



Governmental Affairs Policy Committee

**Wednesday, February 3, 2010
8:15 AM - 9:30 AM
306 HOB**

**Larry Cretul
Speaker**

**Robert C. "Rob" Schenck
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Governmental Affairs Policy Committee

Start Date and Time: Wednesday, February 03, 2010 08:15 am
End Date and Time: Wednesday, February 03, 2010 09:30 am
Location: 306 HOB
Duration: 1.25 hrs

Consideration of the following bill(s):

HB 123 Claims by Law Enforcement and Correctional Officers by Patterson

Consideration of the following proposed committee bill(s):

PCB GAP 10-01 -- Relating to Government Sponsored Health Insurance
PCB GAP 10-04 -- Relating to the Minority Business Certification Task Force

The above-referenced PCBs repeal statutory provisions that are obsolete, duplicative or otherwise unnecessary.

Presentation by the Florida Building Commission on the International Building Code and Building Code reform

Presentation by the Office of Program Policy Analysis & Government Accountability on its review of the Department of the Lottery pertaining to headquarters space leased by the department and advertising

NOTICE FINALIZED on 01/27/2010 15:28 by Ellinor.Martha

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 123
SPONSOR(S): Patterson
TIED BILLS:

Claims by Law Enforcement and Correctional Officers

IDEN./SIM. BILLS: SB 212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Affairs Policy Committee		Haug <i>EH</i>	Williamson <i>AW</i>
2) Government Operations Appropriations Committee			
3) Military & Local Affairs Policy Committee			
4) Full Appropriations Council on Education & Economic Development			
5)			

SUMMARY ANALYSIS

Current law establishes a presumption for state and local firefighters and law enforcement, correctional and correctional probation officers regarding determinations of job-related disability. It provides that certain diseases (tuberculosis, heart disease and hypertension) acquired by such firefighters and officers are presumed to have been suffered in the line of duty. This presumption in law has the effect of shifting from the employee to the employer the burden of proving by competent evidence that the disabling disease resulted from the person's employment.

Current law also establishes similar presumptions for municipal police officers' pension systems and municipal firefighters' pension systems.

The bill provides that a law enforcement officer, correctional officer or correctional probation officer who suffers from tuberculosis, heart disease, or hypertension and who has departed from the prescribed course of treatment loses this presumption. The departure must be shown to have caused an aggravation of the disability causing condition. The change in presumption applies to any claim occurring on or after July 1, 2010.

The bill also provides a definition of "prescribed course of treatment," requires a second medical opinion in certain situations and specifies that only claims made prior to leaving the employment of the employing agency are eligible for a presumptive disability.

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:

BACKGROUND¹

The Florida Retirement System (FRS) was created in December 1970 to consolidate then-existing state-administered retirement systems for state and county officers and employees, teachers and Highway Patrol officers. The Judicial Retirement System was consolidated into the FRS in 1972. The FRS is the fourth largest public retirement system in the United States, covering 668,416 active employees, 289,602 Pension Plan annuitants (retirees and their surviving beneficiaries) and 32,921 participants of the Deferred Retirement Option Program (DROP).

As of June 30, 2009, about 181 Florida cities² are covering firefighters, police or general employees under the FRS and 221 independent special districts³ have members in the FRS. District school boards represent nearly half (48.38 percent) of the FRS membership, with community colleges (2.87 percent) and universities (3.63 percent) bringing the total for educational institutions to approximately 55 percent of the FRS membership. State employees (excluding university employees) represent 17.35 percent of the FRS. Remaining members are employed by local agencies, including counties (23.30 percent) as well as cities and special districts (4.46 percent) that have opted to join the FRS.

The active membership of the FRS Pension Plan is divided into five membership classes. As of June 30, 2009, the Regular Class consists of 582,671 members (87.17 percent of the membership); the Special Risk Class includes 75,640 members (11.32 percent), the Special Risk Administrative Support Class has 76 members (0.01 percent), the Elected Officers' Class has 2,304 members (0.34 percent) and the Senior Management Service Class has 7,725 members (1.16 percent). Each class is funded separately based upon the costs attributable to the members of that class except for the funding of DROP.

¹ Data provided in this section is based on a snapshot of the Florida Retirement System taken on June 30, 2009. These counts include members of the Teachers' Retirement System, State and County Officers and Employees' Retirement System and special retirement programs. [Department of Management Services HB 123 (2010) Substantive Bill Analysis (Jan. 19, 2010) pages 1-3 (on file with the Governmental Affairs Policy Committee).]

² In January 1, 1996, many cities and special districts were authorized by law to "opt out" of the FRS for new employees. Many chose to do so and, since that time, some have elected to rejoin the FRS. As of June 30, 2009, among the 181 cities participating in the FRS, there are 26 cities that have chosen to withdraw from the system and do not cover new members under the FRS.

³ This number includes 13 independent special districts closed to new FRS members since January 1996.

Special Risk Class

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S. As of June 30, 2009, Special Risk Class membership comprised nearly 11 percent of the active FRS membership (75,640 in the Special Risk Class and 76 members in the Special Risk Administrative Support Class).

The Special Risk Class under the FRS was created as the Legislature recognized that persons employed in certain categories of law enforcement, firefighting, criminal detention and emergency medical care positions must, as an essential function of their positions, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. The Legislature further found that as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public and their coworkers.⁴ In response, the Legislature established a special class to permit these employees to retire at an earlier age and with less service without suffering economic deprivation compared to Regular Class members with normal retirement after 30 years of service or age 62 and vested. The comparison of equivalent benefits was determined when 25 years at a 2 percent Special Risk Class accrual value resulted in 50 percent of the average final compensation compared to 48 percent of average final compensation for a Regular Class member with 30 years of service at a 1.60 percent per year accrual value.

The benefit improvements enjoyed by members of the Special Risk Class are funded by higher employer contributions. For the 2009-10 plan years the retirement portion of the employer contribution rate for the Special Risk Class is 19.76 percent.⁵

FRS members must meet specified eligibility requirements to qualify for membership in the Special Risk Class. These requirements limit membership to employees who meet the criteria for Special Risk membership as set forth in applicable s. 121.0515, F.S., and who are employed by an FRS employer in one of the following positions: 1) law enforcement officer; 2) firefighter; 3) correctional officer; 4) correctional probation officer; 5) emergency medical technician; 6) paramedic; 7) youth custody officer; and 8) specified professional health care and forensic positions who spend at least 75 percent of their time performing duties involving inmate or patient contact in the Departments of Corrections and Children and Family Services.

Disability

The FRS provides disability benefits for its active members who are totally and permanently disabled from useful employment. The level of disability benefit to which an eligible disabled member is minimally entitled depends upon membership class and whether the disabling injury or illness was job related. For special risk members retiring on or after July 1, 2000, the minimum in-line-of-duty disability benefit is 65 percent of member's average final compensation (AFC). For members of all other classes, if the disabling injury or illness occurs in the line of duty, the base benefit is 42 percent of the member's AFC as of the disability retirement date. If the disabling injury or illness did not occur in the line of duty, the benefit minimum is 25 percent of AFC, regardless of membership class.⁶

Any member of the FRS who is totally and permanently disabled due to a condition or impairment of health caused by an injury or illness that occurred before the member terminated employment is entitled to disability benefits.⁷ Certain criteria must be met:

- An FRS member is eligible for in-line-of-duty disability benefits from his/her first day on the job. In contrast, the member must have eight years of creditable service before becoming disabled

⁴ Section 121.0515(1), F.S.

⁵ Regardless of whether an individual member elects to participate in the FRS Pension Plan or the FRS Investment Plan, the employer pays the same contribution rate for each class or subclass of membership by blending the rates for both plans as required under the uniformed contribution rate system of the FRS as provided in Part III of Chapter 121. Under the FRS Investment Plan, the amount contributed to an individual member account increases from 9.00 percent to 20.00 percent when the member moves from the Regular Class to the Special Risk Class.

⁶ Section 121.091(4), F.S.

⁷ *Id.*

in order to receive disability retirement benefits for any disability occurring other than in the line of duty.

- For a member to be deemed “totally and permanently disabled,” the disabling injury or illness must prevent him/her from “performing useful and efficient service as an officer or employee.”
- To further qualify for in-line-of-duty disability benefits, the injury or illness must have arisen out of and in the performance of work-related duties as required by the FRS employer.

Proof of disability is required, including certification by two Florida-licensed physicians⁸ that the member’s disability is total and permanent (i.e., the member is prevented by reason of a medically determinable physical or mental impairment from engaging in gainful employment). It is the responsibility of the applicant to provide such proof. To qualify to receive the higher in-line-of-duty disability benefits, unless a legal presumption applies (such as is provided under s. 112.18, F.S.), the member also must show by competent evidence that the disability occurred in the line of duty.

Existing in-line-of-duty disability presumptions

Section 112.18, F.S., establishes a presumption for state and local firefighters, law enforcement, correctional and correctional probation officers regarding determinations of job-related disability. This statute provides that certain diseases (tuberculosis, heart disease and hypertension) acquired by these officers are presumed to have been suffered in the line of duty. This presumption in law has the effect of shifting from the employee to the employer the burden of proving by competent evidence that the disabling disease resulted from the person’s employment. The presumption applies to disability determinations under all public retirement systems providing disability coverage for firefighters, law enforcement officers, correctional officers and correctional probation officers, including the Florida Retirement System (FRS) and to disability determinations under the Worker’s Compensation Law (ch. 440, F.S.).

Sections 185.34 and 175.231, F.S., establish similar presumptions for municipal police officers’ pension systems and municipal firefighters’ pension systems.

Section 112.181, F.S., also is similar regarding presumptions as to firefighters, paramedics, emergency medical technicians, law enforcement officers and correctional officers who are disabled or die as a result of contracting hepatitis, meningococcal meningitis, or tuberculosis.

Death benefits also are provided to FRS members, surviving spouses or eligible dependents. Death benefits may be paid for an active member of the FRS who dies before retirement due to an injury or illness (including tuberculosis, heart disease, or hypertension). If the injury or illness arises out of and in the actual performance of duty required by his job, the member’s surviving spouse and/or eligible dependent(s) are entitled to in-line-of-duty death benefits.⁹ There are important differences in the laws applicable to death benefits, depending on whether the death is found to be due to an injury or illness “suffered in the line of duty.”

In-Line-of-Duty Death Benefits. Beginning with the first day of employment, an FRS member is eligible for in-line-of-duty death benefits that will pay a minimum monthly benefit to a survivor equal to half the member’s last monthly salary. If the deceased member would have been entitled to a higher retirement benefit based on service credit, the higher benefit would be payable to his/her spouse or eligible dependent(s).¹⁰

Non-Duty Death Benefits. If the death was NOT job-related:¹¹

- For FRS members who die before vesting, only accumulated member contributions, if any, are payable to designated beneficiaries.
- If the deceased member was eligible for normal retirement, the death benefit is the option 3 benefit amount (paying continuing benefits to a spouse and/or other eligible dependent for life). If the member was not eligible for normal retirement, the benefit is reduced just as if the

⁸ In limited situations certain out-of-state physicians may certify total and permanent disability (see ch. 2005-134, Laws of Florida).

⁹ Section 121.091(7), F.S.

¹⁰ *Id.*

¹¹ *Id.*

member had taken early retirement. However, for survivors of members with 20 years of creditable service at the time of death, a different benefit calculation method applies: Benefits are based on salary at the time of death and the penalty is applied against either the number of years before normal retirement age, or the number of years remaining in a full career of service, whichever affords the better benefit. In any case, the beneficiary can also defer benefits (just as if the member had chosen to defer benefits) in order to reduce or eliminate early retirement penalties.

Special Survivor Provisions. For non-duty and in-line-of-duty deaths, the surviving spouse or eligible dependent may purchase credit for any service, which could have been claimed by the member at the time of his/her death. If a member dies within 1 year of vesting, the surviving spouse or other eligible dependent may use the member's annual, sick, or compensatory leave, or purchasable service, to purchase enough service credit to vest the member posthumously (and entitle the surviving beneficiary to a death benefit).

Burden of Proof. Unless a legal presumption applies such as the one provided under s. 112.18, F.S., the eligible beneficiary must show by competent evidence that the death occurred in the line of duty to qualify to receive the higher in-line-of-duty death benefits.

Death benefits available under chapters 175 and 185, F.S.

If a police officer or firefighter has less than 10 years of service, his/her beneficiary receives a refund of his/her contributions without interest. If a police officer or firefighter has at least 10 years of service, his/her beneficiary is eligible to receive the member's accrued retirement benefit (a minimum of 2 percent x years of service x AFC) at his/her early (actuarially reduced) retirement date or at his/her normal (not reduced) retirement date for 10 years (120 monthly payments). No consideration is given to whether the death occurred in the line of duty or non-line of duty.

Death benefits available under chapter 112, F.S.

In addition to chapter 121, F.S., death benefits, chapter 112, F.S., contains several laws mandating death benefits for public employees under specified circumstances. Under s. 112.19, F.S., the following special death benefits are provided for law enforcement officers, correctional officers and correctional probation officers who are killed in the performance of duty:

- The sum of \$25,000 is payable for an officer who is accidentally killed in the line of duty.
- Another \$25,000 is payable if the officer is killed in "fresh pursuit" or in an emergency.
- Another \$75,000 is payable if the officer is unlawfully and intentionally killed or dies as a result of an unlawful and intentional act of another.
- If an officer employed by a state agency is killed in the line of duty as the result of an act of violence under riot conditions, \$1,000 is paid toward the funeral and burial expenses.
- If an officer employed by a political subdivision of the state is killed by another while performing his/her law enforcement duties or under riot conditions, the premium of the employer's health insurance plan is paid for the surviving spouse and minor dependent(s).
- Tuition expenses are waived for vocational or undergraduate education of children of officers killed accidentally in the line of duty or unlawfully or intentionally as described above.

Similar death benefits are available for firefighters under s. 112.191, F.S.

PROPOSED CHANGES

The bill provides that a law enforcement officer, correctional officer or correctional probation officer who suffers from tuberculosis, heart disease, or hypertension and who has departed from the prescribed course of treatment loses this presumption. The departure must be shown to have caused an aggravation of the disability causing condition. The change in presumption applies to any claim occurring on or after July 1, 2010.

The bill also provides a definition of "prescribed course of treatment,"¹² requires a second medical opinion in certain situations and specifies that only claims made prior to leaving the employment of the employing agency are eligible for a presumptive disability.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.18, F.S., providing conditions under which a law enforcement, correctional, or correctional probation officer who suffers from a specified medical condition and has materially departed from the prescribed treatment for that condition loses a specified presumption for claims made on or after a specified date.

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:

The bill could create additional administrative expenses. See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill could create additional administrative expenses. See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Actuarial Statement of Fiscal Soundness:¹³

Actuaries Fiscal Note: There is no new fiscal impact for benefit improvement resulting from HB 123, the correctional probation officers added by this bill have been covered since the presumption for hypertension, heart disease and tuberculosis was expanded to include state law enforcement officers. There may be additional administrative expenses resulting from this bill; any changes in trends of ILOD disability benefits resulting from this bill will be measured by future valuations and experience studies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹² "Prescribed course of treatment" means "prescribed medical courses of action and prescribed medicines for the specific disease or diseases claimed and as documented in the prescribing physician's medical records."

¹³ Robert Dezube, Enrolled Actuary, Milliamn, Inc., January 4, 2010 [Department of Management Services HB 123 (2010) Substantive Bill Analysis (Jan. 19, 2010) at 8 (on file with the Governmental Affairs Policy Committee)].

1. Applicability of Municipality/County Mandates Provision:

Not applicable because 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:

Actuarial Statement of Fiscal Soundness:¹⁴

- This bill complies with the requirements of Article X, Section 14 of the Constitution.
- This bill complies with the provisions of Chapter 112, Part VII, Florida Statutes.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

¹⁴ *Id.*

1 A bill to be entitled
 2 An act relating to claims by law enforcement and
 3 correctional officers; amending s. 112.18, F.S.; providing
 4 conditions under which a law enforcement officer,
 5 correctional officer, or correctional probation officer
 6 who suffers from a specified medical condition and has
 7 materially departed from the prescribed treatment for that
 8 condition shall lose a specified presumption for claims
 9 made on or after a specified date; defining the term
 10 "prescribed course of treatment"; providing for second
 11 medical opinions in certain situations; providing that
 12 only claims made before leaving employment are eligible
 13 for a specified presumption; providing an effective date.

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

16
 17 Section 1. Section 112.18, Florida Statutes, is amended to
 18 read:

19 112.18 Firefighters and law enforcement or correctional
 20 officers; special provisions relative to disability.--

21 (1) (a) Any condition or impairment of health of any
 22 Florida state, municipal, county, port authority, special tax
 23 district, or fire control district firefighter or any law
 24 enforcement officer, ~~or~~ correctional officer, or correctional
 25 probation officer as defined in s. 943.10(1), (2), or (3) caused
 26 by tuberculosis, heart disease, or hypertension resulting in
 27 total or partial disability or death shall be presumed to have
 28 been accidental and to have been suffered in the line of duty

29 unless the contrary be shown by competent evidence. However, any
 30 such firefighter or law enforcement officer must ~~shall~~ have
 31 successfully passed a physical examination upon entering into
 32 any such service as a firefighter or law enforcement officer,
 33 which examination failed to reveal any evidence of any such
 34 condition. Such presumption does ~~shall~~ not apply to benefits
 35 payable under or granted in a policy of life insurance or
 36 disability insurance, unless the insurer and insured have
 37 negotiated for such additional benefits to be included in the
 38 policy contract.

39 (b) For any claim occurring on or after July 1, 2010, a
 40 law enforcement officer, correctional officer, or correctional
 41 probation officer as defined in s. 943.10(1), (2), or (3)
 42 suffering from tuberculosis, heart disease, or hypertension is
 43 presumed not to have incurred such disease in the line of duty
 44 as provided in this section if the law enforcement officer,
 45 correctional officer, or correctional probation officer:

46 1. Departed in a material fashion from the prescribed
 47 course of treatment of his or her personal physician and the
 48 departure is demonstrated to have resulted in a significant
 49 aggravation of the tuberculosis, heart disease, or hypertension
 50 resulting in disability or increasing the disability or need for
 51 medical treatment; or

52 2. Was previously compensated pursuant to this section and
 53 chapter 440 for tuberculosis, heart disease, or hypertension and
 54 thereafter sustains and reports a new compensable workers'
 55 compensation claim under this section and chapter 440, and the
 56 law enforcement officer, correctional officer, or correctional

57 probation officer has departed in a material fashion from the
 58 prescribed course of treatment of an authorized physician for
 59 the preexisting workers' compensation claim and the departure is
 60 demonstrated to have resulted in a significant aggravation of
 61 the tuberculosis, heart disease, or hypertension resulting in
 62 disability or increasing the disability or need for medical
 63 treatment.

64 (c) As used in this subsection, "prescribed course of
 65 treatment" means prescribed medical courses of action and
 66 prescribed medicines for the specific disease or diseases
 67 claimed and as documented in the prescribing physician's medical
 68 records.

69 (d) If there is a dispute as to the appropriateness of the
 70 course of treatment prescribed by a physician under subparagraph
 71 (b)1. or subparagraph (b)2. or whether a departure in a material
 72 fashion from the prescribed course of treatment is demonstrated
 73 to have resulted in a significant aggravation of the
 74 tuberculosis, heart disease, or hypertension resulting in
 75 disability or increasing the disability or need for medical
 76 treatment, the law enforcement officer, correctional officer, or
 77 correctional probation officer is entitled to seek a second
 78 opinion from a physician pursuant to the procedure for an
 79 independent medical examination provided in s. 440.13(5).

80 (e) A law enforcement officer, correctional officer, or
 81 correctional probation officer is not entitled to the
 82 presumption provided in this section unless a claim for benefits
 83 is made prior to leaving the employment of the employing agency.

84 (2) This section authorizes each governmental entity
 85 specified in subsection (1) ~~shall be construed to authorize the~~
 86 ~~above governmental entities~~ to negotiate policy contracts for
 87 life and disability insurance to include accidental death
 88 benefits or double indemnity coverage which shall include the
 89 presumption that any condition or impairment of health of any
 90 firefighter, law enforcement officer, or correctional officer
 91 caused by tuberculosis, heart disease, or hypertension resulting
 92 in total or partial disability or death was accidental and
 93 suffered in the line of duty, unless the contrary be shown by
 94 competent evidence.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-01 Relating to Government Sponsored Health Insurance

SPONSOR(S): Governmental Affairs Policy Committee

TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Governmental Affairs Policy Committee, Haug, Williamsch.

SUMMARY ANALYSIS

Current law establishes the Florida Employee Long-Term-Care Plan Act. The purpose of the Act is to implement a self-funded, voluntary, long-term-care plan for public employees and their families in order to reduce the rapid rate of increase in state expenditures and to meet the long-term-care needs of the public.

The Act also creates a Florida Employee Long-Term-Care Plan Board of Directors (Board). The Board is composed of nine members serving two-year terms and must be appointed after May 1, 1999. All appointments to the Board were not made, nor did the Board ever meet.

The bill repeals s. 110.1227, F.S., establishing the Florida Employee Long-Term-Care Plan Act. The statutory deadline for receiving vendor submissions for the plan has passed and the Board was never fully appointed, nor did it meet.

Current law directs the Department of Management Services (DMS) to solicit competitive bids from state-licensed insurance companies to provide and administer a fully insured Medicare supplement policy for all eligible retirees of state and local public employers.

Current law also directs DMS to initiate and supervise a group insurance program providing death and disability benefits for active members of the Florida Highway Patrol Auxiliary, with coverage beginning by July 1, 1978.

Under current law, the board of directors of the nonprofit corporation authorized to operate Florida's correctional work program is authorized to apply for participation in the state group health insurance and prescription drug coverage programs.

It appears DMS did not make the IRS request and, as such, the section never took effect. Thus, this bill repeals s. 946.525, F.S., as the deadline has passed with no action by DMS.

There is no fiscal impact associated with the repeal of these sections.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb01.GAP.doc

DATE: 1/27/2010

HOUSE PRINCIPLES

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- 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:

FLORIDA EMPLOYEE LONG-TERM-CARE PLAN ACT

Background

Section 110.1227, F.S., establishes the Florida Employee Long-Term-Care Plan Act (Act). The purpose of the Act is to implement a self-funded,¹ voluntary, long-term-care plan for public employees and their families in order to reduce the rapid rate of increase in state expenditures and to meet the long-term-care needs of the public.² The intent is to provide a plan by which public employees can purchase long-term-care insurance by means of payroll deduction.³

The Act directs the departments of Elderly Affairs and Management Services to jointly design a plan to provide long-term-care coverage for eligible participants.⁴ The departments must implement the plan through a procurement process that requires vendor submissions by February 23, 1999.⁵

Proposals for long-term-care plans from 10 vendors included four self-funded and nine fully insured plans. The maximum possible score for each of the six criteria was 100 points. As provided for by the Invitation to Negotiate, if a proposal failed to achieve an acceptable score on any one of the six criteria, that proposal could be eliminated from further consideration. At the time the evaluation criteria were established, the acceptable score was 70 points on at least three of the six criteria. All of the proposals failed to meet the scoring requirements; therefore, all of the proposals were disqualified and rejected.

The Act also creates a Florida Employee Long-Term-Care Plan Board of Directors (Board).⁶ The Board is composed of nine members serving two-year terms and must be appointed after May 1, 1999. All appointments to the Board were not made, nor did the Board ever meet.

¹ For purposes of the Act, "self-funded" means "that plan benefits and costs are funded from contributions made by or on behalf of participants and trust fund investment revenue." Section 110.1227(2)(b), F.S.

² Section 110.1227(1), F.S.

³ Section 110.1227(1)(a), F.S.

⁴ Eligible plan participants must include "active and retired officers and employees of all branches and agencies of state and their spouses, children, stepchildren, parents, and parents-in-law; and, upon the affirmative vote of the governing body of any county or municipality in this state, the active and retired officers and employees of any such county or municipality and their spouses, children, stepchildren, parents, and parents-in-law; and the surviving spouses, children, stepchildren, parents, and parents-in-law of such deceased officers and employees, whether active or retired at the time of death. Section 110.1227(1)(b), F.S.

⁵ Section 110.1227(1)(d), F.S.

Effect of the Bill

The bill repeals s. 110.1227, F.S., establishing the Florida Employee Long-Term-Care Plan Act. The statutory deadline for receiving vendor submissions for the plan has passed and the Board was never fully appointed, nor did it meet. Thus, the statute appears outdated and has not been implemented.

HEALTH INSURANCE FOR RETIREES UNDER THE FLORIDA RETIREMENT SYSTEM

Background

Sections 110.1234 and 112.0804, F.S., direct the Department of Management Services (DMS) to solicit competitive bids from state-licensed insurance companies to provide and administer a fully insured Medicare supplement policy for all eligible retirees⁷ of state and local public employers. It also directs DMS to solicit competitive bids for health insurance coverage for all public employees who retired from a state or local public employer who are not covered by Medicare. The policy is optional and retiree paid and it must meet the provisions of the Alonzo Mourning Access to Care Act.⁸

DMS has not pursued such solicitation due to the availability of options at the federal level. There exist already 12 standardized Medicare supplement plans that are off-the-shelf products approved by Health Care Financing Administration (now the Centers for Medicare & Medicaid Services) and approved for sale by the Department of Financial Services. These products are widely available to all Medicare-eligible citizens, and do not have to be purchased under a group contract.⁹

Effect of the Bill

This bill repeals ss. 110.1234 and 112.0804, F.S., thereby removing the directive as DMS has not pursued such solicitation. Repeal of the provisions does not reduce nor detract from any value already available in the open insurance market. Further, for those not Medicare-eligible, there is a conversion privilege in existing insurance contracts that allows covered persons to convert to an individual insurance policy.

The bill also removes cross-references to these sections.

GROUP INSURANCE PROGRAM FOR THE FLORIDA HIGHWAY PATROL AUXILIARY

Background

Section 112.08(5), F.S., directs DMS to initiate and supervise a group insurance program providing death and disability benefits for active members of the Florida Highway Patrol Auxiliary, with coverage beginning by July 1, 1978. According to law, the program would be purchased from state funds appropriated for that purpose. Subsection (5) further requires DMS, in cooperation with the Office of Insurance Regulation, to prepare specifications necessary to implement the program. DMS must receive bids and award the contract in accordance with general law.

Effect of the Bill

There is no available information to suggest this program was initiated, nor have state funds ever been appropriated for the program. Further, the deadline for coverage to start has expired. As such, the bill repeals s. 112.08(5), F.S., thereby removing the expired directive.

⁶ Section 110.1227(6), F.S.

⁷ For purposes of those sections, "eligible retiree" means "any public employee who retired from a state or local public employer who is covered by Medicare, Parts A and B." Sections 110.1234(1) and 112.0804(1), F.S.

⁸ Sections 627.671 – 627.675, F.S., comprise the Alonzo Mourning Access to Care Act.

⁹ See Centers for Medicare & Medicaid Services 2009 Brochure *Choosing a Medigap Policy: A Guide to Health Insurance for People with Medicare*.

PARTICIPATION BY THE CORPORATION IN STATE GROUP HEALTH INSURANCE AND PRESCRIPTION DRUG PROGRAMS

Background

Section 946.525, F.S., authorizes the board of directors of the nonprofit corporation authorized to operate Florida's correctional work program,¹⁰ currently PRIDE, to apply for participation in the state group health insurance¹¹ and prescription drug coverage programs.¹² The board of directors must submit an application along with a \$500 nonrefundable fee to DMS. The section provides additional prerequisites that must be met by the corporation (PRIDE) prior to seeking participation in the state programs.

Section 946.525, F.S., however, never took effect because implementation was contingent upon a favorable letter ruling from the Internal Revenue Service (IRS). Section 15 of chapter 2001-242, L.O.F., directed DMS to request from the IRS, by October 1, 2001, a written determination letter and a favorable private letter ruling stating the State Group Self-Insurance Program as amended by s. 946.525, F.S., was a facially qualified plan.

Effect of the Bill

There is no evidence that DMS made the IRS request and, as such, the section never took effect. Thus, this bill repeals s. 946.525, F.S., as the deadline has passed with apparently no action by DMS.

B. SECTION DIRECTORY:

Section 1. Repeals s. 110.1227, F.S., relating to Florida Employee Long-Term-Care Plan Act.

Section 2. Repeals s. 110.1234, F.S., relating to health insurance for retirees under the Florida Retirement System.

Section 3. Amends s. 112.08, F.S., repealing the authority of DMS to initiate and supervise a group insurance program for the Florida Highway Patrol Auxiliary.

Section 4. Repeals s. 112.0804, F.S., relating to health insurance for retirees under the Florida Retirement System.

Section 5. Repeals s. 946.525, F.S., relating to participation by PRIDE in the state group health insurance and prescription drug programs.

Section 6. Amends s. 1001.705, F.S., to remove a cross-reference.

Section 7. Amends s. 1001.706, F.S., to remove a cross-reference.

Section 8. Amends s. 1001.74, F.S., to remove a cross-reference.

Section 9. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹⁰ For purposes of this section, "correctional work program" means "any program presently a part of the prison industries program operated by the department or any other correctional work program carried on at any state correctional facility presently or in the future, but the term does not include any program authorized by s. 945.091 or s. 946.40." Section 946.503(2), F.S. "Department" means the Department of Corrections. Section 946.503(3), F.S.

¹¹ The state group health insurance program is authorized in s. 110.123, F.S.

¹² The prescription drug coverage program is authorized by s. 110.12315, F.S.

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:

Not applicable because 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.

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1 A bill to be entitled
2 An act relating to government sponsored health insurance;
3 repealing s. 110.1227, F.S., relating to the Florida
4 Employee Long-Term-Care Plan Act; repealing s. 110.1234,
5 F.S., relating to health insurance for retirees under the
6 Florida Retirement System; amending s. 112.08, F.S.;
7 repealing the authority of the Department of Management
8 Services to initiate and supervise a group insurance
9 program for active members of the Florida Highway Patrol
10 Auxiliary; renumbering subsections; repealing s. 112.0804,
11 F.S., relating to health insurance for retirees under the
12 Florida Retirement System; repealing s. 946.525, F.S.,
13 relating to participation by the nonprofit corporation,
14 which is authorized to operate the correctional work
15 programs, in the state group health insurance and
16 prescription drug programs; amending s. 1001.705, F.S.;
17 removing a cross-reference; amending s. 1001.706, F.S.;
18 removing a cross-reference; amending s. 1001.74, F.S.;
19 removing a cross-reference; providing an effective date.

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

22
23 Section 1. Section 110.1227, Florida Statutes, is
24 repealed.

25 Section 2. Section 110.1234, Florida Statutes, is
26 repealed.

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27 Section 3. Subsection (5) of section 112.08, Florida
 28 Statutes, is amended, and present subsections (6) through (8)
 29 are renumbered as subsections (5) through (7), to read:

30 112.08 Group insurance for public officers, employees, and
 31 certain volunteers; physical examinations.—

32 ~~(5) The Department of Management Services shall initiate~~
 33 ~~and supervise a group insurance program providing death and~~
 34 ~~disability benefits for active members of the Florida Highway~~
 35 ~~Patrol Auxiliary, with coverage beginning July 1, 1978, and~~
 36 ~~purchased from state funds appropriated for that purpose. The~~
 37 ~~Department of Management Services, in cooperation with the~~
 38 ~~Office of Insurance Regulation, shall prepare specifications~~
 39 ~~necessary to implement the program, and the Department of~~
 40 ~~Management Services shall receive bids and award the contract in~~
 41 ~~accordance with general law.~~

42 Section 4. Section 112.0804, Florida Statutes, is
 43 repealed.

44 Section 5. Section 946.525, Florida Statutes, is repealed.

45 Section 6. Paragraph (b) of subsection (1) of section
 46 1001.705, Florida Statutes, is amended to read:

47 1001.705 Responsibility for the State University System
 48 under s. 7, Art. IX of the State Constitution; legislative
 49 finding and intent.—

50 (1) LEGISLATIVE FINDINGS.—

51 (b) Constitutional duties of the Board of Governors of the
 52 State University System.—In accordance with s. 7, Art. IX of the
 53 State Constitution, the Board of Governors of the State
 54 University System has the duty to operate, regulate, control,

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55 and be fully responsible for the management of the whole
 56 publicly funded State University System and the board, or the
 57 board's designee, has responsibility for:

58 1. Defining the distinctive mission of each constituent
 59 university.

60 2. Defining the articulation of each constituent
 61 university in conjunction with the Legislature's authority over
 62 the public schools and community colleges.

63 3. Ensuring the well-planned coordination and operation of
 64 the State University System.

65 4. Avoiding wasteful duplication of facilities or programs
 66 within the State University System.

67 5. Accounting for expenditure of funds appropriated by the
 68 Legislature for the State University System as provided by law.

69 6. Submitting a budget request for legislative
 70 appropriations for the institutions under the supervision of the
 71 board as provided by law.

72 7. Adopting strategic plans for the State University
 73 System and each constituent university.

74 8. Approving, reviewing, and terminating degree programs
 75 of the State University System.

76 9. Governing admissions to the state universities.

77 10. Serving as the public employer to all public employees
 78 of state universities for collective bargaining purposes.

79 11. Establishing a personnel system for all state
 80 university employees; however, the Department of Management
 81 Services shall retain authority over state university employees
 82 for programs established in ss. 110.123, 110.1232, ~~110.1234,~~

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83 110.1238, and 110.161, and in chapters 121, 122, and 238.

84 12. Complying with, and enforcing for institutions under
85 the board's jurisdiction, all applicable local, state, and
86 federal laws.

87 Section 7. Paragraph (b) of subsection (5) of section
88 1001.706, Florida Statutes, is amended to read:

89 1001.706 Powers and duties of the Board of Governors.—

90 (5) POWERS AND DUTIES RELATING TO PERSONNEL.—

91 (b) The Department of Management Services shall retain
92 authority over state university employees for programs
93 established in ss. 110.123, 110.1232, ~~110.1234~~, 110.1238, and
94 110.161 and in chapters 121, 122, and 238. Unless specifically
95 authorized by law, neither the Board of Governors nor a state
96 university may offer group insurance programs for employees as a
97 substitute for or as an alternative to the health insurance
98 programs offered pursuant to chapter 110.

99 Section 8. Paragraph (c) of subsection (5) of section
100 1001.74, Florida Statutes, is amended to read:

101 1001.74 Powers and duties of university boards of
102 trustees.—

103 (5) POWERS AND DUTIES RELATING TO PERSONNEL.—

104 (c) The Department of Management Services shall retain
105 authority over state university employees for programs
106 established in ss. 110.123, 110.1232, ~~110.1234~~, 110.1238, and
107 110.161 and in chapters 121, 122, and 238. Unless specifically
108 authorized by law, neither the Board of Governors nor a state
109 university may offer group insurance programs for employees as a
110 substitute for or as an alternative to the health insurance

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111 | programs offered pursuant to chapter 110.

112 | Section 9. This act shall take effect July 1, 2010.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Under the Florida Government Accountability Act,¹ most state agencies are subject to a "sunset" review process to determine whether the agency should be retained, modified, or abolished. During the 2010 Regular Session, among the departments that the Legislature will review is the Department of Management of Services.² Part of that review includes an examination of agency advisory committees.³

Two statutorily created advisory entities, the Florida Small and Minority Business Advisory Council and the Minority Business Certification Task Force, are assigned to the Office of Supplier Diversity within the Department of Management Services to assist in specified responsibilities.⁴

The Minority Business Certification Task Force (Task Force) was created in s. 287.0943, F.S., to propose uniform criteria and procedures by which participating entities and organizations can qualify businesses to participate in procurement or contracting programs as certified minority business enterprises.^{5,6} The primary purpose of the Task Force is to propose a final list of the criteria and procedures for consideration by the Secretary of DMS. The Task Force also is authorized to seek technical assistance from qualified providers of technical, business, and managerial expertise to ensure the reliability of the certification criteria developed.

The 19-member Task Force appointed by the Secretary of DMS is intended to be regionally balanced and comprised of officials representing governmental entities who administer programs to assist minority businesses procure or develop government-sponsored programs. Six organizations (Florida

¹ Sections 11.901-11.920, F.S.

² See s. 11.905, F.S.

³ See s. 11.906, F.S.

⁴ The Office of Supplier Diversity function is to improve business and economic opportunities for Florida's minority, women, and service-disabled veteran business enterprises. To accomplish this goal the office's primary functions include certification of business enterprises, advocacy and outreach, and matchmaking activities. See the DMS website for information on the responsibilities of the office.

⁵ See Chapter 94-322, L.O.F.

⁶ Pursuant to s. 20.03(8), F.S., a task force created by specific statutory enactment is, by definition, limited to no more than 3 years, appointed to study a specific problem and recommend a solution or policy alternative with respect to the problem, and terminates upon the completion of its assignment."

League of Cities, Florida Association of Counties, Florida School Boards Association, Association of Special Districts, Florida Association of Minority Business Enterprise Officials, and Florida Association of Government Purchasing Officials) are authorized to appoint up to two members to the Task Force. The Office of Supplier Diversity within DMS appoints seven members, consisting of three representatives of minority business enterprises, two office representatives, and two at-large members. The chairperson of the Legislative Committee on Intergovernmental Relations or designee is to serve as an ex officio member.

The Task Force has fulfilled its statutory responsibility to propose uniform minority business certification criteria. DMS placed the criteria in the Florida Administrative Code 13 years ago.⁷ According to the Office of Supplier Diversity, the Task Force has not met in recent years primarily because the use of reciprocal agreements (agreements to accept a business's certified minority enterprise status issued by other entities) ended in 2003.⁸

Abolishing the Task Force was recommended by the Office of Program Policy Analysis & Government Accountability as part of its sunset review of DMS.

Effect of Proposed Change

The abolishment of the Minority Business Certification Task Force will have no effect since the statutory responsibility of the Task Force has been fulfilled, the Task Force has not been functional for several years, and the statutory authority of the Florida Advisory Council on Small and Minority Business Development permits the council to provide guidance and assistance to the Office of Supplier Diversity relating to the efforts of that office related to reciprocal agreements.⁹

B. SECTION DIRECTORY:

Section 1. Amends s. 287.0943, F.S., deleting provisions which established and referenced the Minority Business Certification Task Force, renumbering subsections because of the deletion, and correcting internal cross references because of the renumbering.

Section 2. Amends s. 287.09431, F.S., correcting cross-references.

Section 3. Amends s. 288.073, F.S., removing a cross-reference.

Section 4. Provides a July 1, 2010 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁷ Office of Program Policy Analysis & Government Accountability Sunset Review Report, p. 4., *Department of Management Services Advisory Committees Assessment*, Report No. 08-S11, published December 2008.

⁸ Information provided by Mr. Torey Alston, Executive Director, Office of Supplier Diversity, Department of Management Services on January 26, 2010.

⁹ According to the Office of Supplier Diversity, the office has begun reaching out to local governments for reciprocal agreements, now referred to as certification agreements. The office has already received some guidance from the Florida Advisory Council on Small and Minority Business Development relating to reciprocal agreements. Information provided by Mr. Torey Alston, Executive Director, Office of Supplier Diversity, Department of Management Services on January 26, 2010.

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:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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1 A bill to be entitled
 2 An act relating to the Minority Business Certification
 3 Task Force; amending s. 287.0943, F.S.; deleting
 4 provisions establishing the Minority Business
 5 Certification Task Force; renumbering subsections,
 6 correcting references to subsections, and deleting
 7 references to the Minority Business Certification Task
 8 Force in the section; amending s. 287.09431, F.S.;
 9 correcting cross-references; amending s. 288.073, F.S.;
 10 removing a cross-reference; providing an effective date.

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

13
 14 Section 1. Subsections (2), (3), and (12) of section
 15 287.0943, Florida Statutes, are amended, and present subsections
 16 (4) through (11) and (13) through (15) are renumbered as
 17 subsections (3) through (10) and (12) through (14),
 18 respectively, to read:

19 287.0943 Certification of minority business enterprises.-
 20 ~~(2) (a) The office is hereby directed to convene a~~
 21 ~~"Minority Business Certification Task Force." The task force~~
 22 ~~shall meet as often as necessary, but no less frequently than~~
 23 ~~annually.~~

24 ~~(b) The task force shall be regionally balanced and~~
 25 ~~comprised of officials representing the department, counties,~~
 26 ~~municipalities, school boards, special districts, and other~~
 27 ~~political subdivisions of the state who administer programs to~~
 28 ~~assist minority businesses in procurement or development in~~

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29 ~~government-sponsored programs. The following organizations may~~
 30 ~~appoint two members each of the task force who fit the~~
 31 ~~description above:~~

- 32 ~~1. The Florida League of Cities, Inc.~~
- 33 ~~2. The Florida Association of Counties.~~
- 34 ~~3. The Florida School Boards Association, Inc.~~
- 35 ~~4. The Association of Special Districts.~~
- 36 ~~5. The Florida Association of Minority Business Enterprise~~
 37 ~~Officials.~~
- 38 ~~6. The Florida Association of Government Purchasing~~
 39 ~~Officials.~~

40
 41 ~~In addition, the Office of Supplier Diversity shall appoint~~
 42 ~~seven members consisting of three representatives of minority~~
 43 ~~business enterprises, one of whom should be a woman business~~
 44 ~~owner, two officials of the office, and two at-large members to~~
 45 ~~ensure balance. The chairperson of the Legislative Committee on~~
 46 ~~Intergovernmental Relations or a designee shall be a member of~~
 47 ~~the task force, ex officio. A quorum shall consist of one-third~~
 48 ~~of the current members, and the task force may take action by~~
 49 ~~majority vote. Any vacancy may only be filled by the~~
 50 ~~organization or agency originally authorized to appoint the~~
 51 ~~position.~~

52 ~~(c) The purpose of the task force will be to propose~~
 53 ~~uniform criteria and procedures by which participating entities~~
 54 ~~and organizations can qualify businesses to participate in~~
 55 ~~procurement or contracting programs as certified minority~~
 56 ~~business enterprises in accordance with the certification~~

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57 ~~criteria established by law.~~

58 ~~(d) A final list of the criteria and procedures proposed~~
 59 ~~by the task force shall be considered by the secretary. The task~~
 60 ~~force may seek technical assistance from qualified providers of~~
 61 ~~technical, business, and managerial expertise to ensure the~~
 62 ~~reliability of the certification criteria developed.~~

63 ~~(e) In assessing the status of ownership and control,~~
 64 ~~certification criteria shall, at a minimum:~~

65 ~~1. Link ownership by a minority person, as defined in s.~~
 66 ~~288.703(3), or as dictated by the legal obligations of a~~
 67 ~~certifying organization, to day-to-day control and financial~~
 68 ~~risk by the qualifying minority owner, and to demonstrated~~
 69 ~~expertise or licensure of a minority owner in any trade or~~
 70 ~~profession that the minority business enterprise will offer to~~
 71 ~~the state when certified. Businesses must comply with all state~~
 72 ~~licensing requirements prior to becoming certified as a minority~~
 73 ~~business enterprise.~~

74 ~~2. If present ownership was obtained by transfer, require~~
 75 ~~the minority person on whom eligibility is based to have owned~~
 76 ~~at least 51 percent of the applicant firm for a minimum of 2~~
 77 ~~years, when any previous majority ownership interest in the firm~~
 78 ~~was by a nonminority who is or was a relative, former employer,~~
 79 ~~or current employer of the minority person on whom eligibility~~
 80 ~~is based. This requirement shall not apply to minority persons~~
 81 ~~who are otherwise eligible who take a 51-percent-or-greater~~
 82 ~~interest in a firm that requires professional licensure to~~
 83 ~~operate and who will be the qualifying licenseholder for the~~
 84 ~~firm when certified. A transfer made within a related immediate~~

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85 | ~~family group from a nonminority person to a minority person in~~
 86 | ~~order to establish ownership by a minority person shall be~~
 87 | ~~deemed to have been made solely for purposes of satisfying~~
 88 | ~~certification criteria and shall render such ownership invalid~~
 89 | ~~for purposes of qualifying for such certification if the~~
 90 | ~~combined total net asset value of all members of such family~~
 91 | ~~group exceeds \$1 million. For purposes of this subparagraph, the~~
 92 | ~~term "related immediate family group" means one or more children~~
 93 | ~~under 16 years of age and a parent of such children or the~~
 94 | ~~spouse of such parent residing in the same house or living unit.~~
 95 | ~~3. Require that prospective certified minority business~~
 96 | ~~enterprises be currently performing or seeking to perform a~~
 97 | ~~useful business function. A "useful business function" is~~
 98 | ~~defined as a business function which results in the provision of~~
 99 | ~~materials, supplies, equipment, or services to customers. Acting~~
 100 | ~~as a conduit to transfer funds to a nonminority business does~~
 101 | ~~not constitute a useful business function unless it is done so~~
 102 | ~~in a normal industry practice. As used in this section, the term~~
 103 | ~~"acting as a conduit" means, in part, not acting as a regular~~
 104 | ~~dealer by making sales of material, goods, or supplies from~~
 105 | ~~items bought, kept in stock, and regularly sold to the public in~~
 106 | ~~the usual course of business. Brokers, manufacturer's~~
 107 | ~~representatives, sales representatives, and nonstocking~~
 108 | ~~distributors are considered as conduits that do not perform a~~
 109 | ~~useful business function, unless normal industry practice~~
 110 | ~~dictates.~~
 111 | ~~(f) When a business receives payments or awards exceeding~~
 112 | ~~\$100,000 in one fiscal year, a review of its certification~~

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113 ~~status or an audit will be conducted within 2 years. In~~
 114 ~~addition, random reviews or audits will be conducted as deemed~~
 115 ~~appropriate by the Office of Supplier Diversity.~~

116 ~~(g) The certification criteria approved by the task force~~
 117 ~~and adopted by the Department of Management Services shall be~~
 118 ~~included in a statewide and interlocal agreement as defined in~~
 119 ~~s. 287.09431 and, in accordance with s. 163.01, shall be~~
 120 ~~executed according to the terms included therein.~~

121 ~~(h) The certification procedures should allow an applicant~~
 122 ~~seeking certification to designate on the application form the~~
 123 ~~information the applicant considers to be proprietary,~~
 124 ~~confidential business information. As used in this paragraph,~~
 125 ~~"proprietary, confidential business information" includes, but~~
 126 ~~is not limited to, any information that would be exempt from~~
 127 ~~public inspection pursuant to the provisions of chapter 119;~~
 128 ~~trade secrets; internal auditing controls and reports; contract~~
 129 ~~costs; or other information the disclosure of which would injure~~
 130 ~~the affected party in the marketplace or otherwise violate s.~~
 131 ~~286.041. The executor in receipt of the application shall issue~~
 132 ~~written and final notice of any information for which~~
 133 ~~noninspection is requested but not provided for by law.~~

134 ~~(i) A business that is certified under the provisions of~~
 135 ~~the statewide and interlocal agreement shall be deemed a~~
 136 ~~certified minority enterprise in all jurisdictions or~~
 137 ~~organizations where the agreement is in effect, and that~~
 138 ~~business is deemed available to do business as such within any~~
 139 ~~such jurisdiction or with any such organization statewide. All~~
 140 ~~state agencies must accept minority business enterprises~~

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141 ~~certified in accordance with the statewide and interlocal~~
 142 ~~agreement of s. 287.09431, and that business shall also be~~
 143 ~~deemed a "certified minority business enterprise" as defined in~~
 144 ~~s. 288.703. However, any governmental jurisdiction or~~
 145 ~~organization that administers a minority business purchasing~~
 146 ~~program may reserve the right to establish further certification~~
 147 ~~procedures necessary to comply with federal law.~~

148 ~~(j) The statewide and interlocal agreement shall be guided~~
 149 ~~by the terms and conditions found therein and may be amended at~~
 150 ~~any meeting of the task force and subsequently adopted by the~~
 151 ~~secretary of the Department of Management Services. The amended~~
 152 ~~agreement must be enacted, initialed, and legally executed by at~~
 153 ~~least two-thirds of the certifying entities party to the~~
 154 ~~existing agreement and adopted by the state as originally~~
 155 ~~executed in order to bind the certifying entity.~~

156 ~~(k) The task force shall meet for the first time no later~~
 157 ~~than 45 days after the effective date of this act.~~

158 (2)~~(3)~~(a) The office shall review and evaluate the
 159 certification programs and procedures of all prospective
 160 executors of the statewide and interlocal agreement to determine
 161 if their programs exhibit the capacity to meet the standards of
 162 the agreement.

163 (b) The evaluations shall, at a minimum, consider: the
 164 certifying entity's capacity to conduct investigations of
 165 applicants seeking certification under the designated criteria;
 166 the ability of the certifying entity to collect the requisite
 167 data and to establish adequate protocol to store and exchange
 168 said information among the executors of the agreement and to

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169 provide adequate security to prevent unauthorized access to
 170 information gathered during the certification process; and the
 171 degree to which any legal obligations or supplemental
 172 requirements unique to the certifying entity exceed the capacity
 173 of that entity to conduct certifications.

174 (c) Any firms certified by organizations or governmental
 175 entities determined not to meet the state certification criteria
 176 shall not be eligible to participate as certified minority
 177 business enterprises in the minority business assistance
 178 programs of the state. For a period of 1 year from the effective
 179 date of this legislation, the executor of the statewide and
 180 interlocal agreement may elect to accept only minority business
 181 enterprises certified pursuant to criteria in place at the time
 182 the agreement was signed. After the 1-year period, either party
 183 may elect to withdraw from the agreement without further notice.

184 (d) Any organizations or governmental entities determined
 185 by the office not to meet the standards of the agreement shall
 186 not be eligible to execute the statewide and interlocal
 187 agreement as a participating organization until approved by the
 188 office.

189 (e) Any participating program receiving three or more
 190 challenges to its certification decisions pursuant to subsection
 191 (3)~~(4)~~ from other organizations that are executors to the
 192 statewide and interlocal agreement, shall be subject to a review
 193 by the office, as provided in paragraphs (a) and (b), of the
 194 organization's capacity to perform under such agreement and in
 195 accordance with the core criteria established by the task force.
 196 The office shall submit a report to the secretary of the

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197 Department of Management Services regarding the results of the
 198 review.

199 (f) The office shall maintain a directory of all executors
 200 of the statewide and interlocal agreement. The directory should
 201 be communicated to the general public.

202 (11)~~(12)~~ Any executor of the statewide and interlocal
 203 agreement may revoke the certification or recertification of a
 204 firm doing business as a certified minority business enterprise
 205 if the minority business enterprise does not meet the
 206 requirements of the jurisdiction or certifying entity that
 207 certified or recertified the firm as a certified minority
 208 business enterprise, ~~or the requirements of subsection (2), s.~~
 209 288.703, and any rule of the office or the Department of
 210 Management Services or if the business acquired certification or
 211 recertification by means of falsely representing any entity as a
 212 minority business enterprise for purposes of qualifying for
 213 certification or recertification.

214 Section 2. Section 287.09431, Florida Statutes, is amended
 215 to read:

216 287.09431 Statewide and interlocal agreement on
 217 certification of business concerns for the status of minority
 218 business enterprise.—The statewide and interlocal agreement on
 219 certification of business concerns for the status of minority
 220 business enterprise is hereby enacted and entered into with all
 221 jurisdictions or organizations legally joining therein. If,
 222 within 2 years from the date that the certification core
 223 criteria are approved by the Department of Labor and Employment
 224 Security, the agreement included herein is not executed by a

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225 majority of county and municipal governing bodies that
 226 administer a minority business assistance program on the
 227 effective date of this act, then the Legislature shall review
 228 this agreement. It is the intent of the Legislature that if the
 229 agreement is not executed by a majority of the requisite
 230 governing bodies, then a statewide uniform certification process
 231 should be adopted, and that said agreement should be repealed
 232 and replaced by a mandatory state government certification
 233 process.

234 ARTICLE I

235 PURPOSE, FINDINGS, AND POLICY.—

236 (1) The parties to this agreement, desiring by common
 237 action to establish a uniform certification process in order to
 238 reduce the multiplicity of applications by business concerns to
 239 state and local governmental programs for minority business
 240 assistance, declare that it is the policy of each of them, on
 241 the basis of cooperation with one another, to remedy social and
 242 economic disadvantage suffered by certain groups, resulting in
 243 their being historically underutilized in ownership and control
 244 of commercial enterprises. Thus, the parties seek to address
 245 this history by increasing the participation of the identified
 246 groups in opportunities afforded by government procurement.

247 (2) The parties find that the State of Florida presently
 248 certifies firms for participation in the minority business
 249 assistance programs of the state. The parties find further that
 250 some counties, municipalities, school boards, special districts,
 251 and other divisions of local government require a separate, yet

BILL ORIGINAL YEAR

252 similar, and in most cases redundant certification in order for
 253 businesses to participate in the programs sponsored by each
 254 government entity.

255 (3) The parties find further that this redundant
 256 certification has proven to be unduly burdensome to the
 257 minority-owned firms intended to benefit from the underlying
 258 purchasing incentives.

259 (4) The parties agree that:

260 (a) They will facilitate integrity, stability, and
 261 cooperation in the statewide and interlocal certification
 262 process, and in other elements of programs established to assist
 263 minority-owned businesses.

264 (b) They shall cooperate with agencies, organizations, and
 265 associations interested in certification and other elements of
 266 minority business assistance.

267 (c) It is the purpose of this agreement to provide for a
 268 uniform process whereby the status of a business concern may be
 269 determined in a singular review of the business information for
 270 these purposes, in order to eliminate any undue expense, delay,
 271 or confusion to the minority-owned businesses in seeking to
 272 participate in the minority business assistance programs of
 273 state and local jurisdictions.

274 ARTICLE II

275 DEFINITIONS.—As used in this agreement and contracts made
 276 pursuant to it, unless the context clearly requires otherwise:

277 (1) "Awarding organization" means any political
 278 subdivision or organization authorized by law, ordinance, or

BILL ORIGINAL YEAR

279 agreement to enter into contracts and for which the governing
 280 body has entered into this agreement.

281 (2) "Department" means the Department of Labor and
 282 Employment Security.

283 (3) "Minority" means a person who is a lawful, permanent
 284 resident of the state, having origins in one of the minority
 285 groups as described and adopted by the Department of Labor and
 286 Employment Security, hereby incorporated by reference.

287 (4) "Minority business enterprise" means any small
 288 business concern as defined in subsection (6) that meets all of
 289 the criteria described and adopted by the Department of Labor
 290 and Employment Security, hereby incorporated by reference.

291 (5) "Participating state or local organization" means any
 292 political subdivision of the state or organization designated by
 293 such that elects to participate in the certification process
 294 pursuant to this agreement, which has been approved according to
 295 s. 287.0943(2)~~(3)~~ and has legally entered into this agreement.

296 (6) "Small business concern" means an independently owned
 297 and operated business concern which is of a size and type as
 298 described and adopted by vote related to this agreement of the
 299 commission, hereby incorporated by reference.

300 ARTICLE III

301 STATEWIDE AND INTERLOCAL CERTIFICATIONS.—

302 (1) All awarding organizations shall accept a
 303 certification granted by any participating organization which
 304 has been approved according to s. 287.0943(2)~~(3)~~ and has entered
 305 into this agreement, as valid status of minority business

BILL ORIGINAL YEAR

306 enterprise.

307 (2) A participating organization shall certify a business
 308 concern that meets the definition of minority business
 309 enterprise in this agreement, in accordance with the duly
 310 adopted eligibility criteria.

311 (3) All participating organizations shall issue notice of
 312 certification decisions granting or denying certification to all
 313 other participating organizations within 14 days of the
 314 decision. Such notice may be made through electronic media.

315 (4) No certification will be granted without an onsite
 316 visit to verify ownership and control of the prospective
 317 minority business enterprise, unless verification can be
 318 accomplished by other methods of adequate verification or
 319 assessment of ownership and control.

320 (5) The certification of a minority business enterprise
 321 pursuant to the terms of this agreement shall not be suspended,
 322 revoked, or otherwise impaired except on any grounds which would
 323 be sufficient for revocation or suspension of a certification in
 324 the jurisdiction of the participating organization.

325 (6) The certification determination of a party may be
 326 challenged by any other participating organization by the
 327 issuance of a timely written notice by the challenging
 328 organization to the certifying organization's determination
 329 within 10 days of receiving notice of the certification
 330 decision, stating the grounds therefor.

331 (7) The sole accepted grounds for challenge shall be the
 332 failure of the certifying organization to adhere to the adopted
 333 criteria or the certifying organization's rules or procedures,

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334 or the perpetuation of a misrepresentation or fraud by the firm.

335 (8) The certifying organization shall reexamine its
336 certification determination and submit written notice to the
337 applicant and the challenging organization of its findings
338 within 30 days after the receipt of the notice of challenge.

339 (9) If the certification determination is affirmed, the
340 challenging agency may subsequently submit timely written notice
341 to the firm of its intent to revoke certification of the firm.

342 ARTICLE IV

343 APPROVED AND ACCEPTED PROGRAMS.—Nothing in this agreement
344 shall be construed to repeal or otherwise modify any ordinance,
345 law, or regulation of a party relating to the existing minority
346 business assistance provisions and procedures by which minority
347 business enterprises participate therein.

348 ARTICLE V

349 TERM.—The term of the agreement shall be 5 years, after
350 which it may be reexecuted by the parties.

351 ARTICLE VI

352 AGREEMENT EVALUATION.—The designated state and local
353 officials may meet from time to time as a group to evaluate
354 progress under the agreement, to formulate recommendations for
355 changes, or to propose a new agreement.

356 ARTICLE VII

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357 OTHER ARRANGEMENTS.—Nothing in this agreement shall be
 358 construed to prevent or inhibit other arrangements or practices
 359 of any party in order to comply with federal law.

360 ARTICLE VIII

361 EFFECT AND WITHDRAWAL.—

362 (1) This agreement shall become effective when properly
 363 executed by a legal representative of the participating
 364 organization, when enacted into the law of the state and after
 365 an ordinance or other legislation is enacted into law by the
 366 governing body of each participating organization. Thereafter it
 367 shall become effective as to any participating organization upon
 368 the enactment of this agreement by the governing body of that
 369 organization.

370 (2) Any party may withdraw from this agreement by enacting
 371 legislation repealing the same, but no such withdrawal shall
 372 take effect until one year after the governing body of the
 373 withdrawing party has given notice in writing of the withdrawal
 374 to the other parties.

375 (3) No withdrawal shall relieve the withdrawing party of
 376 any obligations imposed upon it by law.

377 ARTICLE IX

378 FINANCIAL RESPONSIBILITY.—

379 (1) A participating organization shall not be financially
 380 responsible or liable for the obligations of any other
 381 participating organization related to this agreement.

382 (2) The provisions of this agreement shall constitute

BILL ORIGINAL YEAR

383 neither a waiver of any governmental immunity under Florida law
 384 nor a waiver of any defenses of the parties under Florida law.
 385 The provisions of this agreement are solely for the benefit of
 386 its executors and not intended to create or grant any rights,
 387 contractual or otherwise, to any person or entity.

388 ARTICLE X

389 VENUE AND GOVERNING LAW.—The obligations of the parties to
 390 this agreement are performable only within the county where the
 391 participating organization is located, and statewide for the
 392 Office of Supplier Diversity, and venue for any legal action in
 393 connection with this agreement shall lie, for any participating
 394 organization except the Office of Supplier Diversity,
 395 exclusively in the county where the participating organization
 396 is located. This agreement shall be governed by and construed in
 397 accordance with the laws and court decisions of the state.

398 ARTICLE XI

399 CONSTRUCTION AND SEVERABILITY.—This agreement shall be
 400 liberally construed so as to effectuate the purposes thereof.
 401 The provisions of this agreement shall be severable and if any
 402 phrase, clause, sentence, or provision of this agreement is
 403 declared to be contrary to the State Constitution or the United
 404 States Constitution, or the application thereof to any
 405 government, agency, person, or circumstance is held invalid, the
 406 validity of the remainder of this agreement and the
 407 applicability thereof to any government, agency, person, or
 408 circumstance shall not be affected thereby. If this agreement

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409 shall be held contrary to the State Constitution, the agreement
410 shall remain in full force and effect as to all severable
411 matters.

412 Section 3. Subsection (4) of section 288.703, Florida
413 Statutes, is amended to read:

414 288.703 Definitions.—As used in this act, the following
415 words and terms shall have the following meanings unless the
416 content shall indicate another meaning or intent:

417 (4) "Certified minority business enterprise" means a
418 business which has been certified by the certifying organization
419 or jurisdiction in accordance with s. 287.0943(1) ~~and (2)~~.

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

Florida Lottery Reviews

House Governmental Affairs
Policy Committee
February 3, 2010

Sabrina Hartley
Chief Legislative Analyst

Projects

- **Annual Review – s. 24.123 *Florida Statutes***
 - **Identify options to**
 - **enhance earning capability**
 - **improve efficiency**
 - **Examine Field Support Services Delivery – 2009 GAA proviso directive**

- **Lottery Advertising – return on investment**
 - **2009 GAA proviso Directive**

Since 2002 OPPAGA Recommended Reduce Excess Office Space

- **Headquarters occupies 159,759 sq. ft.**
 - **16,652 sq. ft. sublet to vendors**
 - **143,107 sq. ft. occupied by the Lottery**
 - **74,276 sq. ft. of office space**
 - **68,831 sq. ft. of special use space –
conference and training centers, secure
storage, cafeteria/break rooms, winner
conference areas, warehouse**

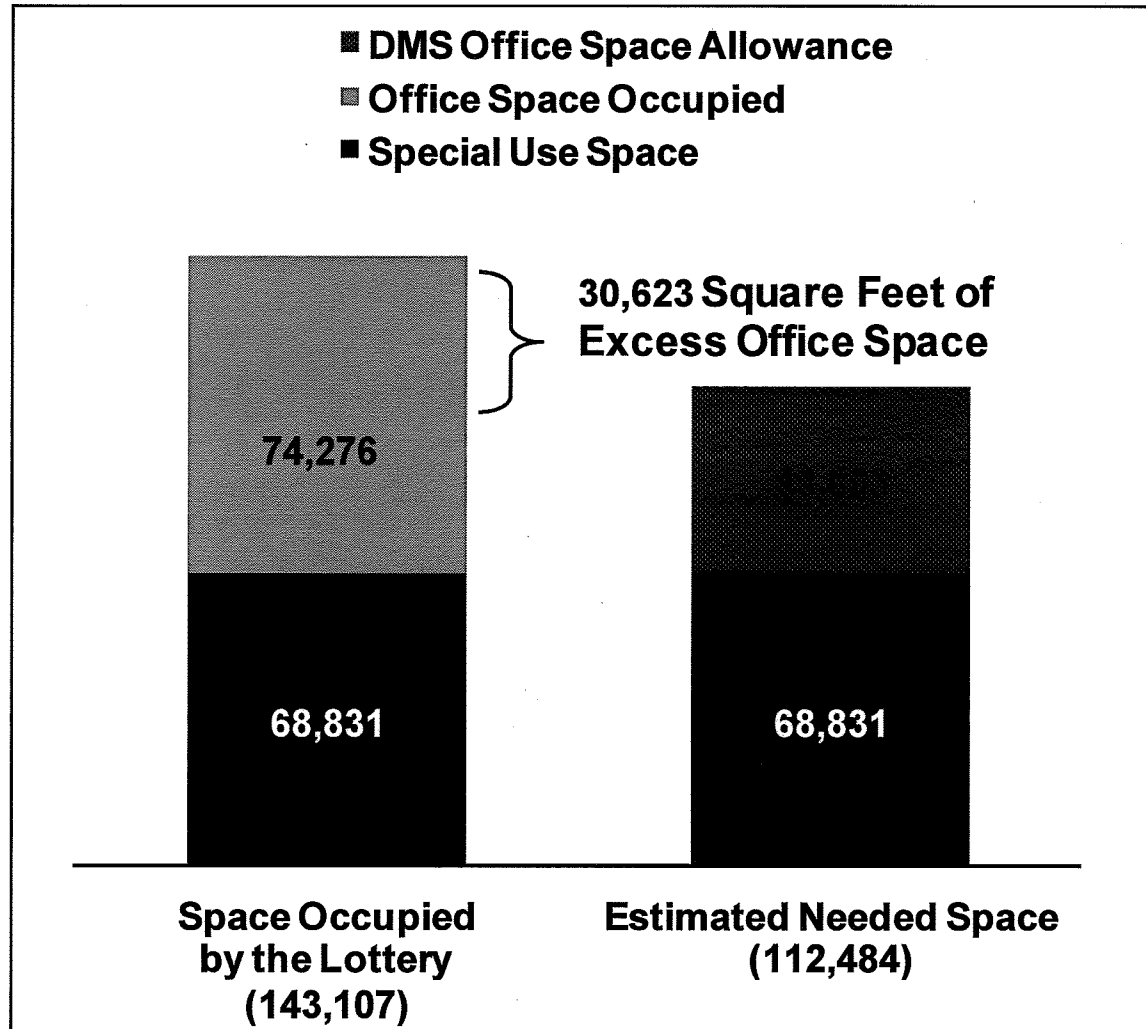
Current Building Lease

- **\$2.6 million FY 2009-10 lease payment**
 - **Combined office and warehouse rate of \$16.19 per sq. ft.**
 - **Payment reduced by \$232,400 through subleases**

Long-Term Lease Locks-In Space and Costs

- **Lottery renegotiated the building lease in 2008 – signed both 5-year extensions for a 10-year lease agreement**
- **Lottery occupies 300 sq. ft. per employee – DMS standard is 180 sq. ft. per employee**
- **Lottery leases about 30,623 sq. ft. of excess office space - \$496,000 annually**
- **Draw studio moving in-house (3,756 sq. ft.)**

Lottery Leases 30,623 Square Feet of Excess Office Space



Recommendations

- **Special use space should be consolidated and warehouse space better utilized**
- **DMS should help develop renovation/consolidation plan**

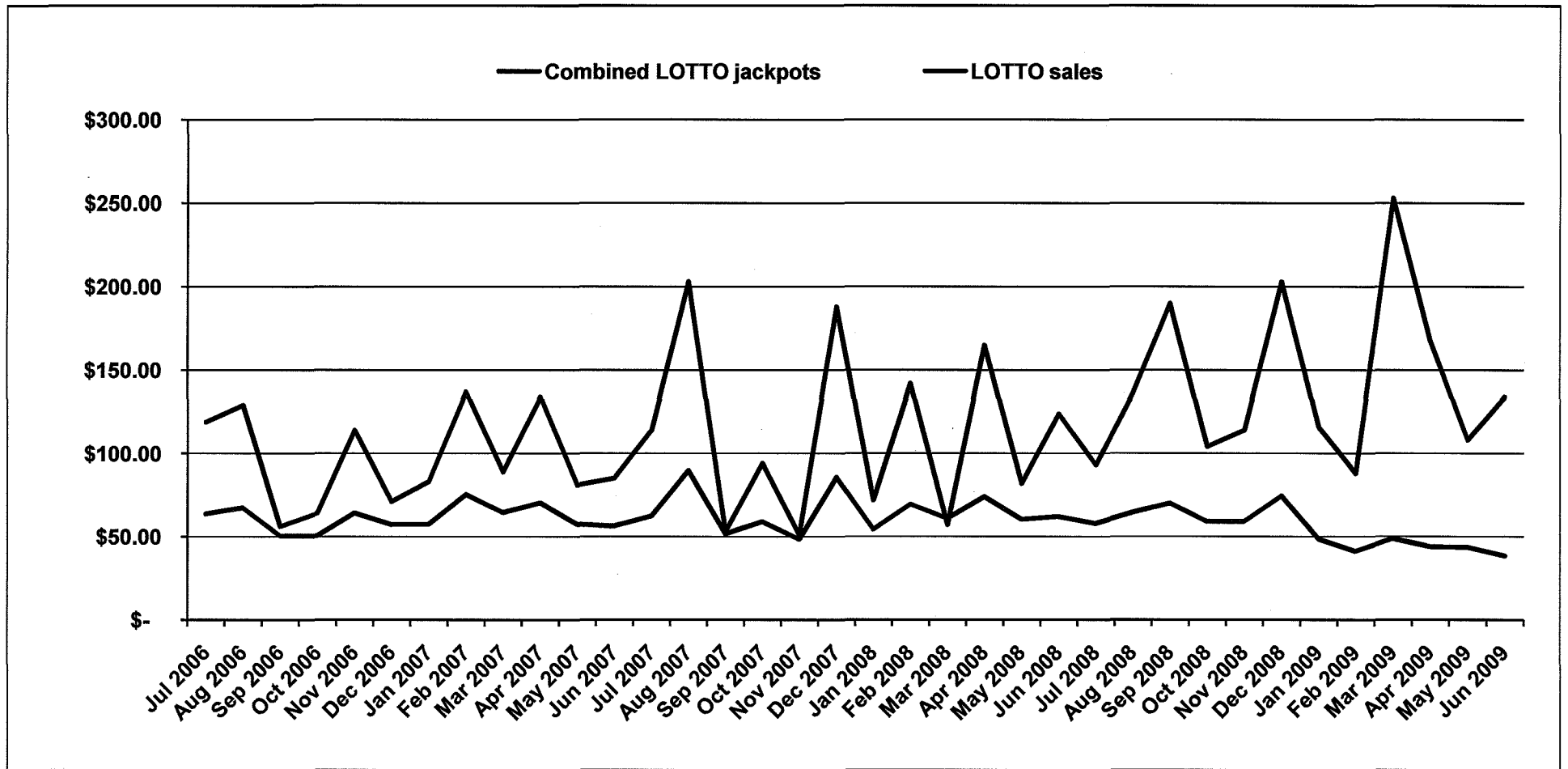
Advertising

- **Lottery spends \$34.8 million annually - includes vendor fees, production costs, and a compulsive gambling helpline**
- **Separate vendor contracts for Spanish and English language markets**

Lottery Transfers to Education are Affected by Multiple Factors

- **Prize payout levels**
- **Lottery retailer density**
- **Advertising**

Jackpot Size is the Primary Driver of Ticket Sales



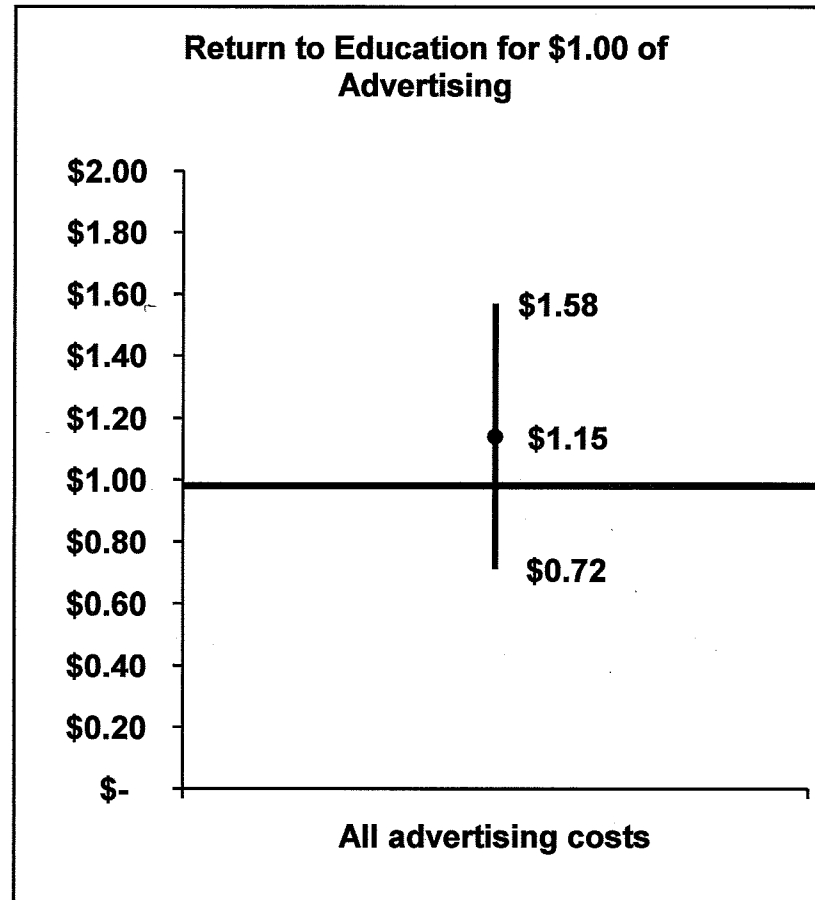
Adding More Retailers Would Increase Education Transfers

- **Increase the retailer network**
 - **Net loss of 86 retailer outlets in 2008-09**
 - **1,500 more retailers required to meet the top-performing states' average market penetration rate – estimated additional \$32 million in transfers**

Advertising Is Necessary to Maintain Sales

- **States that eliminated or severely reduced advertising experienced a 7% - 16% drop in sales.**
- **If Florida Lottery advertising were reduced by 10% and sales dropped 7%, education transfers would be reduced by \$83 million.**

Increased Advertising Expenses May Mean Increased Education Transfers



Production Costs Affect Advertising Return on Investment

- **Media buys represent the greatest return on investment - returning \$.98 to \$2.17 with a midpoint of \$1.57**
- **Production costs reduce the advertising return on investment - returning \$.72 to \$1.58 with a midpoint of \$1.15**
- **Reduced production costs translate into increased media buys and return on investment**

Gambling Helpline Calls

- **In FY 2008-09, 39% (868 of 2,253) of helpline callers identifying a specific gambling issue mentioned Lottery**
- **Lottery-related helpline calls did not increase commensurate with advertising spending**
- **Lottery-related helpline calls are linked to the state's unemployment rate**

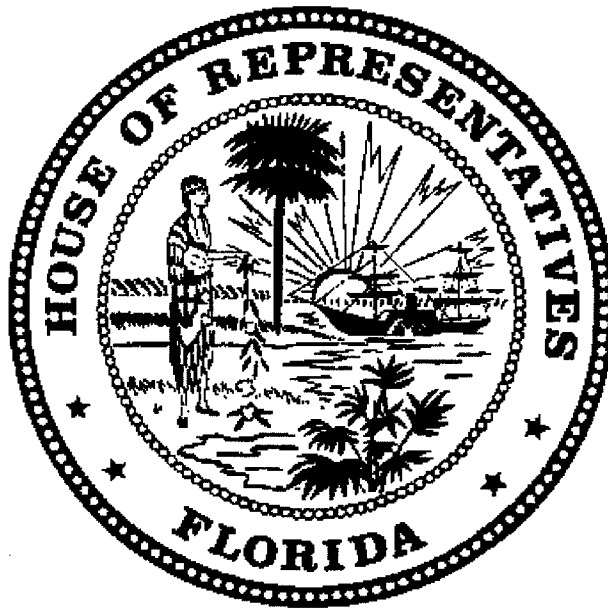
QUESTIONS?

Sabrina Hartley
hartley.sabrina@oppaga.fl.gov



Office of Program Policy Analysis & Government Accountability

OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources.



Governmental Affairs Policy Committee

Wednesday, February 3, 2010

8:15 AM

306 HOB

Addendum A – 2/2/10 4:40 pm

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB GAP 10-04 (2010)

Amendment No.

20 ~~appoint two members each of the task force who fit the~~
21 ~~description above:~~

22 ~~1. The Florida League of Cities, Inc.~~

23 ~~2. The Florida Association of Counties.~~

24 ~~3. The Florida School Boards Association, Inc.~~

25 ~~4. The Association of Special Districts.~~

26 ~~5. The Florida Association of Minority Business Enterprise~~
27 ~~Officials.~~

28 ~~6. The Florida Association of Government Purchasing~~
29 ~~Officials.~~

30
31 ~~In addition, the Office of Supplier Diversity shall appoint~~
32 ~~seven members consisting of three representatives of minority~~
33 ~~business enterprises, one of whom should be a woman business~~
34 ~~owner, two officials of the office, and two at-large members to~~
35 ~~ensure balance. The chairperson of the Legislative Committee on~~
36 ~~Intergovernmental Relations or a designee shall be a member of~~
37 ~~the task force, ex officio. A quorum shall consist of one-third~~
38 ~~of the current members, and the task force may take action by~~
39 ~~majority vote. Any vacancy may only be filled by the~~
40 ~~organization or agency originally authorized to appoint the~~
41 ~~position.~~

42 ~~(c) The purpose of the task force will be to propose~~
43 ~~uniform criteria and procedures by which participating entities~~
44 ~~and organizations can qualify businesses to participate in~~
45 ~~procurement or contracting programs as certified minority~~
46 ~~business enterprises in accordance with the certification~~
47 ~~criteria established by law.~~

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB GAP 10-04 (2010)

Amendment No.

48 ~~(d) A final list of the criteria and procedures proposed~~
49 ~~by the task force shall be considered by the secretary. The task~~
50 ~~force may seek technical assistance from qualified providers of~~
51 ~~technical, business, and managerial expertise to ensure the~~
52 ~~reliability of the certification criteria developed.~~

53 (a)~~(e)~~ In assessing the status of ownership and control,
54 certification criteria shall, at a minimum:

55 1. Link ownership by a minority person, as defined in s.
56 288.703(3), or as dictated by the legal obligations of a
57 certifying organization, to day-to-day control and financial
58 risk by the qualifying minority owner, and to demonstrated
59 expertise or licensure of a minority owner in any trade or
60 profession that the minority business enterprise will offer to
61 the state when certified. Businesses must comply with all state
62 licensing requirements prior to becoming certified as a minority
63 business enterprise.

64 2. If present ownership was obtained by transfer, require
65 the minority person on whom eligibility is based to have owned
66 at least 51 percent of the applicant firm for a minimum of 2
67 years, when any previous majority ownership interest in the firm
68 was by a nonminority who is or was a relative, former employer,
69 or current employer of the minority person on whom eligibility
70 is based. This requirement shall not apply to minority persons
71 who are otherwise eligible who take a 51-percent-or-greater
72 interest in a firm that requires professional licensure to
73 operate and who will be the qualifying licenseholder for the
74 firm when certified. A transfer made within a related immediate
75 family group from a nonminority person to a minority person in

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB GAP 10-04 (2010)

Amendment No.

76 order to establish ownership by a minority person shall be
77 deemed to have been made solely for purposes of satisfying
78 certification criteria and shall render such ownership invalid
79 for purposes of qualifying for such certification if the
80 combined total net asset value of all members of such family
81 group exceeds \$1 million. For purposes of this subparagraph, the
82 term "related immediate family group" means one or more children
83 under 16 years of age and a parent of such children or the
84 spouse of such parent residing in the same house or living unit.

85 3. Require that prospective certified minority business
86 enterprises be currently performing or seeking to perform a
87 useful business function. A "useful business function" is
88 defined as a business function which results in the provision of
89 materials, supplies, equipment, or services to customers. Acting
90 as a conduit to transfer funds to a nonminority business does
91 not constitute a useful business function unless it is done so
92 in a normal industry practice. As used in this section, the term
93 "acting as a conduit" means, in part, not acting as a regular
94 dealer by making sales of material, goods, or supplies from
95 items bought, kept in stock, and regularly sold to the public in
96 the usual course of business. Brokers, manufacturer's
97 representatives, sales representatives, and nonstocking
98 distributors are considered as conduits that do not perform a
99 useful business function, unless normal industry practice
100 dictates.

101 ~~(b)(f)~~ When a business receives payments or awards
102 exceeding \$100,000 in one fiscal year, a review of its
103 certification status or an audit will be conducted within 2

Amendment No.

104 years. In addition, random reviews or audits will be conducted
105 as deemed appropriate by the Office of Supplier Diversity.

106 ~~(c)-(g)~~ The certification criteria ~~approved by the task~~
107 ~~force and~~ adopted by the Department of Management Services shall
108 be included in a statewide and interlocal agreement as defined
109 in s. 287.09431 and, in accordance with s. 163.01, shall be
110 executed according to the terms included therein.

111 ~~(d)-(h)~~ The certification procedures should allow an
112 applicant seeking certification to designate on the application
113 form the information the applicant considers to be proprietary,
114 confidential business information. As used in this paragraph,
115 "proprietary, confidential business information" includes, but
116 is not limited to, any information that would be exempt from
117 public inspection pursuant to the provisions of chapter 119;
118 trade secrets; internal auditing controls and reports; contract
119 costs; or other information the disclosure of which would injure
120 the affected party in the marketplace or otherwise violate s.
121 286.041. The executor in receipt of the application shall issue
122 written and final notice of any information for which
123 noninspection is requested but not provided for by law.

124 ~~(e)-(i)~~ A business that is certified under the provisions
125 of the statewide and interlocal agreement shall be deemed a
126 certified minority enterprise in all jurisdictions or
127 organizations where the agreement is in effect, and that
128 business is deemed available to do business as such within any
129 such jurisdiction or with any such organization statewide. All
130 state agencies must accept minority business enterprises
131 certified in accordance with the statewide and interlocal

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB GAP 10-04 (2010)

Amendment No.

132 agreement of s. 287.09431, and that business shall also be
133 deemed a "certified minority business enterprise" as defined in
134 s. 288.703. However, any governmental jurisdiction or
135 organization that administers a minority business purchasing
136 program may reserve the right to establish further certification
137 procedures necessary to comply with federal law.

138 ~~(j) The statewide and interlocal agreement shall be guided~~
139 ~~by the terms and conditions found therein and may be amended at~~
140 ~~any meeting of the task force and subsequently adopted by the~~
141 ~~secretary of the Department of Management Services. The amended~~
142 ~~agreement must be enacted, initialed, and legally executed by at~~
143 ~~least two-thirds of the certifying entities party to the~~
144 ~~existing agreement and adopted by the state as originally~~
145 ~~executed in order to bind the certifying entity.~~

146 ~~(k) The task force shall meet for the first time no later~~
147 ~~than 45 days after the effective date of this act.~~

148 (3)

149 (e) Any participating program receiving three or more
150 challenges to its certification decisions pursuant to subsection
151 (4) from other organizations that are executors to the statewide
152 and interlocal agreement, shall be subject to a review by the
153 office, as provided in paragraphs (a) and (b), of the
154 organization's capacity to perform under such agreement and in
155 accordance with the core criteria ~~established by the task force.~~
156 The office shall submit a report to the secretary of the
157 Department of Management Services regarding the results of the
158 review.

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

Amendment No.

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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 the Minority Business Certification Task Force; amending s. 287.0943, F.S.; deleting provisions establishing the Minority Business Certification Task Force; deleting references to the Minority Business Certification Task Force in the section; providing an effective date.