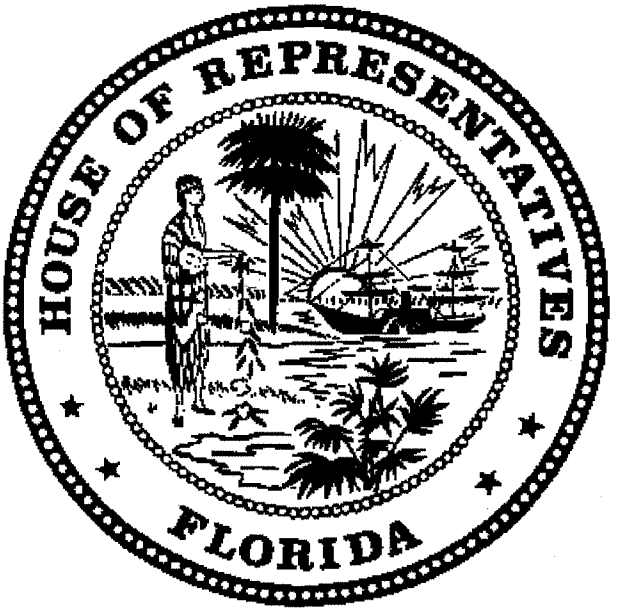

Governmental Affairs Policy Committee

Wednesday, March 24, 2010
8:00 AM – 10:30 AM
306 House Office Building

Revised

Larry Cretul
Speaker

Robert C. "Rob" Schenck
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Governmental Affairs Policy Committee

Start Date and Time: Wednesday, March 24, 2010 08:00 am

End Date and Time: Wednesday, March 24, 2010 10:30 am

Location: 306 HOB
Duration: 2.50 hrs

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

PCS for HB 219 -- Immigration

Consideration of the following bill(s):

HB 405 Public Meetings by Kiar
HB 625 Voter Information Cards by Gibson
HB 1075 Recertification of Minority Business Enterprises by Braynon
HB 1179 Electronic Documents Recorded in the Official Records by Grimsley
HB 1401 Export of Goods, Commodities, & Things of Value to Foreign Countries by Rivera
HB 1511 Effective Public Notices by Governmental Entities by Workman
HB 1565 Rulemaking by Dorworth
HB 1603 Florida State Employees' Charitable Campaign by Cruz

Consideration of the following proposed committee bill(s):

PCB GAP 10-19 -- OGSR Voluntary Prekindergarten
PCB GAP 10-20 -- OGSR H. Lee Moffitt Cancer Center and Research Institute
PCB GAP 10-29 -- Professional Sports Franchises

Any of the above referenced bills that are not heard at this meeting will be carried over to the meeting on Thursday, March 25, 2010.

NOTICE FINALIZED on 03/22/2010 16:19 by Ellinor.Martha

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 219 Immigration
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The federal Immigration Reform and Control Act of 1986 made it illegal for any U.S. employer to knowingly:

- Hire, recruit or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit or refer for a fee any person (citizen or alien) without following the record keeping requirements of the Act.

This law established a procedure that employers must follow to verify that employees are authorized to work in the United States. The procedure requires employees to present documents that establish both the worker's identity and eligibility to work, and requires employers to complete an "I-9" form for each new employee hired. This procedure is required of all employers, regardless of size.

The bill prohibits public employers from entering into contracts for the physical performance of services unless the contractor registers with and participates in a federal work authorization program. Contractors who receive such contract awards are prohibited from executing a contract, purchase order, or subcontract in connection with the award unless the contractor and all subcontractors register with and participate in a federal work authorization program. The bill requires specified contractors and subcontractors to certify in writing that they have registered with and participate in a federal work authorization program. Compliance with this requirement is phased in between July 1, 2011 and July 1, 2013, based upon the number of employees employed by a specified contractor or subcontractor.

The bill also requires the Department of the Lottery to verify that the winner of a prize from specified lottery games is a citizen of or legally present in the United States. The Department of the Lottery may have increased personnel costs to train Lottery prize payment staff on citizenship and immigration requirements and to administer the bill.

The bill creates a fiscal impact on the Department of Management Services and the Department of Transportation associated with the promulgation of rules and the administration of those rules to ensure contractors and subcontractors participate in a federal work authorization program. The Department of the Lottery may incur increased personnel costs to train Lottery prize payment staff on citizenship and immigration requirements purposes of administering the bill.

Private contractors and subcontractors not presently in compliance with the federal work authorization program may have to expend funds to come into compliance.

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:

The Federal Work Authorization Program

Background

The federal Immigration Reform and Control Act of 1986 (IRCA) made it illegal for any U.S. employer to knowingly:

- Hire, recruit or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit or refer for a fee any person (citizen or alien) without following the record keeping requirements of the Act.[1]

The law established a procedure that employers must follow to verify that employees are authorized to work in the United States. The procedure requires employees to present documents that establish both the worker's identity and eligibility to work, and requires employers to complete an "I-9" form for each new employee hired. This procedure is required of all employers, regardless of size.

The United States Citizenship and Immigration Services (USCIS - formerly the INS and now part of the Department of Homeland Security) enforces IRCA. However, because the IRCA only required that employees produce paper documents verifying their identity or eligibility and because such documents are easily falsified, enforcement has been problematic.

In 1996, IRCA was amended by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). In an attempt to address some of the problems related to employment eligibility verification, the IIRIRA created three pilot programs to test electronic employment eligibility verification systems. Of these three programs, the Basic Pilot program, an Internet-based system operated by USCIS in partnership with the Social Security Administration (SSA), was chosen for nationwide implementation. Now known as the Employment Eligibility Verification Program (EEV), the Basic Pilot program provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their social security numbers. The EEV is free to employers and is available in all 50 states.

[1] P.L. 99-603, 100 Stat. 3359. IRCA amended the Immigration and Nationality Act (INA) (codified as amended at 8 U.S.C. 1101).

Effect of the Bill

The bill prohibits public employers from entering into contracts for the physical performance of services unless the contractor registers and participates in a federal work authorization program.

The Florida Security and Immigration Compliance Act

The Florida Security and Immigration Compliance Act is created in s. 287.0575, F.S., to require compliance with federal work authorization programs. Contractors who receive a contract award under s. 287.057, F.S.,[2] for such services are prohibited from executing a contract, purchase order, or subcontract in connection with the award unless the contractor and all subcontractors register and participate in a federal work authorization program. Contractors must ensure that subcontractors who provide services for the contractor register with and participate in the federal work authorization program. The bill requires contractors and subcontractors to certify in writing that they have registered with and participate in a federal work authorization program over a phased in schedule between July 1, 2011 and July 1, 2013.[3] The bill also requires the Department of Management Services to adopt rules and prescribe forms necessary to administer this bill.

Department of Transportation

The bill creates similar requirements in s. 337.163, F.S. Starting July 1, 2011, the Department of Transportation (DOT) is prohibited from entering into contracts for the physical performance of services unless the contractor registers with and participates in a federal work authorization program. The bill prohibits contractors who receive a contract award under ch. 337, F.S.,[4] from executing a contract, purchase order, or subcontract in connection with the award unless the contractor and all subcontractors register with and participate in a federal work authorization program. Contractors also must ensure that subcontractors who provide services for the contractor register with and participate in the federal work authorization program. The bill requires contractors and subcontractors to certify in writing that they have registered with and participate in a federal work authorization program. It also requires the Secretary of DOT to prescribe forms and adopt rules deemed necessary to effectuate the process.

Definitions

The bill defines the following terms:

- *Federal Work Authorization Program* – Any program operated by the United States Department of Homeland Security that provides electronic verification of work authorization issued by the United States Bureau of Citizenship and Immigration Services or any equivalent federal work authorization program operated by the United States Department of Homeland Security that provides for the verification of information regarding newly hired employees under the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603.
- *Public Employer* – Any department, agency, or instrumentality of the state or a political subdivision of the state.
- *Subcontractor* – Any entity providing services for a contractor, whether as a subcontractor, contract employee, staffing agency, or other entity, regardless of the level of subcontracting duties, if the services provided are related to the contractor's contract with an agency.

The Florida Lottery

Background

Under current law, the Department of the Lottery is not required to limit the sale of lottery tickets or the payment of lottery prizes based upon citizenship or immigration status.[5]

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[2] Section 287.057, F.S., relates to the procedures state agencies use to procure contracts for the purchase of commodities or contractual services.

[3] Employers with 500 or more employees must comply by July 1, 2011, employers with 100 or more employees by July 1, 2012 and all other employers by July 1, 2013.

[4] Chapter 337, F.S., relates to contracting by the Department of Transportation.

[5] Sections 24.1055 and 24.115, F.S. According to the Department on the Lottery's website (http://www.flalottery.com/inet/games-HowToClaimMain.do) to claim a prize of $600 or more, the player must complete a Florida Lottery Winner Claim Form and present

Effect of the Bill

The bill requires the Department of the Lottery to verify that the winner of a prize from specified lottery games is citizen of or legally present in the United States.

B. SECTION DIRECTORY:

Section 1: Amends s. 24.115, F.S., providing that the Department of the Lottery may not pay specified prizes until the department verifies the winner is a citizen of or legally present in the United States.

Section 2: Creates s. 287.0575, F.S., providing definitions; requiring compliance with federal work authorization programs; prohibiting an agency from entering into a contract for the performance of services with contractors who are not registered and participating in a federal work authorization program by specified dates; providing for enforcement; requiring the Department of Management Services to prescribe forms and adopt rules.

Section 3: Creates s. 337.163, F.S., providing definitions; prohibiting the Department of Transportation from entering into a contract for the performance of services with contractors who are not registered and participating in a federal work authorization program by specified dates; providing for enforcement; requiring the department to prescribe forms and adopt rules.

Section 4: Providing an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill creates a fiscal impact on the Department of Management Services and the Department of Transportation associated with the promulgation of rules. These departments also will incur costs associated with the administration of those rules in order to ensure contractors and subcontractors participate in a federal work authorization program.

   The Department of the Lottery may incur increased personnel costs to train Lottery prize payment staff on citizenship and immigration requirements purposes of administering the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

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one form of the following identification that is current or was issued within the past five years and bares a serial number or other identifying number:

- An identification card or driver's license issued by a public agency authorized to issue driver's licenses in Florida, a state other than Florida, a territory of the U.S., Canada, or Mexico.
- A passport issued by the U.S. Department of State.
- A passport issued by a foreign government.
- An identification card issued by any branch of the U.S. armed forces.
- An identification card issued by the U.S. Bureau of Citizenship and Immigration Services.

The Florida Lottery Winner Claim Form (http://www.flalottery.com/inet/downloads/englishclaim.pdf) has somewhat different identification requirements most notably the identification card or driver's license can be from *any country* and a sixth category is added: "Other proof of identity authorized for use by notaries public in Chapter 117, Florida Statutes."

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private contractors and subcontractors not presently in compliance with the federal work authorization program may have to expend funds to come into compliance.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Department of Management Services and the Department of Transportation to adopt rules to effectuate contractor and subcontractor compliance with the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of the Lottery provided the following comments:

- The Lottery's current prize claim procedures require the claimant to state under oath whether they are a U.S. citizen. The primary purpose of this requirement is to ensure that federal income taxes are withheld at the proper rate—25% for citizens and higher rates for non-citizens. Those claiming to be citizens, as well as certain legal aliens, are required to furnish a Social Security number. We follow the procedures deemed acceptable by the Internal Revenue Service for federal tax purposes.

- Unscrupulous individuals already engage in unlawful scams, victimizing the elderly, in particular, in which they represent themselves as "illegal aliens" and, therefore, unable to redeem their allegedly winning lottery ticket. The victim is then convinced to withdraw enough money from their bank to pay a "discounted" value for the ticket, which in reality is not a winning ticket at all. By the time the victim learns the ticket is worthless, the perpetrator has vanished with the victim's money. HB 421, by prohibiting lottery claims by illegal aliens, could add a note of authenticity to these scams, making them even more prevalent.

- There are a variety of avenues by which a person can legally be in the United States, such as tourists with passports, students with visas, workers with work permits, legal residents, etc., and each avenue would have guidelines, such as the length of time a tourist may stay in the United States on a passport, and questions, such as whether the person had overstayed the permissible length of time. The documentation required to prove legal presence in the United States would not necessarily be the same for each person, and Lottery employees would be required to exercise individual judgment in determining whether documents presented were satisfactory. Therefore, this provision would require Lottery staff to become extensively trained in immigration policy.

- The current language does not make it unlawful for a person not legally in the United States to purchase a lottery ticket. Case law holds that the purchase of a lottery ticket establishes a contract between the ticket purchaser and the lottery issuing the ticket. If the purchase of a ticket is not made illegal, a question arises as to whether or not the Lottery is in breach of contract.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to immigration; amending s. 24.115, F.S.; requiring the Department of the Lottery to verify the citizenship or legal presence in the United States of certain prize winners; creating s. 287.0575, F.S.; providing definitions; prohibiting agencies from entering into a contract for contractual services with contractors not registered and participating in a federal work authorization program by a specified date; providing procedures and requirements with respect to the registration of contractors and subcontractors; providing for enforcement; providing a schedule for phased compliance; requiring the Department of Management Services to adopt rules; creating s. 337.163, F.S.; providing definitions; prohibiting the Department of Transportation from entering into a contract for contractual services with contractors not registered and participating in a federal work authorization program by a specified date; providing procedures and requirements with respect to the registration of contractors and subcontractors; providing for enforcement; providing a schedule for phased compliance; requiring the department to adopt rules; providing an effective date.

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

Section 1. Paragraph (h) is added to subsection (1) of section 24.115, Florida Statutes, to read:

24.115 Payment of prizes.—

(1) The department shall promulgate rules to establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes; however:

(h) The department may not pay any prize, excluding prizes for which payment by retailers has been authorized under paragraph (e), until the department has verified that the winner of that prize is a citizen of the United States or legally present in the United States.

Section 2. Section 287.0575, Florida Statutes, is created to read:

287.0575 Compliance with federal work authorization programs.—

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

(a) "Federal work authorization program" means any program operated by the United States Department of Homeland Security that provides electronic verification of work authorization issued by the United States Citizenship and Immigration Services or any equivalent federal work authorization program operated by the United States Department of Homeland Security that provides for the verification of information regarding newly hired employees under the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603.

(b) "Subcontractor" means a person who enters into a contract with a contractor for the performance of any part of such contractor's contract.

(2) An agency may not enter into a contract under s. 287.057 for contractual services unless the contractor registers

and participates in a federal work authorization program.

(3) A contractor who receives a contract award under s. 287.057 for contractual services may not execute a contract, purchase order, or subcontract in connection with the award unless the contractor and all subcontractors providing services for the contractor register and participate in a federal work authorization program. The contractor shall certify in writing to the agency that it is in compliance with this subsection.

(4) A contractor shall ensure that each subcontractor providing services for the contractor registers and participates in a federal work authorization program. Each subcontractor shall certify in writing to the contractor that it is in compliance with this subsection.

(5) Subsections (2), (3), and (4) shall apply as follows:

(a) On or after July 1, 2011, with respect to contractors or subcontractors employing 500 or more employees.

(b) On or after July 1, 2012, with respect to contractors or subcontractors employing 100 or more employees.

(c) On or after July 1, 2013, with respect to all contractors or subcontractors.

(6) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(7) The department shall adopt rules deemed necessary to administer this section, including prescribing forms.

Section 3. Section 337.163, Florida Statutes, is created to read:

337.163 Compliance with federal work authorization program.—

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

(a) "Federal work authorization program" means any program operated by the United States Department of Homeland Security that provides electronic verification of work authorization issued by the United States Citizenship and Immigration Services or any equivalent federal work authorization program operated by the United States Department of Homeland Security that provides for the verification of information regarding newly hired employees under the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603.

(b) "Subcontractor" means a person who enters into a contract with a contractor for the performance of any part of such contractor's contract.

(2) The department may not enter into a contract under this chapter for contractual services unless the contractor registers and participates in a federal work authorization program.

(3) A contractor who receives a contract award under this chapter for contractual services may not execute a contract, purchase order, or subcontract in connection with the award unless the contractor and all subcontractors providing services for the contractor register and participate in a federal work authorization program. The contractor shall certify in writing to the department that it is in compliance with this subsection.

(4) A contractor shall ensure that each subcontractor providing services for the contractor registers and participates in a federal work authorization program. Each subcontractor shall certify in writing to the contractor that it is in

compliance with this subsection.

(5) Subsections (2), (3), and (4) shall apply as follows:

(a) On or after July 1, 2011, with respect to contractors or subcontractors employing 500 or more employees.

(b) On or after July 1, 2012, with respect to contractors or subcontractors employing 100 or more employees.

(c) On or after July 1, 2013, with respect to all contractors or subcontractors.

(6) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(7) The department shall adopt rules deemed necessary to administer this section, including prescribing forms.

Section 4. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 405 Public Meetings
SPONSOR(S): Kiar
TIED BILLS: **IDEN./SIM. BILLS:** SB 138

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee		Williamson	Williamson
2)	Civil Justice & Courts Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

In the absence of a legislative exemption, discussions between a public board and its attorney are subject to open meetings requirements.

Current law provides a public meeting exemption for certain discussions by a public board or commission and the chief administrative or executive officer of the governmental entity. Such board or commission and the chief administrative or executive officer may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided certain conditions are met. Only the entity, the entity's attorney, the chief administrative officer of the entity, and the court reporter are authorized to attend a closed attorney-client session. Other staff members or consultants are not allowed to be present.

The bill amends the public meeting exemption to allow the risk manager and division heads of a governmental entity to attend the closed meeting if such manager or division head is identified by the chief administrative or executive officer as being involved in pending litigation. It requires a person attending the closed attorney-client session to agree not to disclose any part of the discussion that took place during such session until conclusion of the litigation, unless ordered by a court. The bill also prohibits a person who is an adverse party of the litigation from attending the closed attorney-client session. That means a staff person or member of the board or commission who currently is legally authorized to attend a closed attorney-client session may be prohibited from attending future closed sessions if such person or member is an adverse party to the litigation being discussed.

The new prohibitions created by the bill related to attendance at closed attorney-client sessions appear to serve as an expansion of the current public meeting exemption. As such, it appears the bill requires a public necessity statement and a two-thirds vote for final passage as mandated by the State Constitution. In addition, bills creating or expanding a public record or public meeting exemption typically provide for future review and repeal of the exemption pursuant to the Open Government Sunset Review Act. This bill does not provide such provision.

Finally, the bill reorganizes the exemption and provides editorial changes.

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

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 Meetings Laws

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of the executive branch and local government be open and noticed to the public. The Legislature may, however, provide by general law for the exemption of meetings from the requirements of Article I, s. 24(b) 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 stated purpose. In addition, the State Constitution requires enactment of the exemption by a two-thirds vote of the members present and voting.[1]

Public policy regarding access to public meetings is addressed further in the Florida Statutes. Section 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act[2] provides that a 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.

Attorney-Client Meetings

In the absence of a legislative exemption, discussions between a public board and its attorney are subject to s. 286.011, F.S.[3]

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

[2] Section 119.15, F.S.

[3] *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985) (s. 90.502, F.S., which provides for the confidentiality of attorney-client communications under the Florida Evidence Code, does not create an exemption for attorney-client communications at public meetings; application of the Sunshine Law to the discussions of a public commission with its attorney does not usurp the constitutional authority of the Supreme Court to regulate the practice of law, nor is it at odds with Florida Bar rules providing for

Current law provides a public meeting exemption for certain discussions by any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity. Such board or commission and the chief administrative or executive officer may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

- The attorney must advise the entity at a public meeting that he or she desires advice concerning the litigation.
- The subject matter of the meeting must be confined to settlement negotiations or strategy sessions related to litigation expenditures.
- The entire closed session must be recorded by a certified court reporter, including the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking.[4]
- The entity must give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session must commence at an open meeting at which the persons chairing the meeting must announce the commencement and estimated length of the attorney-client session and the names of the persons attending.[5]
- The transcript must be made part of the public record upon conclusion of the litigation.[6]

Only the entity, the entity's attorney, the chief administrative officer of the entity, and the court reporter are authorized to attend a closed attorney-client session. Other staff members or consultants are not allowed to be present.[7] However, because the entity's attorney is permitted to attend the closed session, if the entity hires outside counsel to represent it in pending litigation, both the entity's attorney and the litigation attorney may attend a closed session.[8]

Finally, qualified interpreters for the deaf are treated by the Americans with Disabilities Act as auxiliary aids in the nature of hearing aids and other assistive devices and may attend litigation strategy meetings of a board or commission to interpret for a deaf board member without violating section 286.011(8), F.S.

Effect of Bill

The bill amends the public meeting exemption to allow the risk manager and division heads of a governmental entity to attend the closed meeting if such manager or division head is identified by the chief administrative or executive officer as being involved in pending litigation.

The bill requires a person attending the closed attorney-client session to agree not to disclose any part of the discussion that took place during such session until conclusion of the litigation, unless ordered by a court. This new requirement could be considered an expansion of the current public meeting exemption as persons would not be allowed to attend who were previously authorized if they do not agree to the prohibition on disclosure of information discussed during the closed session.

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attorney-client confidentiality). *Cf.*, s. 90.502(6), F.S., stating that a discussion or activity that is not a meeting for purposes of s. 286.011, F.S., shall not be construed to waive the attorney-client privilege. *And see, Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978), stating that all decisions taken by legal counsel to a public board need not be made or approved by the board; thus, the decision to appeal made by legal counsel after private discussions with the individual members of the board did not violate s. 286.011, F.S.

[4] The court reporter's notes must be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

[5] At the conclusion of the attorney-client session, the meeting must be reopened and the person chairing the meeting must announce the termination of the session.

[6] Section 286.011(8), F.S.

[7] *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d at 101. *And see, Zorc v. City of Vero Beach*, 722 So. 2d 891, 898 (Fla. 4th DCA 1998), *review denied*, 735 So. 2d 1284 (Fla. 1999) (city charter provision requiring that city clerk attend all council meetings does not authorize clerk to attend closed attorney-client session; municipality may not authorize what the Legislature has expressly forbidden); and Attorney General Opinion 01-10 (clerk of court not authorized to attend).

[8] Attorney General Opinion 98-06. *And see, Zorc v. City of Vero Beach*, 722 So. 2d at 898 (attendance of Special Counsel authorized).

The bill further expands the current public meeting exemption by prohibiting a person who is an adverse party of the litigation from attending the closed attorney-client session. That means a staff person or member of the board or commission who currently is legally authorized to attend a closed attorney-client session, may be prohibited from attending future closed sessions if such person or member is an adverse party to the litigation being discussed.

The new prohibitions created by the bill related to attendance at closed attorney-client sessions appear to serve as an expansion of the current public meeting exemption. As such, it appears the bill requires a public necessity as mandated by the State Constitution.[9] In addition, bills creating or expanding a public record or public meeting exemption typically provide for future review and repeal of the exemption pursuant to the Open Government Sunset Review Act.[10] This bill does not provide such provision.

Finally, the bill reorganizes the exemption and provides editorial changes.

B. SECTION DIRECTORY:

Section 1 amends s. 286.011, F.S., allowing additional persons to attend a private meeting between a governmental entity and the entity's attorney to discuss pending litigation to which the governmental entity is a party.

Section 2 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

[9] Section 24(c), Art. I of the State Constitution.
[10] *See* s. 119.15, F.S.

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

Vote Requirement
Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created or expanded public record or public meeting exemption. Because the bill creates additional prohibitions regarding attendance at closed attorney-client sessions, it could be argued that the bill expands the current public meeting exemption for such sessions. As such, it appears the bill 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. Because the bill creates additional prohibitions regarding attendance at closed attorney-client sessions, it could be argued that the bill expands the current public meeting exemption for such sessions. As such, it appears the bill requires a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Excerpt from the *Government-In-The Sunshine Manual* on closed attorney-client meetings[11]
In rejecting the argument that the exemption should be construed so as to allow staff to attend closed attorney-client sessions, the courts have noted that individual board members are free to meet privately with staff at any time since "staff members are not subject to the Sunshine Law."[12]

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[11] Excerpt from the *Government-In-The-Sunshine Manual*, 2009 Edition, Volume 31, at 28.
[12] *Zorc v. City of Vero Beach*, 722 So. 2d at 899. *Accord, School Board of Duval County v. Florida Publishing Company*, 670 So. 2d at 101. *Cf.*, Attorney General Opinion 95-06 (s. 286.011(8), F.S., does not authorize the temporary adjournment and reconvening of meetings in order for members who are attending such a session to leave the room and consult with others outside the meeting).

A bill to be entitled

An act relating to public meetings; amending s. 286.011, F.S.; expanding persons authorized to attend a private meeting between a governmental entity and the entity's attorneys to discuss pending litigation to which the governmental entity is a party before a court or administrative agency; revising and providing additional conditions precedent to such private meetings; providing an effective date.

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

Section 1. Subsection (8) of section 286.011, Florida Statutes, is amended to read:

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(8) Notwithstanding ~~the provisions of~~ subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, and the risk manager and division heads of the governmental entity identified by the chief administrative or executive officer as being involved in pending litigation may meet in private with the entity's attorneys ~~attorney~~ to discuss pending litigation to which the entity is presently a party before a court or administrative agency, if ~~provided that the following conditions are met~~:

(a) The entity gives reasonable public notice of the time

and date of the attorney-client session and the names of persons who will be attending the session.

(b) The session commences as an open meeting at which the person chairing the meeting announces the commencement and estimated length of the attorney-client session and the names of the persons attending.

(c) The entity's attorney advises ~~shall advise~~ the entity at the ~~a~~ public meeting that he or she desires advice concerning the litigation, which advisory announcement may be made immediately before the attorney-client session begins.

(d) ~~(b)~~ The subject matter of the session is ~~meeting shall be~~ confined to settlement negotiations or strategy sessions relating ~~related~~ to litigation expenditures.

(e) A person who is an adverse party to the litigation is not permitted to attend the attorney-client session.

(f) ~~(c)~~ The entire session is ~~shall be~~ recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes must ~~shall~~ be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(g) ~~(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of~~

~~the attorney-client session and the names of the persons attending.~~ At the conclusion of the attorney-client session, the meeting is ~~shall be~~ reopened, and the person chairing the meeting announces ~~shall announce~~ the termination of the attorney-client session.

(h) ~~(c)~~ The transcript is ~~shall be~~ made part of the public record upon conclusion of the litigation.

(i) A person in attendance at the attorney-client session agrees not to disclose any part of the discussion that took place during the session until the conclusion of the litigation unless ordered by the court.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 625 Voter Information Cards
SPONSOR(S): Gibson
TIED BILLS: **IDEN./SIM. BILLS:** SB 192

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee		McDonald	Williamson
2)	Military & Local Affairs Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill requires the voter information card prescribed in s. 97.071, F.S., to include the address of the polling place. If an elector's address of legal residence or polling place address changes, the supervisor of elections must send the elector a new voter information card. For any elector registered to vote on July 1, 2010, the supervisor of elections has until 30 days before the next supervisor-administered election in which the elector is eligible to vote to include the polling place address on the elector's voter information card.

Currently, every supervisor of elections must furnish a voter information card to every registered voter in the supervisor's county. The card must include date of registration; full name of elector; party affiliation; date of birth; legal residence address; precinct number; supervisor's name and contact information; and other information deemed necessary by the supervisor. Replacement cards are provided free of charge. New cards are issued automatically when a voter's name, address, or party affiliation changes. Sixty-one counties include the polling place address on the voter information card.

The bill takes effect July 1, 2010.

There will be a fiscal impact on counties that do not include the polling place address on the voter information card. 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

Currently, every supervisor of elections must furnish a voter information card to every registered voter in the supervisor's county. The card must include the following information:

- date of registration;
- full name of elector;
- party affiliation;
- date of birth;
- legal residence address;
- precinct number;
- supervisor's name and contact information; and,
- other information deemed necessary by the supervisor.[1]

Replacement cards are provided free of charge upon verification of the voter's registration, if the voter provides a signed written request for a replacement card.[2] The voter also may use the uniform statewide voter registration application to request a replacement card.[3] New cards are issued automatically when a voter's name, address, or party affiliation changes.[4]

According to the Florida State Association of Supervisors of Elections, 61 counties include the polling place address on the voter information card. Counties that do not include the polling place address are *Glades,* Jefferson, Madison, Orange, Taylor, and Volusia.[5]

Effect of Proposed Changes

The bill requires the voter information card prescribed in s. 97.071, F.S., to include the address of the polling place. If an elector's address of legal residence or polling place address changes, the supervisor of elections must send the elector a new voter information card. For any elector registered to vote on July 1, 2010, the supervisor of elections has until 30 days before the next supervisor-

[1] s. 97.071(1), F.S.
[2] s. 97.071(2), F.S.
[3] s. 97.052(1), F.S.
[4] s. 97.071(3), F.S. See also s. 97.1031, F.S.
[5] Information received from the Florida State Association of Supervisors of Elections, February 23, 2010.

administered election in which the elector is eligible to vote to include the polling place address on the elector's voter information card.

B. SECTION DIRECTORY:

Section 1. Amends s. 97.01, F.S., to add polling place address to the information required on the voter information card required to be given to all registered voters residing in a Supervisor of Elections county and to issue the voter a new card when the polling place address changes.

Section 2. 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:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact has not been determined for the six counties that will be required to issue new voter information cards reflecting the polling place address. While it varies from county to county, the average county cost to print and mail one card is approximately 52 cents. For electors who are registered to vote on July 1, 2010, the bill would allow the supervisor until 30 days before the next supervisor-administered election in which an elector is eligible to vote to comply with the polling place address requirement.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill is exempt from the mandate requirements because it is amending the elections laws.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to voter information cards; amending s. 97.071, F.S.; requiring that voter information cards contain the address of the polling place of the registered voter; requiring a supervisor of elections to issue a new voter information card to a voter upon a change in a voter's address of legal residence or a change in a voter's polling place address; providing instructions for implementation by the supervisors of elections; providing an effective date.

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

Section 1. Section 97.071, Florida Statutes, is amended to read:

97.071 Voter information card.—

(1) A voter information card shall be furnished by the supervisor to all registered voters residing in the supervisor's county. The card must contain:

(a) Voter's registration number.

(b) Date of registration.

(c) Full name.

(d) Party affiliation.

(e) Date of birth.

(f) Address of legal residence.

(g) Precinct number.

(h) Polling place address.

(i) ~~(h)~~ Name of supervisor and contact information of

supervisor.

(j) ~~(i)~~ Other information deemed necessary by the supervisor.

(2) A voter may receive a replacement voter information card by providing a signed, written request for a replacement card to a voter registration official. Upon verification of registration, the supervisor shall issue the voter a duplicate card without charge.

(3) In the case of a change of name, address of legal residence, polling place address, or party affiliation, the supervisor shall issue the voter a new voter information card.

Section 2. The supervisor must meet the requirements of this act for any elector who is registered to vote on July 1, 2010, no later than 30 days before the first election administered by the supervisor in which the elector is eligible to vote.

Section 3. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1075 Recertification of Minority Business Enterprises
SPONSOR(S): Braynon and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1612

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee		McDonald	Williamson
2)	Policy Council			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Office of Supplier Diversity (office) is established within the Department of Management Services (department) to assist minority business enterprises (MBEs) in becoming suppliers of commodities, services, and construction to state government. One of the duties of the office is to certify MBEs pursuant to specified statutory criteria, and to recertify MBEs at least once every two years. Recertification is accomplished via a process in which a vendor enters information in online forms, prints the forms, has the forms notarized, and returns the forms to the office.

The bill amends the minority business enterprise recertification process by authorizing that affidavits to recertify minority business enterprises be administered by electronic signature in lieu of administration by or before any judge, clerk, or deputy clerk of any court of record in the state or any notary public in the state. According to the Office of Supplier Diversity in the Department of Management Services, this change in law would fully automate the recertification process.

The bill has no fiscal impact.

The bill takes 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:

Present Situation

The Office of Supplier Diversity (office) is established within the Department of Management Services (department) to assist minority business enterprises (MBEs) in becoming suppliers of commodities, services, and construction to state government.[1] One of the duties of the office is to certify MBEs[2] pursuant to specified statutory criteria,[3] and to recertify MBEs at least once every two years. Recertification is accomplished via a process in which a vendor enters information in online forms, prints the forms, has the forms notarized, and returns the forms to the office.

The Uniform Electronic Transaction Act in Ch. 668, F.S., permits governmental agencies to accept electronic signatures,[4] and defines an "electronic signature" as an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.[5]

Effect of Proposed Changes

The bill provides that the affidavit to recertify a minority business enterprise may be administered by electronic signature in lieu of administration by or before any judge, clerk, or deputy clerk of any court of record in the state or any notary public in the state.[6]

According to the Department of Management Services, the option of electronic signature would fully automate the recertification process.[7]

B. SECTION DIRECTORY:

Section 1 amends s. 287.09451, F.S., to authorize that affidavits to recertify minority business enterprises be administered by electronic signature.

Section 2 provides an effective date of July 1, 2010.

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[1] Section 287.09451(2), F.S.
[2] Minority business enterprises are defined in s. 288.703, F.S.
[3] Sections 287.0943 and 287.09431, F.S., specify the requirements for certification as an MBE.
[4] Section 668.50(18), F.S.
[5] Section 668.50(2)(h), F.S.
[6] Section 92.50, F.S.
[7] Analysis of HB 1075, Department of Management Services, February 10, 2010, p. 1 (on file with the Governmental Affairs Policy Committee).

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.

A bill to be entitled

An act relating to the recertification of minority business enterprises; amending s. 287.09451, F.S.; authorizing that affidavits to recertify minority business enterprises be administered by electronic signature; providing an effective date.

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

Section 1. Paragraph (m) of subsection (4) of section 287.09451, Florida Statutes, is amended to read:

287.09451 Office of Supplier Diversity; powers, duties, and functions.—

(4) The Office of Supplier Diversity shall have the following powers, duties, and functions:

(m) To certify minority business enterprises, as defined in s. 288.703, and as specified in ss. 287.0943 and 287.09431, and shall recertify such minority businesses at least once every 2 years. Minority business enterprises must be recertified at least once every 2 years by affidavit, which may be administered by electronic signature in lieu of administration by or before an official listed in s. 92.50.

Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1179 Electronic Documents Recorded in the Official Records
SPONSOR(S): Grimsley and Others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1288

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	10 Y, 0 N	Mato	De La Paz
2)	Governmental Affairs Policy Committee		Williamson	Williamson
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Several of the clerks of the court and county recorders were accepting electronic recordings relating to real property prior to the 2006 adoption of the Uniform Real Property Electronic Recording Act and others began accepting electronic documents for recording before rules contemplated in the act were formally adopted.

The bill retroactively and prospectively ratifies the validity of all such electronic documents submitted to and accepted by a county recorder for recordation, whether or not the electronic documents were in strict compliance with the statutory or regulatory framework in effect at that time. The bill provides that all such recorded documents are deemed to provide constructive notice. It also clarifies that changes made by the bill do not alter the duty of the clerk or recorder to comply with the Uniform Real Property Electronic Recording Act or rules adopted by the Department of State pursuant to that act.

The bill appears to have no fiscal impact.

The bill provides that it 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:

Current Situation

In 2000, the Legislature adopted the Uniform Electronic Transaction Act (UETA).[1] This Act was based on work by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Many, including NCCUSL, believed the UETA permitted the electronic creation, submission, and recording of electronic documents affecting real property.

Some county recorders began accepting electronic recordings based on the authorities facially granted under the UETA. As such, a significant number of electronic documents were filed.

Some legal commentators disagreed, feeling the UETA alone did not authorize the recording of electronic documents affecting title to real property. That disagreement, and the natural conservative nature of most real estate professionals, resulted in a limitation on the use and acceptability of electronic documents in real estate transactions.

To address this problem, NCCUSL promulgated a separate uniform law to address these perceived shortcomings. A variation of the NCCUSL uniform law was adopted by the by the Legislature in 2006 and was called the Uniform Real Property Electronic Recording Act (URPERA).[2]

The adoption of the URPERA, as a matter of statutory interpretation, called into question the efficacy of electronic documents recorded under UETA. The URPERA requires the Department of State, by rule to prescribe standards to implement the act in consultation with the Electronic Recording Advisory Committee.[3], [4] It also directs any county recorder who elects to receive, index, store, archive, and transmit electronic documents to do so in compliance with standards established by rules adopted by the Department of State.[5]

Before the Department of State could begin establishing rules, several county recorders began accepting electronic recordings and, as a result, discovered significant cost and labor savings. At

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[1] *See* s. 668.50, F.S., part II of chapter 668, F.S.

[2] *See* s. 695.27, F.S.

[3] Section 695.27(5)(a), F.S.

[4] Section 695.27(5)(a), F.S., creates the Electronic Recording Advisory Committee. It also requires the Florida Association of Court Clerks and Comptrollers to provide administrative support to the Department of State and the committee at no charge. The committee is composed of nine members who serve one year terms.

[5] Section 695.27(4)(b), F.S.

present, Rule 1B-31, Florida Administrative Code, implements the URPERA and provides guidelines for accepting electronic documents.

Effect of the Bill

The bill creates s. 695.28, F.S., to retroactively and prospectively ratify the validity of all electronic documents affecting title to real property submitted to and accepted by a county recorder for recordation, notwithstanding possible technical defects.

The bill provides that all documents, previously or hereafter accepted by a county recorder for recordation electronically, whether under the UETA or the URPERA, are deemed to be validly recorded and provides notice to all persons notwithstanding that:

- Such documents may have been received and recorded before the formal adoption of rules by the Department of State; or
- Defects in, deviations from, or the inability to demonstrate strict compliance with any statute, rule, or procedure to electronically record documents that may have been in effect at the time the electronic documents were submitted for recording.

The bill clarifies that the newly created s. 695.28, F.S., does not alter the duty of the clerk or recorder to comply with the URPERA or rules adopted by the Department of State pursuant to that act.

Finally, the bill adds to the URPERA cross-references for the newly created section and provides that the newly created section also may be referred to as the Uniform Real Property Electronic Recording Act.

B. SECTION DIRECTORY:

Section 1 amends s. 695.27, F.S., relating to the Uniform Real Property Recording Act.

Section 2 creates s. 695.28, F.S., relating to the validity of electronically recorded documents.

Section 3 provides this act is intended to clarify existing law and applies prospectively and retroactively.

Section 4 provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill clarifies that the newly created s. 695.28, F.S., does not alter the duty of the clerk or recorder to comply with the URPERA or rules adopted by the Department of State pursuant to that act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to electronic documents recorded in the official records; amending s. 695.27, F.S.; providing for the inclusion of an additional statute in the Uniform Real Property Electronic Recording Act; delaying termination of the Electronic Recording Advisory Committee; creating s. 695.28, F.S.; declaring that certain electronic documents accepted for recordation are deemed validly recorded; providing intent to clarify existing law; providing for retroactive application; providing an effective date.

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

Section 1. Section 695.27, Florida Statutes, is amended to read:

695.27 Uniform Real Property Electronic Recording Act.—

(1) SHORT TITLE.—This section and s. 695.28 may be cited as the "Uniform Real Property Electronic Recording Act."

(2) DEFINITIONS.—As used in this section and s. 695.28:

(a) "Document" means information that is:

1. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

2. Eligible to be recorded in the Official Records, as defined in s. 28.222, and maintained by a county recorder.

(b) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(c) "Electronic document" means a document that is received by a county recorder in an electronic form.

(d) "Electronic signature" means an electronic sound, symbol, or process that is executed or adopted by a person with the intent to sign the document and is attached to or logically associated with a document such that, when recorded, it is assigned the same document number or a consecutive page number immediately following such document.

(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, instrumentality, or any other legal or commercial entity.

(f) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(3) VALIDITY OF ELECTRONIC DOCUMENTS.—

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying the requirements of this section.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic

signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

(4) RECORDING OF DOCUMENTS.—

(a) In this subsection, the term "paper document" means a document that is received by the county recorder in a form that is not electronic.

(b) A county recorder:

1. Who implements any of the functions listed in this section shall do so in compliance with standards established by rule by the Department of State.

2. May receive, index, store, archive, and transmit electronic documents.

3. May provide for access to, and for search and retrieval of, documents and information by electronic means.

4. Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.

5. May convert paper documents accepted for recording into electronic form.

6. May convert into electronic form information recorded before the county recorder began to record electronic documents.

7. May agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic

satisfaction of prior approvals and conditions precedent to recording.

(5) ADMINISTRATION AND STANDARDS.—

(a) The Department of State, by rule pursuant to ss. 120.536(1) and 120.54, shall prescribe standards to implement this section in consultation with the Electronic Recording Advisory Committee, which is hereby created. The Florida Association of Court Clerks and Comptrollers shall provide administrative support to the committee and technical support to the Department of State and the committee at no charge. The committee shall consist of nine members, as follows:

1. Five members appointed by the Florida Association of Court Clerks and Comptrollers, one of whom must be an official from a large urban charter county where the duty to maintain official records exists in a county office other than the clerk of court or comptroller.

2. One attorney appointed by the Real Property, Probate and Trust Law Section of The Florida Bar Association.

3. Two members appointed by the Florida Land Title Association.

4. One member appointed by the Florida Bankers Association.

(b) Appointed members shall serve a 1-year term. All initial terms shall commence on the effective date of this act. Members shall serve until their successors are appointed. An appointing authority may reappoint a member for successive terms. A vacancy on the committee shall be filled in the same manner in which the original appointment was made, and the term

shall be for the balance of the unexpired term.

(c) The first meeting of the committee shall be within 60 days of the effective date of this act. Thereafter, the committee shall meet at the call of the chair, but at least annually.

(d) The members of the committee shall serve without compensation and shall not claim per diem and travel expenses from the Secretary of State.

(e) To keep the standards and practices of county recorders in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this section and to keep the technology used by county recorders in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this section, the Department of State, in consultation with the committee, so far as is consistent with the purposes, policies, and provisions of this section, in adopting, amending, and repealing standards, shall consider:

1. Standards and practices of other jurisdictions.

2. The most recent standards adopted by national standard-setting bodies, such as the Property Records Industry Association.

3. The views of interested persons and governmental officials and entities.

4. The needs of counties of varying size, population, and resources.

5. Standards requiring adequate information security protection to ensure that electronic documents are accurate,

authentic, adequately preserved, and resistant to tampering.

(f) The committee shall terminate on July 1, 2013 ~~2010~~.

(6) UNIFORMITY OF APPLICATION AND CONSTRUCTION.—In applying and construing this section, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(7) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.—This section modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq., but this section does not modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

Section 2. Section 695.28, Florida Statutes is created to read:

695.28 Validity of recorded electronic documents.—

(1) A document that is otherwise entitled to be recorded and that was or is submitted to the clerk of the court or county recorder by electronic means and accepted for recordation is deemed validly recorded and provides notice to all persons notwithstanding:

(a) That the document was received and accepted for recordation before the Department of State adopted standards implementing s. 695.27; or

(b) Any defects in, deviations from, or the inability to demonstrate strict compliance with any statute, rule, or procedure to submit or record an electronic document in effect

at the time the electronic document was submitted for recording.

(2) This section does not alter the duty of the clerk or recorder to comply with s. 695.27 or rules adopted pursuant to that section.

Section 3. This act is intended to clarify existing law and applies prospectively and retroactively.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1401 Export of Goods, Commodities, & Things of Value to Foreign Countries
SPONSOR(S): Rivera
TIED BILLS: **IDEN./SIM. BILLS:** SB 2576

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee		McDonald	Williamson
2)	Government Operations Appropriations Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill prohibits any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government from issuing a certificate of free sale, export certification report, certificate of good manufacturing practices, permit, registration, license, or certification of any kind for any good, commodity, or thing of value to a foreign determined by the United States Secretary of State to be a state sponsor of terrorism.

The four countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Cuba, Iran, Sudan, and Syria.

Federal law specifically prohibits certain goods or products from being sent to countries designated as "state sponsors of terrorism;" however, certain goods or products classified as "humanitarian" are permitted to be transported to such countries. Federal law and regulations and guidelines for such enforcement provided by the Office of the U.S. Secretary of State govern what can be done by the various states.

The Florida Department of Agriculture and Consumer Services issues a certificate of free sale, also known as a certificate for export or a certificate to foreign governments, to exporters of products to foreign countries. These are required by some countries as assurance from a foreign agency that the products listed on the certificate are freely sold and manufactured in the U.S. Some foreign destinations also require a "certificate of origin" for the purpose of authenticating the country of origin of the merchandise being shipped. Some require an *Apostille* from the Florida Department of State, which is a document that certifies that the department's notary who notified the documents is, in fact, a notary.

Currently, the Department of Agriculture and Consumer Services issues approximately 1,350 certificates per year. On average, the department turns down about 10 requests per year for the "state sponsors of terrorism" restriction. These refusals almost always relate to trade with Cuba.

There is no known fiscal impact caused by the bill.

The bill takes 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:

Present Situation

State Sponsors of Terrorism

Countries that are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as "State Sponsors of Terrorism" and are subject to sanctions under the Export Administration Act,[1] the Arms Export Control Act,[2] and the Foreign Assistance Act.[3] The four main categories of sanctions resulting from designations under these acts are: restrictions on U.S. foreign assistance, a ban on defense exports and sales, certain controls over exports of dual use items, and miscellaneous financial and other restrictions.[4] Some of the miscellaneous restrictions include opposition to loans by the World Bank and other financial institutions, removal of diplomatic immunity to allow victims of terrorism to file civil lawsuits, denial of tax credits to companies and individuals for income earned in named countries, authority to prohibit U.S. citizens from engaging in transactions without a Treasury Department license, and prohibition of Department of Defense contracts above $100,000 with companies controlled by terrorist-list states.[5]

Some types of humanitarian aid are permitted with countries on the "State Sponsors of Terrorism" list. For example, the United States is the largest contributor for humanitarian aid to Sudan which is one of the four countries on the state sponsors of terrorism list.

The four countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Cuba, Iran, Sudan, and Syria.[6]

Certificate of Origin and Free Sale - Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services issues a "certificate of free sale," also known as a "certificate for export" or a "certificate to foreign governments," to exporters of products to foreign countries. These are required by some countries as assurance from a foreign agency that the products listed on the certificate are freely sold and manufactured in the U.S. Some foreign destinations

[1] Section 6(j), U.S. Export Administration Act.
[2] Section 40, U.S. Arms Export Control Act.
[3] Section 620A, U.S. Foreign Assistance Act.
[4] U.S. Department of State website, http://www.state.gov/s/ct/c14151.htm , Office of Coordinator for Counterterrorism, State Sponsors of Terrorism, last viewed on March 22, 2010.
[5] U.S. Department of State website, http://www.state.gov/s/ct, Country Reports on Terrorism, last viewed on March 22, 2010.
[6] See Footnote 5.

also require a "certificate of origin" for the purpose of authenticating the country of origin of the merchandise being shipped.

Some foreign governments require an *Apostille* from the Florida Department of State, which is a document that certifies that the department's notary who notarized the documents is, in fact, a notary.

Requirements to obtain a certificate of origin and free sale from the Department of Agriculture and Consumer Services are as follows:

- The exporter must provide documented proof that they are a registered Florida corporation or company, and
- The exporter must provide documented proof that they have been inspected by their County Health Department, Division of Food Industry, or FDA.

Between 90 percent and 95 percent of the exporters require a certificate of origin and free sale.

Currently, the Department of Agriculture and Consumer Services issues approximately 1,350 certificates per year. On the average, the department turns down about 10 requests per year for the "state sponsors of terrorism" restriction. These refusals almost always relate to trade with Cuba.

Effect of Proposed Changes

The bill prohibits any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government from issuing a certificate of free sale, export certification report, certificate of good manufacturing practices, permit, registration, license, or certification of any kind for any good, commodity, or thing of value to a foreign country determined by the United States Secretary of State to be a state sponsor of terrorism.[7]

There is no indication as to what agencies might fall under the prohibition. It is known that the Department of Agriculture and Consumer Services has been involved in issuing certain documents as described above for several years. This, in part, grew out of cattlemen and others involved with Florida agribusiness exporting products to foreign countries.

State agencies must abide by the federal requirements regarding export to state sponsors of terrorism.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law that prohibits a state agency from exporting goods, commodities, and things of value to foreign countries that support international terrorism.

Section 2. Provides an effective date of becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[7] In subsection (2), the bill references provisions in the United States Code in determining what determines what foreign countries are covered under prohibition on issuance of certain certificates. The bill refers to 50 U.S.CC. App. S. 2405(j) which requires a validated license for the export of goods or technology to a country that repeatedly provides support for international acts of terrorism and the export of those goods could make a significant contribution to the military potential of the country, including its military logistics capability, or could enhance the ability of the country to support acts of international terrorism. It also refers to 22 U.S.C. s. 2371(a) which prohibits assistance under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.), the Peace Corps Act (22 U.S.CC. 2501 et seq), or the Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.). Finally, 22 U.S.C. s. 2780(d) relates to activities that aid or abet international proliferation of nuclear explosive devices, or the acquisition or stockpiling of such or chemical, biological, or radiological weapons.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown fiscal impact. It is not known how many businesses, if any, could be impacted by the bill because of the federal prohibitions.

D. FISCAL COMMENTS:

According to the Department of Agriculture and Consumer Services, there is no fiscal impact on the agency because the department does not issues documentation to any country identified by the United States Secretary of State as having provided support acts of terrorism.[8]

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:

No known constitutional concerns.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Agriculture and Consumer Services stated there is a possibility that litigation will be caused by this legislation; however, no detail was given concerning the grounds for the possible litigation.[9]

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[8] Analysis of HB 1401 by the Department of Agriculture and Consumer Services, March 16, 2010, p. 1.
[9] Information provided by the Department of Agriculture and Consumer Services on March 22, 2010, which is on file with the Governmental Affairs Policy Committee.

A bill to be entitled

An act relating to the export of goods, commodities, and things of value to foreign countries; defining the term "state agency"; prohibiting state agencies from issuing certain forms of documentation for any good, commodity, or thing of value to be exported to certain foreign countries; providing an effective date.

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

Section 1. Export of goods, commodities, and things of value to foreign countries that support international terrorism; prohibited documentation.—

(1) As used in this section, the term "state agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

(2) Notwithstanding any other provision of law, a state agency may not issue a certificate of free sale, export certification report, certificate of good manufacturing practices, permit, registration, license, or certification of any kind for any good, commodity, or thing of value to be exported to a foreign country if the United States Secretary of State, pursuant to 50 U.S.C. App. s. 2405(j), 22 U.S.C. s. 2371(a), or 22 U.S.C. s. 2780(d), determines that the government of that country has repeatedly provided support for acts of international terrorism.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1511 Effective Public Notices by Governmental Entities
SPONSOR(S): Workman
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Current law provides requirements for publishing legal notices and official advertisements. Publications must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language. In addition, the newspaper must qualify or be entered to qualify as periodicals matter at the post office in the county where published, and be generally available to the public for the purpose of publication of official or other notices.

The bill authorizes a local government to use its publicly accessible website for legally required advertisements and public notices. The use of such website constitutes legal notice.

The bill defines "publicly accessible website" to mean a local government's official website that is accessible on the Internet. If specifically authorized by ordinance, a local government may use its website for legally required advertisements and public notices if:

- A public library or other governmental facility providing free access to the Internet during regular business hours exists within the jurisdictional boundaries of the local government;
- The local government provides notice to its residents at least once per year in a newspaper of general circulation, or the local government's newsletter or periodical, or another publication mailed or delivered to all residents or property owners within its jurisdictional boundaries, indicating that residents can register with the local government to receive all advertisements and public notices by first-class mail or by e-mail; and
- The local government maintains a registry of names, addresses and e-mail addresses of residents who request in writing that they receive advertisements and notices by first-class mail or by e-mail.

Advertisements and public notices published on a publicly accessible website must be conspicuously placed on the homepage of that website or must be accessible through a direct link from the homepage. The advertisement must indicate the date on which it was first published on the website.

The bill also authorizes a local government with an authorized government access channel to include on such channel a summary of all advertisements and public notices published on its website.

Finally, the bill provides specific authorizations for a local government to advertise or notice on its publicly accessible website provided certain requirements are met.

The bill may reduce local government expenditures associated with publishing required notices and advertisements in the newspaper; however, local governments might have to expend funds to create, maintain and issue correspondence from a registry of persons requesting notifications by first-class mail or e-mail. In addition, the bill also may cause a loss of revenue to the private sector and a loss of revenue to the state associated with corporate income tax revenue.

This bill has an effective date of 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

The publication of legal notices in newspapers is a long established practice in Florida and throughout the United States. According to newspaper trade associations and independent analysts, "it's unclear how much newspapers collect in total from such publicly financed advertising."[1] At one newspaper company, Trib Total Media which runs the Pittsburgh Tribune-Review and other newspapers in western Pennsylvania, about 7 percent of revenues come from government-funded legal notices. Newspaper advertising revenues have been declining in recent years, 17.7 percent in 2008 alone. Classified ads have declined at an even greater rate, 29 percent, but the ad grouping that includes legal and public notices remains fairly stable, only declining 4.3 percent in 2008.[2]

The requirements for legal and official advertisements are provided in chapter 50, F.S. Current law requires that publication must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language. The newspaper must qualify or be entered to qualify as periodicals matter at the post office in the county where published, and be generally available to the public for the purpose of publication of official or other notices.[3]

When there is no weekly newspaper published in the county the advertisement may be made by posting three copies in three different places in the county, one of which must be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.[4]

Current law also provides requirements for newspapers. A newspaper is required to have been in existence for at least one year. Also, it must meet the requirements for periodicals matter at the post office in the county where published.[5] An exception is provided for counties in which no newspaper in existence has been published for a year. Proof of publication also is required in the form of a uniform affidavit.[6]

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[1] *Move to Online Public Notices Looms Over Papers*, USA Today, May 22, 2009, http://www.usatoday.com/tech/news/2009-05-22-online-notices_N.htm (last visited March 19, 2010).

[2] *Move to Online Public Notices Looms Over Papers*, USA Today, May 22, 2009, citing the Newspaper Association of America.

[3] Section 50.011, F.S.

[4] Section 50.021, F.S.

[5] Section 50.031, F.S.

[6] Section 50.041, F.S.

The amount a newspaper can charge for publication is standardized at 70 cents per square inch for the first insertion, and 40 cents per square inch for each subsequent insertion.[7] Where the regular established minimum commercial rate per square inch of the newspaper publishing the official notice or legal advertisement is greater than the per square inch rate established in statute, the minimum commercial rate may be charged or the government agency may procure publication through bids. All official notices and legal advertisements must be charged and paid for on the basis of 6-point type on 6-point body, unless otherwise specified in statute. There are criminal penalties for non-compliance with these rates and charges.[8]

Effect of Proposed Changes

The bill creates a new section of law authorizing local governments to use its publicly accessible website for legally required advertisements and public notices. The use of such website constitutes legal notice.

The bill defines "publicly accessible website" to mean a local government's official website that is accessible on the Internet. If specifically authorized by ordinance, a local government may use its website for legally required advertisements and public notices if:

- A public library or other governmental facility providing free access to the Internet during regular business hours exists within the jurisdictional boundaries of the local government;
- The local government provides notice to its residents at least once per year in a newspaper of general circulation, or the local government's newsletter or periodical, or another publication mailed or delivered to all residents or property owners within its jurisdictional boundaries, indicating that residents can register with the local government to receive all advertisements and public notices by first-class mail or by e-mail; and
- The local government maintains a registry of names, addresses and e-mail addresses of residents who request in writing that they receive advertisements and notices by first-class mail or by e-mail.

Any registry of names, addresses and e-mail addresses of residents requesting receipt of legal advertisements and public notices by first-class mail or by e-mail is a public record unless a specific public record exemption exists. For example, information relating to the identification or location of a police officer or firefighter could remain protected in the database if the officer or firefighter requests in writing the protection of such information.[9]

Advertisements and public notices published on a publicly accessible website must be conspicuously placed on the homepage of that website or must be accessible through a direct link from the homepage. The advertisement must indicate the date on which it was first published on the website.

The bill also authorizes a local government with a government access channel authorized under s. 610.109, F.S., to include on such channel a summary of all advertisements and public notices published on its website.

The bill specifically authorizes the following advertisements or public notices on a local government's publicly accessible website provided the previously discussed requirements are met:

- Advertisement directed by law or order or decree of court.
- Notice regarding special election or referendums. The local government responsible for publication must publish such notice daily during the five weeks immediately preceding the election or referendum.

[7] Section 50.061(2)(a) and (b), F.S., provides that counties with a population in excess of 304,000 may charge 80 cents per square inch for the first insertion and 60 cents per square inch for each subsequent insertion. Counties with a population in excess of 450,000 may charge 95 cents per square inch for the first insertion and 75 cents per square inch for each subsequent insertion.

[8] Section 50.061, F.S.,

[9] *See* s. 119.071(4)(d), F.S.

- Notice regarding the consideration of a county ordinance by the board of county commissioners. Such notice must be provided at least 10 days before the meeting and must be published daily during the 10 days preceding the meeting.
- Summary statements of adopted tentative county budgets.
- Advertisement of a public hearing relating to the amendment of a county budget. Such advertisement must be published daily during the five days immediately preceding the hearing.
- Advertisement by a county water and sewer system district regarding a project to construct, reconstruct, acquire or improve a water system or a sewer system, and of a call for sealed bids for such projects. Such advertisement must be published daily during the three weeks immediately preceding the date set for receipt of such bids.
- Advertisement for competitive bids to contract construction projects under the Florida Industrial Development Financing Act.
- Notice by code enforcement boards regarding violations of a county or municipal code. Such notice must be provided daily during the four weeks immediately preceding the hearing on the local government's website.
- Notice of public hearings regarding the adoption of a local government comprehensive plan or plan amendment or the approval of a compliance agreement under the Local Government Comprehensive Planning and Land Development Regulation Act. The bill provides multiple requirements for such notice.
- Notice regarding the adoption of a municipal ordinance. Such notice must be provided daily during the 10 days immediately preceding the adoption on the municipality's website.
- Publication of resolutions relating to municipal public improvements financed by special assessments.
- Notice regarding hearings on municipal public improvements financed by special assessments. Such notice must be provided daily for two weeks on the municipality's website.
- Advertisement of specified construction contracts for utilities or extensions to a previously constructed utility. Such advertisement must be made daily for two weeks on the municipality's website.
- Notice of intent to use the uniform method of collecting non-ad valorem assessments. Such notice must be made daily for the four weeks immediately preceding the hearing.
- Notice by a taxing authority of its intent to adopt a millage rate and budget. Such notice must be maintained on the local government website until completion of the hearing.
- Notice by a multicounty taxing authority of its intent to adopt a tentative budget and millage rate. The hearing may not be held less than two days after initial publication of the advertisement on the local government website and not later than September 18. The notice must remain on the website until the date of the hearing.
- Notice of a specified error contained in a notice of proposed property taxes mailed to taxpayers.
- Advertisement of a solicitation of specified competitive bids or proposals for construction projects by a county, municipality or other political subdivision. The bill provides multiple requirements for such advertisement.
- Advertisement of a public hearing by a local government on an areawide development of regional impact under the Florida Environmental Land and Water Management Act of 1972.
- Advertisement of funding availability through a local housing assistance plan under the State Housing Initiatives Partnership Act.

Finally, the bill provides requirements for meeting the public disclosure system requirements for s. 403.7049, F.S., relating to local solid waste management fees.

B. SECTION DIRECTORY:

Section 1: Creates s. 50.0311, F.S., providing a definition, authorizing a local government to use its publicly accessible website for legally required advertisements and public notices and providing an optional receipt of legally required advertisements and public notices by first-class mail or e-mail.

Section 2: Amends s. 50.011, F.S., providing that a notice, advertisement, or publication on a publicly accessible website of a local government constitutes legal notice.

Section 3: Amends s. 50.021, F.S., providing that advertisements directed by law or order or decree of court to be made in a county without a published newspaper may be made by publication on a publicly accessible website.

Section 4: Amends s. 50.051, F.S., clarifying provisions.

Section 5: Amends s. 50.061, F.S., clarifying provisions.

Section 6: Amends s. 100.342, F.S., providing that special election or referendum notices may be published on a publicly accessible website.

Section 7: Amends s. 125.66, F.S., providing that notices of consideration of a county ordinance by the board of county commissioners may be published on a publicly accessible website.

Section 8: Amends s. 129.03, F.S., providing that a summary statement of adopted tentative county budgets may be published on a publicly accessible website.

Section 9: Amends s. 129.06, F.S., providing that advertisement of a public hearing relating to the amendment of a county budget may be published on a publicly accessible website.

Section 10: Amends s. 153.79, F.S., providing that advertisement by a county water and sewer system district regarding a project to construct, reconstruct, acquire, or improve a water system or a sewer system, and of a call for sealed bids for such projects, may be published on a publicly accessible website.

Section 11: Amends s. 159.32, F.S., providing that the advertisement for competitive bids to contract construction projects under the Florida Industrial Development Financing Act may be published on a publicly accessible website.

Section 12: Amends s. 162.12, F.S., providing that code enforcement boards may notice violation of a county or municipal code on a publicly accessible website.

Section 13: Amends s. 163.3184, F.S., providing that notice of public hearings on the adoption of a local government comprehensive plan or plan amendment or the approval of a compliance agreement under the Local Government Comprehensive Planning and Land Development Regulation Act may be published on a publicly accessible website.

Section 14: Amends s. 166.041, F.S., providing that notice of adoption of a municipal ordinance may be published on a publicly accessible website; providing clarifying provisions.

Section 15: Amends s. 170.05, F.S., providing that resolutions relating to municipal public improvements financed by special assessments may be published on a publicly accessible website.

Section 16: Amends s. 170.07, F.S., providing that notice relating to hearings on municipal public improvements financed by special assessments may be noticed on a publicly accessible website.

Section 17: Amends s. 180.24, F.S., providing that specified construction contracts for utilities or extensions to a previously constructed utility may be advertised on a publicly accessible website.

Section 18: Amends s. 197.3632, F.S., providing that notices of intent to use the uniform method of collecting non-ad valorem assessments may be published on a publicly accessible website.

Section 19: Amends s. 200.065, F.S., providing that a taxing authority's notice of intent to adopt a millage rate and budget, a specified multicounty taxing authority's notice of intent to adopt a tentative budget and millage rate, and correction of a specified error contained in a notice of proposed property taxes mailed to taxpayers may be advertised on a publicly accessible website.

Section 20: Amends s. 255.0525, F.S., providing that for the solicitation of specified competitive bids or proposals for construction projects, a county, municipality, or other political subdivision may be advertised on a publicly accessible website.

Section 21: Amends s. 380.06, F.S., providing that a public hearing by a local government on an areawide development of regional impact under the Florida Environmental Land and Water Management Act of 1972 may be advertised on a publicly accessible website.

Section 22: Amends s. 403.973, F.S., redefining the term "duly noticed."

Section 23: Amends s. 420.9075, F.S., providing that funding availability through a local housing assistance plan under the State Housing Initiatives Partnership Act may be advertised on a publicly accessible website.

Section 24: Amends s. 403.7049, F.S., providing fulfillment requirements of the public disclosure system.

Section 25: Providing an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   State corporate income tax receipts may decrease as a result of corporate profit reductions associated with local governments moving required advertising and noticing from newspapers to publicly accessible websites.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may reduce local government expenditures associated with publishing required notices and advertisements in the newspaper. Local governments might have to expend funds to create, maintain and issue correspondence from a registry of persons requesting notifications by first-class mail or e-mail.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Corporations or other entities or individuals that publish required local government public notices and advertisements will have a loss of revenue associated with local governments moving such required advertising and noticing from newspapers to publicly accessible websites.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to effective public notices by governmental entities; creating s. 50.0311, F.S.; defining the term "publicly accessible website"; authorizing a local government to use its publicly accessible website for legally required advertisements and public notices; providing conditions for such use; providing for optional receipt of legally required advertisements and public notices by first-class mail or e-mail; providing requirements for advertisements and public notices published on a publicly accessible website; amending s. 50.011, F.S.; providing that a notice, advertisement, or publication on a publicly accessible website of a local government in accordance with s. 50.0311, F.S., constitutes legal notice; amending s. 50.021, F.S.; providing that advertisements directed by law or order or decree of court to be made in a county in which no newspaper is published may be made by publication on a publicly accessible website; amending s. 50.051, F.S.; providing clarifying provisions; amending s. 50.061, F.S.; providing clarifying provisions; amending s. 100.342, F.S.; providing for notice of special election or referendum on a publicly accessible website; amending s. 125.66, F.S.; providing for notice of consideration of an ordinance by a board of county commissioners to be published on a publicly accessible website; requiring maintenance of the advertisement for a specified period; providing clarifying provisions; amending s. 129.03, F.S.;

providing for the advertisement of a summary statement of adopted tentative county budgets on a publicly accessible website; amending s. 129.06, F.S.; providing for advertisement of a public hearing relating to the amendment of a county budget on a publicly accessible website; amending s. 153.79, F.S.; providing for public advertisement by a county water and sewer system district of projects to construct, reconstruct, acquire, or improve a water system or a sewer system, and of a call for sealed bids for such projects, on a publicly accessible website; amending s. 159.32, F.S.; providing for advertisement for competitive bids for contracts for the construction of a project under the Florida Industrial Development Financing Act on a publicly accessible website; amending s. 162.12, F.S.; providing for optional serving of notice by a code enforcement board of a violation of a county or municipal code via a publicly accessible website; amending s. 163.3184, F.S.; providing for notice of public hearings on the adoption of a local government comprehensive plan or plan amendment or the approval of a compliance agreement under the Local Government Comprehensive Planning and Land Development Regulation Act via a publicly accessible website; amending s. 166.041, F.S.; providing for notice of adoption of a municipal ordinance via a publicly accessible website; providing clarifying provisions; amending s. 170.05, F.S.; providing for publication on a publicly accessible website of a resolution relating to municipal public improvements financed by special

assessments; amending s. 170.07, F.S.; providing for publication on a publicly accessible website of notice of hearing on municipal public improvements financed by special assessments; amending s. 180.24, F.S.; providing for advertisement via a publicly accessible website of specified construction contracts for utilities or extensions to a previously constructed utility; amending s. 197.3632, F.S.; providing for publication on a publicly accessible website of a local government's notice of intent to use the uniform method of collecting non-ad valorem assessments; amending s. 200.065, F.S.; providing for advertisement on a publicly accessible website of a taxing authority's intent to adopt a millage rate and budget; providing for advertisement on a publicly accessible website of the intention of a specified multicounty taxing authority to adopt a tentative budget and millage rate; providing clarifying and conforming provisions; providing for notice via a publicly accessible website of correction of a specified error contained in a notice of proposed property taxes mailed to taxpayers; amending s. 255.0525, F.S.; providing for advertisement via a publicly accessible website for the solicitation of competitive bids or proposals for construction projects of a county, municipality, or other political subdivision which are projected to exceed specified costs; amending s. 380.06, F.S.; providing for publication of an advertisement on a publicly accessible website of a public hearing by a local government on an areawide development

of regional impact under the Florida Environmental Land and Water Management Act of 1972; amending s. 403.973, F.S.; redefining the term "duly noticed" to include publication on a publicly accessible website; providing conforming provisions; amending s. 420.9075, F.S.; providing for advertisement of notice on a publicly accessible website of funding availability through a local housing assistance plan under the State Housing Initiatives Partnership Act; amending s. 403.7049, F.S.; prescribing procedures for fulfilling public disclosure system requirements with respect to the duty of a municipality to disclose costs for solid waste management; providing an effective date.

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

Section 1. Section 50.0311, Florida Statutes, is created to read:

50.0311 Publication of advertisements and public notices on a local government's publicly accessible website and government access channels.—

(1) For purposes of notices and advertisements required by statute to be published by a local government, the term "publicly accessible website" means a county or municipal government's official website that is accessible via the Internet.

(2) If specifically authorized by ordinance, a local government may use its website for legally required

advertisements and public notices if:

(a) A public library or other governmental facility providing free access to the Internet during regular business hours exists within the jurisdictional boundaries of such county or municipality;

(b) The local government provides notice to its residents at least once per year in a newspaper of general circulation, the county or municipality's newsletter or periodical, or another publication that is mailed or delivered to all residents or property owners throughout the local government's jurisdiction, indicating that residents may receive legally required advertisements and public notices from the local government by first-class mail or e-mail upon registering their name and address or e-mail address with the local governmental entity; and

(c) The local government maintains a registry of names, addresses, and e-mail addresses of residents who request in writing that they receive legally required advertisements and public notices from the local government by first-class mail or e-mail.

(3) Advertisements and public notices published on a publicly accessible website shall be conspicuously placed on the website's homepage or accessible through a direct link from the homepage. The advertisement shall indicate the date on which the advertisement was first published on the publicly accessible website.

(4) The local government that has a government access channel authorized under s. 610.109 may also include on its

government access channel a summary of all advertisements and public notices that are published on its website.

Section 2. Section 50.011, Florida Statutes, is amended to read:

50.011 Where and in what language legal notices to be published.—Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a newspaper printed and published periodically once a week or oftener, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public. Notwithstanding any provisions to the contrary, and as specifically authorized by s. 50.0311, a notice, advertisement, or publication on a publicly accessible

website of a local government in accordance with s. 50.0311 constitutes legal notice.

Section 3. Section 50.021, Florida Statutes, is amended to read:

50.021 Publication when no newspaper in county.—When any law, or order or decree of court, shall direct advertisements to be made in any county and there be no newspaper published in the said county, the advertisement may be made, in the case of a county or municipality, by publishing such advertisement on a publicly accessible website maintained by the entity responsible for publication or posting three copies thereof in three different places in said county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.

Section 4. Section 50.051, Florida Statutes, is amended to read:

50.051 Proof of publication; form of uniform affidavit.—The printed form upon which all such affidavits establishing proof of publication in a newspaper are to be executed shall be substantially as follows:

NAME OF NEWSPAPER

Published (Weekly or Daily)

(Town or City) (County) FLORIDA

STATE OF FLORIDA

COUNTY OF ....:

Before the undersigned authority personally appeared ...., who on oath says that he or she is .... of the ...., a .... newspaper published at .... in .... County, Florida; that the attached copy of advertisement, being a .... in the matter of .... in the .... Court, was published in said newspaper in the issues of .....

Affiant further says that the said .... is a newspaper published at ...., in said .... County, Florida, and that the said newspaper has heretofore been continuously published in said .... County, Florida, each .... and has been entered as periodicals matter at the post office in ...., in said .... County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this .... day of ...., ...(year)..., by ...., who is personally known to me or who has produced (type of identification) as identification.

...(Signature of Notary Public)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

...(Notary Public)...

Section 5. Subsection (4) of section 50.061, Florida Statutes, is amended to read:

50.061 Amounts chargeable.—

(4) All official public notices and legal advertisements published in a newspaper shall be charged and paid for on the basis of 6-point type on 6-point body, unless otherwise specified by statute.

Section 6. Section 100.342, Florida Statutes, is amended to read:

100.342 Notice of special election or referendum.—In any special election or referendum not otherwise provided for there shall be at least 30 days' notice of the election or referendum by publication in a newspaper of general circulation in the county, district, or municipality, as the case may be, or, in the case of a county or municipality, publication on a publicly accessible website maintained by the local government responsible for publication and published daily during the 5 weeks immediately preceding the election or referendum. If advertised in the newspaper, the publication shall be made at least twice, once in the fifth week and once in the third week prior to the week in which the election or referendum is to be held. If there is no newspaper of general circulation in the county, district, or municipality and publication is not made on a publicly accessible website maintained by the local government responsible for publication, the notice shall be posted in no fewer ~~less~~ than five places within the territorial limits of the county, district, or municipality.

Section 7. Paragraph (a) of subsection (2) and paragraph

(b) of subsection (4) of section 125.66, Florida Statutes, are amended to read:

125.66 Ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.—

(2)(a) The regular enactment procedure shall be as follows: The board of county commissioners at any regular or special meeting may enact or amend any ordinance, except as provided in subsection (4), if notice of intent to consider such ordinance is given at least 10 days before the ~~prior to said~~ meeting on a publicly accessible website maintained by the county or by publication in a newspaper of general circulation in the county. If advertised on a publicly accessible website, the advertisement shall be published daily during the 10 days immediately preceding the meeting. A copy of such notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(4) Ordinances or resolutions, initiated by other than the county, that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to subsection (2). Ordinances or resolutions that change the actual

list of permitted, conditional, or prohibited uses within a zoning category, or ordinances or resolutions initiated by the county that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

(b) In cases in which the proposed ordinance or resolution changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the board of county commissioners shall provide for public notice and hearings as follows:

1. The board of county commissioners shall hold two advertised public hearings on the proposed ordinance or resolution. At least one hearing shall be held after 5 p.m. on a weekday, unless the board of county commissioners, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

2. The required <u>newspaper</u> advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The <u>newspaper</u> advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The <u>newspaper</u> advertisement shall be placed in a

newspaper of general paid circulation in the county and of general interest and readership in the community pursuant to chapter 50, not one of limited subject matter. It is the legislative intent that, whenever possible, the newspaper advertisement shall appear in a newspaper that is published at least 5 days a week unless the only newspaper in the community is published less than 5 days a week. The newspaper advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The ...(name of local governmental unit)... proposes to adopt the following by ordinance or resolution:...(title of ordinance or resolution)....

A public hearing on the ordinance or resolution will be held on ...(date and time)... at ...(meeting place)....

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area within the local government covered by the proposed ordinance or resolution. The map shall include major street names as a means of identification of the general area.

3. In lieu of publishing the advertisements set out in this paragraph, the board of county commissioners may mail a notice to each person owning real property within the area covered by the ordinance or resolution. Such notice shall

clearly explain the proposed ordinance or resolution and shall notify the person of the time, place, and location of both public hearings on the proposed ordinance or resolution.

Section 8. Paragraph (b) of subsection (3) of section 129.03, Florida Statutes, is amended to read:

129.03 Preparation and adoption of budget.—

(3) No later than 15 days after certification of value by the property appraiser pursuant to s. 200.065(1), the county budget officer, after tentatively ascertaining the proposed fiscal policies of the board for the ensuing fiscal year, shall prepare and present to the board a tentative budget for the ensuing fiscal year for each of the funds provided in this chapter, including all estimated receipts, taxes to be levied, and balances expected to be brought forward and all estimated expenditures, reserves, and balances to be carried over at the end of the year.

(b) Upon receipt of the tentative budgets and completion of any revisions made by the board, the board shall prepare a statement summarizing all of the adopted tentative budgets. This summary statement shall show, for each budget and the total of all budgets, the proposed tax millages, the balances, the reserves, and the total of each major classification of receipts and expenditures, classified according to the classification of accounts prescribed by the appropriate state agency. The board shall cause this summary statement to be advertised one time in a newspaper of general circulation published in the county, <u>on a publicly accessible website maintained by the county,</u> or by posting at the courthouse door if there is no such newspaper <u>or</u>

website, and the advertisement shall appear adjacent to the advertisement required pursuant to s. 200.065.

Section 9. Paragraph (f) of subsection (2) of section 129.06, Florida Statutes, is amended to read:

129.06 Execution and amendment of budget.—

(2) The board at any time within a fiscal year may amend a budget for that year, and may within the first 60 days of a fiscal year amend the budget for the prior fiscal year, as follows:

(f) If an amendment to a budget is required for a purpose not specifically authorized in paragraphs (a)-(e), unless otherwise prohibited by law, the amendment may be authorized by resolution or ordinance of the board of county commissioners adopted following a public hearing. ~~The public hearing must be advertised at least 2 days, but not more than 5 days, before the date of the hearing.~~ The advertisement must appear on a publicly accessible website maintained by the county or in a newspaper of paid general circulation and must identify the name of the taxing authority, the date, place, and time of the hearing, and the purpose of the hearing. If advertised in the newspaper, the public hearing must be advertised at least 2 days, but not more than 5 days, before the date of the hearing. If advertised on a publicly accessible website, the notice must be published daily during the 5 days immediately preceding the hearing. The advertisement must also identify each budgetary fund to be amended, the source of the funds, the use of the funds, and the total amount of each budget.

Section 10. Section 153.79, Florida Statutes, is amended

to read:

153.79 Contracts for construction of improvements, sealed bids.—All contracts let, awarded, or entered into by the district for the construction, reconstruction, or acquisition or improvement of a water system or a sewer system or both or any part thereof, if the amount thereof shall exceed $1,000, shall be awarded only after public advertisement and call for sealed bids therefor on a publicly accessible website maintained by the county or ~~,~~ in a newspaper published in the county circulating in the district, or, if there is ~~be~~ no such website or newspaper, ~~then~~ in a newspaper published in the state and circulating in the district. If advertised in the newspaper, such advertisement shall ~~to~~ be published at least once at least 3 weeks before the date set for the receipt of such bids. If advertised on a publicly accessible website, such advertisement shall be published daily during the 3 weeks immediately preceding the date set for the receipt of such bids. Such advertisements for bids in addition to the other necessary and pertinent matter shall state in general terms the nature and description of the improvement or improvements to be undertaken and shall state that detailed plans and specifications for such work are on file for inspection in the office of the district clerk and copies thereof shall be furnished to any interested party upon payment of reasonable charges to reimburse the district for its expenses in providing such copies. The award shall be made to the responsible and competent bidder or bidders who shall offer to undertake the improvements at the lowest cost to the district and such bidder or bidders shall be required to file bond for

the full and faithful performance of such work and the execution of any such contract in such amount as the district board shall determine, and in all other respects the letting of such construction contracts shall comply with applicable provisions of the general laws relating to the letting of public contracts. Nothing in this section shall be deemed to prevent the district from hiring or retaining such consulting engineers, attorneys, financial experts or other technicians as it shall determine, in its discretion, or from undertaking any construction work with its own resources, without any such public advertisement.

Section 11. Section 159.32, Florida Statutes, is amended to read:

159.32 Construction contracts.—Contracts for the construction of the project may be awarded by the local agency in such manner as in its judgment will best promote free and open competition, including advertisement for competitive bids in a newspaper of general circulation within the boundaries of the local agency <u>or on a publicly accessible website maintained by the county</u>; however, if the local agency shall determine that the purposes of this part will be more effectively served, the local agency in its discretion may award or cause to be awarded contracts for the construction of any project, or any part thereof, upon a negotiated basis as determined by the local agency. The local agency shall prescribe bid security requirements and other procedures in connection with the award of such contracts as in its judgment shall protect the public interest. The local agency may by written contract engage the services of the lessee, purchaser, or prospective lessee or

purchaser of any project in the construction of the project and may provide in the contract that the lessee, purchaser, or prospective lessee or purchaser may act as an agent of, or an independent contractor for, the local agency for the performance of the functions described therein, subject to such conditions and requirements consistent with the provisions of this part as shall be prescribed in the contract, including functions such as the acquisition of the site and other real property for the project; the preparation of plans, specifications, and contract documents; the award of construction and other contracts upon a competitive or negotiated basis; the construction of the project, or any part thereof, directly by the lessee, purchaser, or prospective lessee or purchaser; the inspection and supervision of construction; the employment of engineers, architects, builders, and other contractors; and the provision of money to pay the cost thereof pending reimbursement by the local agency. Any such contract may provide that the local agency may, out of proceeds of bonds, make advances to or reimburse the lessee, purchaser, or prospective lessee or purchaser for its costs incurred in the performance of those functions, and shall set forth the supporting documents required to be submitted to the local agency and the reviews, examinations, and audits that shall be required in connection therewith to assure compliance with the provisions of this part and the contract.

Section 12. Paragraph (a) of subsection (2) of section 162.12, Florida Statutes, is amended to read:

162.12 Notices.—

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board, notice may also be served by publication or posting, as follows:

(a)1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located or daily during the 4 weeks immediately preceding the hearing on a publicly accessible website maintained by the local government. The website and newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of newspaper publication shall be made as provided in ss. 50.041 and 50.051.

Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

Section 13. Paragraph (b) of subsection (15) and paragraph (c) of subsection (16) of section 163.3184, Florida Statutes, are amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(15) PUBLIC HEARINGS.—

(b) The local governing body shall hold at least two advertised public hearings on the proposed comprehensive plan or

plan amendment as follows:

1. The first public hearing shall be held at the transmittal stage pursuant to subsection (3). It shall be held on a weekday at least 7 days after the day that the first advertisement is published or after the notice of the first public hearing is initially published on the publicly accessible website.

2. The second public hearing shall be held at the adoption stage pursuant to subsection (7). It shall be held on a weekday at least 5 days after the day that the second advertisement is published or after the notice of the second public hearing is initially published on the publicly accessible website.

(16) COMPLIANCE AGREEMENTS.—

(c) Before ~~Prior to~~ its execution of a compliance agreement, the local government must approve the compliance agreement at a public hearing advertised at least 10 days before the public hearing in a newspaper of general circulation in the area or daily during the 10 days immediately preceding the hearing on a publicly accessible website maintained by the local government in accordance with the advertisement requirements of subsection (15).

Section 14. Paragraphs (a) and (c) of subsection (3) of section 166.041, Florida Statutes, are amended to read:

166.041 Procedures for adoption of ordinances and resolutions.—

(3)(a) Except as provided in paragraph (c), a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days before ~~prior to~~

adoption, be noticed once in a newspaper of general circulation in the municipality or noticed daily during the 10 days immediately preceding the adoption on a publicly accessible website maintained by the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(c) Ordinances initiated by other than the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to paragraph (a). Ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances initiated by the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

1. In cases in which the proposed ordinance changes the actual zoning map designation for a parcel or parcels of land involving less than 10 contiguous acres, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will redesignate by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall

be given at least 30 days prior to the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the governing body. The governing body shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

2. In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the governing body shall provide for public notice and hearings as follows:

a. The local governing body shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5 p.m. on a weekday, unless the local governing body, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

b. The required <u>newspaper</u> advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The <u>newspaper</u> advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements

appear. The newspaper advertisement shall be placed in a newspaper of general paid circulation in the municipality and of general interest and readership in the municipality, not one of limited subject matter, pursuant to chapter 50. It is the legislative intent that, whenever possible, the newspaper advertisement appear in a newspaper that is published at least 5 days a week unless the only newspaper in the municipality is published less than 5 days a week. The newspaper advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The ...(name of local governmental unit)... proposes to adopt the following ordinance:...(title of the ordinance)....

A public hearing on the ordinance will be held on ...(date and time)... at ...(meeting place)....

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area.

c. In lieu of publishing the advertisement set out in this paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of any public hearing on the proposed ordinance.

Section 15. Section 170.05, Florida Statutes, is amended to read:

170.05 Publication of resolution.—Upon the adoption of the resolution provided for in s. 170.03, the municipality shall cause said resolution to be published on a publicly accessible website maintained by the municipality or one time in a newspaper of general circulation published in said municipality, and if there is ~~be~~ no website or newspaper published in said municipality, the governing authority of said municipality shall cause said resolution to be published once a week for a period of 2 weeks in a newspaper of general circulation published in the county in which said municipality is located.

Section 16. Section 170.07, Florida Statutes, is amended to read:

170.07 Publication of preliminary assessment roll.—Upon the completion of said preliminary assessment roll, the governing authority of the municipality shall by resolution fix a time and place at which the owners of the property to be assessed or any other persons interested therein may appear before said governing authority and be heard as to the propriety and advisability of making such improvements, as to the cost thereof, as to the manner of payment therefor, and as to the amount thereof to be assessed against each property so improved. Thirty days' notice in writing of such time and place shall be given to such property owners. The notice shall include the amount of the assessment and shall be served by mailing a copy to each of such property owners at his or her last known address, the names and addresses of such property owners to be

obtained from the records of the property appraiser or from such other sources as the city or town clerk or engineer deems reliable, proof of such mailing to be made by the affidavit of the clerk or deputy clerk of said municipality, or by the engineer, said proof to be filed with the clerk, provided, that failure to mail said notice or notices shall not invalidate any of the proceedings hereunder. Notice of the time and place of such hearing shall also be given by two publications a week apart in a newspaper of general circulation in said municipality or by publication daily for 2 weeks on a publicly accessible website maintained by the municipality, and if there is ~~be~~ no website or newspaper published in said municipality, the governing authority of said municipality shall cause said notice to be published in like manner in a newspaper of general circulation published in the county in which said municipality is located; provided that the last publication shall be at least 1 week before ~~prior to~~ the date of the hearing. Said notice shall describe the streets or other areas to be improved and advise all persons interested that the description of each property to be assessed and the amount to be assessed to each piece or parcel of property may be ascertained at the office of the clerk of the municipality. Such service by publication shall be verified by the affidavit of the publisher and filed with the clerk of said municipality.

Section 17. Subsection (1) of section 180.24, Florida Statutes, is amended to read:

180.24 Contracts for construction; bond; publication of notice; bids.—

(1) Any municipality desiring the accomplishment of any or all of the purposes of this chapter may make contracts for the construction of any of the utilities mentioned in this chapter, or any extension or extensions to any previously constructed utility, which said contracts shall be in writing, and the contractor shall be required to give bond, which said bond shall be executed by a surety company authorized to do business in the state; provided, however, construction contracts in excess of $25,000 shall be advertised by the publication of a notice in a newspaper of general circulation in the county in which said municipality is located at least once each week for 2 consecutive weeks, by publication daily for 2 weeks on a publicly accessible website maintained by the municipality, or by posting three notices in three conspicuous places in said municipality, one of which shall be on the door of the city hall; and that at least 10 days shall elapse between the date of the first publication or posting of such notice and the date of receiving bids and the execution of such contract documents. For municipal construction projects identified in s. 255.0525, the notice provision of that section supersedes and replaces the notice provisions in this section.

Section 18. Paragraph (a) of subsection (3) of section 197.3632, Florida Statutes, is amended to read:

197.3632 Uniform method for the levy, collection, and enforcement of non-ad valorem assessments.—

(3)(a) Notwithstanding any other provision of law to the contrary, a local government which is authorized to impose a non-ad valorem assessment and which elects to use the uniform

method of collecting such assessment for the first time as authorized in this section shall adopt a resolution at a public hearing before ~~prior to~~ January 1 or, if the property appraiser, tax collector, and local government agree, March 1. The resolution shall clearly state its intent to use the uniform method of collecting such assessment. The local government shall publish notice of its intent to use the uniform method for collecting such assessment weekly in a newspaper of general circulation within each county contained in the boundaries of the local government for 4 consecutive weeks preceding the hearing or, in the case of a county or municipality, daily during the 4 consecutive weeks immediately preceding the hearing on a publicly accessible website maintained by the county or municipality. The resolution shall state the need for the levy and shall include a legal description of the boundaries of the real property subject to the levy. If the resolution is adopted, the local governing board shall send a copy of it by United States mail to the property appraiser, the tax collector, and the department by January 10 or, if the property appraiser, tax collector, and local government agree, March 10.

Section 19. Paragraph (d) of subsection (2), paragraph (g) of subsection (3), paragraph (b) of subsection (12), and paragraph (a) of subsection (14) of section 200.065, Florida Statutes, are amended to read:

200.065 Method of fixing millage.—

(2) No millage shall be levied until a resolution or ordinance has been approved by the governing board of the taxing authority which resolution or ordinance must be approved by the

taxing authority according to the following procedure:

(d) Within 15 days after the meeting adopting the tentative budget, the taxing authority shall advertise in a newspaper of general circulation in the county as provided in subsection (3)~~,~~ its intent to finally adopt a millage rate and budget or, in the case of a county or municipality, may advertise on its publicly accessible website its intent to finally adopt a millage rate and budget, and shall maintain the notice on its website until completion of the hearing. If advertised in a newspaper, a public hearing to finalize the budget and adopt a millage rate shall be held not less than 2 days nor more than 5 days after the day that the advertisement is first published. During the hearing, the governing body of the taxing authority shall amend the adopted tentative budget as it sees fit, adopt a final budget, and adopt a resolution or ordinance stating the millage rate to be levied. The resolution or ordinance shall state the percent, if any, by which the millage rate to be levied exceeds the rolled-back rate computed pursuant to subsection (1), which shall be characterized as the percentage increase in property taxes adopted by the governing body. The adoption of the budget and the millage-levy resolution or ordinance shall be by separate votes. For each taxing authority levying millage, the name of the taxing authority, the rolled-back rate, the percentage increase, and the millage rate to be levied shall be publicly announced before ~~prior to~~ the adoption of the millage-levy resolution or ordinance. ~~In no event may~~ The millage rate adopted pursuant to this paragraph may not exceed the millage rate tentatively adopted pursuant to

paragraph (c). If the rate tentatively adopted pursuant to paragraph (c) exceeds the proposed rate provided to the property appraiser pursuant to paragraph (b), or as subsequently adjusted pursuant to subsection (11), each taxpayer within the jurisdiction of the taxing authority shall be sent notice by first-class mail of his or her taxes under the tentatively adopted millage rate and his or her taxes under the previously proposed rate. The notice must be prepared by the property appraiser, at the expense of the taxing authority, and must generally conform to the requirements of s. 200.069. If such additional notice is necessary, its mailing must precede the hearing held pursuant to this paragraph by not less than 10 days and not more than 15 days.

(3)

(g) If ~~In the event that~~ the mailing of the notice of proposed property taxes is delayed beyond September 3 in a county, any multicounty taxing authority which levies ad valorem taxes within that county shall advertise its intention to adopt a tentative budget and millage rate on a publicly accessible website maintained by the taxing authority or in a newspaper of paid general circulation within that county, as provided in this subsection, and shall hold the hearing required pursuant to paragraph (2)(c). If advertised in the newspaper, the hearing shall be held not less than 2 days or more than 5 days thereafter, and not later than September 18. If advertised on the website, the hearing shall be held not less than 2 days after initial publication of the advertisement on the website and not later than September 18, and shall remain on the website

until the date of the hearing. The advertisement shall be in the following form, unless the proposed millage rate is less than or equal to the rolled-back rate, computed pursuant to subsection (1), in which case the advertisement shall be as provided in paragraph (e):

NOTICE OF TAX INCREASE

The ...(name of the taxing authority)... proposes to increase its property tax levy by ...(percentage of increase over rolled-back rate)... percent.

All concerned citizens are invited to attend a public hearing on the proposed tax increase to be held on ...(date and time)... at ...(meeting place)....

(12) The time periods specified in this section shall be determined by using the date of certification of value pursuant to subsection (1) or July 1, whichever date is later, as day 1. The time periods shall be considered directory and may be shortened, provided:

(b) Any public hearing preceded by a newspaper advertisement is held not less than 2 days or more than 5 days following publication of such advertisement and any public hearing preceded by advertisement on a website advertisement is held not less than 2 days after initial publication; and

(14)(a) If the notice of proposed property taxes mailed to taxpayers under this section contains an error, the property appraiser, in lieu of mailing a corrected notice to all taxpayers, may correct the error by mailing a short form of the notice to those taxpayers affected by the error and its

correction. The notice shall be prepared by the property appraiser at the expense of the taxing authority which caused the error or at the property appraiser's expense if he or she caused the error. The form of the notice must be approved by the executive director of the Department of Revenue or the executive director's designee. If the error involves only the date and time of the public hearings required by this section, the property appraiser, with the permission of the taxing authority affected by the error, may correct the error by advertising the corrected information on a publicly accessible website maintained by the taxing authority or in a newspaper of general circulation in the county as provided in subsection (3).

Section 20. Subsection (2) of section 255.0525, Florida Statutes, is amended to read:

255.0525 Advertising for competitive bids or proposals.—

(2) The solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than $200,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 21 days before ~~prior to~~ the established bid opening and at least 5 days before ~~prior to~~ any scheduled prebid conference, or advertised daily during the 21-day period immediately preceding the established bid opening date and daily during the 5-day period immediately preceding any scheduled prebid conference on a publicly accessible website maintained by the entity responsible for publication. The solicitation of competitive bids or proposals for any county, municipality, or

other political subdivision construction project that is projected to cost more than $500,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 30 days before ~~prior to~~ the established bid opening and at least 5 days before ~~prior to~~ any scheduled prebid conference, or advertised daily during the 30-day period immediately preceding the established bid opening date and daily during the 5-day period immediately preceding any scheduled prebid conference on a publicly accessible website. Bids or proposals shall be received and opened at the location, date, and time established in the bid or proposal advertisement. In cases of emergency, the procedures required in this section may be altered by the local governmental entity in any manner that is reasonable under the emergency circumstances.

Section 21. Paragraph (e) of subsection (25) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(25) AREAWIDE DEVELOPMENT OF REGIONAL IMPACT.—

(e) The local government shall schedule a public hearing within 60 days after receipt of the petition. The public hearing shall be advertised at least 30 days before ~~prior to~~ the hearing. In addition to the public hearing notice by the local government, the petitioner, except when the petitioner is a local government, shall provide actual notice to each person owning land within the proposed areawide development plan at least 30 days before ~~prior to~~ the hearing. If the petitioner is a local government, or local governments pursuant to an

interlocal agreement, notice of the public hearing shall be provided by the publication of an advertisement on a publicly accessible website maintained by the county or municipality responsible for publication or in a newspaper of general circulation that meets the requirements of this paragraph. The newspaper advertisement must be no less than one-quarter page in a standard size or tabloid size newspaper, and the headline in the newspaper advertisement must be in type no smaller than 18 point. The newspaper advertisement may ~~shall~~ not be published in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must be published on a publicly accessible website maintained by the county or municipality responsible for publication or in a newspaper of general paid circulation in the county and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50. Whenever possible, the newspaper advertisement must appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the community is published less than 5 days a week. The advertisement must be in substantially the form used to advertise amendments to comprehensive plans pursuant to s. 163.3184. The local government shall specifically notify in writing the regional planning agency and the state land planning agency at least 30 days before ~~prior to~~ the public hearing. At the public hearing, all interested parties may testify and submit evidence regarding the petitioner's qualifications, the need for and benefits of an areawide development of regional impact, and such other issues relevant to a full consideration of the petition. If more than

one local government has jurisdiction over the defined planning area in an areawide development plan, the local governments shall hold a joint public hearing. Such hearing shall address, at a minimum, the need to resolve conflicting ordinances or comprehensive plans, if any. The local government holding the joint hearing shall comply with the following additional requirements:

1. The notice of the hearing shall be published at least 60 days in advance of the hearing and shall specify where the petition may be reviewed.

2. The notice shall be given to the state land planning agency, to the applicable regional planning agency, and to such other persons as may have been designated by the state land planning agency as entitled to receive such notices.

3. A public hearing date shall be set by the appropriate local government at the next scheduled meeting.

Section 22. Paragraph (a) of subsection (2) of section 403.973, Florida Statutes, is amended to read:

403.973 Expedited permitting; comprehensive plan amendments.—

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

(a) "Duly noticed" means publication <u>on a publicly accessible website maintained by the municipality or county having jurisdiction or</u> in a newspaper of general circulation in the municipality or county <u>having</u> ~~with~~ jurisdiction. <u>If published in a newspaper,</u> the notice shall appear on at least 2 separate days, one of which shall be at least 7 days before the meeting. <u>If published on a publicly accessible website, the</u>

notice shall appear daily during the 7 days immediately preceding the meeting. The notice shall state the date, time, and place of the meeting scheduled to discuss or enact the memorandum of agreement, and the places within the municipality or county where such proposed memorandum of agreement may be inspected by the public. The newspaper notice must be one-eighth of a page in size and must be published in a portion of the paper other than the legal notices section. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the memorandum of agreement.

Section 23. Paragraph (b) of subsection (4) of section 420.9075, Florida Statutes, is amended to read:

420.9075 Local housing assistance plans; partnerships.—

(4) Each local housing assistance plan is governed by the following criteria and administrative procedures:

(b) The county or eligible municipality or its administrative representative shall advertise the notice of funding availability in a newspaper of general circulation and periodicals serving ethnic and diverse neighborhoods, at least 30 days before the beginning of the application period or daily during the 30 days immediately preceding the application period on a publicly accessible website maintained by the county or eligible municipality. If no funding is available due to a waiting list, no notice of funding availability is required.

Section 24. Subsection (2) of section 403.7049, Florida Statutes, is amended to read:

403.7049 Determination of full cost for solid waste management; local solid waste management fees.—

(2)(a) Each municipality shall establish a system to inform, no less than once a year, residential and nonresidential users of solid waste management services within the municipality's service area of the user's share, on an average or individual basis, of the full cost for solid waste management as determined pursuant to subsection (1). Counties shall provide the information required of municipalities only to residential and nonresidential users of solid waste management services within the county's service area that are not served by a municipality. Municipalities shall include costs charged to them or persons contracting with them for disposal of solid waste in the full cost information provided to residential and nonresidential users of solid waste management services.

(b) The public disclosure system requirements of this section shall be fulfilled by meeting one of the following:

1. By mailing a copy of the full cost information to each residential and nonresidential user of solid waste management service within the solid waste management service area of the county or municipality;

2. By enclosing a copy of the full cost information in or with a bill sent to each residential and nonresidential user of solid waste management services within the service area of the county or municipality;

3. By publishing a copy of the full cost information in a newspaper of general circulation within the county. Such notice shall be a display advertisement not less than one-quarter page in size; or

4. By advertising a copy of the full cost information

daily for at least two consecutive weeks on a publicly accessible website maintained by the municipality.

(c) ~~(b)~~ Counties and municipalities are encouraged to operate their solid waste management systems through use of an enterprise fund.

Section 25. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1565 Rulemaking
SPONSOR(S): Dorworth and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1844

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee		McDonald	Williamson
2)	Economic Development & Community Affairs Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

Currently, under the Administrative Procedure Act each agency, before the adoption, amendment, or repeal of a rule, must consider the impact of the rule on a small business. A small business is defined as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement includes both personal and business investments. Under the current process, an agency is required to provide the Small Business Advisory Council (Council) and the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor with notice of a proposed rule that affects small businesses 28 days prior to its adoption. The Council has 21 days after it receives notice of a rule in which to review the impact of that rule on small businesses and offer alternatives to lessen the identified impact. If an agency does not adopt all alternatives offered by the Council, it must, prior to rule adoption or amendment, file a detailed written statement with the Administrative Procedures Committee and the Council explaining the reasons for failure to adopt the alternatives.

The bill adds determinations that must be made prior to the adoption, amendment, or repeal of a rule. If an agency initially determines that a rule adversely affects or increases regulatory costs to small businesses, the agency must retain an independent entity, which can be a third party or the Legislature, to do an independent economic analysis. The analysis can also be triggered by a request from the Council. The analysis must be certified by the Office of Economic and Demographic Research. A further independent analysis is required to determine if a rule that was the subject of the first analysis would result in a net creation of new private sector jobs and reduce the state's unemployment rate. Finally, the bill requires the Legislature to ratify rules that an agency cannot demonstrate would result in creation of new private sector jobs and reduce the state's unemployment rate. Emergency rules are exempt from the requirements for independent analysis and ratification by the Legislature.

The bill raises issues relating to a violation of separation of powers between the executive and legislative branches of government. See "Constitutional Issues" section for further discussion.

The bill has an indeterminate, but potentially significant fiscal impact. See "Fiscal Comments."

The bill takes 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:

Present Situation

Administrative Procedure Act[1]

Administrative Procedures Committee[2]
Within the Administrative Procedure Act, the responsibility of the Administrative Procedures Committee of the Legislature is spelled out. As a legislative check on legislatively created authority, the committee is required to examine every proposed rule, unless exempted by law, and existing rules to make certain determinations. Among those are such things as:

- Is the rule an invalid exercise of delegated legislative authority,
- Has the statutory authority for the rule been repealed,
- Is it in proper form, was proper notice given and was it adequate for the purpose and effect of the rule,
- Is it consistent with expressed legislative intent,
- Is it a reasonable implementation of the law as it affects persons impacted,
- Is it necessary to implement the law cited, and
- Could regulatory costs on persons impacted by the rule be reduced by adoption of a less costly alternative.[3]

The Administrative Procedures Committee then makes recommendations for change in the law, if determined necessary. Those recommendations for change, if any, are presented as legislation to come before the House of Representatives and Senate for consideration just as are other issues.[4]

Rules Relating to Small Business
Each agency, before the adoption, amendment, or repeal of a rule, is required to consider the impact of the rule on a small business. A small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state that has a Small Business

[1] Codified in chapter 120, F.S.
[2] *See* s. 120.545, F.S.
[3] *See* s. 120.545(1), F.S.
[4] *See* s. 120.545(8), F.S.

Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement includes both personal and business investments.

Under the current process, an agency is required to provide the Small Business Advisory Council (Council) and the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor with notice of a proposed rule that affects small businesses 28 days prior to its adoption. The Council has 21 days after it receives notice of a rule in which to review the impact of that rule on small businesses and offer alternatives to lessen the identified impact. According to the staff of the Joint Administrative Procedures Committee (Committee), the Council meets once each month, which means that the 21 day deadline is sometimes past before the Council has had time to consider a rule.[5] Under current law, if the Council does offer a small business alternative, the time limit for adopting the rule is extended 21 days, within which time the agency must consider the alternative, revise its statement of estimated regulatory costs as necessary, and accept or reject the alternative. If an agency does not adopt all alternatives offered by the Small Business Regulatory Advisory Council, it must, prior to rule adoption or amendment, file a detailed written statement with the Administrative Procedures Committee and the Small Business Regulatory Advisory Council explaining the reasons for failure to adopt the alternatives.[6]

A statement on estimated regulatory costs (SERC) affecting small businesses must be prepared by an agency and must not be limited to only those proposed rules that have an adverse impact on small business, but be done on any rule that affects a small business. A SERC must include the following:

- A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule;
- A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues;
- A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule[7];
- An analysis of the impact on small businesses and an analysis of the impact on small counties and small cities; and
- Additional information that the agency determines may be useful.

Additionally, agency notices and reports relating to impacts on small business must be sent in writing to the Council and the Committee.

Every 2 years, agencies review their rules and provide a report to the Speaker of the House of Representatives and the President of the Senate regarding changes made to rules that promote efficiency, reduce paperwork, or decrease costs to government and the private sector. In 2008, this requirement was changed to include the economic impact on small businesses. The 2010 report is due October 1, 2010.[8]

Office of Tourism, Trade, and Economic Development[9]

The Office of Tourism, Trade, and Economic Development (OTTED) within the Executive Office of the Governor is responsible for "considering the impact of agency rules on businesses" and for serving "as an advocate for business, particularly small businesses, in their dealings with state agencies."[10] OTTED is charged with reviewing proposed agency actions for impacts on small businesses and with offering alternatives to mitigate those impacts. Also, in consultation with the Governor's rules

[5] Information received from the Joint Administrative Procedures Committee staff on March 3, 2010.
[6] *See* s. 120.54(3)(b), F.S.
[7] According to s. 120.541(c), F.S., "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting.
[8] *See* s. 120.74, F.S., and s. 8, ch.2008-149.
[9] Created in s. 14.2015, F.S. With the dismantling of the Department of Commerce in 1996, OTTED was created within the Executive Office of the Governor and assumed some of the roles of the Department of Commerce albeit on a smaller scale.
[10] *See* s. 14.2015(6)(a), F.S.

ombudsman, OTTED has the power and duty to make recommendations to state agencies on "any existing and proposed rules for alleviating unnecessary or disproportionate adverse effects to businesses."[11]

Small Business Regulatory Advisory Council[12]
The Small Business Regulatory Advisory Council, an advisory body created in 2008, may make recommendations to agencies on proposed rules or programs that adversely affect small businesses, consider requests from small businesses to review rules or programs adopted by an agency, and review rules promulgated by an agency to determine whether a rule places an unnecessary burden on small business and make recommendations to the agency to mitigate the adverse effects.[13] The Council actively participates in the Administrative Procedure Act rule review and recommendation process for state agency rules affecting small businesses.

Effect of Proposed Changes

The bill adds determinations that must be made prior to the adoption, amendment, or repeal of a rule. If a rule adversely affects or increases regulatory costs to small businesses, an agency must retain an independent entity, which can be a third party or the Legislature, to do an independent economic analysis. The analysis can also be triggered by a request from the Council. Any analysis that is done must be certified by the Office of Economic and Demographic Research.

A further independent analysis is required to determine if a rule that was the subject of the first economic analysis would result in a net creation of new private sector jobs and reduce the state's unemployment rate. The legislation does not differentiate between different types of rules such as health safety or other necessary regulatory changes that might not show a net increase in private sector jobs and a reduction in unemployment; however, such rules might have a cost impact on small businesses.

Additionally, no indication is given as to how the determination is to be made for reduction of the unemployment rate.

Finally, the bill requires the Legislature to ratify rules except for emergency rules.

In effect, executive rulemaking functions are being shifted to the legislative branch of government which raises concerns regarding separation of powers. See "Constitutional Issues" section for further discussion.

B. SECTION DIRECTORY:

Section 1 amends s. 120.54(3)(b), F.S., creating requirements for an agency if it determines a rule adversely affects small businesses or increases regulatory costs to small businesses; requiring certification of certain economic analyses by the Office of Economic and Demographic Research; requiring rule ratification by the Legislature under certain circumstances.

Section 2 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   It is unknown how the bill will affect state government revenues.

[11] *See* s. 14.2015(6)(b), F.S.
[12] Created in s. 288.7001, F.S., the advisory council is composed of 9 members who are current or former small business owners, with three members appointed by the Governor, three by the Speaker of the House of Representatives, and three appointed by the President of the Senate. The council is administratively housed in the Florida Small Business Development Center Network.
[13] *See* s. 288.7001(3)(c), F.S.

2. Expenditures:

It is unknown Indeterminate, but potentially significant. See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

It is unknown how the bill will affect local government revenues.

2. Expenditures:

It is unknown how the bill will affect local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Persons or companies performing the kinds of independent analyses required by the bill could see an increase in business based upon the third party contracting requirements. Additionally, there could be a negative impact on businesses caused by delays in review and ratification of rules; or a potentially positive impact on small businesses.

D. FISCAL COMMENTS:

Although indeterminate, the bill will increase expenditures relating to the required independent economic analyses required. The total costs of the economic analyses will be dependent on the number of rule changes that require an analysis, which is not known at this time, and the cost of each analysis required.

According to the Department of Business and Professional Regulation in its analysis of HB 1565:

> In 2009, the department proposed 275 rules. As agency regulating businesses and professions, majority, if not all affect small businesses. For purposes of this example, it is estimated that 80% of the proposed rules could fall into the category of low complexity and limited impact requiring a lower threshold independent economic impact analysis estimated at $5,000. The remaining could fall into the category of high complexity and large impact requiring a higher threshold independent economic impact of $50,000. Therefore, the initial impact cost would be $3,850,000.00 (220 x $5,000 = $1,100,000) + (55 x $50,000 = $2,750,000).[14]

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:

Concerns regarding separation of powers are raised on the following parts of the bill:

- Authorizing the Legislature to serve as the independent entity for reviewing the rules for the executive agencies, if asked, and reporting on those findings and then taking action in its legislative capacity are problematic.

[14] 2010 Bill Analysis & Economic Impact Statement, HB 1844, Department of Business & Professional Regulation, at 6.

- Requiring the Legislature to ratify any rule that has an adverse effect on or increases the regulatory costs of small businesses without increasing private sector jobs or reducing the unemployment rate.

Article II, sec. 3 of the Florida Constitution, states that state government's powers are divided into the legislative, executive and judicial branches. Specifically,

> No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

As the United States Supreme Court has stated:

> Executive action under legislatively delegated authority that might resemble 'legislative' action in some respects is not subject to the approval of [the legislature] for the reason that the Constitution does not so require. That kind of Executive action is always subject to check by the terms of the legislation that authorized it; and if that authority is exceeded it is open to judicial review as well as the power of [the legislature] to modify or revoke the authority entirely.[15]

This concept was directly addressed by Professor Patricia A. Dore in her seminal article regarding access to administrative proceedings in Florida in which she stated, "[S]tate constitutional problems with legislative participation in agency rulemaking surfaced in the state courts even before the United States Supreme Court held the legislative veto violative of the Federal Constitution in [Chadha]." [16]

State supreme courts and attorneys general in Kentucky, New Hampshire, West Virginia, Tennessee, and Texas have found legislative approval of agency rules as unconstitutional.[17]

B. RULE-MAKING AUTHORITY:

The bill has a significant effect on rulemaking authority of agencies. It also shifts rulemaking ratification to the Legislature which is discussed in the "Constitutional Issues" section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 120.52, F.S., provides that "an agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute." Agencies will not be able to promulgate a rule that creates jobs or reduces unemployment unless the implemented statute provides for job creation or unemployment reduction.

The Agency for Health Care Administration stated "this burdensome process will delay necessary rulemaking, compromising an agency's ability to meet its regulatory duties. This has significant ramifications on the health, safety and welfare of the population protected by health care regulatory agencies such as AHCA."[18]

The Department Business and Professional Regulation (DBPR) stated "the financial costs and the time required to perform the analysis would paralyze agency rulemaking." Additionally, it stated the workload for the Legislature to assume would not be feasible:

> In February 2010 alone, the Florida Administrative Weekly contained Notices of Proposed Rule for 166 rules. If we assume that 50 percent of those rules will meet the threshold requirements of this bill, which is a conservative estimate because 99.8 percent of Florida businesses are small businesses, then the

[15] Immigration & Naturalization Serv. v. Chadra, 462 U.S. 919, 954 n. 16 (1983).
[16] See Patricia A. Dore, *Access to Florida Administrative Proceedings*, 13 *Fla. St. U. L. Rev.* 967, 1015-16 (Winter 1986).
[17] *See id.* at 1015-1016.
[18] 2010 Bill Analysis & Economic Impact Statement, SB 1844 (Identical Bill to HB 1565), ACHA, at 2.

> legislature could very easily be asked to perform approximately 83 economic analyses per month. Such a workload is not feasible.[19]

The DBPR analysis determined that in order to reduce the unemployment rate of 11.8 percent in December 2009, based on a labor force of 9,180,000 people and 1,087,000 jobless people, 8,500 jobs would have to be created to lower the rate to 11.74 percent.[20]

DBPR also stated there was no direct conflict with federal law; however, the Florida Real Estate Appraisal Board must comply with federal requirements:

> Any delay in the rulemaking process may hinder Florida's ability to adopt ever-changing federal requirements for the licensing and practice of the appraisal profession. It may also hinder compliance with the federal mandate to close FREAB cases within one year of the complaint being received by the department.[21]

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[19] 2010 Legislative Analysis Form, SB 1844, Department of Business & Professional Regulation, p. 4.
[20] Ibid., p. 4.
[21] Ibid., p 7.

A bill to be entitled

An act relating to rulemaking; amending s. 120.54, F.S.; requiring each agency, before adopting, amending, or repealing a rule, to determine whether the rule would adversely affect small businesses or increase the regulatory costs of small businesses; requiring the agency to conduct an independent economic analysis under certain specified circumstances; prohibiting a state agency from producing its own economic analysis or an economic analysis for another state agency; requiring that the economic analysis be certified as valid by the Office of Economic and Demographic Research; requiring the agency to request further independent analysis if the rule would adversely affect or increase the regulatory costs of small businesses; requiring a rule to be ratified by the Legislature if the state agency cannot prove that the rule creates new jobs and lowers the unemployment rate for the state; requiring that rules subject to ratification be accompanied by a report from the agency explaining why the rule does not create new private-sector jobs and reduce the unemployment rate for the state; providing that the act is not applicable to certain specified rules; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

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

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

2. Small businesses, small counties, and small cities.—

a. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined by s. 288.703 and the impact of the rule on small counties or small cities as defined by s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following

methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

b.

(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph a., the agency shall send written notice of the rule to the Small Business Regulatory Advisory Council and the Office of Tourism, Trade, and Economic Development not less than 28 days prior to the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the Small Business Regulatory Advisory Council and provided to the agency no later than 21 days after the council's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the

Small Business Regulatory Advisory Council, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, prior to rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days of the filing of such notice, the agency shall send a copy of such notice to the Small Business Regulatory Advisory Council. The Small Business Regulatory Advisory Council may make a request of the President of the Senate and the Speaker of the House of Representatives that the presiding officers direct the Office of Program Policy Analysis and Government Accountability to determine whether the rejected alternatives reduce the impact on small business while meeting the stated objectives of the proposed rule. Within 60 days after the date of the directive from the presiding officers, the Office of Program Policy Analysis and Government Accountability shall report to the Administrative Procedures Committee its findings as to whether an alternative reduces the impact on small business while meeting the stated objectives of the proposed rule. The Office of Program Policy Analysis and Government Accountability shall consider the proposed rule, the economic impact statement, the written statement of the agency, the proposed alternatives, and any comment submitted during the comment period on the proposed rule. The Office of Program Policy Analysis and Government Accountability shall submit a report of its findings and

recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Administrative Procedures Committee shall report such findings to the agency, and the agency shall respond in writing to the Administrative Procedures Committee if the Office of Program Policy Analysis and Government Accountability found that the alternative reduced the impact on small business while meeting the stated objectives of the proposed rule. If the agency will not adopt the alternative, it must also provide a detailed written statement to the committee as to why it will not adopt the alternative.

3. Job creation.—

a. Except as provided in sub-subparagraph g., each agency shall initially determine, before adopting, amending, or repealing a rule, whether the rule would:

(I) Adversely affect small businesses; or

(II) Increase regulatory costs to those small businesses affected.

b. If the agency initially determines the rule would adversely affect small businesses or increase the regulatory costs of small businesses, the agency shall retain an independent entity to conduct an economic analysis to determine the extent to which the rule as adopted, amended, or repealed, would adversely affect a small business or increase its regulatory costs. The agency shall also initiate an independent economic analysis if it receives an electronic or written request from the Small Business Regulatory Advisory Council to do so.

c. The independent entity used to conduct the analysis may be the Legislature or a third party. However, the agency proposing the rule may not conduct its own economic analysis and an agency may not conduct an analysis for any other agency. The completed analysis must be certified as valid by the Office of Economic and Demographic Research.

d. If the independent analysis shows that the rule would adversely affect small businesses or increase the regulatory costs of small businesses, the agency shall request the independent entity to further analyze whether the rule as adopted, amended, or repealed, would:

(I) Result in the net creation of new private-sector jobs; and

(II) Reduce the state's unemployment rate.

e. If an agency cannot demonstrate that the rule as adopted, amended, or repealed would result in the net creation of new private-sector jobs and reduce the state's unemployment rate, the rule may not take effect until the rule is submitted to and ratified by the Legislature.

f. Rules subject to ratification by the Legislature must be accompanied by a report from the agency which explains why the rule does not result in the creation of new private-sector jobs or reduce the state's unemployment rate.

g. A proposed rule is not subject to this subparagraph if the proposed rule is initiated by an agency pursuant to its emergency rulemaking powers.

Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1603 Florida State Employees' Charitable Campaign
SPONSOR(S): Cruz and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1312

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee		Haug	Williamson
2)	Economic Development & Community Affairs Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

On an annual basis, the Department of Management Services, in consultation with the Florida State Employees' Charitable Campaign statewide steering committee screens upwards of 1400 applications from charities applying to participate in the campaign. Employees are invited to designate their pledged amount to the charity(ies) of their choice and the associated amount(s) will be paid through payroll deduction. Employees also may donate money to the campaign without designating a specific charity. Such donations are classified as "undesignated funds." Monies earmarked to a particular charity are forwarded to that charity (or that charity's parent organization) by the local fiscal agent. Undesignated monies are maintained by the local fiscal agent until allocation decisions have been made.

In 2006, the Legislature created a two-fold allocation process for undesignated funds. Implementation of the two-fold allocation process for undesignated funds necessitated the creation of a second application process that has been difficult to administer due to ambiguities in the statutory language

The bill makes changes to the Florida State Employees' Charitable Campaign to provide a uniform distribution process of undesignated funds. The bill eliminates the undesignated funds application and decision making process and establishes a pro rata method as the sole manner for allocation of undesignated funds to participating charitable organizations.

This bill is expected to reduce expenditures by the Department of Management Services. It does not have a fiscal impact on local governments.

This 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

On an annual basis, the Department of Management Services (DMS), in consultation with the Florida State Employees' Charitable Campaign (FSECC) statewide steering committee (consisting of 9 appointed state employees) must screen upwards of 1400 applications from charities applying to participate in the campaign. The vast majority of these applicant organizations (1200 to 1300) meets the criteria each year and become participating charities.[1]

FSECC fundraising is de-centralized into 27 fiscal agent areas. DMS contracts with the United Way of Florida, Inc. (UWOF), to act as the fiscal agent. UWOF then utilizes the 27 regional United Way entities to serve as sub-agents to perform the duties of the contracted fiscal agent. During the annual campaign, each state employee receives a booklet that lists the participating charities for the fiscal agent area in which he or she works. In addition to listing the participating United Way charities specific to the fiscal agent area, each booklet also lists the other participating charities. Employees are invited to designate their pledged amount to the charity(ies) of their choice and the associated amount(s) will be paid through payroll deduction.

Employees also may donate money to the campaign without designating a specific charity. Such donations are classified as "undesignated funds." Additional undesignated funds are collected from various state agency hosted fund raising events such as bake sales and short distance jogging.

Monies collected in each fiscal agent area are handled separately by each local fiscal agent. Monies earmarked to a particular charity are forwarded to that charity (or that charity's parent organization) by the local fiscal agent. Undesignated monies are maintained by the local fiscal agent until allocation decisions have been made.

Historically all decisions regarding the allocation of undesignated funds were delegated to the local steering committee in each fiscal agent area. These committees were and still are comprised of state employees located in each respective fiscal agent area. Any charity that DMS and the FSECC statewide steering committee approved to participate in a particular fiscal agent area can petition the local steering committee of that area for undesignated funds. The allocation of undesignated funds

[1] Department of Management Services HB 1603 (2010) Substantive Bill Analysis (March 12, 2010) at 1 (on file with the Governmental Affairs Policy Committee).

between local (United Way) charities, national charities, international charities and independent charities is at the sole discretion of each local steering committee.

In 2006, the Legislature created a two-fold allocation process for undesignated funds.[2] "Tier One" undesignated funds determinations occur when charities apply to DMS and certify that they are providing direct services to one or more fiscal agent areas. Charities affiliated with the United Way have been allowed to participate in the Tier One allocation process without having to formally apply, on the premise that they provide direct services in their respective fiscal agent area as a matter of course. DMS, in consultation with the FSECC statewide steering committee, reviews applications from the non-United Way charities and determines which ones have met the criteria for Tier One undesignated funds. All eligible charities receive a pro rata share of the Tier One funds (i.e., the same percentage of undesignated funds as the percentage of designated funds they received).[3] In 2008, the FSECC statewide steering committee reviewed applications from 90 different charities with over 1,192 fiscal agent area claims. Those applicants had to be analyzed to determine if direct services were provided in those local fiscal agent areas.[4]

After the Tier One allocation is made usually there are residual undesignated funds remaining in most of the fiscal agent areas. The local steering committees are then tasked with allocation of these "Tier Two" funds. It is left to their discretion as to which participating charities will receive a portion of the undesignated funds and what percentage/dollar amount they will receive. There are no statutory eligibility requirements in order for organizations to receive undesignated funds through the Tier Two distribution process other than the organization must be approved for participation in the current year's campaign.

Implementation of the two-fold allocation process for undesignated funds necessitated the creation of a second application process administered by DMS. The FSECC statewide steering committee is now involved in a second application process. This has significantly increased the amount of time DMS devotes to administration of the campaign and that the FSECC statewide steering committee must spend meeting and deliberating. In addition, the task of determining whether non United Way charities are providing direct services in a local fiscal agent area as contemplated by the 2006 change in the law has been difficult to perform due to ambiguities in the statutory language. Consequently, the first year of application of the statutory requirement resulted in litigation due to charities challenging the determination that they had not met the criteria.

Effect of Proposed Changes

The bill makes changes to the Florida State Employees' Charitable Campaign to provide a uniform distribution process of undesignated funds. The bill eliminates the undesignated funds application and decision making process that currently requires substantial DMS staff time to administer.

The bill establishes a pro rata method as the sole manner for allocation of undesignated funds to participating charitable organizations. This change is accomplished by eliminating the requirement that only those charities that provide direct services in a local fiscal agent's area may receive undesignated funds.

The change will remove the discretion of the FSECC statewide steering committee to interpret the meaning of the term "direct services" and resulting fund distribution.[5] This interpretive process has been the subject of controversy and has led to litigation.[6]

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[2] Public Law 2006-221; codified at s. 110.181, F.S.

[3] Section 110.181(2)(e), F.S.

[4] Department of Management Services HB 1603 (2010) Substantive Bill Analysis (March 12, 2010) at 2 (on file with the Governmental Affairs Policy Committee).

[5] Section 110.181(2)(e), F.S.

[6] *Community Health Charities of Florida v. State, Dept. of Management Services*, 961 So.2d 372, (Fla. 1st DCA 2007); *Community Health Charities of Florida v. State, Dept. of Management Services*, 7 So.3d 570 (Fla. 1st DCA 2009).

B. SECTION DIRECTORY:

Section 1: Amends s. 110.181, F.S., removing the power of local steering committees to direct distribution of undesignated charitable campaign funds.

Section 2: 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:

   This bill is expected to reduce expenditures by the Department of Management Services (*see* Fiscal Comments).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The funds received by participating charitable organizations may increase or decrease depending on the level of contributions received as a result of each annual campaign.

D. FISCAL COMMENTS:

The Department of Management Service provided the following fiscal comment:

Since the inception of the FSECC in 1993, the Legislature has provided the DMS Division of Human Resource Management (HRM) with an annual appropriation of $17,000 to administer the campaign. Even if we assume the cost of doing business has not generally risen in the past 17 years, this amount would not include the costs associated with the new application process, the unanticipated expenses of litigation, or the ongoing legal services that are now required. As a consequence, the actual administrative costs to DMS for the FSECC in Fiscal Year 2007 to 2008 was $106,457.53, of which $45,101.23 was general counsel hours, $7,181.16 was for other legal costs (including Attorney General hours) and $12,800.00 was the cost of a settlement agreement. In Fiscal Year 2008 to 2009, actual administrative costs were $153,830.23, of which $54,043.29 were related to legal services. Even though the statutes authorize DMS to recoup from the campaign the administrative costs that exceed our appropriation, such reimbursement is capped to 1% of campaign proceeds, which has been declining slightly the past few years (the 2007 campaign raised $4,869,270.00 but the 2008 campaign only raised $4,364,809.00). For example, in FY 08-09 DMS had to absorb over $93,000.00:

$153,830.23	Grand Total Expenditures for FY 08-09
($ 17,000.00)	Covered by Annual Appropriation
($ 43,648.09)	Amount Recouped from Campaign (1% of the $4,364,809.00 raised in 2008)
$ 93,182.14	Amount Absorbed by DMS

Also, because the amount recouped from the campaign is not returned directly to either the operating budget of HRM or the DMS Office of the General Counsel (OGC), the actual impact on these program

areas is a loss of over $136,000.000, which affects their ability to effectively perform other mission critical activities. Specifically:

$153,830.23	Grand Total Expenditures for FY 08-09
($ 17,000.00)	Appropriation Amount in the HRM Budget
$136,830.23	Total Amount un-recouped by HRM and OGC

Of the 2,047.25 hours of professional staff time that HRM devoted to the FSECC in Fiscal Year 2008 to 2009, HRM estimates that approximately 682.42 hours or a third (33%) was required to administer the undesignated funds process of the Campaign.[7]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[7] Department of Management Services HB 1603 (2010) Substantive Bill Analysis (March 12, 2010) at 2 (on file with the Governmental Affairs Policy Committee).

A bill to be entitled

An act relating to the Florida State Employees' Charitable Campaign; amending s. 110.181, F.S.; deleting the power of local steering committees to direct the distribution of undesignated funds; requiring such undesignated campaign funds to be shared proportionally by the participating charitable organizations based on the percentage of designations in each area; providing an effective date.

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

Section 1. Subsection (2) of section 110.181, Florida Statutes, is amended to read:

110.181 Florida State Employees' Charitable Campaign.—

(2) SELECTION OF FISCAL AGENTS; COST.—

(a) The Department of Management Services shall select through the competitive procurement process a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations.

(b) The fiscal agent shall withhold the reasonable costs for conducting the campaign and for accounting and distribution to the participating organizations and shall reimburse the department the actual cost, not to exceed 1 percent of gross pledges, for coordinating the campaign in accordance with the rules of the department. In any fiscal year in which the Legislature specifically appropriates to the department its total costs for coordinating the campaign from the General Revenue Fund, the fiscal agent is not required to reimburse such

costs to the department under this subsection. Otherwise, reimbursement will be the difference between actual costs and the amount appropriated.

(c) The fiscal agent shall furnish the department and participating charitable organizations a report of the accounting and distribution activities. Records relating to these activities shall be open for inspection upon reasonable notice and request.

(d) A local steering committee shall be established in each fiscal agent area to assist in conducting the campaign ~~and to direct the distribution of undesignated funds remaining after partial distribution pursuant to paragraph (c)~~. The committee shall be composed of state employees selected by the fiscal agent from among recommendations provided by interested participating organizations, if any, and approved by the Statewide Steering Committee.

(e) Participating charitable organizations ~~that provide direct services in a local fiscal agent's area~~ shall receive the same percentage of undesignated funds as the percentage of designated funds they receive in the campaign. The payment of each charity's share of undesignated funds shall be distributed in the same manner as the designations. ~~The undesignated funds remaining following allocation to these charitable organizations shall be distributed by the local steering committee.~~

Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-19 OGSR Voluntary Prekindergarten
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2144

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

SUMMARY ANALYSIS

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

In 2002, the State Constitution was amended to require the establishment of a prekindergarten program for every 4-year-old child in the state that is voluntary, high-quality, free, and delivered according to professionally accepted standards. As such, the Legislature created the voluntary prekindergarten (VPK) program. The VPK program is administered at the local level by school districts and early learning coalitions. At the state level, the Department of Education administers the educational accountability requirements of the program and the Agency for Workforce Innovation (AWI) administers the operational requirements of the program.

Current law provides a public record exemption for the VPK program. Individual records of a child enrolled in the VPK program held by an early learning coalition, AWI, or a VPK program provider are confidential and exempt from public records requirements. Current law also authorizes the sharing and release of such records.

The bill reenacts the public record exemption, which will repeal on October 2, 2010, if this bill does not become law. It also reorganizes the exemption.

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

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[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.

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 created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Voluntary Prekindergarten Education Program

In 2002, the State Constitution was amended to require the establishment of a prekindergarten program for every 4-year-old child in the state that is voluntary, high-quality, free, and delivered

[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.

according to professionally accepted standards.[4] As such, the Legislature created the voluntary prekindergarten (VPK) program. It took effect for the 2005 school year and provided the parents of eligible children a choice among three program options: a school-year VPK program delivered by a private prekindergarten provider, a school-year VPK program delivered by a public school, or a summer VPK program delivered by a public school or private prekindergarten provider.[5]

The VPK program is administered at the local level by school districts and early learning coalitions.[6] At the state level, the Department of Education administers the educational accountability requirements of the program[7] and the Agency for Workforce Innovation (AWI) administers the operational requirements of the program.[8] AWI's specific operational requirements include determining the eligibility of private providers to deliver the VPK program.

All VPK providers must register with an early learning coalition, comply with federal antidiscrimination requirements, and may not discriminate against a parent or child, including the refusal to admit a child for enrollment in the VPK program in violation of the antidiscrimination requirements.[9]

In 2008-2009, there were 5,660 providers that participated in the VPK program, 657 offered the summer program and 5,472 offered the school year program.[10] Most of the VPK providers (84 percent) were private centers. For 2008-2009, the VPK program enrollment is estimated to be 63.5 percent of the 4-year old population.[11]

Public Record Exemption under Review

Current law provides a public record exemption for the VPK program.[12] Individual records of a child enrolled in the VPK program held by an early learning coalition, AWI, or a VPK program provider are confidential and exempt[13] from public records requirements. Such records include assessment data, health data, records of teacher observations, and personal identifying information of an enrolled child and his or her parent. Current law provides for retroactive application of the public record exemption.[14]

A parent has the right to inspect and review the VPK program record of his or her child. In addition, a parent may obtain a copy of such record.[15]

An early learning coalition, AWI, or a VPK program provider may release the confidential and exempt records to:

- The United States Secretary of Education, the United States Secretary of Health and Human Services, and the Comptroller General of the United States for the purpose of federal audits.
- Individuals or organizations conducting studies for institutions to develop, validate, or administer assessments or improve instruction.
- Accrediting organizations in order to carry out their accrediting functions.

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[4] Section 1(b) and (c), Art. IX of the State Constitution.

[5] Chapter 2004-484, L.O.F.; codified at ss. 1002.55, 1002.61, and 1002.63, F.S.

[6] Section 1002.51(2), F.S., defines "early learning coalition" or "coalition" to mean an that early learning coalition created under s. 411.01, F.S.

[7] Section 1002.73(1), F.S.

[8] Sections 1002.75(1), F.S.

[9] Sections 1002.53(6)(c) and 1002.75(2), F.S., and 42 U.S.C. s. 2000d.

[10] Senate Bill Analysis and Fiscal Impact Statement for CS/SB 2144, March 19, 2010, at 4.

[11] *Id.*

[12] Section 1002.72, F.S.

[13] 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).

[14] Section 1002.72(1), F.S.

[15] Section 1002.72(2), F.S.

- Appropriate parties in connection with an emergency if the information is necessary to protect the health or safety of the child or other individuals.
- The Auditor General in connection with his or her official functions.
- A court of competent jurisdiction in compliance with an order of that court pursuant to a lawfully issued subpoena.
- Parties to an interagency agreement among early learning coalitions, local governmental agencies, Voluntary Prekindergarten Education Program providers, or state agencies for the purpose of implementing the Voluntary Prekindergarten Education Program.[16]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2010, unless reenacted by the Legislature.[17]

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record exemption. It also reorganizes the exemption.

B. SECTION DIRECTORY:

Section 1 amends s. 1002.72, F.S., to reenact the public record exemption for the VPK program.

Section 2 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:

   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:

[16] Section 1002.72(3), F.S.

[17] Section 1002.72(4), F.S.

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.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 1002.72, F.S., which provides an exemption from public records requirements for records of children in the Voluntary Prekindergarten Education Program; making editorial changes; reorganizing the section; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 1002.72, Florida Statutes, is amended to read:

1002.72 Records of children in the Voluntary Prekindergarten Education Program.—

(1)(a) The ~~individual~~ records of a child enrolled in the Voluntary Prekindergarten Education Program held by an early learning coalition, the Agency for Workforce Innovation, or a Voluntary Prekindergarten Education Program provider are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this section, such records include assessment data, health data, records of teacher observations, and personal identifying information of an enrolled child and his or her parent.

(b) This exemption applies to the ~~individual~~ records of a child enrolled in the Voluntary Prekindergarten Education Program held by an early learning coalition, the Agency for Workforce Innovation, or a Voluntary Prekindergarten Education

Program provider before, on, or after the effective date of this exemption.

(2) A parent has the right to inspect and review the ~~individual~~ Voluntary Prekindergarten Education Program record of his or her child and to obtain a copy of such record.

(3)(a) Confidential and exempt Voluntary Prekindergarten Education Program records may be released to:

1.~~(a)~~ The United States Secretary of Education, the United States Secretary of Health and Human Services, and the Comptroller General of the United States for the purpose of federal audits.

2.~~(b)~~ Individuals or organizations conducting studies for institutions to develop, validate, or administer assessments or improve instruction.

3.~~(c)~~ Accrediting organizations in order to carry out their accrediting functions.

4.~~(d)~~ Appropriate parties in connection with an emergency if the information is necessary to protect the health or safety of the child or other individuals.

5.~~(e)~~ The Auditor General in connection with his or her official functions.

6.~~(f)~~ A court of competent jurisdiction in compliance with an order of that court pursuant to a lawfully issued subpoena.

7.~~(g)~~ Parties to an interagency agreement among early learning coalitions, local governmental agencies, Voluntary Prekindergarten Education Program providers, or state agencies for the purpose of implementing the Voluntary Prekindergarten Education Program.

(b) Agencies, organizations, or individuals receiving such confidential and exempt records in order to carry out their official functions must protect the records in a manner that will not permit the personal identification of an enrolled child or his or her parent by persons other than those authorized to receive the records.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-20 OGSR H. Lee Moffitt Cancer Center and Research Institute
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1678

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

SUMMARY ANALYSIS

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

Current law establishes the H. Lee Moffitt Cancer Center and Research Institute (the center) at the University of South Florida. A not-for-profit corporation governs the center in accordance with an agreement with the State Board of Education for the use of facilities on the campus of the University of South Florida. The not-for-profit corporation, acting as an instrumentality of the state, operates the center in accordance with an agreement between the Board of Governors and the not-for-profit corporation. A board of directors manages the not-for-profit corporation, and a chief executive officer, who serves at the pleasure of the board of directors, administers the center.

Current law provides public record and meeting exemptions for the not-for-profit corporation and its subsidiaries.

The bill reenacts and expands the public record exemption for the not-for-profit corporation and its subsidiaries. It expands the current exemption to include the identity of a donor or prospective donor to the not-for-profit corporation or a subsidiary who wishes to remain anonymous, and to include patentable materials. As such, the bill extends the repeal date from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.

In addition, the bill narrows the public meeting exemption for the board of directors for the not-for-profit corporation and its subsidiaries. It provides that meetings may be closed to the public only to discuss information the Legislature has deemed confidential and exempt from public records requirements. This change conforms the public meetings requirements for the board of directors for the not-for-profit corporation and its subsidiaries to that of other similar entities.

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

Open Government Sunset Review Act

The Open Government Sunset Review 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.

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 created[3] then a public necessity statement and a two-thirds vote for passage are not required.

The H. Lee Moffitt Cancer Center and Research Institute

Current law establishes the H. Lee Moffitt Cancer Center and Research Institute (the center) at the University of South Florida.[4] A not-for-profit corporation governs the center in accordance with an

[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 1004.43, F.S.,

agreement with the State Board of Education for the use of facilities on the campus of the University of South Florida. The not-for-profit corporation, acting as an instrumentality of the state, operates the center in accordance with an agreement between the Board of Governors and the not-for-profit corporation.[5]

A board of directors manages the not-for-profit corporation, and a chief executive officer, who serves at the pleasure of the board of directors, administers the center. The board of directors is comprised of:

- The President of the University of South Florida, or his or her designee;
- The chair of the Board of Governors, or his or her designee;
- Five representatives of the state universities; and
- No more than 14 or fewer than 10 directors who are not medical doctors or state employees.[6]

The corporation has created three not-for-profit subsidiaries that were approved by the Board of Regents and two for-profit subsidiaries that were approved by the Board of Governors.[7]

Records of the not-for-profit corporation and its subsidiaries are public records.[8]

Public Record Exemption for the Not-For-Profit Corporation and its Subsidiaries

Current law provides a public record exemption for proprietary confidential business information. Such information is made confidential and exempt[9] from public records requirements. Such information must be provided to the Auditor General, the Office of Program Policy Analysis and Government Accountability, and the Board of Governors pursuant to their oversight and auditing functions.[10]

For purposes of the public record exemption, "proprietary confidential business information" is defined to mean information that is owned or controlled by the not-for-profit corporation or its subsidiaries; is intended to be and is treated by the not-for-profit corporation or its subsidiaries as private and the disclosure of which would harm the business operations of the not-for-profit corporation or its subsidiaries; has not been intentionally disclosed by the corporation or its subsidiaries unless pursuant to law, an order of a court or administrative body, a legislative proceeding pursuant to s. 5, Art. III of the State Constitution, or a private agreement that provides that the information may be released to the public; and which is information concerning:

- Internal auditing controls and reports of internal auditors;
- Matters reasonably encompassed in privileged attorney-client communications;[11]

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[5] Section 1004.43(1), F.S.

[6] *Id.*

[7] Open Government Sunset Review of s. 1004.43, F.S., relating to the H. Lee Moffitt Cancer Center and Research Institute, joint questionnaire by House and Senate staff, July 31, 2009, at question 1 and question 3 (on file with the Governmental Affairs Policy Committee).

[8] Section 1004.43(8)(a), F.S.

[9] 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).

[10] Section 1004.43(8)(b), F.S.

[11] Section 119.071(1)(d), F.S., provides a general public record exemption, which is applicable to the not-for-profit corporation and its subsidiaries, for a public record that was prepared by an agency attorney or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings. The public record exemption expires at the conclusion of the litigation or adversarial administrative proceedings. According to its questionnaire response, the not-for-profit corporation prefers the more broad public record exemption for "matters reasonably encompassed in privileged attorney-client communications because it protects confidential attorney-client communications made during the course of general representation of the not-for-profit corporation in *all* legal matters, including transactions. According to the questionnaire response,

> These differences reflect the varying natures of the attorney-client relationship contemplated by Section 119.071, and of the attorney-client relationship the corporation must maintain with its attorneys to effectively fulfill its

- Contracts for managed-care[12] arrangements, including preferred provider organization contracts, health maintenance organization contracts, and exclusive provider organization contracts, and any documents directly relating to the negotiation, performance, and implementation of any such contracts for managed-care arrangements;
- Bids or other contractual data, banking records, and credit agreements the disclosure of which would impair the efforts of the not-for-profit corporation or its subsidiaries to contract for goods or services on favorable terms;
- Information relating to private contractual data, the disclosure of which would impair the competitive interest of the provider of the information;
- Corporate officer and employee personnel information;[13]
- Information relating to the proceedings and records of credentialing panels and committees and of the governing board of the not-for-profit corporation or its subsidiaries relating to credentialing;
- Minutes of exempt meetings of the governing board of the not-for-profit corporation and its subsidiaries;
- Information that reveals plans for marketing services that the not-for-profit corporation or its subsidiaries reasonably expect to be provided by competitors;
- Trade secrets as defined by the Uniform Trade Secrets Act,[14] including: information relating to methods of manufacture or production, potential trade secrets, potentially patentable materials, or proprietary information received, generated, ascertained, or discovered during the course of research conducted by the not-for-profit corporation or its subsidiaries; and reimbursement methodologies or rates;
- The identity of donors or prospective donors of property who wish to remain anonymous or any information identifying such donors or prospective donors; or
- Any information received by the not-for-profit corporation or its subsidiaries from an agency in this or another state or nation or the Federal Government which is otherwise exempt or confidential pursuant to the laws of this or another state or nation or pursuant to federal law.

Public Meeting Exemption for the Not-For-Profit Corporation and its Subsidiaries

Current law also provides a public meeting exemption for the governing board of the not-for-profit corporation and its subsidiaries. All meetings are exempt from public meetings requirements except those meetings wherein the expenditure of dollars appropriated by the state to the not-for-profit

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mission and legislative mandates. Specifically, unlike the attorney-client relationship contemplated by Section 119.071, the corporation must engage its attorneys in its everyday operations and strategic planning to allow the corporation to directly compete and collaborate with non-public entities that are not subject to the public records law and that enjoy the protections set forth in Section 90.502(1)(c), Florida Statutes, of attorney-client communications. [Open Government Sunset Review of s. 1004.43, F.S., relating to the H. Lee Moffitt Cancer Center and Research Institute, joint questionnaire by House and Senate staff, July 31, 2009, at question 1 and question 3 (on file with the Governmental Affairs Policy Committee)]

The questionnaire response indicates that agencies do not engage with their attorneys on a daily basis; however, agencies at the state and local level have attorneys that they engage with on a regular basis yet, these agencies are not afforded the same protections as the not-for-profit corporation or its subsidiaries.

[12] For purposes of the exemption, "managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services. Managed-care techniques most often include one or more of the following: prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or site of services; contracts with selected health care providers; financial incentives or disincentives related to the use of specific providers, services, or service sites; controlled access to and coordination of services by a case manager; and payor efforts to identify treatment alternatives and modify benefit restrictions for high-cost patient care. Section 1004.43(8), F.S.

[13] This exemption does not apply to the not-for-profit corporation's highest paid executives and employees as those executives and employees are required to publically disclose their names and compensation by virtue of Federal law and IRS reporting requirements.

[14] Chapter 688, F.S., is the Uniform Trade Secrets Act. Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

corporation are discussed or reported.[15] In essence, the only time the not-for-profit corporation or its subsidiaries conducts a meeting that is open to the public is when the expenditure of dollars appropriated by the state is discussed.

Review of the Exemptions

Pursuant to the Open Government Sunset Review Act, the public record exemption for the following information will repeal on October 2, 2010, unless reenacted by the Legislature: [16]

- Trade secrets as defined by the Uniform Trade Secrets Act, including: information relating to methods of manufacture or production, potential trade secrets, potentially patentable materials, or proprietary information received, generated, ascertained, or discovered during the course of research conducted by the not-for-profit corporation or its subsidiaries; and reimbursement methodologies or rates; and
- Any information received by the not-for-profit corporation or its subsidiaries from an agency in this or another state or nation or the Federal Government which is otherwise exempt or confidential pursuant to the laws of this or another state or nation or pursuant to federal law.

As part of the review process, staff studied the public record and public meeting exemptions in their entirety and compared those exemptions with similar exemptions found throughout current law.[17] Staff discovered the following as part of the Open Government Sunset Review process:

- Portions of the definition of proprietary confidential business information included information that did not meet the definition, such as, minutes of exempt meetings and information received that is otherwise confidential or exempt from public records requirements.
- The current exemption for information that would identify a person donating property who would prefer to remain anonymous is more narrow than other public record exemptions for donor information. Typically, such protections are provided to any donor or prospective donor who wishes to remain anonymous, whether or not the person is donating property.
- When compared with other public meeting exemptions, including exemptions for similar not-for-profit corporations, it was found that the public meeting exemption appeared overly broad in that *all* meetings are exempt from public meetings requirements unless state appropriated funds are discussed. For example, the not-for-profit corporation for the Florida Institute for Human and Machine Cognition has a more limited public meeting exemption. Only those meetings wherein confidential and exempt information is discussed are exempt from public meetings requirements.[18] Meetings of the board of directors of the Scripps Florida Funding Corporation are open to the public unless confidential and exempt information is discussed.[19] In addition, as part of a conference call between staff of the not-for-profit corporation and the House and Senate, staff of the not-for-profit corporation indicated that the current public meeting exemption was not strictly adhered to by the board of directors.[20]

Effect of Bill

The bill reenacts the public record exemption for the not-for-profit corporation of the H. Lee Moffitt Cancer Center and Research Institute and its subsidiaries.

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[15] Section 1004.43(9), F.S.

[16] Section 1004.39(8)(c), F.S.

[17] Section 119.15(6)(a), F.S., requires the Legislature to consider the following as part of the Open Government Sunset Review process:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- *Is the record or meeting protected by another exemption?*
- *Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?*

[18] *See* s. 1004.4472(4), F.S.

[19] *See* s. 288.9551(3)(a), F.S.

[20] Conference call on February 24, 2010.

The bill expands the current exemption to create a public record exemption for the identity of a donor or prospective donor to the not-for-profit corporation or a subsidiary who wishes to remain anonymous. This expansion creates the same protections afforded other agencies or similar entities.[21] It further expands the current exemption to provide a public record exemption for patentable materials, which is added to the definition of proprietary confidential business information.[22]

The bill narrows the public meeting exemption for the board of directors for the not-for-profit corporation and its subsidiaries. It provides that meetings may be closed to the public *only* to discuss information the Legislature has deemed confidential and exempt from public records requirements. This change conforms the public meetings requirements for the board of directors for the not-for-profit corporation and its subsidiaries to that of other similar entities.

The bill reorganizes the exemption and revises the definition of proprietary confidential business information.

Because the bill expands the current public record exemption, it extends the repeal date for the exemption from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.[23]

B. SECTION DIRECTORY:

Section 1 amends s. 1004.43, F.S., to reenact and expand the public record exemption for the not-for-profit corporation of the H. Lee Moffitt Cancer Center and Research Institute and its subsidiaries, and to narrow its public meeting exemption.

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:

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.

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[21] For example, *see* s. 1004.4472(2)(d), F.S.

[22] Section 1004.4472(2)(a), F.S., provides the same protection for the Florida Institute for Human and Machine Cognition, Inc.

[23] Section 24(c), Art. I of the State Constitution.

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 passage of a newly created public record or public meeting exemption. The bill expands the current exemption 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 exemption 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.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 1004.43, F.S., which provides an exemption from public records and public meetings requirements for the not-for-profit corporation or a subsidiary of the H. Lee Moffitt Cancer Center and Research Institute; providing a definition for the terms "managed care," "proprietary confidential business information," and "trade secret"; expanding the public record exemption to include the identity of a donor or prospective donor to the not-for-profit corporation or a subsidiary who wishes to remain anonymous; expanding the public record exemption to include patentable materials received, generated, ascertained, or discovered during the course of research; narrowing the public meetings exemption to include only those portions of meetings wherein confidential and exempt information is discussed; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; reorganizing the section; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsections (8) and (9) of section 1004.43, Florida Statutes, are amended to read:

1004.43 H. Lee Moffitt Cancer Center and Research Institute.—There is established the H. Lee Moffitt Cancer Center

and Research Institute at the University of South Florida.

(8)(a) Records of the not-for-profit corporation and of its subsidiaries are public records unless made confidential or exempt by law.

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

1. Information received by the not-for-profit corporation or a subsidiary from a person in another state or nation or the Federal Government that is otherwise exempt or confidential pursuant to the laws of that state or nation or pursuant to federal law.

2. Information received by the not-for-profit corporation or a subsidiary in the performance of its duties and responsibilities which is otherwise confidential or exempt by law.

3. Matters reasonably encompassed in privileged attorney-client communications.

4. Proprietary confidential business information ~~is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~.

5. Records of credentialing panels and committees and of the governing board of the not-for-profit corporation or its subsidiaries relating to credentialing.

6. The identity of a donor or prospective donor to the not-for-profit corporation or a subsidiary who wishes to remain anonymous.

7. Trade secrets.

(c) ~~However,~~ The Auditor General, the Office of Program Policy Analysis and Government Accountability, and the Board of Governors, pursuant to their oversight and auditing functions, must be given access to all ~~proprietary confidential business~~ information made confidential and exempt under paragraph (b), upon request and without subpoena and must maintain the confidentiality of information so received.

(d) As used in this subsection ~~paragraph~~, the term:

1. "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services. Managed-care techniques most often include one or more of the following:

a. Prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or site of services;

b. Contracts with selected health care providers;

c. Financial incentives or disincentives related to the use of specific providers, services, or service sites;

d. Controlled access to and coordination of services by a case manager; and

e. Payor efforts to identify treatment alternatives and modify benefit restrictions for high-cost patient care.

2. "Proprietary confidential business information" means information, regardless of its form or characteristics, that ~~which~~ is owned or controlled by the not-for-profit corporation or its subsidiaries; is intended to be and is treated by the not-for-profit corporation or its subsidiaries as private and the disclosure of which would harm the business operations of

the not-for-profit corporation or its subsidiaries; has not been intentionally disclosed by the not-for-profit corporation or its subsidiaries unless pursuant to law, an order of a court or administrative body, a legislative proceeding pursuant to s. 5, Art. III of the State Constitution, or a private agreement that provides that the information may be released to the public; and that ~~which~~ is information concerning:

a.~~1.~~ Internal auditing controls and reports of internal auditors;

~~2. Matters reasonably encompassed in privileged attorney-client communications;~~

b.~~3.~~ Contracts for managed-care arrangements, including preferred provider organization contracts, health maintenance organization contracts, and exclusive provider organization contracts, and any records ~~documents~~ directly relating to the negotiation, performance, and implementation of any such contracts for managed-care arrangements;

c.~~4.~~ Bids or other contractual data, banking records, and credit agreements the disclosure of which would impair the efforts of the not-for-profit corporation or its subsidiaries to contract for goods or services on favorable terms;

d.~~5.~~ Information relating to private contractual data, the disclosure of which would impair the competitive interest of the provider of the information;

e.~~6.~~ Corporate officer and employee personnel information;

~~7. Information relating to the Proceedings and records of credentialing panels and committees and of the governing board of the not-for-profit corporation or its subsidiaries relating~~

~~to credentialing;~~

~~8. Minutes of meetings of the governing board of the not-for-profit corporation and its subsidiaries, except minutes of meetings open to the public pursuant to subsection (9);~~

f.~~9.~~ Information that reveals plans for marketing services that the not-for-profit corporation or its subsidiaries reasonably expect to be provided by competitors;

~~10. Trade secrets as defined in s. 688.002, including:~~

g.~~a.~~ Information relating to methods of manufacture or production, potential trade secrets, or patentable or potentially patentable materials~~, or proprietary information~~ received, generated, ascertained, or discovered during the course of research conducted by the not-for-profit corporation or its subsidiaries;~~—~~and

h.~~b.~~ Reimbursement methodologies or rates.~~;~~

3. "Trade secret" means a trade secret as defined in s. 688.002.

~~11. The identity of donors or prospective donors of property who wish to remain anonymous or any information identifying such donors or prospective donors. The anonymity of these donors or prospective donors must be maintained in the auditor's report; or~~

~~12. Any information received by the not-for-profit corporation or its subsidiaries from an agency in this or another state or nation or the Federal Government which is otherwise exempt or confidential pursuant to the laws of this or another state or nation or pursuant to federal law.~~

~~As used in this paragraph, the term "managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services. Managed-care techniques most often include one or more of the following: prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or site of services; contracts with selected health care providers; financial incentives or disincentives related to the use of specific providers, services, or service sites; controlled access to and coordination of services by a case manager; and payor efforts to identify treatment alternatives and modify benefit restrictions for high-cost patient care.~~

(d) ~~(c)~~ This subsection is ~~Subparagraphs 10. and 12. of paragraph (b) are~~ subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015 ~~2010~~, unless reviewed and saved from repeal through reenactment by the Legislature.

(9)(a) Those portions of meetings of the governing board of the not-for-profit corporation and meetings of the subsidiaries of the not-for-profit corporation at which information made confidential and exempt pursuant to subsection (8) are discussed are exempt from ~~the expenditure of dollars appropriated to the not-for-profit corporation by the state are discussed or reported must remain open to the public in accordance with~~ s. 286.011 and s. 24(b), Art. I of the State Constitution ~~unless made confidential or exempt by law. Other meetings of the governing board of the not-for-profit corporation and of the subsidiaries of the not-for-profit~~

~~corporation are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution~~.

(b) Minutes of closed meetings of the governing board of the not-for-profit corporation and its subsidiaries are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 2. The Legislature finds that it is a public necessity to make confidential and exempt from public records requirements the identity of a donor or prospective donor to the not-for-profit corporation or a subsidiary of the H. Lee Moffitt Cancer Center and Research Institute who wishes to remain anonymous. The Legislature finds that the identity of a donor or prospective donor who wishes to remain anonymous should be confidential and exempt from public disclosure in the same manner provided to the direct-support organizations at the state universities in s. 1004.28(5), Florida Statutes. This exemption is necessary because the disclosure of such confidential and exempt information may adversely impact the ability of the not-for-profit corporation or its subsidiaries to receive donations from individuals who request anonymity. In addition, the Legislature finds that patentable materials received, generated, ascertained, or discovered during the course of research conducted by or through the not-for-profit corporation or a subsidiary of the H. Lee Moffitt Cancer Center and Research Institute must be made confidential and exempt because the disclosure of such information would create an unfair competitive advantage for persons receiving such information and would adversely impact the not-for-profit corporation or its

subsidiaries. If such confidential and exempt information was released pursuant to a public records request, others would be allowed to take the benefit of the research without compensation or reimbursement to the not-for-profit corporation or its subsidiaries. Without the exemptions provided for in this act, the disclosure of confidential and exempt information would place the not-for-profit corporation in an unequal footing in the marketplace as compared with its private research competitors that are not required to disclose confidential and exempt information. The Legislature finds that the disclosure of such confidential and exempt information would adversely impact the ability of the not-for-profit corporation or its subsidiaries to fulfill the mission of research and education.

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

PCB GAP 10-29

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-29 Professional Sports Franchises
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2540

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

SUMMARY ANALYSIS

Fifteen of the 30 Major League Baseball franchises conduct their spring training seasons in Florida. Since 2000, a dedicated source of state general revenue funds has assisted, or will assist, in the construction of 10 spring-training stadiums or related facilities.

Current law specifies a process by which the Governor's Office of Tourism, Trade, and Economic Development (OTTED) has certified 10 local governments to receive up to $15 million each in state sales tax revenues to help pay for spring-training facilities. One of those certified local governments – Vero Beach – has been without a team for 2 years, and Fort Lauderdale will lose the Baltimore Orioles to Sarasota after the 2010 spring season.

However, the statute does not require OTTED and the certified local governments to enter into contracts before receiving the state funds; does not have a reporting requirement or other mechanism by which OTTED can monitor the funds' expenditures; does not include provisions to decertify and recover state funds from local governments whose spring training franchises have relocated; and does not permit the participation of a private entity as a certified applicant.

The bill proposes a number of changes to current Florida law to address these issues. The bill does permit participation of a private entity provided certain requirements are met to ensure protection of the funds received. It also directs OTTED and its partners to develop a strategic plan to help guide the future of spring training baseball in Florida. It provides an opportunity for currently certified local governments who have lost their teams to recruit new franchises, before they are decertified by OTTED and must return state funds.

In addition, the bill expands the scope of the incentive, which is currently restricted to "retained" spring training franchises that were based in Florida prior to 2000, to include any spring training franchise. This allows the incentive to be used by local communities or private entities to attract Arizona-based teams to Florida, should additional state funding become available.

The bill provides an unnumbered section of law recognizing the validity of an agreement certified under the existing spring training provisions of law and the continued release of funding by OTTED for a certified applicant under the current law governing spring training franchises.

The bill does not increase the number of certifications allowed in current law nor does it change the individual or total limits on the amount of funding that is permitted for such certification. Some changes made by the bill have a potential positive, but indeterminate fiscal impact. See "Fiscal Comments" for details.

The bill takes 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:

Present Situation

Florida's Grapefruit League

The first professional team to come to Florida for spring training was the Washington Capitals, in 1888, which spent three weeks in Jacksonville to get ready for the upcoming regular season.[1] In the modern era, Florida's Grapefruit League[2] has been the spring-training home to as many as 20 of the 30 Major League Baseball teams. But since the late 1990s, it has slowly been losing teams to Arizona's Cactus League,[3] which has a storied, 60-year history of its own with Major League Baseball spring training. A 2007 economic impact study indicated that spring training generates nearly $311 million annually to Arizona's economy.[4]

The impetus for Arizona's emergence as a spring-training competitor to Florida was passage in 2000 of legislation creating the "Arizona Sports and Tourism Authority" with authority to levy and collect certain taxes (such as car-rental fees), and to bond them as debt service, for certain specified sports facilities.[5] These revenue sources, coupled with local bed-tax and other funds, have enabled the construction of new spring-training ballparks, some shared. For example, the Cincinnati Reds and the Chicago White Sox will share a $108 million spring training complex in Goodyear, Arizona.[6] Both teams will use the 10,000-seat stadium, but have separate clubhouses, offices, and practice fields. Meanwhile, the Chicago Cubs have announced intentions to stay in Mesa, contingent on the city of Mesa securing the funding to build a new $84 million spring training complex, with a 15,000-seat stadium.[7]

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[1] Baseball in Florida, written by Kevin M. McCarthy. Published by Pineapple Press in 1996. Page 141.
[2] More information about the league is available at http://www.floridagrapefruitleague.com/. Last visited March 11, 2010.
[3] The Cactus League began in 1947 with two teams, and now has 15 teams.
[4] See report at http://www.cactusleague.com/downloads/2007_Cactus_League_Report.pdf.
[5] See Chapter 8 of the Arizona Statutes at http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=5. The relevant statewide legislation was ch. 372, Laws 2000, and the implementing local referendum was Proposition 302, which Maricopa County voters approved by a vote of 52 percent to 48 percent, authorizing new tourism taxes.
[6] Information available at http://www.goodyearaz.gov/index.asp?NID=1800.
[7] The Arizona Legislature is considering a bill to add a $1 surcharge on rental car fees in Maricopa County, and an 8-percent surcharge on all Grapefruit League tickets, to raise an estimated $81 million over 25 years. At least some of the revenues would be used to finance the new Cubs complex. An alternate plan to raise the necessary funds for the new Cubs complex is through tax-increment financing.

Besides the availability of large, new facilities, baseball teams are drawn to Arizona because of the proximity of the spring training stadiums, which are located within two adjacent counties, Maricopa and Pima. Florida's spring training facilities are scattered along the state's two coasts and within the state's heartland, so travel between stadiums can be time-consuming and exhausting.

Since 1998, six teams have left the Grapefruit League for the Cactus League. They are the Texas Rangers, the Kansas City Royals, the Chicago White Sox, the Los Angeles Dodgers, the Cleveland Indians, and the Cincinnati Reds.

Florida's Current Grapefruit League Teams[8]

Team	Host Community in 2010	State Certified	Public or Private Stadium	Term of Lease	Average Attendance Per Game in 2009
Atlanta Braves	Disney	No	Private	2017	8,314
Baltimore Orioles[9]	Fort Lauderdale (Sarasota in 2011)	Yes (both cities)	Public	2010	4,588
Boston Red Sox	Fort Myers	No	Public	2019	7,855
Detroit Tigers	Lakeland	Yes	Public	2016	6,946
Florida Marlins	Jupiter	No	Public	2017	4,102
Houston Astros	Osceola County	Yes	Public	2016	3,666
Minnesota Twins	Fort Myers	No	Public	2020	7,209
New York Mets	St. Lucie County	Yes	Public	2017	5,136
NY Yankees	Tampa	No	Public	2027	10,558
Philadelphia Phillies	Clearwater	Yes	Public	2024	8,353
Pittsburg Pirates	Bradenton	Yes	Public	2036	4,589
St. Louis Cardinals	Jupiter	No	Public	2027	5,652
Tampa Bay Rays[10]	Charlotte County	Yes	Public	2029	6,513
Toronto Blue Jays	Dunedin	Yes	Public	2016	4,292
Wash. Nationals	Viera	No	Public	2017	3,868
None	Indian River Co.[11]	Yes	Public	Not Applicable	Not Applicable

Note: Shaded cells indicate teams playing in communities that have received state certification under s. 288.1162, F.S.

According to the Florida Grapefruit League website,[12] total attendance in 2009 was 1,561,873 fans, or 6,030 fans per game. That was a decline of 115,000 in attendance from 2008, which in turn experienced a drop of about 40,000 in attendance from 2007. This year, the spring training season runs from March 2 to April 3.

[8] Information in this chart was compiled from information provided by the Florida Sports Foundation, the Florida Grapefruit League, and OTTED.

[9] Fort Lauderdale's proposal to renovate its spring-training facility for the Orioles was rejected by the FAA without an accompanying increase in rental fees, so the Orioles have decided to relocate to Sarasota after the 2010 season.

[10] The Rays originally played their spring training games at Florida Power Park-Al Lang Field in St. Petersburg, but have moved to the newly renovated Port Charlotte Park in Charlotte County, built in part with state certification funds.

[11] 2008 was the last spring training season for the Los Angeles Dodgers at the publicly owned Dodger Town in Indian River County's Vero Beach. The Dodgers now share a new, $100 million facility with the Chicago White Sox in Glendale, Arizona.

[12] Supra FN 2.

A June 2009 economic impact study on spring training baseball in Florida estimated that the sport generated $442 million in direct spending during the 2009 season.[13] When calculated using an economic multiplier effect, that direct spending created an estimated $752.3 million in total spending and $284.3 million in income, while creating or supporting 9,205 full-time and part-time jobs. Among the study's conclusions was that every $1 spent for a spring training-related activity turned over 1.7 times in the overall state economy.

Of the 1.56 million people who attended spring training games in 2009, nearly 52 percent (811,286 persons) were Floridians. Seventy-one percent of all attendees indicated that their primary reason for traveling to the communities which host spring training was to attend one or more baseball games.[14]

Florida's Role in Funding Spring Training Facilities

Chapter 88-226, L.O.F., established a funding mechanism for state financial support of the construction of new professional sports franchise facilities within Florida.[15] Legislation in 1991 added eligibility for state funding for local-government-owned facilities for "new spring training franchises," defined as teams not based in Florida prior to July 1, 1990, and a certification process for local governments.[16] No local government ever applied for the certification.

The source of the state funds is a distribution of state sales tax revenues, pursuant to s. 212.20(6)(d)7.b., F.S. Certified facilities are eligible for a maximum of $41,667 monthly.

As the pressure from Arizona to recruit Grapefruit League teams intensified in the late 1990's, the Legislature in 2000 amended the law to make the certification process easier for local governments.[17] A key change in the law expanded eligibility, by replacing the definition for "new spring training franchise" with that of "retained spring training franchise," meaning a franchise that has been based in Florida prior to January 1, 2000. The legislation also gave Office of Tourism, Trade, and Economic Development (OTTED) (the successor to the Department of Commerce) the responsibility for certifying spring training facilities for state funding. Among the information that the certification applicants were required to submit to OTTED was:

- Whether the applicant local government was responsible for the acquisition, construction, management, or operation of the retained spring training franchise facility, or held title to the property on which the facility was located;
- A verified copy of a signed agreement with a retained spring training franchise for the use of the facility for a term of at least 15 years;
- Whether the applicant had a financial commitment of 50 percent or more of the funds required by an agreement for the acquisition, construction, or renovation of the facility;
- Valid projections demonstrating that the facility would attract paid attendance of at least 50,000 annually; and
- If the facility was or would be located in a county levying a tourist development tax pursuant to s. 125.0104, F.S.

OTTED was to "competitively evaluate" the applications, and nine criteria were specified in the new law in descending order of priority:

- The intended use of the funds by the applicant, with priority given to the construction of a new facility;
- The length of time that the existing franchise has been located in the state, with priority given to retaining franchises that have been in the same location the longest;

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[13] "2009 Major League Baseball Florida Spring Training Economic Impact Study." June 2009. Prepared by the Florida Sports Foundation and The Bonn Marketing Research Group. On file with the House Governmental Affairs Policy Committee.
[14] Ibid. Page 40.
[15] Information in this paragraph based on bill analysis for HB 1439 (ch. 2000-186, L.O.F.).
[16] Only three spring training franchises met the original date criteria: the Blue Jays, the Marlins, and the Devil Rays (now known as the Rays).
[17] Chapter 2000-186, L.O.F., which amended s. 288.1162, F.S.

- The length of time that a facility to be used by a retained spring training franchise has been used by one or more spring training franchises, with priority given to a facility that has been in continuous use as a facility for spring training the longest;
- For those teams leasing a spring training facility from a unit of local government, the remaining time on the lease for facilities used by the spring training franchise, with priority given to the shortest time period remaining on the lease;
- The duration of the future-use agreement with the retained spring training franchise, with priority given to the future-use agreement having the longest duration;
- The amount of the local match, with priority given to the largest percentage of local match proposed;
- The net increase of total active recreation space owned by the applying unit of local government following the acquisition of land for the spring training facility, with priority given to the largest percentage increase of total active recreation space;
- The location of the facility in a brownfield, an enterprise zone, a community redevelopment area, or other area of targeted development or revitalization included in an Urban Infill Redevelopment Plan, with priority given to facilities located in these areas; and
- The projections on paid attendance attracted by the facility and the proposed effect on the economy of the local community, with priority given to the highest projected paid attendance.

Local governments may use state funds to pay for acquisition, construction, reconstruction, or renovation of a spring training facility; to pay or pledge for the payment of debt service on a facility; or to reimburse or refinance bonds issued for the facility.[18] State funds also may be used to relocate' a retained spring training franchise to another unit of local government within Florida if the local government from which it is relocating agrees to the move.[19] The statute does not define "relocate" or the process by which the current host community would make its decision to either approve or veto the relocation.

State funds were prohibited from being expended to subsidize privately-owned and maintained facilities for use by the retained spring training franchise.[20]

The legislation directed the Department of Revenue (DOR) to distribute sales tax proceeds to any applicant certified under s. 288.1162(5), F.S., as a "facility for a retained spring training franchise." A certified applicant could receive up to $41,667 monthly for up to 30 years.

The original five certifications, in 2000, were awarded to:
- The City of Lakeland: $7 million over 15 years for a facility for the Detroit Tigers;
- The City of Dunedin: $10 million over 20 years for a facility for the Toronto Blue Jays;
- Indian River County: $15 million over 30 years for a facility for the Los Angeles Dodgers;
- Osceola County: $7.5 million over 15 years for a facility for the Houston Astros; and
- The City of Clearwater: $15 million over 30 years for a facility for the Philadelphia Phillies.

In 2006, the Legislature amended s. 288.1162, F.S., to authorize five more certifications for spring training facilities. The criteria were essentially identical and the source of funding, in s. 212.20, F.S., was unchanged. Six local governments submitted applications, and OTTED selected five:[21]
- Charlotte County: $15 million over 30 years for a facility for the Tampa Bay Rays;
- The City of Bradenton: $15 million over 30 years for a facility for the Pittsburgh Pirates;
- The City of Fort Lauderdale: $15 million over 30 years for a facility for the Baltimore Orioles;
- The City of Sarasota: $15 million over 30 years for a facility for the Cincinnati Reds; and
- St. Lucie County: $7.5 million over 30 years for the New York Mets.

Eight of the local governments have either begun spending or have encumbered the state funds. As for the other two:

[18] Section 288.1162(6), F.S.
[19] Section 288.1162(5)(b), F.S.
[20] Section 288.1162(5)(d), F.S.
[21] The City of Fort Myers' application for a new facility for the Boston Red Sox was not approved by OTTED in 2006.

- Fort Lauderdale has received in excess of $1.5 million in state funds, as of March 2010, but has not spent or otherwise encumbered the funds because the city's plan to build a new stadium for the Orioles was halted because of Federal Aviation Administration restrictions.[22] As mentioned previously, the Orioles have entered into an agreement with Sarasota to relocate there for spring training after the 2010 season.
- Sarasota also has received in excess of $1.5 million in state funds, as of March 2010, and has not encumbered or spent any of the funds, because it lost the Reds to Arizona. As soon as it enters into a formal agreement with the Orioles, it plans to pledge the state revenue stream to help pay debt service on bonds to be issued to pay for facility renovations.

DOR Distributions to Hosts of Certified Spring Training Facilities[23]
As of March 31, 2010

Host Community	First Distribution Date/ Expiration Date	Total Paid to Date
Clearwater	Feb. 2001/Feb. 2031	$4.54 million
Dunedin	Feb. 2001/Feb. 2023	$4.54 million
Indian River County	Feb. 2001/Feb. 2031	$4.54 million
Osceola County	Feb. 2001/Feb. 2016	$4.54 million
Lakeland	Feb. 2001/Feb. 2016	$4.28 million
Charlotte County	March 2007/Feb. 2037	$1.54 million
Bradenton	March 2007/Feb. 2037	$1.54 million
Fort Lauderdale	March 2007/Feb. 2037	$1.54 million
Sarasota	March 2007/Feb. 2037	$1.54 million
St. Lucie County	March 2007/Feb. 2037	$813,462

Recent Developments
The city of Sarasota and the Baltimore Orioles have tentatively agreed to enter into a 30-year agreement, whereby the city and Sarasota County will help finance a $31 million renovation of existing spring training facilities for the Orioles in time for the 2011 season. The city of Sarasota's existing stream of state funding - $15 million over 30 years - also will be used to finance the renovations. No formal agreement has been signed.

Meanwhile, a group of Naples businesspeople over the summer of 2009 made a bid for the Chicago Cubs, who are under new ownership. As mentioned above, Cubs ownership announced the team was staying in Mesa, Arizona, where it has played its spring training games for 50 years. But if a funding stream for a new complex is not approved, there are indications, at least as reported by the media, that the Cubs might exercise a buyout clause in its agreement with Mesa in 2012.

Effect of Proposed Changes

The bill relocates the certification program for spring training facilities from s. 288.1162, F.S., which included new and retained professional sports franchises, to a new s. 288.11621, F.S. that specifically deals with the certification program for spring training facilities. In this new section, the bill removes a potential impediment to Florida communities interested in recruiting teams from Arizona's Cactus League by deleting a definition requiring that eligible teams had to be based in Florida prior to January 1, 2000.

The bill clarifies and strengthens existing statutory provisions related to the state certification program not only for local governmental entities applying for or receiving state funding for spring training baseball facilities but also for private entities that meet certification requirements provided in the bill.

The new certification program includes both provisions from the existing certification program and new provisions. Some provisions in the existing spring training certification program that are preserved in

[22] Among the conditions imposed by the FAA was an increase in the Orioles' annual facility rental fee to $1.3 million from the current maximum rate of $120,000. The stadium is on land owned by the Fort Lauderdale Executive Airport.
[23] Chart information provided by DOR. Complete Excel chart on file with the Commerce Committee.

the new section include the following and apply them to the changed definitions of "applicant" and "certified applicant" which include not only a local government, but local governments in a county that partner for a spring training franchise and private sector entities:

- Before certifying an applicant to receive state funding for a facility for a spring training franchise, OTTED must verify that the:
    1. Applicant is responsible for the acquisition, construction, management, or operation of a spring training facility, or holds title to the property on which the facility is located;
    2. Applicant has a signed agreement with a spring training team;
    3. Applicant has made a financial commitment to provide at least 50 percent of the funds needed to acquire, construct, or renovate the spring training facility;
    4. Applicant demonstrates that the spring training facility will attract an annual paid attendance of at least 50,000 persons; and
    5. Spring training facility is or will be located in a county that levies a tourist development tax pursuant to s. 125.0104, F.S.
- OTTED must competitively evaluate applications for funding using the following criteria, with priority given in descending order (the order has been changed):
    1. Anticipated effect on local community economy where the spring training facility is to be built, including projections on paid attendance, local and state tax collections generated by spring training games, and direct and indirect job creation resulting from the spring training activities. Priority is given to applicants who can demonstrate the largest projected economic impact (partially new criterion);
    2. Amount of local matching funds committed relative to amount of state funding sought, with priority given to largest local commitment relative to state funding;
    3. Potential for the facility to serve multiple uses (new criterion);
    4. Intended fund use with priority for purchase, construction, or renovation of facility;
    5. Length of time a spring training franchise has been under agreement to do spring training activities in an applicant's geographical location or jurisdiction (partially new criterion);
    6. Length of time that the facility has been used by one or more spring training teams;
    7. Term remaining on the lease between the applicant and a spring training team for the facility's use;
    8. Length of time that the spring training franchise has agreed to use the applicant's facility;
    9. Net increase of total active recreational space owned by the applicant, following the acquisition of land for a new spring training facility; and
    10. Whether the facility is located in a brownfield, an enterprise zone, a community development area, or a revitalization area in an urban infill redevelopment plan.
- No more than 10 communities can be certified at any one time.

The bill also includes a number of new provisions aimed at improving state oversight and management of the spring training certification program. For example, local governments and private entities certified by OTTED on or after July 1, 2010, must enter into a formal agreement with OTTED that specifies:

- The amount of state funds to be distributed;
- The criteria to be met in order to remain certified;
- The process by which a local government or private entity will be decertified if it fails to comply with certification requirements;
- State funds may be recovered in case of decertification;
- Information that the certified applicant, whether a local government or a private entity, must provide to OTTED; and
- Any other provisions deemed prudent to OTTED.

The prohibition against the use of state funds for private funded facilities is changed to allow state funding provided that those facilities are not used just by the spring training team but are used for other public purposes.

The state funds may be used only to: acquire, construct, or renovate a facility for a spring training franchise; pay or pledge debt service or fund debt service reserves for bonds issued to build or

renovate a spring training facility; or to assist in the relocation of a spring training franchise from one unit of local government to another or to or from the location of a private entity to another private entity or to a unit of local government. The change is to allow relocation to or from a private entity to other private entities or local governments.

OTTED also is given explicit authority to decertify certified applicants that no longer meet the criteria, and is able to collect the state funds that have not been encumbered. Certified applicants can ask to be decertified or OTTED can initiate the decertification if a certified applicant either no longer has a valid agreement with a spring training franchise; has satisfied its required local match for the state funds; or has not satisfied the bond requirement, if applicable. However, decertification proceedings by OTTED against an applicant certified prior to July 1, 2010, are stayed until 12 months after the expiration of its most recent team agreement without a new agreement being signed, provided that the local government can demonstrate to OTTED that it is in active negotiations with a different major league spring training franchise from the one that formed the basis of its original certification.[24] Typically, the certified applicant facing decertification has 60 days after it receives a notice of OTTED's intent to decertify to petition OTTED's executive director for a review of the decision. Within 45 days of the request for review, the executive director must notify the certified applicant of the outcome of the requested review.

OTTED must notify DOR within 10 days after an order of decertification becomes final, at which time DOR stops the distribution of state funds to the decertified certified applicant. A decertified certified applicant must repay all of the unencumbered or unexpended or contractually unencumbered state funds received through this program, plus any interest earnings, within 60 days after the decertification order becomes final. The returned funds will be deposited into the state's General Revenue Fund.

Other new provisions are as follows:

- Certified applicants' agreements with spring training teams must be for a term of at least 20 years, rather than the minimum 15 years specified in current law.
- DOR may not distribute funds to any new certified local government until it is notified by OTTED that the local government has encumbered funds for the spring training facilities.
- All certified applicants, current or future, must place unexpended state funds in a trust account for the purposes provided in law. Additionally, certified local governments that have lost their teams may ask DOR to suspend further distributions of the state funds for 12 months after the expiration of their existing team agreements, in order to give them time to enter into a new agreement, at which point the distribution of funds would resume.
- Expenditure of the state funds to local governments certified prior to July 1, 2010, must begin within 48 months of the initial receipt of the funds, and construction or renovations to, a spring training facility must be completed within 24 months of the project's beginning date.[25]
- By September 1 of each year, all certified applicants must submit an annual report to OTTED including the most recent annual audit, a detailed report on the use of all funds, a copy of the contract between the certified applicant and the spring training team, a cost-benefit analysis of the team's impact on the host community, and evidence that the certified applicant continues to meet the certification requirements.
- If a certified applicant is decertified, OTTED may accept applications for the vacant slot.
- The Auditor General may conduct audits to verify that the state funding is being expended as required in this section. If the Auditor General determines that is not the case, then the Auditor General may contact DOR to recover the funds.
- OTTED is required to adopt rules to implement certification, decertification, and review processes, rather than given broad permissive authority to adopt rules.
- A certified applicant that is a private entity is required to execute a contract with OTTED to ensure protection of the state's financial interests. Requirements for the contract provisions are provided.

[24] This would apply to all 10 currently certified communities, but for all practical purposes may be used by the three that no longer have teams: Indian River County/Vero Beach, Sarasota, and Fort Lauderdale.

[25] This would apply to all 10 currently certified communities, but for all practical purposes may be used by Fort Lauderdale, which no longer has a team and has not encumbered state funds.

The bill also directs OTTED, in conjunction with the Florida Sports Foundation and the Florida Grapefruit League Association, to develop a comprehensive strategic plan for Florida to retain and recruit spring training franchises. A copy of the strategic plan must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2010.

The bill provides an unnumbered section of law recognizing the validity of an agreement certified under the existing spring training provisions of law and the continued release of funding by OTTED for a certified applicant under the current law governing spring training franchises.

B. SECTION DIRECTORY:

Section 1 amends s. 14.2015, F.S., to replace a cross-reference, consistent with the proposed changes in section 5 of the bill.

Section 2. Amends s. 212.20, F.S., to make conforming changes.

Section 3. Amends s. 218.64, F.S., to make conforming changes.

Section 4. Amends s. 288.1162, F.S., to delete all references to retained spring training baseball teams and to the certification process for local governments seeking state funds to help finance spring-training facilities; to direct the Auditor General, rather than DOR, to conduct audits to verify proper use of funds and to notify DOR of discrepancies; and to allow for DOR to pursue recovery of the funds.

Section 5. Creates s. 288.11621, F.S., which is devoted exclusively to the state funding program for communities with spring training baseball teams and is designed to increase program oversight and accountability.

Section 6. Amends s. 288.1229, F.S., to add assistance in the retention of spring training baseball and other professional sports franchises among the duties of the Florida Sports Foundation, the sports-related direct support organization under contract to OTTED.

Section 7. Creates a section that is not assigned to any section of law that provides legislative recognition of the validity of an agreement certified under the existing spring training provisions of law and the authority of OTTED to release funds as it has done.

Section 8. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could have a positive, but indeterminate, impact on a private entity that participates under the provisions of this act and becomes a certified applicant. As a certified applicant, the private entity is eligible to receive funding, if selected, under the criteria provided in section 5 of the bill.

D. FISCAL COMMENTS:

According to OTTED, there is no additional fiscal impact on the office for the requirements of the bill. The other requirements for the Auditor General are indeterminate since the number of audits and timing of audits are not specified. The requirement for audits performed by the Department of Revenue is removed; thereby, creating some cost savings to the department.

Because the bill allows OTTED to recover unencumbered state funds from decertified local governments, it is possible that at least $2 million in released state funds can be returned to the state's General Revenue Fund. Additionally, up to $28 million in sales tax revenue dedicated over the next 28 years can instead be directed to the General Revenue Fund, unless OTTED decides to certify new applicants for the purpose of developing spring training baseball facilities.

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:

OTTED, in current law, is authorized to adopt rules relating to spring training. The bill narrows the current grant of rulemaking authority by requiring OTTED to adopt rules only addressing specific areas of responsibility.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to professional sports franchises; amending ss. 14.2015, 212.20, and 218.64, F.S., relating to the Office of Tourism, Trade, and Economic Development, the distribution of certain tax proceeds, and the allocation of a portion of the local government half-cent sales tax; conforming provisions to changes made by the act; conforming cross-references; amending s. 288.1162, F.S.; deleting provisions relating to the certification and funding of facilities for spring training franchises; authorizing the Auditor General to conduct audits to verify whether certain funds for professional sports franchises are used as required by law; requiring the Auditor General to notify the Department of Revenue if the funds are not used as required by law; creating s. 288.11621, F.S.; authorizing certain units of local government and private entities to apply for certification to receive state funding for a facility for a spring training franchise; providing definitions; providing eligibility requirements; providing criteria to competitively evaluate applications for certification; requiring a certified applicant to use the funds awarded for specified public purposes and place unexpended funds in a trust fund or separate account; authorizing a certified applicant to request a suspension of the distribution of funds for a specified period under certain circumstances; requiring the expenditure of funds by certain certified applicants within a specified period;

requiring the completion of certain spring training facility projects within a specified period; requiring certified applicants to submit annual reports to the Office of Tourism, Trade, and Economic Development; requiring a contract for receipt of funds by certified applicant that is a private entity; providing contract requirements; requiring the office to decertify applicants under certain circumstances; providing for delay in decertification proceedings for local governments certified before a specified date under certain circumstances; providing for review of the office's notice of intent to decertify an applicant; requiring an applicant to repay unencumbered state funds and interest after decertification; requiring the office to develop a strategic plan relating to baseball spring training activities; requiring the office to adopt rules; authorizing the Auditor General to conduct audits to verify whether certified funds for baseball spring training facilities are used as required by law; requiring the Auditor General to notify the Department of Revenue if the funds are not used as required by law; amending s. 288.1229, F.S.; providing that the Office of Tourism, Trade, and Economic Development may authorize a direct-support organization to assist in the retention of professional sports franchises; recognizing validity of specified agreement under circumstances; providing an effective date.

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

Section 1. Paragraph (f) of subsection (2) of section 14.2015, Florida Statutes, is amended to read:

14.2015 Office of Tourism, Trade, and Economic Development; creation; powers and duties.—

(2) The purpose of the Office of Tourism, Trade, and Economic Development is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to provide economic opportunities for all Floridians. To accomplish such purposes, the Office of Tourism, Trade, and Economic Development shall:

(f)1. Administer the Florida Enterprise Zone Act under ss. 290.001-290.016, the community contribution tax credit program under ss. 220.183 and 624.5105, the tax refund program for qualified target industry businesses under s. 288.106, the tax-refund program for qualified defense contractors and space flight business contractors under s. 288.1045, contracts for transportation projects under s. 288.063, the sports franchise facility programs ~~program~~ under ss. 288.1162 and 288.11621 ~~s. 288.1162~~, the professional golf hall of fame facility program under s. 288.1168, the expedited permitting process under s. 403.973, the Rural Community Development Revolving Loan Fund under s. 288.065, the Regional Rural Development Grants Program under s. 288.018, the Certified Capital Company Act under s. 288.99, the Florida State Rural Development Council, the Rural

Economic Development Initiative, and other programs that are specifically assigned to the office by law, by the appropriations process, or by the Governor. Notwithstanding any other provisions of law, the office may expend interest earned from the investment of program funds deposited in the Grants and Donations Trust Fund to contract for the administration of the programs, or portions of the programs, enumerated in this paragraph or assigned to the office by law, by the appropriations process, or by the Governor. Such expenditures shall be subject to review under chapter 216.

2. The office may enter into contracts in connection with the fulfillment of its duties concerning the Florida First Business Bond Pool under chapter 159, tax incentives under chapters 212 and 220, tax incentives under the Certified Capital Company Act in chapter 288, foreign offices under chapter 288, the Enterprise Zone program under chapter 290, the Seaport Employment Training program under chapter 311, the Florida Professional Sports Team License Plates under chapter 320, Spaceport Florida under chapter 331, Expedited Permitting under chapter 403, and in carrying out other functions that are specifically assigned to the office by law, by the appropriations process, or by the Governor.

Section 2. Paragraph (d) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this chapter and s.

202.18(1)(b) and (2)(b) shall be as follows:

(d) The proceeds of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:

1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5.2 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.

2. After the distribution under subparagraph 1., 8.814 percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less $5,000 each month, which shall be added to the amount calculated in subparagraph 3. and distributed accordingly.

3. After the distribution under subparagraphs 1.and 2., 0.095 percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

4. After the distributions under subparagraphs 1., 2., and 3., 2.0440 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

5. After the distributions under subparagraphs 1., 2., and 3., 1.3409 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

6. Of the remaining proceeds:

a. In each fiscal year, the sum of $29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties must begin each fiscal year on or before January 5th and continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the district school board, special district, or a municipal government, such payment must continue until the local or

special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards before July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or relieve local governments, special districts, or district school boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135 before July 1, 2000.

b. The department shall distribute $166,667 monthly pursuant to s. 288.1162 to each applicant that has been certified as a facility for a new or retained professional sports franchise ~~"facility for a new professional sports franchise" or a "facility for a retained professional sports franchise"~~ pursuant to s. 288.1162. Up to $41,667 shall be distributed monthly by the department to each certified applicant as defined in s. 288.11621 for a facility for a retained spring training franchise. ~~that has been certified as a "facility for a retained spring training franchise" pursuant to s. 288.1162;~~ However, not more than $416,670 may be distributed monthly in the aggregate to all certified applicants for facilities for ~~a retained~~ spring training franchises ~~franchise~~. Distributions ~~must~~ begin 60 days after ~~following~~ such certification and ~~shall~~ continue for not more than 30 years, except as otherwise provided in s. 288.11621. A certified

applicant identified in this sub-subparagraph may not ~~This paragraph may not be construed to allow an applicant certified pursuant to s. 288.1162 to~~ receive more in distributions than ~~actually~~ expended by the applicant for the public purposes provided for in s. 288.1162(5) or s. 288.11621(3) ~~s. 288.1162(6)~~.

c. Beginning 30 days after notice by the Office of Tourism, Trade, and Economic Development to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

d. Beginning 30 days after notice by the Office of Tourism, Trade, and Economic Development to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, $83,333 shall be distributed monthly, for up to 168 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169. A lump sum payment of $999,996 shall be made, after certification and before July 1, 2000.

7. All other proceeds must remain in the General Revenue Fund.

Section 3. Section 218.64, Florida Statutes, is amended to read:

218.64 Local government half-cent sales tax; uses; limitations.—

(1) The proportion of the local government half-cent sales

tax received by a county government based on two-thirds of the incorporated area population shall be deemed countywide revenues and shall be expended only for countywide tax relief or countywide programs. The remaining county government portion shall be deemed county revenues derived on behalf of the unincorporated area but may be expended on a countywide basis.

(2) Municipalities shall expend their portions of the local government half-cent sales tax only for municipality-wide programs or for municipality-wide property tax or municipal utility tax relief. All utility tax rate reductions afforded by participation in the local government half-cent sales tax shall be applied uniformly across all types of taxed utility services.

(3) Subject to ordinances enacted by the majority of the members of the county governing authority and by the majority of the members of the governing authorities of municipalities representing at least 50 percent of the municipal population of such county, counties may use up to $2 million annually of the local government half-cent sales tax allocated to that county for funding for any of the following applicants:

(a) A certified applicant as a facility for a new or retained professional sports franchise under ~~"facility for a new professional sports franchise," a "facility for a retained professional sports franchise," or a "facility for a retained spring training franchise," as provided for in~~ s. 288.1162 or a certified applicant as defined in s. 288.11621 for a facility for a spring training franchise. It is the Legislature's intent that the provisions of s. 288.1162, including, but not limited to, the evaluation process by the Office of Tourism, Trade, and

Economic Development except for the limitation on the number of certified applicants or facilities as provided in that section and the restrictions set forth in s. 288.1162(8) ~~s. 288.1162(9)~~, shall apply to an applicant's facility to be funded by local government as provided in this subsection.

(b) A certified applicant as a "motorsport entertainment complex," as provided for in s. 288.1171. Funding for each franchise or motorsport complex shall begin 60 days after certification and shall continue for not more than 30 years.

(4) A local government is authorized to pledge proceeds of the local government half-cent sales tax for the payment of principal and interest on any capital project.

Section 4. Section 288.1162, Florida Statutes, is amended to read:

288.1162 Professional sports franchises; ~~spring training franchises;~~ duties.—

(1) The Office of Tourism, Trade, and Economic Development shall serve as the state agency for screening applicants for state funding under ~~pursuant to~~ s. 212.20 and for certifying an applicant as a facility for a new or retained professional sports franchise. ~~"facility for a new professional sports franchise," a "facility for a retained professional sports franchise," or a "facility for a retained spring training franchise."~~

(2) The Office of Tourism, Trade, and Economic Development shall develop rules for the receipt and processing of applications for funding under ~~pursuant to~~ s. 212.20.

(3) As used in this section, the term:

(a) "New professional sports franchise" means a professional sports franchise was ~~that is~~ not based in this state before ~~prior to~~ April 1, 1987.

(b) "Retained professional sports franchise" means a professional sports franchise that has had a league-authorized location in this state on or before December 31, 1976, and has continuously remained at that location, and has never been located at a facility that has been previously certified under any provision of this section.

(4) Before ~~Prior to~~ certifying an applicant as a facility for a new or retained professional sports franchise, ~~"facility for a new professional sports franchise" or a "facility for a retained professional sports franchise,"~~ the Office of Tourism, Trade, and Economic Development must determine that:

(a) A "unit of local government" as defined in s. 218.369 is responsible for the construction, management, or operation of the professional sports franchise facility or holds title to the property on which the professional sports franchise facility is located.

(b) The applicant has a verified copy of a signed agreement with a new professional sports franchise for the use of the facility for a term of at least 10 years, or in the case of a retained professional sports franchise, an agreement for use of the facility for a term of at least 20 years.

(c) The applicant has a verified copy of the approval from the governing authority of the league in which the new professional sports franchise exists authorizing the location of the professional sports franchise in this state after April 1,

1987, or in the case of a retained professional sports franchise, verified evidence that it has had a league-authorized location in this state on or before December 31, 1976. As used in this section, the term "league" means the National League or the American League of Major League Baseball, the National Basketball Association, the National Football League, or the National Hockey League.

(d) The applicant has projections, verified by the Office of Tourism, Trade, and Economic Development, which demonstrate that the new or retained professional sports franchise will attract a paid attendance of more than 300,000 annually.

(e) The applicant has an independent analysis or study, verified by the Office of Tourism, Trade, and Economic Development, which demonstrates that the amount of the revenues generated by the taxes imposed under chapter 212 with respect to the use and operation of the professional sports franchise facility will equal or exceed $2 million annually.

(f) The municipality in which the facility for a new or retained professional sports franchise is located, or the county if the facility for a new or retained professional sports franchise is located in an unincorporated area, has certified by resolution after a public hearing that the application serves a public purpose.

(g) The applicant has demonstrated that it has provided, is capable of providing, or has financial or other commitments to provide more than one-half of the costs incurred or related to the improvement and development of the facility.

(h) An ~~No~~ applicant previously certified under any

provision of this section who has received funding under such certification is not ~~shall be~~ eligible for an additional certification.

~~(5)(a) As used in this section, the term "retained spring training franchise" means a spring training franchise that has been based in this state prior to January 1, 2000.~~

~~(b) Prior to certifying an applicant as a "facility for a retained spring training franchise," the Office of Tourism, Trade, and Economic Development must determine that:~~

~~1. A "unit of local government" as defined in s. 218.369 is responsible for the acquisition, construction, management, or operation of the facility for a retained spring training franchise or holds title to the property on which the facility for a retained spring training franchise is located.~~

~~2. The applicant has a verified copy of a signed agreement with a retained spring training franchise for the use of the facility for a term of at least 15 years.~~

~~3. The applicant has a financial commitment to provide 50 percent or more of the funds required by an agreement for the acquisition, construction, or renovation of the facility for a retained spring training franchise. The agreement can be contingent upon the awarding of funds under this section and other conditions precedent to use by the spring training franchise.~~

~~4. The applicant has projections, verified by the Office of Tourism, Trade, and Economic Development, which demonstrate that the facility for a retained spring training franchise will attract a paid attendance of at least 50,000 annually.~~

~~5. The facility for a retained spring training franchise is located in a county that is levying a tourist development tax pursuant to s. 125.0104.~~

~~(c)1. The Office of Tourism, Trade, and Economic Development shall competitively evaluate applications for funding of a facility for a retained spring training franchise. Applications must be submitted by October 1, 2000, with certifications to be made by January 1, 2001. If the number of applicants exceeds five and the aggregate funding request of all applications exceeds $208,335 per month, the office shall rank the applications according to a selection criteria, certifying the highest ranked proposals. The evaluation criteria shall include, with priority given in descending order to the following items:~~

~~a. The intended use of the funds by the applicant, with priority given to the construction of a new facility.~~

~~b. The length of time that the existing franchise has been located in the state, with priority given to retaining franchises that have been in the same location the longest.~~

~~c. The length of time that a facility to be used by a retained spring training franchise has been used by one or more spring training franchises, with priority given to a facility that has been in continuous use as a facility for spring training the longest.~~

~~d. For those teams leasing a spring training facility from a unit of local government, the remaining time on the lease for facilities used by the spring training franchise, with priority given to the shortest time period remaining on the lease.~~

~~e. The duration of the future-use agreement with the retained spring training franchise, with priority given to the future-use agreement having the longest duration.~~

~~f. The amount of the local match, with priority given to the largest percentage of local match proposed.~~

~~g. The net increase of total active recreation space owned by the applying unit of local government following the acquisition of land for the spring training facility, with priority given to the largest percentage increase of total active recreation space.~~

~~h. The location of the facility in a brownfield, an enterprise zone, a community redevelopment area, or other area of targeted development or revitalization included in an Urban Infill Redevelopment Plan, with priority given to facilities located in these areas.~~

~~i. The projections on paid attendance attracted by the facility and the proposed effect on the economy of the local community, with priority given to the highest projected paid attendance.~~

~~2. Beginning July 1, 2006, the Office of Tourism, Trade, and Economic Development shall competitively evaluate applications for funding of facilities for retained spring training franchises in addition to those certified and funded under subparagraph 1. An applicant that is a unit of government that has an agreement for a retained spring training franchise for 15 or more years which was entered into between July 1, 2003, and July 1, 2004, shall be eligible for funding. Applications must be submitted by October 1, 2006, with~~

~~certifications to be made by January 1, 2007. The office shall rank the applications according to selection criteria, certifying no more than five proposals. The aggregate funding request of all applicants certified shall not exceed an aggregate funding request of $208,335 per month. The evaluation criteria shall include the following, with priority given in descending order:~~

~~a. The intended use of the funds by the applicant for acquisition or construction of a new facility.~~

~~b. The intended use of the funds by the applicant to renovate a facility.~~

~~c. The length of time that a facility to be used by a retained spring training franchise has been used by one or more spring training franchises, with priority given to a facility that has been in continuous use as a facility for spring training the longest.~~

~~d. For those teams leasing a spring training facility from a unit of local government, the remaining time on the lease for facilities used by the spring training franchise, with priority given to the shortest time period remaining on the lease. For consideration under this subparagraph, the remaining time on the lease shall not exceed 5 years, unless an agreement of 15 years or more was entered into between July 1, 2003, and July 1, 2004.~~

~~e. The duration of the future-use agreement with the retained spring training franchise, with priority given to the future-use agreement having the longest duration.~~

~~f. The amount of the local match, with priority given to the largest percentage of local match proposed.~~

~~g. The net increase of total active recreation space owned by the applying unit of local government following the acquisition of land for the spring training facility, with priority given to the largest percentage increase of total active recreation space.~~

~~h. The location of the facility in a brownfield area, an enterprise zone, a community redevelopment area, or another area of targeted development or revitalization included in an urban infill redevelopment plan, with priority given to facilities located in those areas.~~

~~i. The projections on paid attendance attracted by the facility and the proposed effect on the economy of the local community, with priority given to the highest projected paid attendance.~~

~~(d) Funds may not be expended to subsidize privately owned and maintained facilities for use by the spring training franchise. Funds may be used to relocate a retained spring training franchise to another unit of local government only if the existing unit of local government with the retained spring training franchise agrees to the relocation.~~

(5) ~~(6)~~ An applicant certified as a facility for a new or retained professional sports franchise ~~or a facility for a retained professional sports franchise or as a facility for a retained spring training franchise~~ may use funds provided under ~~pursuant to~~ s. 212.20 only for the public purpose of paying for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise~~,~~ ~~a facility for a retained professional sports franchise, or a~~

~~facility for a retained spring training franchise or~~ to pay or pledge for the payment of debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to, bonds issued for the acquisition, construction, reconstruction, or renovation of such facility or for the reimbursement of such costs or the refinancing of bonds issued for such purposes.

(6) ~~(7)~~ (a) The Office of Tourism, Trade, and Economic Development shall notify the Department of Revenue of any facility certified as a facility for a new or retained professional sports franchise ~~or a facility for a retained professional sports franchise or as a facility for a retained spring training franchise~~. The Office of Tourism, Trade, and Economic Development shall certify no more than eight facilities as facilities for a new professional sports franchise or as facilities for a retained professional sports franchise, including in the ~~such~~ total any facilities certified by the former Department of Commerce before July 1, 1996. ~~The number of facilities certified as a retained spring training franchise shall be as provided in subsection (5).~~ The office may make no more than one certification for any facility. ~~The office may not certify funding for less than the requested amount to any applicant certified as a facility for a retained spring training franchise.~~

(b) The eighth certification of an applicant under this section as a facility for a new or retained professional sports franchise ~~or a facility for a retained professional sports franchise~~ shall be for a franchise that is a member of the

National Basketball Association, has been located within the state since 1987, and has not been previously certified. This paragraph is repealed July 1, 2010.

(7) ~~(8)~~ The Auditor General ~~Department of Revenue~~ may conduct audits ~~audit~~ as provided in s. 11.45 ~~s. 213.34~~ to verify that the distributions under ~~pursuant to~~ this section are ~~have been~~ expended as required in this section. ~~Such information is subject to the confidentiality requirements of chapter 213.~~ If the Auditor General ~~Department of Revenue~~ determines that the distributions under ~~pursuant to~~ this section are ~~have~~ not ~~been~~ expended as required by this section, the Auditor General shall notify the Department of Revenue, which ~~it~~ may pursue recovery of the ~~such~~ funds under ~~pursuant to~~ the laws and rules governing the assessment of taxes.

(8) ~~(9)~~ An applicant is not qualified for certification under this section if the franchise formed the basis for a previous certification, unless the previous certification was withdrawn by the facility or invalidated by the Office of Tourism, Trade, and Economic Development or the former Department of Commerce before any funds were distributed under ~~pursuant to~~ s. 212.20. This subsection does not disqualify an applicant if the previous certification occurred between May 23, 1993, and May 25, 1993; however, any funds to be distributed under ~~pursuant to~~ s. 212.20 for the second certification shall be offset by the amount distributed to the previous certified facility. Distribution of funds for the second certification shall not be made until all amounts payable for the first certification are ~~have been~~ distributed.

Section 5. Section 288.11621, Florida Statutes, is created to read:

288.11621 Spring training baseball facilities.—

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

(a) "Agreement" means a certified, signed lease between an applicant and the spring training baseball franchise for the use of a facility. This definition applies to applicants that apply for certification after July 1, 2010.

(b) "Applicant" means a unit of local government as defined in s. 218.369, including local governments located in the same county that have partnered with a certified applicant prior to the effective date of this act or with an application for a new certification, for the purposes of sharing in the responsibilities of a facility, or a private entity.

(c) "Certified applicant" means a facility for a spring training franchise that was certified before July 1, 2010, under s. 288.1162(5), Florida Statutes 2009, or a unit of local government or a private entity that is certified under this section.

(d) "Facility" means a spring training stadium, playing fields, and appurtenances intended to support spring training activities.

(e) "Local funds" and "local matching funds" means funds provided by a county, municipality, or other local government, funds provided by a private entity, or a combination of such funds.

(f) "Office" means the Office of Tourism, Trade, and Economic Development.

(2) CERTIFICATION PROCESS.—

(a) Before certifying an applicant to receive state funding for a facility for a spring training franchise, the office must verify that:

1. The applicant is responsible for the acquisition, construction, management, or operation of the facility for a spring training franchise or holds title to the property on which the facility for a spring training franchise is located.

2. The applicant has a certified copy of a signed agreement with a spring training franchise for the use of the facility for a term of at least 20 years. The agreement also must require the franchise to reimburse the state for state funds expended by an applicant under this section if the franchise relocates before the agreement expires. The agreement may be contingent on an award of funds under this section and other conditions precedent.

3. The applicant has made a financial commitment to provide 50 percent or more of the funds required by an agreement for the acquisition, construction, or renovation of the facility for a spring training franchise. The commitment may be contingent upon an award of funds under this section and other conditions precedent.

4. The applicant demonstrates that the facility for a spring training franchise will attract a paid attendance of at least 50,000 annually to the spring training games.

5. The facility for a spring training franchise is located in a county that levies a tourist development tax under s. 125.0104.

6. The applicant, if a private entity, demonstrates that it can be bonded for an amount that it anticipates to be required by the office and the Department of Revenue in accordance with subsection (5).

(b) The office shall competitively evaluate applications for state funding of a facility for a spring training franchise. The total number of certifications may not exceed 10 at any time. The evaluation criteria must include, with priority given in descending order, the following items:

1. The anticipated effect on the economy of the local community where the spring training facility is to be built, including projections on paid attendance, local and state tax collections generated by spring training games, and direct and indirect job creation resulting from the spring training activities. Priority shall be given to applicants who can demonstrate the largest projected economic impact.

2. The amount of the local matching funds committed to a facility relative to the amount of state funding sought, with priority given to applicants that commit the largest amount of local matching funds relative to the amount of state funding sought.

3. The potential for the facility to serve multiple uses.

4. The intended use of the funds by the applicant, with priority given to the funds being used to acquire a facility, construct a new facility, or renovate an existing facility.

5. The length of time that a spring training franchise has been under an agreement to conduct spring training activities within an applicant's geographical location or jurisdiction,

with priority given to applicants having agreements with the same franchise for the longest period of time.

6. The length of time that an applicant's facility has been used by one or more spring training franchises, with priority given to applicants whose facilities have been in continuous use as facilities for spring training the longest.

7. The term remaining on a lease between an applicant and a spring training franchise for a facility, with priority given to applicants having the shortest lease terms remaining.

8. The length of time that a spring training franchise agrees to use an applicant's facility if an application is granted under this section, with priority given to applicants having agreements for the longest future use.

9. The net increase of total active recreation space owned by the applicant after an acquisition of land for the facility, with priority given to applicants having the largest percentage increase of total active recreation space that will be available for public use.

10. The location of the facility in a brownfield, an enterprise zone, a community redevelopment area, or other area of targeted development or revitalization included in an urban infill redevelopment plan, with priority given to applicants having facilities located in these areas.

(c) Applicants that are certified on or after July 1, 2010, shall enter into an agreement with the office that:

1. Specifies the amount of the state incentive funding to be distributed.

2. States the criteria that the certified applicant must

meet in order to remain certified.

3. States that the certified applicant is subject to decertification if the certified applicant fails to comply with this section or the agreement.

4. States that the office may recover state incentive funds if the certified applicant is decertified.

5. Specifies information that the certified applicant must report to the office.

6. Includes any provision deemed prudent by the office.

(3) USE OF FUNDS.—

(a) A certified applicant may use funds provided under s. 212.20(6)(d)7.b. only to:

1. Serve the public purpose of acquiring, constructing, reconstructing, or renovating a facility for a spring training franchise.

2. Pay or pledge for the payment of debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect thereto, bonds issued for the acquisition, construction, reconstruction, or renovation of such facility, or for the reimbursement of such costs or the refinancing of bonds issued for such purposes.

3. Assist in the relocation of a spring training franchise from one unit of local government to another or to or from the location of a private entity to another private entity or to a unit of local government.

(b) State funds awarded to a certified applicant for a facility for a spring training franchise may not be used to subsidize facilities that are privately owned, maintained, and

used only by a spring training franchise.

(c) The Department of Revenue may not distribute funds to an applicant certified on or after July 1, 2010, until it receives notice from the office that the certified applicant has encumbered funds under subparagraph (a)2. or has expended funds or contractually encumbered funds for the acquisition, construction, reconstruction, or renovation of a facility for spring training pursuant to contract requirements in subsection (5).

(d)1. All certified applicants must place unexpended state funds received pursuant to s. 212.20(6)(d)7.b. in a trust fund or separate account for use only as authorized in this section.

2. A certified applicant may request that the Department of Revenue suspend further distributions of state funds made available under s. 212.20(6)(d)7.b. for 12 months after expiration of an existing agreement with a spring training baseball franchise to provide the certified applicant with an opportunity to enter into a new agreement with a spring training baseball franchise, at which time the distributions shall resume.

3. The expenditure of state funds distributed to an applicant certified before July 1, 2010, must begin within 48 months after the initial receipt of the state funds. In addition, the construction of, or capital improvements to, a spring training facility must be completed within 24 months after the project's commencement.

(4) ANNUAL REPORTS.—On or before September 1 of each year, a certified applicant shall submit to the office a report that

includes, but is not limited to:

(a) A copy of its most recent annual audit.

(b) A detailed report on all local and state funds expended to date on the project being financed under this section.

(c) A copy of the contract between the certified local governmental entity or certified private entity and the spring training team.

(d) A cost-benefit analysis of the team's impact on the community.

(e) Evidence that the certified applicant continues to meet the criteria in effect when the applicant was certified.

(f) For purposes of a certified applicant that is a private entity, a list of all uses of the facility and appurtenant property for public purposes during the preceding calendar year.

(5) Contract requirements for certified applicant that is a private entity.--

(a) In order for a private entity applicant that is certified under subsection (2) to receive funding under s. 212.20(6)(d), a contract must be executed between the applicant and the Office of Tourism, Trade, and Economic Development to ensure the protection of the state's financial interests.

(b) At a minimum the contract shall include the following:

1. Required maintenance of a bond by the private entity that will be sufficient to cover the funding received, to ensure the proper use of funds, and to ensure a mechanism for the state to recover funds if the private entity defaults on the

completion of the fund use in any manner or in the case of decertification as provided in this section. The amount of the bond shall be determined by the Office of Tourism, Trade and Economic Development in consultation with the Department of Revenue.

2. Information on the private entity, including, but not limited to, its status as a Florida business and length of operation in the state, business or organizational structure, officers, and budget, including continued efforts in the area of spring training.

3. Compliance with applicable requirements for certification pursuant to subsection (2).

4. Compliance with requirements related to the use of funds in subsection (3).

5. Annual compliance review and assessment as required in subsection (4).

6. Agreement to allow the use of the facility, appurtenant property, and other property, whatever is subject to the contract, for public purposes.

(6) DECERTIFICATION.—

(a) The office shall decertify a certified applicant upon the request of the certified applicant.

(b) The office shall decertify a certified applicant if the certified applicant does not:

1. Have a valid agreement with a spring training franchise;

2. Satisfy its commitment to provide local matching funds to the facility; or

3. Satisfy the bond requirement in accordance with subsection (5).

However, decertification proceedings against a local government certified prior to July 1, 2010, shall be delayed until 12 months after the expiration of the local government's existing agreement with a spring training baseball franchise and without a new agreement being signed if the certified local government can demonstrate to the office that it is in active negotiations with a major league spring training franchise, other than the franchise that was the basis for the original certification.

(c) A certified applicant has 60 days after it receives a notice of intent to decertify from the office to petition the office's executive director for review of the decertification. Within 45 days after receipt of the request for review, the executive director must notify a certified applicant of the outcome of the review.

(d) The office shall notify the Department of Revenue that a certified applicant is decertified within 10 days after the order of decertification becomes final. The Department of Revenue shall immediately stop the payment of any funds under this section that were not encumbered by the certified applicant under subparagraph (3)(a)2. or expended or contractually encumbered as directed under paragraph (3)(c) pursuant to contract requirements under subsection (5).

(e) The office shall order a decertified applicant to repay all of the unencumbered state funds that the local government or private entity received under this section and any

interest that accrued on those funds. The repayment must be made within 60 days after the decertification order becomes final. These funds shall be deposited into the General Revenue Fund.

(6) ADDITIONAL CERTIFICATIONS. If the office decertifies a unit of local government or a private entity, the office may accept applications for an additional certification. A unit of local government or a private entity may not be certified for more than one spring training franchise at a time.

(7) STRATEGIC PLANNING.—

(a) The office shall request assistance from the Florida Sports Foundation and the Florida Grapefruit League Association to develop a comprehensive strategic plan to:

1. Finance spring training facilities.

2. Monitor and oversee the use of state funds awarded to applicants.

3. Identify the financial impact that spring training has on the state and ways in which to maintain or improve that impact.

4. Identify opportunities to develop public-private partnerships to engage in marketing activities and advertise spring training baseball.

5. Identify efforts made by other states to maintain or develop partnerships with baseball spring training teams.

6. Develop recommendations for the Legislature to sustain or improve this state's spring training tradition.

(b) The office shall submit a copy of the strategic plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2010.

(8) RULEMAKING.—The office shall adopt rules to implement the certification, decertification, and decertification review processes required by this section.

(9) AUDITS.—The Auditor General may conduct audits as provided in s. 11.45 to verify that the distributions under this section are expended as required in this section. If the Auditor General determines that the distributions under this section are not expended as required by this section, the Auditor General shall notify the Department of Revenue, which may pursue recovery of the funds under the laws and rules governing the assessment of taxes.

Section 6. Subsection (1) of section 288.1229, Florida Statutes, is amended to read:

288.1229 Promotion and development of sports-related industries and amateur athletics; direct-support organization; powers and duties.—

(1) The Office of Tourism, Trade, and Economic Development may authorize a direct-support organization to assist the office in:

(a) The promotion and development of the sports industry and related industries for the purpose of improving the economic presence of these industries in Florida.

(b) The promotion of amateur athletic participation for the citizens of Florida and the promotion of Florida as a host for national and international amateur athletic competitions for the purpose of encouraging and increasing the direct and ancillary economic benefits of amateur athletic events and competitions.

(c) The retention of professional sports franchises, including the spring training operations of Major League Baseball.

Section 7. An agreement with a spring training franchise relocating from one local government to another local government shall be recognized as a valid agreement under this act if the Office of Tourism, Trade, and Economic Development approved the continuing release of funds to the local government to which the franchise relocated prior to the effective date of this act. The Legislature recognizes the validity of the agreement and acknowledges the authority of the Office of Tourism, Trade, and Economic Development to provide for the continuing release of funds to the local government under the terms of section 288.1162, Florida Statutes, that were in effect prior to the effective date of this act.

Section 8. This act shall take effect upon becoming a law.

Governmental Affairs Policy Committee

Wednesday, March 24, 2010
8:00 AM – 10:30 AM
306 HOB

Addendum A

Larry Cretul
Speaker

Robert C. "Rob" Schenck
Chair

Amendment No.

CHAMBER ACTION

Senate | House

Representative(s) Kiar offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (8) of section 286.011, Florida Statutes, is amended to read:

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(8)(a) Notwithstanding ~~the provisions of~~ subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, and the risk manager and division heads of the governmental entity identified by the chief administrative or executive officer as being involved in pending litigation may meet in private with the entity's

attorneys ~~attorney~~ to discuss pending litigation to which the entity is presently a party before a court or administrative agency, if ~~provided that the following conditions are met~~:

1.~~(a)~~ The entity gives reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session.

2. The session commences as an open meeting at which the person chairing the meeting announces the commencement and estimated length of the attorney-client session and the names of the persons attending.

3. The entity's attorney advises ~~shall advise~~ the entity at the ~~a~~ public meeting that he or she desires advice concerning the litigation, which advisory announcement may be made immediately before the attorney-client session begins.

4.~~(b)~~ The subject matter of the session is ~~meeting shall be~~ confined to settlement negotiations or strategy sessions relating ~~related~~ to litigation expenditures.

5. A person who is an adverse party to the litigation is not permitted to attend the attorney-client session.

6.~~(c)~~ The entire session is ~~shall be~~ recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes must ~~shall~~ be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

7.~~(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending.~~ At the conclusion of the attorney-client session, the meeting is ~~shall be~~ reopened, and the person chairing the meeting announces ~~shall announce~~ the termination of the attorney-client session.

8.~~(e)~~ The transcript is ~~shall be~~ made part of the public record upon conclusion of the litigation.

9. A person in attendance at the attorney-client session agrees not to disclose any part of the discussion that took place during the session until the conclusion of the litigation unless ordered by the court.

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

Section 2. The Legislature finds that it is a public necessity to expand the current public meeting exemption for those meetings wherein any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorneys attorney to discuss pending litigation to which the entity is presently a

party before a court or administrative agency. The Legislature finds that it is a public necessity to exclude from those attorney-client sessions any person who is an adverse party to the litigation. If such person was authorized to attend the closed attorney-client session, then that person would be privy to attorney-client discussions, thus providing that person with an advantage in the litigation process. Allowing such person to attend discussions regarding settlement negotiations and litigation strategies places the public body at a disadvantage in the judicial and administrative process. Further, the Legislature finds that it is a public necessity to prohibit a person from attending a closed attorney-client session if that person does not agree to the nondisclosure restriction provided in the act. If a person attending a closed attorney-client session discloses any part of the discussion that took place during such session prior to conclusion of the litigation or unless ordered by the court, then that person places the public body at a disadvantage with the adverse party by revealing litigation strategies. As such, the Legislature finds that it is a public necessity to prohibit a person who is an adverse party to litigation from attending closed attorney-client sessions and to prohibit a person from attending such sessions if that person does not agree to the nondisclosure requirements created by the act in order to ensure a public body is treated fairly as part of the judicial and administrative process.

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

Amendment No.

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

Remove the entire title and insert:

A bill to be entitled

An act relating to public meetings; amending s. 286.011, F.S.; expanding persons authorized to attend a private meeting between a governmental entity and the entity's attorneys to discuss pending litigation to which the governmental entity is a party before a court or administrative agency; revising and providing additional conditions precedent to such private meetings; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION __ (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER _____

Council/Committee hearing bill: Governmental Affairs Policy Committee

Representative Gibson offered the following:

Amendment

Remove lines 41-44 and insert:

this act for any elector who registers to vote or who is issued a new voter information card pursuant to s. 97.071(2) or (3), Florida Statutes, after September 1, 2010.

Amendment No.

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Governmental Affairs Policy Committee

Representative Braynon offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (m) of subsection (4) of section 287.09451, Florida Statutes, is amended to read:

287.09451 Office of Supplier Diversity; powers, duties, and functions.—

(4) The Office of Supplier Diversity shall have the following powers, duties, and functions:

(m) To certify minority business enterprises, as defined in s. 288.703, and as specified in ss. 287.0943 and 287.09431, and shall recertify such minority businesses at least once every 2 years. Minority business enterprises must be recertified at least once every 2 years ~~by affidavit~~. Such certifications may include an electronic signature.

Section 2. This act shall take effect July 1, 2010.

Amendment No.

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

Remove the entire title and insert:

An act relating to the Office of Supplier diversity of the Department of Management Services; amending s. 287.09451, F.S.; deleting the requirement for affidavits in certifications of minority business enterprises; providing that certifications may be signed electronically; providing an effective date.

Amendment No.

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Governmental Affairs Policy Committee

Representative(s) Dorworth offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (3) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

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

1. Statement of estimated regulatory costs.—Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency shall ~~is encouraged to~~ prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. The failure of the agency to prepare the statement of estimated regulatory costs as provided in this section is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter.

~~However, an agency shall prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if the proposed rule will have an impact on small business.~~

2. Small businesses, small counties, and small cities.—

a. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined by s. 288.703 and the impact of the rule on small counties or small cities as defined by s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

b.(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph a., the agency shall send written notice of the rule to the Small Business Regulatory Advisory Council and the Office of Tourism, Trade, and Economic Development not less than 28 days prior to the intended action.

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

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, prior to rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working

days of the filing of such notice, the agency shall send a copy of such notice to the Small Business Regulatory Advisory Council. The Small Business Regulatory Advisory Council may make a request of the President of the Senate and the Speaker of the House of Representatives that the presiding officers direct the Office of Program Policy Analysis and Government Accountability to determine whether the rejected alternatives reduce the impact on small business while meeting the stated objectives of the proposed rule. Within 60 days after the date of the directive from the presiding officers, the Office of Program Policy Analysis and Government Accountability shall report to the Administrative Procedures Committee its findings as to whether an alternative reduces the impact on small business while meeting the stated objectives of the proposed rule. The Office of Program Policy Analysis and Government Accountability shall consider the proposed rule, the economic impact statement, the written statement of the agency, the proposed alternatives, and any comment submitted during the comment period on the proposed rule. The Office of Program Policy Analysis and Government Accountability shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Administrative Procedures Committee shall report such findings to the agency, and the agency shall respond in writing to the Administrative Procedures Committee if the Office of Program Policy Analysis and Government Accountability found that the alternative reduced the impact on small business while meeting the stated objectives of the proposed rule. If the agency will

not adopt the alternative, it must also provide a detailed written statement to the committee as to why it will not adopt the alternative.

Section 2. Section 120.541, Florida Statutes, is amended to read:

120.541 Statement of estimated regulatory costs.—

(1)(a) A substantially affected person, within 21 days after publication of the notice provided under s. 120.54(3)(a), may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The proposal may include the alternative of not adopting any rule, so long as the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days.

(b) Upon the submission of the lower cost regulatory alternative, the agency ~~shall prepare a statement of estimated regulatory costs as provided in subsection (2), or~~ shall revise its prior statement of estimated regulatory costs, and either adopt the alternative or give a statement of the reasons for rejecting the alternative in favor of the proposed rule. The failure of the agency to prepare or revise the statement of estimated regulatory costs as provided in this paragraph is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter. An agency required to prepare or revise a statement of estimated regulatory costs as provided in this paragraph shall make it available to the person

who submits the lower cost regulatory alternative and to the public prior to filing the rule for adoption.

~~(c) No rule shall be declared invalid because it imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives, and no rule shall be declared invalid based upon a challenge to the agency's statement of estimated regulatory costs, unless:~~

~~1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule; and~~

~~2. The substantial interests of the person challenging the agency's rejection of, or failure to consider, the lower cost regulatory alternative are materially affected by the rejection; and~~

~~3.a. The agency has failed to prepare or revise the statement of estimated regulatory costs as required by paragraph (b); or~~

~~b. The challenge is to the agency's rejection under paragraph (b) of a lower cost regulatory alternative submitted under paragraph (a).~~

(2) A statement of estimated regulatory costs shall include:

(a) An economic analysis showing whether the rule:

1. Creates a regulatory environment that could impede or hinder economic growth and private-sector job creation;

2. Expands the growth of state government, where not recognized by the enabling statute;

3. Increases regulatory costs to small businesses; and

4. Is likely to adversely impact private-sector job creation or result in higher unemployment.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) ~~(b)~~ A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) ~~(c)~~ A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this paragraph, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting.

(e) ~~(d)~~ An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined by s. 120.52.

(f) ~~(e)~~ Any additional information that the agency determines may be useful.

(g) ~~(f)~~ In the statement or revised statement, whichever applies, a description of any good faith written proposal

submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) The committee shall determine whether any statement of estimated regulatory costs prepared by an agency complies with subsection (2). If the evidence shows that a proposed rule will create a regulatory environment that impedes or hinders economic growth and private-sector job creation, expand the growth of state government where not anticipated by the enabling statute, increase the regulatory costs to small businesses, or is likely to adversely impact private-sector job creation or result in higher unemployment, the rule may not take effect until it is submitted to the Legislature for review at the next regularly scheduled session. The Legislature may reject, modify, or take no action relative to the rule. If the Legislature takes no action, the rule will take effect upon sine die.

(4) Subsection (2) (a) shall not apply to the adoption of emergency rules.

Section 3. This act shall take effect July 1, 2010.

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

Remove the entire title and insert:

An act relating to rulemaking; amending s. 120.54, F.S.; requiring each agency, before adopting, amending, or repealing a rule, to prepare a statement of estimated regulatory costs of the proposed rule; providing that failure to prepare such statement is a material failure to follow applicable rulemaking

procedures; amending s. 120.541, F.S.; requiring an agency to revise its statement of estimated regulatory costs upon submission of a lower cost regulatory alternative; removing the requirement that a rule be declared invalid if it imposes regulatory costs on certain persons or entities provided a less costly alternative exists; revising the required information that must be included in a statement of estimated regulator costs; requiring the Joint Administrative Procedures Committee to determine whether any statement of estimated regulatory costs complies with certain requirements; prohibiting a rule from taking effect until it is submitted to the Legislature for review if the rule creates certain impediments or hindrances; allowing the Legislature to reject, modify, or take no action relative to a rule; providing a time certain for a rule to take effect if the Legislature takes no action; providing that the act is not applicable to certain specified rules; providing an effective date.

COUNCIL/COMMITTEE AMENDMENT

Bill No. PCB GAP 10-29(2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Governmental Affairs Policy Committee

Representative Schenck offered the following:

Amendment

Remove line 544 and insert:

prior to the effective date of this act or with an applicant