The rules
 165 shall also describe the contents of the notices that must be
 166 published in the Florida Administrative Weekly under s. 120.565,
 167 including any applicable time limit for the filing of petitions
 168 to intervene or petitions for administrative hearing by persons

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169 whose substantial interests may be affected.

170 7. Provision of a method by which each agency head shall
 171 provide a description of the agency's organization and general
 172 course of its operations. The rules shall require that the
 173 statement concerning the agency's organization and operations be
 174 published on the agency's website.

175 8. Uniform rules establishing procedures for granting or
 176 denying petitions for variances and waivers pursuant to s.
 177 120.542.

178 Section 5. Paragraphs (c) and (d) of subsection (1) of
 179 section 120.56, Florida Statutes, are amended to read:

180 120.56 Challenges to rules.—

181 (1) GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF A
 182 RULE OR A PROPOSED RULE.—

183 (c) The petition shall be filed by electronic means with
 184 the division, which shall, immediately upon filing, forward by
 185 electronic means copies to the agency whose rule is challenged,
 186 the Department of State, and the committee. Within 10 days after
 187 receiving the petition, the division director shall, if the
 188 petition complies with the requirements of paragraph (b), assign
 189 an administrative law judge who shall conduct a hearing within
 190 30 days thereafter, unless the petition is withdrawn or a
 191 continuance is granted by agreement of the parties or for good
 192 cause shown. Evidence of good cause includes, but is not limited
 193 to, written notice of an agency's decision to modify or withdraw
 194 the proposed rule or a written notice from the chair of the
 195 committee stating that the committee will consider an objection
 196 to the rule at its next scheduled meeting. The failure of an

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197 agency to follow the applicable rulemaking procedures or
 198 requirements set forth in this chapter shall be presumed to be
 199 material; however, the agency may rebut this presumption by
 200 showing that the substantial interests of the petitioner and the
 201 fairness of the proceedings have not been impaired.

202 (d) Within 30 days after the hearing, the administrative
 203 law judge shall render a decision and state the reasons therefor
 204 in writing. The division shall forthwith transmit by electronic
 205 means copies of the administrative law judge's decision to the
 206 agency, the Department of State, and the committee.

207 Section 6. Paragraph (a) of subsection (2) of section
 208 120.569, Florida Statutes, is amended to read:

209 120.569 Decisions which affect substantial interests.—

210 (2) (a) Except for any proceeding conducted as prescribed
 211 in s. 120.56, a petition or request for a hearing under this
 212 section shall be filed with the agency. If the agency requests
 213 an administrative law judge from the division, it shall so
 214 notify the division by electronic means through the division's
 215 website within 15 days after receipt of the petition or request.

216 A request for a hearing shall be granted or denied within 15
 217 days after receipt. On the request of any agency, the division
 218 shall assign an administrative law judge with due regard to the
 219 expertise required for the particular matter. The referring
 220 agency shall take no further action with respect to a proceeding
 221 under s. 120.57(1), except as a party litigant, as long as the
 222 division has jurisdiction over the proceeding under s.

223 120.57(1). Any party may request the disqualification of the
 224 administrative law judge by filing an affidavit with the

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225 | division prior to the taking of evidence at a hearing, stating
 226 | the grounds with particularity.

227 | Section 7. Paragraph (d) of subsection (3) of section
 228 | 120.57, Florida Statutes, is amended to read:

229 | 120.57 Additional procedures for particular cases.—

230 | (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO
 231 | CONTRACT SOLICITATION OR AWARD.—Agencies subject to this chapter
 232 | shall use the uniform rules of procedure, which provide
 233 | procedures for the resolution of protests arising from the
 234 | contract solicitation or award process. Such rules shall at
 235 | least provide that:

236 | (d)1. The agency shall provide an opportunity to resolve
 237 | the protest by mutual agreement between the parties within 7
 238 | days, excluding Saturdays, Sundays, and state holidays, after
 239 | receipt of a formal written protest.

240 | 2. If the subject of a protest is not resolved by mutual
 241 | agreement within 7 days, excluding Saturdays, Sundays, and state
 242 | holidays, after receipt of the formal written protest, and if
 243 | there is no disputed issue of material fact, an informal
 244 | proceeding shall be conducted pursuant to subsection (2) and
 245 | applicable agency rules before a person whose qualifications
 246 | have been prescribed by rules of the agency.

247 | 3. If the subject of a protest is not resolved by mutual
 248 | agreement within 7 days, excluding Saturdays, Sundays, and state
 249 | holidays, after receipt of the formal written protest, and if
 250 | there is a disputed issue of material fact, the agency shall
 251 | refer the protest to the division by electronic means through
 252 | the division's website for proceedings under subsection (1).

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253 Section 8. Section 120.585, Florida Statutes, is created
254 to read:

255 120.585 Electronic filing.—Any document filed with the
256 division by a party represented by an attorney must be filed by
257 electronic means through the division's website. Any document
258 filed with the division by a party who is not represented by an
259 attorney shall, whenever possible, be filed by electronic means
260 through the division's website.

261 Section 9. Subsections (6) - (9) of section 216.023,
262 Florida Statutes, are renumbered as subsections (7) - (10),
263 respectively, and a new subsection (6) is added to that section
264 to read:

265 216.023 Legislative budget requests to be furnished to
266 Legislature by agencies.—

267 (6) As part of the legislative budget request, the head of
268 each agency shall include an annual inventory of all wireless
269 devices and expenditures, including the number of wireless
270 devices by type, expenditures by type of device, total
271 expenditures, a list of job classifications assigned a wireless
272 device, and steps taken to contain costs.

273 Section 10. Section 282.712, Florida Statutes, is created
274 to read:

275 282.712 Statewide Wireless Communication Utilization.—

276 (1) It is the intent of the Legislature that the
277 expenditure of public funds on wireless communication devices
278 shall be prohibited except as provided herein.

279 (2) Agencies shall limit assignment and use of cellular
280 telephones, personal digital assistants, and other wireless

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281 communication devices to only those employees who, as part of
 282 their official assigned duties, routinely must:

283 (a) Be immediately available to citizens, supervisors, or
 284 subordinates;

285 (b) Be available to respond to emergency situations;

286 (c) Be available to receive calls outside of regular
 287 working hours;

288 (d) Have access to the technology in order to productively
 289 perform job duties in the field; or

290 (e) Have limited or no access to a standard phone, or have
 291 no ability to use a personal cell phone, if needed.

292 (3) Agencies shall procure wireless communication devices
 293 and services using a state term contract or Suncom services
 294 unless otherwise approved by the Department of Management
 295 Services. In seeking approval to use another procurement
 296 method, agencies shall provide a side by side comparison of
 297 costs for the state term contract and the mechanisms otherwise
 298 requested to be used by the agency, and the reasons for
 299 deviating from the state term contract or Suncom services. The
 300 department shall approve such requests only upon a finding that
 301 the cost benefit analysis supports the use of another
 302 procurement method.

303 (4) Agencies shall audit wireless communication device
 304 expenditures to confirm that costs are associated with business
 305 purposes. Any costs associated with personal use of a wireless
 306 communication device by an employee shall be reimbursed to the
 307 agency by that employee.

308 Section 11. Centralized Fleet Management.—

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309 (1) The Department of Management Services is directed to
 310 create, administer, and maintain a centralized fleet of state-
 311 owned motor vehicles.

312 (2) The Department of Management Services shall prepare a
 313 plan to centralize all state-owned motor vehicles that addresses
 314 the following:

315 (a) A method for assigning and administering vehicles to
 316 state agencies and employees.

317 (b) A method for managing a pool of vehicles for short-
 318 term use.

319 (c) A method for charging state agencies for the use of a
 320 motor vehicle, including costs associated with vehicle
 321 replacement and operating costs.

322 (d) A method for purchasing vehicles necessary for the
 323 operation of the centralized fleet.

324 (e) A method for repairing and maintaining vehicles.

325 (f) A method for monitoring the use of vehicles and
 326 enforcing regulations regarding proper use.

327 (g) A method for maintaining records related to the
 328 operation and maintenance of vehicles and the administration of
 329 the fleet.

330 (h) A method to dispose of motor vehicles that are no
 331 longer necessary to maintain the fleet or for vehicles that are
 332 not used effectively as to establish cost savings.

333 (i) A method to determine when it would be cost-efficient
 334 to lease a vehicle from a third-party vendor instead of using a
 335 state-owned vehicle.

336 (2) In developing the plan, the Department of Management

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337 Services shall evaluate the costs and benefits of operating a
 338 centralized motor vehicle fleet compared to the costs and
 339 benefits of contracting with a third-party vendor for the
 340 operation of a centralized motor vehicle fleet.

341 (3) By November 1, 2010, the Department of Management
 342 Services shall submit the plan to the President of the Senate,
 343 the Speaker of the House of Representatives, and the Governor
 344 and Cabinet.

345 Section 12. Subsections (1) and (8) of section 440.192,
 346 Florida Statutes, are amended to read:

347 (1) Any employee may, for any benefit that is ripe, due,
 348 and owing, ~~file by certified mail, or by electronic means~~
 349 ~~approved by the Deputy Chief Judge,~~ with the Office of the
 350 Judges of Compensation Claims a petition for benefits which
 351 meets the requirements of this section and the definition of
 352 specificity in s. 440.02. An employee represented by an attorney
 353 shall file by electronic means approved by the Deputy Chief
 354 Judge. An employee not represented by an attorney may file by
 355 certified mail or by electronic means approved by the Deputy
 356 Chief Judge. The department shall inform employees of the
 357 location of the Office of the Judges of Compensation Claims and
 358 the office's website address for purposes of filing a petition
 359 for benefits. The employee shall also serve copies of the
 360 petition for benefits by certified mail, or by electronic means
 361 approved by the Deputy Chief Judge, upon the employer and the
 362 employer's carrier. The Deputy Chief Judge shall refer the
 363 petitions to the judges of compensation claims.

364 (8) Within 14 days after receipt of a petition for

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365 benefits by certified mail or by approved electronic means, the
 366 carrier must either pay the requested benefits without prejudice
 367 to its right to deny within 120 days from receipt of the
 368 petition or file a response to petition with the Office of the
 369 Judges of Compensation Claims. The response shall be filed by
 370 electronic means approved by the Deputy Chief Judge. The carrier
 371 must list all benefits requested but not paid and explain its
 372 justification for nonpayment in the response to petition. A
 373 carrier that does not deny compensability in accordance with s.
 374 440.20(4) is deemed to have accepted the employee's injuries as
 375 compensable, unless it can establish material facts relevant to
 376 the issue of compensability that could not have been discovered
 377 through reasonable investigation within the 120-day period. The
 378 carrier shall provide copies of the response to the filing
 379 party, employer, and claimant by certified mail or by electronic
 380 means approved by the Deputy Chief Judge.

381 Section 13. Subsection (1) and paragraphs (a), (c), and
 382 (e) of subsection (4) of section 440.25, Florida Statutes, are
 383 amended to read:

384 440.25 Procedures for mediation and hearings.—

385 (1) Forty days after a petition for benefits is filed
 386 under s. 440.192, the judge of compensation claims shall notify
 387 the interested parties by order that a mediation conference
 388 concerning such petition has been scheduled unless the parties
 389 have notified the judge of compensation claims that a private
 390 mediation has been held or is scheduled to be held. A mediation,
 391 whether private or public, shall be held within 130 days after
 392 the filing of the petition. Such order must give the date the

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393 mediation conference is to be held. Such order may be served
 394 personally upon the interested parties or may be sent to the
 395 interested parties by mail or by electronic means approved by
 396 the Deputy Chief Judge. If multiple petitions are pending, or if
 397 additional petitions are filed after the scheduling of a
 398 mediation, the judge of compensation claims shall consolidate
 399 all petitions into one mediation. The claimant or the adjuster
 400 of the employer or carrier may, at the mediator's discretion,
 401 attend the mediation conference by telephone or, if agreed to by
 402 the parties, other electronic means. A continuance may be
 403 granted upon the agreement of the parties or if the requesting
 404 party demonstrates to the judge of compensation claims that the
 405 reason for requesting the continuance arises from circumstances
 406 beyond the party's control. Any order granting a continuance
 407 must set forth the date of the rescheduled mediation conference.
 408 A mediation conference may not be used solely for the purpose of
 409 mediating attorney's fees.

410 (4) (a) If the parties fail to agree to written submission
 411 of pretrial stipulations, the judge of compensation claims shall
 412 conduct a live pretrial hearing. The judge of compensation
 413 claims shall give the interested parties at least 14 days'
 414 advance notice of the pretrial hearing by mail or by electronic
 415 means approved by the Deputy Chief Judge.

416 (c) The judge of compensation claims shall give the
 417 interested parties at least 14 days' advance notice of the final
 418 hearing, served upon the interested parties by mail or by
 419 electronic means approved by the Deputy Chief Judge.

420 (e) The order making an award or rejecting the claim,

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421 referred to in this chapter as a "compensation order," shall set
 422 forth the findings of ultimate facts and the mandate; and the
 423 order need not include any other reason or justification for
 424 such mandate. The compensation order shall be filed in the
 425 Office of the Judges of Compensation Claims at Tallahassee. A
 426 copy of such compensation order shall be sent by mail or by
 427 electronic means approved by the Deputy Chief Judge to the
 428 ~~parties and~~ attorneys of record and any parties not represented
 429 by an attorney at the last known address of each, with the date
 430 of mailing noted thereon.

431 Section 14. Subsection (3) of section 440.29, Florida
 432 Statutes, is amended to read:

433 440.29 Procedure before the judge of compensation claims.—

434 (3) The practice and procedure before the judges of
 435 compensation claims shall be governed by rules adopted by the
 436 Office of the Judges of Compensation Claims ~~Supreme Court~~,
 437 except to the extent that such rules conflict with the
 438 provisions of this chapter.

439 Section 15. Subsection (4) of section 440.45, Florida
 440 Statutes, is amended to read:

441 440.45 Office of the Judges of Compensation Claims.—

442 (4) The Office of the Judges of Compensation Claims shall
 443 adopt rules to effectuate ~~effect~~ the purposes of this section.
 444 Such rules shall include procedural rules applicable to workers'
 445 compensation claim resolution, including rules requiring
 446 electronic filing and service where deemed appropriate by the
 447 Deputy Chief Judge, and uniform criteria for measuring the
 448 performance of the office, including, but not limited to, the

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449 number of cases assigned and resolved ~~disposed~~, the age of
 450 pending and resolved ~~disposed~~ cases, timeliness of decisions
 451 ~~decisionmaking~~, extraordinary fee awards, and other data
 452 necessary for the judicial nominating commission to review the
 453 performance of judges as required in paragraph (2)(c). ~~The~~
 454 ~~workers' compensation rules of procedure approved by the Supreme~~
 455 ~~Court apply until the rules adopted by the Office of the Judges~~
 456 ~~of Compensation Claims pursuant to this section become~~
 457 ~~effective.~~

458 Section 16. Subsection (1) of section 552.40, Florida
 459 Statutes, is amended to read:

460 552.40 Administrative remedy for alleged damage due to the
 461 use of explosives in connection with construction materials
 462 mining activities.—

463 (1) A person may initiate an administrative proceeding to
 464 recover damages resulting from the use of explosives in
 465 connection with construction materials mining activities by
 466 filing a petition with the Division of Administrative Hearings
 467 by electronic means through the division's website on a form
 468 provided by it and accompanied by a filing fee of \$100 within
 469 180 days after the occurrence of the alleged damage. If the
 470 petitioner submits an affidavit stating that the petitioner's
 471 annual income is less than 150 percent of the applicable federal
 472 poverty guideline published in the Federal Register by the
 473 United States Department of Health and Human Services, the \$100
 474 filing fee must be waived.

475 Section 17. Paragraph (b) of subsection (4) of section
 476 553.73, Florida Statutes, is amended to read:

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477 553.73 Florida Building Code.—

478 (4)

479 (b) Local governments may, subject to the limitations of

480 this section, adopt amendments to the technical provisions of

481 the Florida Building Code which apply solely within the

482 jurisdiction of such government and which provide for more

483 stringent requirements than those specified in the Florida

484 Building Code, not more than once every 6 months. A local

485 government may adopt technical amendments that address local

486 needs if:

487 1. The local governing body determines, following a public

488 hearing which has been advertised in a newspaper of general

489 circulation at least 10 days before the hearing, that there is a

490 need to strengthen the requirements of the Florida Building

491 Code. The determination must be based upon a review of local

492 conditions by the local governing body, which review

493 demonstrates by evidence or data that the geographical

494 jurisdiction governed by the local governing body exhibits a

495 local need to strengthen the Florida Building Code beyond the

496 needs or regional variation addressed by the Florida Building

497 Code, that the local need is addressed by the proposed local

498 amendment, and that the amendment is no more stringent than

499 necessary to address the local need.

500 2. Such additional requirements are not discriminatory

501 against materials, products, or construction techniques of

502 demonstrated capabilities.

503 3. Such additional requirements may not introduce a new

504 subject not addressed in the Florida Building Code.

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505 4. The enforcing agency shall make readily available, in a
 506 usable format, all amendments adopted pursuant to this section.

507 5. Any amendment to the Florida Building Code shall be
 508 transmitted within 30 days by the adopting local government to
 509 the commission. The commission shall maintain copies of all such
 510 amendments in a format that is usable and obtainable by the
 511 public. Local technical amendments shall not become effective
 512 until 30 days after the amendment has been received and
 513 published by the commission.

514 6. Any amendment to the Florida Building Code adopted by a
 515 local government pursuant to this paragraph shall be effective
 516 only until the adoption by the commission of the new edition of
 517 the Florida Building Code every third year. At such time, the
 518 commission shall review such amendment for consistency with the
 519 criteria in paragraph (8)(a) and adopt such amendment as part of
 520 the Florida Building Code or rescind the amendment. The
 521 commission shall immediately notify the respective local
 522 government of the rescission of any amendment. After receiving
 523 such notice, the respective local government may readopt the
 524 rescinded amendment pursuant to the provisions of this
 525 paragraph.

526 7. Each county and municipality desiring to make local
 527 technical amendments to the Florida Building Code shall by
 528 interlocal agreement establish a countywide compliance review
 529 board to review any amendment to the Florida Building Code,
 530 adopted by a local government within the county pursuant to this
 531 paragraph, that is challenged by any substantially affected
 532 party for purposes of determining the amendment's compliance

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533 | with this paragraph. If challenged, the local technical
 534 | amendments shall not become effective until time for filing an
 535 | appeal pursuant to subparagraph 8. has expired or, if there is
 536 | an appeal, until the commission issues its final order
 537 | determining the adopted amendment is in compliance with this
 538 | subsection.

539 | 8. If the compliance review board determines such
 540 | amendment is not in compliance with this paragraph, the
 541 | compliance review board shall notify such local government of
 542 | the noncompliance and that the amendment is invalid and
 543 | unenforceable until the local government corrects the amendment
 544 | to bring it into compliance. The local government may appeal the
 545 | decision of the compliance review board to the commission. If
 546 | the compliance review board determines such amendment to be in
 547 | compliance with this paragraph, any substantially affected party
 548 | may appeal such determination to the commission. Any such appeal
 549 | shall be filed with the commission within 14 days of the board's
 550 | written determination. The commission shall promptly refer the
 551 | appeal to the Division of Administrative Hearings by electronic
 552 | means through the division's website for the assignment of an
 553 | administrative law judge. The administrative law judge shall
 554 | conduct the required hearing within 30 days, and shall enter a
 555 | recommended order within 30 days of the conclusion of such
 556 | hearing. The commission shall enter a final order within 30 days
 557 | thereafter. The provisions of chapter 120 and the uniform rules
 558 | of procedure shall apply to such proceedings. The local
 559 | government adopting the amendment that is subject to challenge
 560 | has the burden of proving that the amendment complies with this

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561 paragraph in proceedings before the compliance review board and
 562 the commission, as applicable. Actions of the commission are
 563 subject to judicial review pursuant to s. 120.68. The compliance
 564 review board shall determine whether its decisions apply to a
 565 respective local jurisdiction or apply countywide.

566 9. An amendment adopted under this paragraph shall include
 567 a fiscal impact statement which documents the costs and benefits
 568 of the proposed amendment. Criteria for the fiscal impact
 569 statement shall include the impact to local government relative
 570 to enforcement, the impact to property and building owners, as
 571 well as to industry, relative to the cost of compliance. The
 572 fiscal impact statement may not be used as a basis for
 573 challenging the amendment for compliance.

574 10. In addition to subparagraphs 7. and 9., the commission
 575 may review any amendments adopted pursuant to this subsection
 576 and make nonbinding recommendations related to compliance of
 577 such amendments with this subsection.

578 Section 18. Paragraph (b) of subsection (4) of section
 579 961.03, Florida Statutes, is amended to read:

580 961.03 Determination of status as a wrongfully
 581 incarcerated person; determination of eligibility for
 582 compensation.—

583 (4)

584 (b) If the prosecuting authority responds as set forth in
 585 paragraph (2)(b), and the court determines that the petitioner
 586 is eligible under the provisions of s. 961.04, but the
 587 prosecuting authority contests the nature, significance or
 588 effect of the evidence of actual innocence, or the facts related

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589 | to the petitioner's alleged wrongful incarceration, the court
590 | shall set forth its findings and transfer the petition by
591 | electronic means through the division's website to the division
592 | for findings of fact and a recommended determination of whether
593 | the petitioner has established that he or she is a wrongfully
594 | incarcerated person who is eligible for compensation under this
595 | act.

596 | Section 19. This act shall take effect July 1, 2010.

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:

Background

Most state agencies collect revenues in the form of fees, fines or taxes on behalf of the state. In general, it is not clear how many accounts go uncollected. Typically, revenues owed to the state are submitted voluntarily. There are few statewide standards relating to revenue collection, compliance and enforcement and many agencies have separate authority to enforce collections or waive delinquent accounts.

Currently, under s. 17.20, F.S., the Chief Financial Officer is responsible for directing the state attorneys to collect on all delinquent accounts. The Chief Financial Officer also has the ability to contract with a collection agent for the collection of delinquent accounts.

To implement this statute, the Department of Financial Services established by rule a requirement that all agencies, excluding those with independent statutory direction for collection, submit accounts to the contracted collection agent no more than 6 months after the time the account becomes delinquent. Under the rule, agencies are allowed to ask for consideration not to pursue collection of the delinquent account through a written request to the Chief Financial Officer.¹ As of August 2009, a total of \$292 million of uncollected accounts were referred to the collection agent by state agencies.

Auditor General Reports from the past four years identify a number of operational shortcomings related to internal agency controls and delinquent accounts, including instances where agencies failed to record accounts receivable in FLAIR and failed to report delinquent accounts to the Department of Financial Services for collection.

Effect of Bill

The bill authorizes the Chief Financial Officer to contract with multiple collection agents.

The bill declares that each agency is responsible for exercising due diligence to secure full payment of all accounts receivable and other claims due to the state. It also requires agencies to submit delinquent accounts to the contracted collection agent within 120 days from the time the account becomes delinquent—exempting those agencies that currently have separate statutory authority to pursue

¹ Rule 69I-21.003, Procedure for Processing Delinquent Accounts Receivable.

delinquent accounts through their own collection process. Agencies may request in writing for a different time period for the transfer of the accounts to the collection agent.

The bill requires each agency to submit an annual report to the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer that includes: a list and total of all accounts referred for collection and their current status; a list and total of all delinquent accounts not referred to a collection agency, the reasons for not referring the accounts, and the actions taken by the agency to collect; a list, total, and description of all accounts or claims that were written off or waived by the agency during the prior fiscal year, the reason for the write off, and whether collection of those accounts continue to be pursued. The report is due October 1, 2010 and each October 1 thereafter.

The bill requires the Chief Financial Officer to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that outlines the following information for any contracted collection agent: the amount of claims referred; the number of accounts by age and amount; a listing of agencies that failed to report known claims in a timely manner; and the total amount of claims uncollected. The report is due December 1, 2010 and each December 1 thereafter.

B. SECTION DIRECTORY:

Section 1: Amends s. 17.20, F.S., relating to claims for collections.

Section 2: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be an increased number of delinquent accounts referred to a collection agent.

D. FISCAL COMMENTS:

This bill may have a positive effect on state revenues if it leads to a higher collection rate of delinquent accounts. As a general rule, the earlier delinquent accounts are pursued for collection, the more likely the funds will be collected. Older accounts have a lower collection rate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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1 A bill to be entitled
2 An act relating to claims for collections due the state;
3 amending s. 17.20, F.S.; providing that each agency is
4 responsible for exercising due diligence in securing
5 payment for all accounts receivable and other claims due
6 the state; creating requirements for agencies for purposes
7 of reporting delinquent accounts receivable; requiring
8 agencies to report annually to the Legislature and Chief
9 Financial Officer on accounts receivable and other claims
10 due the state; requiring the Chief Financial Officer to
11 report annually to the Governor and Legislature on claims
12 for collections due the state; providing an effective
13 date.

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

16
17 Section 1. Section 17.20, Florida Statutes, is amended to
18 read:

19 17.20 Assignment of claims for collection.—

20 (1) The Chief Financial Officer shall charge the state
21 attorneys with the collection of all claims that are placed in
22 their hands for collection of money or property for the state or
23 any county or special district, or that it otherwise requires
24 them to collect. The charges are evidence of indebtedness of a
25 state attorney against whom any charge is made for the full
26 amount of the claim, until the charges have been collected and
27 paid into the treasury of the state or of the county or special
28 district or the legal remedies of the state have been exhausted,

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29 or until the state attorney demonstrates to the Chief Financial
 30 Officer that the failure to collect the charges is not due to
 31 negligence and the Chief Financial Officer has made a proper
 32 entry of satisfaction of the charge against the state attorney.

33 (2) The Chief Financial Officer may assign the collection
 34 of any claim to a collection agent or agents who are ~~is~~
 35 registered and in good standing pursuant to chapter 559, if the
 36 Chief Financial Officer determines the assignation to be cost-
 37 effective. The Chief Financial Officer may ~~pay an agent from any~~
 38 ~~amount collected under the claim a fee that the Chief Financial~~
 39 ~~Officer and the agent have agreed upon; may authorize the agent~~
 40 ~~to deduct the fee from the amount collected; may require the~~
 41 ~~appropriate state agency, county, or special district to pay the~~
 42 ~~agent the fee from any amount collected by the agent on its~~
 43 ~~behalf; or may authorize the agent~~ or agents ~~to add~~ a ~~the~~ fee to
 44 the amount to be collected.

45 (3) Each agency shall be responsible for exercising due
 46 diligence in securing full payment of all accounts receivable
 47 and other claims due the state.

48 (a) No later than 120 days after the date on which the
 49 account or other claim was due and payable, unless another
 50 period is approved by the Chief Financial Officer, and after
 51 exhausting other lawful measures available to the agency, each
 52 agency shall report the delinquent accounts receivable as
 53 directed by the Chief Financial Officer to the appropriate
 54 collection agent for further action, excluding those agencies
 55 that collect delinquent accounts with independent statutory
 56 authority.

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57 (b) An agency that has delinquent accounts receivable,
 58 which it considers such accounts to be of a nature that
 59 assignment to a collection agency would be inappropriate, may
 60 request in writing an exemption for those accounts. The request
 61 shall fully explain the nature of the delinquent accounts
 62 receivable and the reasons the agency believes such accounts
 63 would be precluded from being assigned to a collection agency.
 64 The Chief Financial Officer shall disapprove the request in
 65 writing unless it is shown that a demonstrative harm to the
 66 State will occur as a result of assignment to a collection
 67 agency.

68 (c) Agencies that have delinquent accounts receivable,
 69 which accounts are of such a nature that it would not be
 70 appropriate to transfer collection of those delinquent accounts
 71 to the Chief Financial Officer within 120 days from the date
 72 they are due and payable, may request in writing a different
 73 period of time for transfer of collection of such accounts. The
 74 request shall fully explain the nature of the delinquent
 75 accounts receivable and include a recommendation as to an
 76 appropriate period.

77 (4) Beginning October 1, 2010 and each October 1
 78 thereafter, each agency shall submit a report to the President
 79 of the Senate, the Speaker of the House of Representatives, and
 80 the Chief Financial Officer. The report shall include:

81 (a) A detailed list and total of all accounts that were
 82 referred for collection and the status of such accounts,
 83 including the date referred, any amounts collected, and the
 84 total that remains uncollected;

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85 (b) A list and total of all delinquent accounts that were
 86 not referred to a collection agency, the reasons for not
 87 referring those accounts, and the actions taken by the agency to
 88 collect; and

89 (c) A list, total and description of all accounts or
 90 claims that were written off or waived by the agency for any
 91 reason during the prior fiscal year, the reason for the write
 92 off, and whether any of those accounts continue to be pursued by
 93 a collection agent.

94 (5) Beginning December 1, 2010 and each December 1
 95 thereafter, the Chief Financial Officer shall provide to the
 96 Governor, the President of the Senate, and the Speaker of the
 97 House of Representatives a report that details the following
 98 information for any contracted collection agent:

99 (a) The amount of claims referred for collection by each
 100 agency, cumulatively and annually.

101 (b) The number of accounts by age and amount.

102 (c) A listing of those agencies that failed to report
 103 known claims to the Chief Financial Officer in a timely manner
 104 as prescribed in subsection (3).

105 (d) The total amount of claims collected, cumulatively and
 106 annually.

107 ~~(6)~~(3) Notwithstanding any other provision of law, in any
 108 contract providing for the location or collection of unclaimed
 109 property, the Chief Financial Officer may authorize the
 110 contractor to deduct its fees and expenses for services provided
 111 under the contract from the unclaimed property that the
 112 contractor has recovered or collected under the contract. The

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113 Chief Financial Officer shall annually report to the Governor,
114 President of the Senate, and the Speaker of the House of
115 Representatives the total amount collected or recovered by each
116 contractor during the previous fiscal year and the total fees
117 and expenses deducted by each contractor.

118 Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-28 Open Government Sunset Review Act
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson <i>raw</i>	Williamson <i>raw</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

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

The Act originally was created in 1984; however, it was repealed in 1995 and replaced with the Open Government Sunset Review Act of 1995. When the original Open Government Sunset Review Act was repealed in 1995 cross-references to the repealed section remained in law and those cross-references were not changed to reflect the new Act.

This bill corrects those outdated cross-references.

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

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:

Background

Open Government Sunset Review Act

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

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

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

History of the Act

The Act originally was created in 1984 and codified at s. 119.14, F.S.² At that time it set forth a legislative review process every 10 years after the creation of an exemption.³ In 1995, the original Open Government Sunset Review Act was repealed⁴ and replaced with the Open Government Sunset Review Act of 1995.⁵ The 1995 Act abolished the 10 year legislative review process and replaced it with a onetime review process the fifth year after creation or substantial amendment of an exemption.⁶ In 2005, the 1995 Act was amended to change the name back to the Open Government Sunset Review Act. In addition, redundant language was removed from the 1995 Act.⁷

¹ Section 119.15, F.S.

² Section 8 of chapter 84-298, L.O.F.

³ Section 119.14(3)(a), F.S.

⁴ Section 1 of chapter 95-217, L.O.F.

⁵ Section 2 of chapter 95-217, L.O.F.

⁶ Section 119.15(3)(a), F.S.

⁷ Section 37 of chapter 2005-251, L.O.F.

Effect of Bill

When the original Open Government Sunset Review Act was repealed in 1995 cross-references to the repealed section remained in law and those cross-references were not changed to reflect the new Act. This bill corrects those outdated cross-references.

B. SECTION DIRECTORY:

Section 1 amends s. 27.151, F.S., to correct a cross-reference.

Section 2 amends s. 378.406, F.S., to correct a cross-reference.

Section 3 amends s. 400.0077, F.S., to correct a cross-reference.

Section 4 amends s. 403.111, F.S., to correct a cross-reference.

Section 5 amends s. 655.0321, F.S., to correct a cross-reference.

Section 6 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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1 A bill to be entitled
 2 An act relating to the Open Government Sunset Review Act;
 3 amending s. 27.151, F.S., relating to confidentiality of
 4 specified executive orders; correcting a cross-reference;
 5 amending s. 378.406, F.S., relating to confidentiality of
 6 records; correcting a cross-reference; amending s.
 7 400.0077, F.S., relating to confidentiality; correcting a
 8 cross-reference; amending s. 403.111, F.S., relating to
 9 confidential records; correcting a cross-reference;
 10 amending s. 655.0321, F.S., relating to restricted access
 11 to certain hearings, proceedings, and related documents;
 12 correcting a cross-reference; providing an effective date.

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

15
 16 Section 1. Section 27.151, Florida Statutes, is amended to
 17 read:

18 27.151 Confidentiality of specified executive orders;
 19 criteria.--

20 (1) If the Governor provides in an executive order issued
 21 pursuant to s. 27.14 or s. 27.15 that the order or a portion
 22 thereof is confidential, the order or portion so designated, the
 23 application of the Governor to the Supreme Court and all
 24 proceedings thereon, and the order of the Supreme Court shall be
 25 confidential and exempt from the provisions of s. 119.07(1).

26 (2) The Governor shall base his or her decision to make an
 27 executive order confidential on the criteria set forth in s.
 28 119.15(6)(b) ~~119.14~~.

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29 | (3) To maintain the confidentiality of the executive
 30 | order, the state attorney, upon entering the circuit of
 31 | assignment, shall immediately have the executive order sealed by
 32 | the court prior to filing it with the clerk of the circuit
 33 | court. The Governor may make public any executive order issued
 34 | pursuant to s. 27.14 or s. 27.15 by a subsequent executive
 35 | order, and at the expiration of a confidential executive order
 36 | or any extensions thereof, the executive order and all
 37 | associated orders and reports shall be open to the public
 38 | pursuant to chapter 119 unless the information contained in the
 39 | executive order is confidential pursuant to the provisions of
 40 | chapter 39, chapter 415, chapter 984, or chapter 985.

41 | Section 2. Paragraph (a) of subsection (1) of section
 42 | 378.406, Florida Statutes, is amended to read:

43 | 378.406 Confidentiality of records; availability of
 44 | information.--

45 | (1)(a) Any information relating to prospecting, rock
 46 | grades, or secret processes or methods of operation which may be
 47 | required, ascertained, or discovered by inspection or
 48 | investigation shall be exempt from the provisions of s.
 49 | 119.07(1), shall not be disclosed in public hearings, and shall
 50 | be kept confidential by any member, officer, or employee of the
 51 | department, if the applicant requests the department to keep
 52 | such information confidential and informs the department of the
 53 | basis for such confidentiality. Should the secretary determine
 54 | that such information requested to be kept confidential shall
 55 | not be kept confidential, the secretary shall provide the
 56 | operator with not less than 30 days' notice of his or her intent

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57 | to release the information. When making his or her
 58 | determination, the secretary shall consider the public purposes
 59 | specified in s. 119.15(6)(b) ~~119.14(4)(b)~~.

60 | Section 3. Paragraph (c) of subsection (1) of section
 61 | 400.0077, Florida Statutes, is amended to read:

62 | 400.0077 Confidentiality.--

63 | (1) The following are confidential and exempt from the
 64 | provisions of s. 119.07(1):

65 | (c) Any other information about a complaint, including any
 66 | problem identified by an ombudsman council as a result of an
 67 | investigation, unless an ombudsman council determines that the
 68 | information does not meet any of the criteria specified in s.
 69 | 119.15(6)(b) ~~119.14(4)(b)~~; or unless the information is to
 70 | collect data for submission to those entities specified in s.
 71 | 712(c) of the federal Older Americans Act for the purpose of
 72 | identifying and resolving significant problems.

73 | Section 4. Subsection (1) of section 403.111, Florida
 74 | Statutes, is amended to read:

75 | 403.111 Confidential records.--

76 | (1) Any information, other than effluent data and those
 77 | records described in 42 U.S.C. s. 7661a(b)(8), relating to
 78 | secret processes or secret methods of manufacture or production,
 79 | or relating to costs of production, profits, or other financial
 80 | information which is otherwise not public record, which may be
 81 | required, ascertained, or discovered by inspection or
 82 | investigation shall be exempt from the provisions of s.
 83 | 119.07(1), shall not be disclosed in public hearings, and shall
 84 | be kept confidential by any member, officer, or employee of the

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85 department, upon a showing satisfactory to the department that
 86 the information should be kept confidential. The person from
 87 whom the information is obtained must request that the
 88 department keep such information confidential and must inform
 89 the department of the basis for the claim of confidentiality.
 90 The department shall, subject to notice and opportunity for
 91 hearing, determine whether the information requested to be kept
 92 confidential should or should not be kept confidential. The
 93 department shall determine whether the information submitted
 94 should be kept confidential pursuant to the public purpose test
 95 as stated in s. 119.15(6)(b)3. ~~119.14(4)(b)3.~~

96 Section 5. Section 655.0321, Florida Statutes, is amended
 97 to read:

98 655.0321 Restricted access to certain hearings,
 99 proceedings, and related documents.--The office shall consider
 100 the public purposes specified in s. 119.15(6)(b) ~~119.14(4)(b)~~ in
 101 determining whether the hearings and proceedings conducted
 102 pursuant to s. 655.033 for the issuance of cease and desist
 103 orders and s. 655.037 for the issuance of suspension or removal
 104 orders shall be closed and exempt from the provisions of s.
 105 286.011, and whether related documents shall be confidential and
 106 exempt from the provisions of s. 119.07(1).

107 Section 6. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-30 State-owned real property
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Tait <i>MCT</i>	Williamson <i>hw</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

During the regular 2009 session, the Florida Legislature directed the Department of Management Services (DMS) to create, administer and maintain a comprehensive database of all state-owned real property and directed the agency to create a plan to compile the information necessary.

Through its research, DMS found that independent legislation over the last three decades has led to disparate public land databases—creating redundancy, as well as gaps in information. In February 2010, DMS and the Department of Environmental Protection (DEP) recommended to the Legislature that leveraging an existing DEP property database, the Land Information Tracking System, would provide the best option for creating a comprehensive database of all state-owned real property.

To implement a comprehensive database of state-owned real property, the bill makes several changes in consideration of the proposal submitted by DMS, DEP and the Department of Revenue (DOR). The bill requires DEP to maintain a comprehensive database of all state-owned real property and to ensure the database is available to the public in an electronic format. The bill creates new requirements for DMS and DOR to supply data to the comprehensive database.

The bill eliminates the requirement for DEP to maintain two current databases: the Public Lands Inventory and the Florida Statewide Public Lands Inventory. Both of these databases contain information that will be available in the comprehensive database.

The Department of Environmental Protection estimates that the creation of a comprehensive database will save approximately \$100,000 annually through the elimination of redundant databases. Additional revenues could be realized in the future through any surplus sales. DEP and DMS plan to share in costs associated with design and development of the comprehensive database through current fiscal resources. The total estimated cost to consolidate systems is estimated at \$643,500.

There may be minimal administrative costs associated with a new annual requirement for local governments to provide annual property information to local property appraisers. In addition, property appraisers will see an increase in workload due to changes in this bill that require a physical inspection of state-owned property at the request of the owner.

The bill has an effective date of July 1, 2010.

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:

Background

During the regular 2009 session, the Florida Legislature directed the Department of Management Services (DMS or department) to create, administer and maintain a comprehensive database of all state-owned real property and directed the agency to create a plan to compile the information necessary.¹ The agency submitted the plan to the House, Senate and Governor in January 2010, with a subsequent addendum in February 2010.

Through its research, the department found that independent legislation over the last three decades has led to disparate public land databases—creating redundancy, as well as gaps in information.

There are several statewide databases for state-owned land including:

- The Department of Environmental Protection (DEP) Public Lands Inventory – a database of all public lands containing more than 67,000 state-owned parcels.
- The DEP Florida Statewide Public Lands Inventory – a database of all public lands captured directly from county property appraisers.
- The DEP Board of Trustees Land Document System – a listing of state-owned lands owned by the Board of Trustees.
- The DEP Lands Information Tracking System (LITS) – currently under development, this database will contain funding, data, and mapping information related to lands acquired from Florida Preservation 2000 or Florida Forever.
- The Department of Revenue Tax Rolls – an inventory of all private and public lands provided by county property appraisers to ensure counties meet minimum assessment standards.
- The DMS State Facilities Inventory – includes condition information on more than 3,800 state-owned buildings.
- The Department of Financial Services Risk Management Database – includes more than 20,000 state-owned buildings and structures for insurance assessments.²

In its final report to the Legislature, the Department of Management Services outlined three options for meeting the requirements outlined by the 2009 Florida Legislature:

- 1) Outsource the implementation and management of the state-owned real property database;

¹ Chapter 2009-77, L.O.F. (SB 1804)

² Senate Bill 1804: Final Report to the Legislature, Plan for a Comprehensive Database for State-owned Real Property, Department of Management Services, January, 4, 2010.

- 2) Develop a new database in DMS that meets requirements set forth in law; or
- 3) Create a new database in DMS or DEP that consolidates existing databases to meet the requirements in law.

In February 2010, DMS and DEP recommended to the Legislature that leveraging an existing DEP property database, LITS, would provide the best option for creating a database of all state-owned real property. The comprehensive database would provide the opportunity to retire two existing DEP systems in the near future and could be accomplished within currently allocated resources.

Effect of Bill

To implement a comprehensive database of state-owned real property, the bill makes several changes in consideration of the proposal from DMS, DEP and the Department of Revenue.

The bill requires DEP to maintain a comprehensive database of all state-owned real property and ensure the database is available to the public in an electronic format. The database must be completed by March 31, 2011.

The bill requires DMS to maintain certain facility inventory data: including valuations, operating costs, building use, full-time equivalency occupancy, known restrictions or historic designations, and leases or subleases and associated revenues. The bill instructs DMS to use the facility data to conduct strategic analyses, including candidates for surplus sale. The bill requires owning or operating agencies to submit the proscribed information to the department beginning July 1, 2011 and each July 1 thereafter. The bill directs DMS to provide facility data and analysis for the comprehensive database.

The bill authorizes the Department of Revenue to share confidential tax roll data with DEP. The information will be used to assist in the identification and confirmation of publicly-held lands. Any lands held by the state, a state agency, or a water management district, that are not deemed essential or necessary for conservation purposes, must be considered for review for surplus sale.

The bill modifies the deadline for the Board of Trustees to provide a list of real property owned to each state agency, local government, or other public entity from December 31 to November 30 each year. The bill modifies the deadline for each agency or public entity to notify the local property appraiser of any corrections to the list received by the Board of Trustees from March 31 to January 31 each year. These changes will ensure the database is current and up-to-date at the beginning of each Legislative Session.

The bill eliminates the requirement for DEP to maintain two current databases—the Public Lands Inventory and the Florida Statewide Public Lands Inventory. Both of these databases contain information that will be available in the comprehensive database.

The bill creates a new requirement for property appraisers to physically inspect any state-owned land at the request of the owner.

B. SECTION DIRECTORY:

Section 1. Makes legislative findings.

Section 2. Amends section 193.023, F.S., to require property appraisers to inspect any parcel of state-owned real property on request of the owner.

Section 3. Amends section 193.085, F.S., to clarify that local governments shall annually notify property appraisers of any and all real property.

Section 4. Amends section 213.053, F.S., to provide the Department of Revenue with the ability to share confidential information with DEP.

Section 5. Amends section 216.0152, F.S., to require DMS to maintain certain inventory data.

Section 6. Amends section 253.03, F.S., to require DEP to maintain a comprehensive database of all state-owned real property.

Section 7. Amends section 253.034, F.S., to eliminate duplicative databases.

Section 8. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

After the comprehensive database is realized, the Department of Environmental Protection estimates it will save approximately \$100,000 annually through the elimination of redundant databases. Additional revenues could be realized in the future through any surplus sales.

2. Expenditures:

The Department of Environmental Protection and the Department of Management Services plan to share in costs associated with design and development of the comprehensive database through current fiscal resources. The total estimated cost to consolidate systems is estimated at \$643,500.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There may be minimal administrative costs associated with a new annual requirement for local governments to provide annual property information to local property appraisers. In addition, property appraisers will see an increase in workload due to changes in this bill that require a physical inspection of state-owned property at the request of the owner.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandate provision appears to apply because the bill requires counties or municipalities to take an action requiring the expenditure of funds; however, an exemption applies because the mandate would have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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1 A bill to be entitled
 2 An act relating to state-owned real property; making
 3 legislative findings; amending s. 193.023, F.S.; requiring
 4 assessments of state-owned real property; amending s.
 5 193.085, F.S.; requiring annual notification from local
 6 governments; amending s. 213.053, F.S.; providing the
 7 Department of Environmental Protection confidential
 8 information; amending s. 216.0152, F.S.; providing
 9 requirements for inventory information; amending s.
 10 253.03, F.S.; requiring the Department of Environmental
 11 Protection to maintain a comprehensive database of state-
 12 owned land; amending s. 253.034, F.S.; removing a
 13 requirement state land database; providing an effective
 14 date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. The Legislature finds that the management of
 19 state-owned real property requires a comprehensive integrated
 20 inventory system to support decision making processes, including
 21 dispositions. This comprehensive database will serve as the
 22 authoritative inventory repository for state-owned facilities
 23 and publicly-owned lands data that is collected through various
 24 agency operations in disparate systems. The comprehensive
 25 database will provide agencies owning property, the public, and
 26 state policy makers with ready access to an integrated view of
 27 collected information and, wherever operationally feasible and
 28 cost effective, replace any duplicative state property

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29 databases. The initial objective is to establish an integrated
 30 inventory of the state-owned real property data from the
 31 Department of Environmental Protection, the Department of
 32 Management Services, and the Department of Revenue and to
 33 collect operating costs and occupancy data from state agencies,
 34 while considering future developments to include leased lands
 35 and facilities data used by the Department of Financial Services
 36 and the Department of Management Services. The new database
 37 will optimize the use of existing data collection processes and
 38 minimize imposing new collection and reporting requirements
 39 where adequate existing data sources are available; this will
 40 include incorporating interfaces for tax roll data collected
 41 under statutory authorities by the Department of Revenue from
 42 the county property appraisers and other sources. The
 43 Legislature therefore intends to promote the development,
 44 maintenance, and use of the database through a coordinated
 45 interagency effort that leverages existing resources and
 46 processes to minimize costs and impacts on agencies owning
 47 property and county property appraisers.

48 Section 2. Subsection (2) of section 193.023, Florida
 49 Statutes, is amended to read:

50 193.023 Duties of the property appraiser in making
 51 assessments.—

52 (2) In making his or her assessment of the value of real
 53 property, the property appraiser is required to physically
 54 inspect the property at least once every 5 years. Where
 55 geographically suitable, and at the discretion of the property
 56 appraiser, the property appraiser may use image technology in

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57 lieu of physical inspection to ensure that the tax roll meets
 58 all the requirements of law. The Department of Revenue shall
 59 establish minimum standards for the use of image technology
 60 consistent with standards developed by professionally recognized
 61 sources for mass appraisal of real property. However, the
 62 property appraiser shall physically inspect any parcel of
 63 taxable or state-owned real property upon the request of the
 64 taxpayer or owner.

65 Section 3. Paragraph (a) of subsection (3) of section
 66 193.085, Florida Statutes, is amended to read:

67 193.085 Listing all property.-

68 (3) (a) ~~The department will coordinate with all other~~
 69 ~~departments of state government to ensure that the several~~
 70 ~~property appraisers are properly notified annually of state~~
 71 ~~ownership of real property. The department shall promulgate~~
 72 ~~regulations to ensure that~~ All forms of local government,
 73 special taxing districts, multicounty districts, and
 74 municipalities must provide annually written notification to
 75 ~~properly notify annually the several~~ property appraisers of any
 76 and all real property owned by any of them so that ownership of
 77 all such property will be properly listed.

78 Section 4. Paragraph (z) of subsection (8) of section
 79 213.053, Florida Statutes, is amended to read:

80 213.053 Confidentiality and information sharing.-

81 (8) Notwithstanding any other provision of this section,
 82 the department may provide:

83 (z) Information relative to s. 253.03(8) and s. 253.0325
 84 to the Department of Environmental Protection in the conduct of

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85 its official business.

86
 87 Disclosure of information under this subsection shall be
 88 pursuant to a written agreement between the executive director
 89 and the agency. Such agencies, governmental or nongovernmental,
 90 shall be bound by the same requirements of confidentiality as
 91 the Department of Revenue. Breach of confidentiality is a
 92 misdemeanor of the first degree, punishable as provided by s.
 93 775.082 or s. 775.083.

94 Section 5. Subsections (1) and (2) of section 216.0152,
 95 Florida Statutes, are amended to read:

96 216.0152 Inventory of state-owned facilities or state-
 97 occupied facilities.—

98 (1) The Department of Management Services shall develop
 99 and maintain an automated inventory of all facilities owned,
 100 leased, rented, or otherwise occupied or maintained by any
 101 agency of the state or by the judicial branch, ~~except those with~~
 102 ~~less than 3,000 square feet.~~ The inventory data shall be
 103 provided by the owning or operating agency and shall include the
 104 location, occupying agency, ownership, size, condition
 105 assessment, valuations, operating costs, maintenance record,
 106 age, parking and employee facilities, building use, full-time
 107 equivalent occupancy, known restrictions or historic
 108 designations including conservation land status, leases or
 109 subleases and associated revenues and other information as
 110 required by the department. The department shall use such data
 111 for determining maintenance needs, conducting strategic
 112 analyses, including, but not limited to, candidates for surplus,

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113 and life-cycle cost evaluations of the facility. Beginning July
 114 1, 2011 and each July 1 thereafter, inventory information shall
 115 be provided to the department by the owning or operating agency
 116 in a format prescribed by the department. The inventory need not
 117 include a condition assessment or maintenance record of
 118 facilities not owned by a state agency or by the judicial
 119 branch. The term "facility," as used in this section, means
 120 buildings, structures, and building systems, but does not
 121 include transportation facilities of the state transportation
 122 system. The Department of Transportation shall develop and
 123 maintain an inventory of transportation facilities of the state
 124 transportation system. The Board of Governors of the State
 125 University System and the Department of Education, respectively,
 126 shall develop and maintain an inventory, in the manner
 127 prescribed by the Department of Management Services, of all
 128 state university and community college facilities and shall make
 129 the data available in a format acceptable to the Department of
 130 Management Services.

131 (2) For purposes of assessing needed repairs and
 132 renovations of facilities, the Department of Management Services
 133 shall update its inventory with condition information for
 134 facilities of 3,000 square feet or more and cause to be updated
 135 the other inventories required by subsection (1) at least once
 136 every 5 years, but the inventories shall record acquisitions of
 137 new facilities and significant changes in existing facilities as
 138 they occur. The Department of Management Services shall provide
 139 each agency and the judicial branch with the most recent
 140 inventory applicable to that agency or to the judicial branch.

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141 Each agency and the judicial branch shall, in the manner
 142 prescribed by the Department of Management Services, report
 143 significant changes in the inventory as they occur. Items
 144 relating to the condition and life-cycle cost of a facility
 145 shall be updated at least every 5 years.

146 Section 6. Subsection (8) of section 253.03, Florida
 147 Statutes, is amended to read:

148 253.03 Board of trustees to administer state lands; lands
 149 enumerated.—

150 (8) (a) The Board of Trustees of the Internal Improvement
 151 Trust Fund shall prepare, using tax roll data provided by the
 152 Department of Revenue as supplied by the counties, an annual
 153 inventory of all publicly owned lands within the state. Such
 154 inventory shall include all lands owned by any unit of state
 155 government or local government; by the Federal Government, to
 156 the greatest extent possible; and by any other public entity.
 157 ~~The board shall submit a summary report of the inventory and a~~
 158 ~~list of major discrepancies between the inventory and the tax~~
 159 ~~roll data to the President of the Senate and the Speaker of the~~
 160 ~~House of Representatives on or before March 1 of each year.~~

161 (b) The Department of Environmental Protection shall
 162 maintain a comprehensive database of all state-owned real
 163 property. The database shall be available to the public in an
 164 electronic format and be complete and operational by March 31,
 165 2011. The database shall be used by agencies when analyzing
 166 candidates for real property acquisition, use consolidation, or
 167 disposition. The Department of Management Services shall direct
 168 agency entries of facility data and analysis as identified in

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169 s. 216.0152(1) for the statewide database.

170 (c) In addition to any other parcel data available, the
 171 inventory shall include a legal description or proper reference
 172 thereto, the number of acres or square feet within the
 173 boundaries, and the assessed value of all publicly owned
 174 uplands. To the greatest extent practicable, the legal
 175 description or proper reference thereto and the number of acres
 176 or square feet shall be determined for all publicly owned
 177 submerged lands. For the purposes of this subsection, the term
 178 "submerged lands" means publicly owned lands below the ordinary
 179 high-water mark of fresh waters and below the mean high-water
 180 line of salt waters extending seaward to the outer jurisdiction
 181 of the state. ~~By October 31 of each year, the Department of~~
 182 ~~Revenue shall furnish, in machine-readable form, annual, current~~
 183 ~~tax roll data for public lands to the board to be used in~~
 184 ~~compiling the inventory.~~

185 (d)1.(e) Beginning September 30, 2011 and each September
 186 30 thereafter, the Department of Revenue shall furnish to the
 187 board, in electronic form, current tax roll data for public
 188 lands to be used in compiling the inventory.

189 2. By November 30 ~~By December 31~~ of each year, the board
 190 shall prepare and provide to each state agency and local
 191 government and any other public entity which holds title to real
 192 property, including any water management district, drainage
 193 district, navigation district, or special taxing district, a
 194 list of the real property owned by such entity, required to be
 195 listed on county assessment rolls, using tax roll data provided
 196 by the Department of Revenue.

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197 3. By January 31 ~~March 31~~ of the following year, each such
 198 entity shall review its list and inform the appropriate property
 199 appraiser of any corrections to the list. The appropriate county
 200 property appraiser ~~Department of Revenue~~ shall provide for
 201 entering such corrections on the appropriate county tax roll.

202 (e) The board shall use tax roll data which shall be
 203 provided by the Department of Revenue to assist in the
 204 identification and confirmation of publicly-held lands. Lands
 205 held by the state or a water management district and lands
 206 purchased by the state, a state agency, or a water management
 207 district deemed not essential or unnecessary for conservation
 208 purposes shall be subject to review for surplus sale. No new
 209 data requirements will be imposed on the property appraisers
 210 solely for the comprehensive database.

211 (f) ~~(d)~~ Whenever real property is listed on the real
 212 property assessment rolls of the respective counties in the name
 213 of the State of Florida or any of its agencies, the listing
 214 shall not be changed in the absence of a recorded deed executed
 215 by the State of Florida or the state agency in whose name the
 216 property is listed. If, in preparing the assessment rolls, the
 217 ~~several~~ property appraisers within the state become aware of the
 218 existence of a recorded deed not executed by the state and
 219 purporting to convey real property listed on the assessment
 220 rolls as state-owned, the property appraiser shall immediately
 221 forward a copy of the recorded deed to the state agency in whose
 222 name the property is listed.

223 (g) Wherever operationally feasible and cost effective,
 224 when the comprehensive database is available, agencies shall

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225 retire any duplicative state property databases.
 226 Section 7. Subsection (8) of section 253.034, Florida
 227 Statutes, is amended to read:
 228 253.034 State-owned lands; uses.—
 229 (8) (a) ~~Notwithstanding other provisions of this section,~~
 230 ~~the Division of State Lands is directed to prepare a state~~
 231 ~~inventory of all federal lands and all lands titled in the name~~
 232 ~~of the state, a state agency, a water management district, or a~~
 233 ~~local government on a county-by-county basis. To facilitate the~~
 234 ~~development of the state inventory, each county shall direct the~~
 235 ~~appropriate county office with authority over the information to~~
 236 ~~provide the division with a county inventory of all lands~~
 237 ~~identified as federal lands and lands titled in the name of the~~
 238 ~~state, a state agency, a water management district, or a local~~
 239 ~~government.~~ The Legislature recognizes the value of the state's
 240 conservation lands as water recharge areas and air filters and,
 241 in an effort to better understand the scientific underpinnings
 242 of carbon sequestration, carbon capture, and greenhouse gas
 243 mitigation, to inform policymakers and decisionmakers, and to
 244 provide the infrastructure for landowners, the Division of State
 245 Lands shall contract with an organization experienced and
 246 specialized in carbon sinks and emission budgets to conduct an
 247 inventory of all lands that were acquired pursuant to
 248 Preservation 2000 and Florida Forever and that were titled in
 249 the name of the Board of Trustees of the Internal Improvement
 250 Trust Fund. The inventory shall determine the value of carbon
 251 capture and carbon sequestration. Such inventory shall consider
 252 potential carbon offset values of changes in land management

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253 practices, including, but not limited to, replanting of trees,
 254 routine prescribed burns, and land use conversion. Such an
 255 inventory shall be completed and presented to the board of
 256 trustees by July 1, 2009.

257 ~~(b) The state inventory must distinguish between lands~~
 258 ~~purchased by the state or a water management district as part of~~
 259 ~~a core parcel or within original project boundaries, as those~~
 260 ~~terms are used to meet the surplus requirements of subsection~~
 261 ~~(6), and lands purchased by the state, a state agency, or a~~
 262 ~~water management district which are not essential or necessary~~
 263 ~~for conservation purposes.~~

264 ~~(c) In any county having a population of 75,000 or fewer,~~
 265 ~~or a county having a population of 100,000 or fewer which is~~
 266 ~~contiguous to a county having a population of 75,000 or fewer,~~
 267 ~~in which more than 50 percent of the lands within the county~~
 268 ~~boundary are federal lands and lands titled in the name of the~~
 269 ~~state, a state agency, a water management district, or a local~~
 270 ~~government, those lands titled in the name of the state or a~~
 271 ~~state agency which are not essential or necessary to meet~~
 272 ~~conservation purposes may, upon request of a public or private~~
 273 ~~entity, be made available for purchase through the state's~~
 274 ~~surplusing process. Rights-of-way for existing, proposed, or~~
 275 ~~anticipated transportation facilities are exempt from the~~
 276 ~~requirements of this paragraph. Priority consideration shall be~~
 277 ~~given to buyers, public or private, willing to return the~~
 278 ~~property to productive use so long as the property can be~~
 279 ~~reentered onto the county ad valorem tax roll. Property acquired~~
 280 ~~with matching funds from a local government shall not be made~~

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281 ~~available for purchase without the consent of the local~~
282 ~~government.~~

283 (b) ~~(d)~~ If state-owned lands are subject to annexation
284 procedures, the Division of State Lands must notify the county
285 legislative delegation of the county in which the land is
286 located.

287 Section 8. This act shall take effect July 1, 2010.