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# Appropriations Committee

Wednesday, March 30, 2011  
10:00 AM – 8:00 PM  
212 Knott Building

Meeting Packet

**VOLUME IV**

Dean Cannon  
Speaker

Denise Grimsley  
Chair



## The Florida House of Representatives Appropriations Committee

Dean Cannon  
Speaker

Denise Grimsley  
Chair

### Agenda

Wednesday, March 30, 2011  
212 Knott Building  
10:00 AM – 8:00 PM

- I. Call to order/Roll Call
- II. Opening Remarks by Chair Grimsley
- III. Consideration of the following bills:
  - Consideration of the following proposed committee bill(s):
    - PCB APC 11-01** -- Appropriations
    - PCB APC 11-02** -- Implementing the 2011-2012 General Appropriations Act
  - Consideration of the following bill(s):
    - CS/CS/HB 1405** Retirement by State Affairs Committee, Government Operations Subcommittee, Workman
    - CS/HB 5005** Deregulation of Professions and Occupations by Economic Affairs Committee, Business & Consumer Affairs Subcommittee, Hukill
    - CS/HB 5007** Reducing and Streamlining Regulations by Economic Affairs Committee, Business & Consumer Affairs Subcommittee, Hukill
    - HB 5101** Prekindergarten through Grade 12 Education Funding by PreK-12 Appropriations Subcommittee, Coley
    - HB 5201** Postsecondary Education Funding by Higher Education Appropriations Subcommittee, O'Toole
    - HB 5301** Agency for Persons with Disabilities by Health Care Appropriations Subcommittee, Hudson
    - HB 5303** Biomedical Research by Health Care Appropriations Subcommittee, Hudson
    - HB 5305** Correctional Medical Authority by Health Care Appropriations Subcommittee, Hudson

**HB 5307** Department of Children and Family Services by Health Care Appropriations Subcommittee, Hudson

**HB 5309** Domestic Violence by Health Care Appropriations Subcommittee, Hudson

**HB 5311** Medicaid Services by Health Care Appropriations Subcommittee, Hudson

**HB 5401** Cybercrime Office by Justice Appropriations Subcommittee, Glorioso

**HB 5403** Department of Corrections by Justice Appropriations Subcommittee, Glorioso

**HB 5405** Trust Funds of the State Courts System by Justice Appropriations Subcommittee, Glorioso

**HB 5407** Juvenile Commitment by Justice Appropriations Subcommittee, Glorioso

**HB 5409** Clerks of Court by Justice Appropriations Subcommittee, Glorioso

**HB 5501** Department of Highway Safety and Motor Vehicles by Transportation & Economic Development Appropriations Subcommittee, Horner

**HB 5601** Public Employees Relations Commission by Government Operations Appropriations Subcommittee, Hooper

**HB 5603** Department of Management Services by Government Operations Appropriations Subcommittee, Hooper

**HB 5605** Department of Financial Services by Government Operations Appropriations Subcommittee, Hooper

**HB 5701** Management of Funds for Water Pollution Control Loans and Grants by Agriculture & Natural Resources Appropriations Subcommittee, Williams, T.

- IV. Consideration of the following proposed committee bill(s):  
**PCB APC 11-03** -- Auditor General  
**PCB APC 11-04** -- Commission on Capital Cases  
**PCB APC 11-05** -- State Employees  
**PCB APC 11-06** -- Office of Drug Control  
**PCB APC 11-07** -- Agency for Enterprise Information Technology
- V. Closing Remarks and Adjournment



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5401 PCB JUAS 11-08 Cybercrime Office

SPONSOR(S): Justice Appropriations Subcommittee, Glorioso

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee	14 Y, 0 N	McAuliffe	Jones Darity
1) Appropriations Committee		McAuliffe	Leznoff

SUMMARY ANALYSIS

The bill conforms to the House of Representatives proposed Fiscal Year 2011-2012 General Appropriations Act by providing for a transfer of all functions of the Department of Legal Affairs Cybercrime Office to the existing cybercrime unit at the Florida Department of Law Enforcement.

This bill will transfer 15 full-time equivalent positions and \$611,523 in General Revenue and \$404,272 in federal trust fund authority from the Department of Legal Affairs to the Florida Department of Law Enforcement. In addition, the bill reduces the budget of the Department of Legal Affairs by 19 full-time equivalent positions and \$1,419,936 in General Revenue. The total savings to the General Revenue fund is \$1,419,936.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Section 16.61, F.S., creates the Cybercrime Office within the Department of Legal Affairs. The office was created in 2006 and is charged with investigating violations of state law pertaining to the sexual exploitation of children over the internet and other electronic devices. The office currently employs 34 full-time equivalent positions and has a budget of \$2.5 million.

The Florida Department of Law Enforcement also has a cybercrime unit that has been in existence since 1998 and handles all computer cybercrime, not just child predators. This unit currently employs 14 full-time equivalent positions and has a budget of \$1.4 million.

##### Effect of the Bill

This bill provides for a transfer of all functions of the Department of Legal Affairs Cybercrime Office to the existing cybercrime unit at the Florida Department of Law Enforcement. This will include the transfer of 15 full-time equivalent positions and \$611,523 in General Revenue and \$404,272 in federal trust fund authority.

#### B. SECTION DIRECTORY:

**Section 1.** Repeals s. 16.61, F.S., relating to the Department of Legal Affairs' Cybercrime Office.

**Section 2.** Provides for a type two transfer of the cybercrime unit from the Department of Legal Affairs to the Florida Department of Law Enforcement.

**Section 3.** Provides and effective date of July 1, 2011

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The total savings to the General Revenue fund is \$1,419,936. This bill will transfer 15 full-time equivalent positions and \$611,523 in General Revenue and \$404,272 in federal trust fund authority from the Department of Legal Affairs to the Florida Department of Law Enforcement. In addition, the bill reduces the budget of the Department of Legal Affairs by 19 full-time equivalent positions and \$1,419,936 in General Revenue.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

HB 5401

2011

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A bill to be entitled  
 An act relating to the Cybercrime Office; repealing s.  
 16.61, F.S., relating to the operation of the Cybercrime  
 Office by the Department of Legal Affairs; providing for  
 the transfer of the assets and duties of the office to the  
 Department of Law Enforcement; providing an effective  
 date.

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

Section 1. Section 16.61, Florida Statutes, is repealed.

Section 2. All powers, duties, functions, records,  
offices, specified personnel, property, pending issues and  
existing contracts, administrative authority, administrative  
rules, and unexpended balances of appropriations, allocations,  
and other funds relating to the Cybercrime Office in the  
Department of Legal Affairs are transferred by a type two  
transfer, as defined in s. 20.06(2), Florida Statutes, to the  
Department of Law Enforcement.

Section 3. This act shall take effect July 1, 2011.






HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5403 PCB JUAS 11-09 Department of Corrections

SPONSOR(S): Justice Appropriations Subcommittee, Glorioso

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee	14 Y, 0 N	McAuliffe	Jones Darity
1) Appropriations Committee		McAuliffe	Leznoff 

SUMMARY ANALYSIS

The bill conforms to the House of Representatives proposed Fiscal Year 2011-2012 General Appropriations Act by eliminating the Basic Training Program within the Department of Corrections (department). The department operates a male and female Basic Training Program (BTP) for youthful offenders, age 24 and under:

- The female BTP is a 28-bed facility located at Lowell Correctional Institution in Lowell, Florida. Currently there are only four inmates housed at this BTP being supervised by a staff of 14.
- The male BTP is a 112-bed facility located at Sumter Correctional Institution in Bushnell, Florida. Currently there are only 77 inmates housed at this BTP that are supervised by a staff of 36.

This bill eliminates BTP. Youthful offenders currently enrolled in BTP will be transferred to another department program for youthful offenders called the Extended Day Program (EDP.)

Section 958.04, F.S., authorizes the department to petition sentencing judges to modify youthful offenders' sentences for admission into EDP for qualified youthful offenders.

The elimination of BTP represents a savings to the General Revenue Fund of \$2.7 million. See "FISCAL COMMENTS."

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

#### **Youthful Offenders**

Florida's Youthful Offender Act<sup>1</sup> is to provide a sentencing alternative that will improve the chances for rehabilitation of an offender who:

- Is at least 18 years of age or has been transferred for criminal prosecution pursuant to ch. 985, F.S.;
- Has entered a plea to, or has been found guilty of, a felony, other than a capital or life felony, that was committed before the offender's 21st birthday; and
- Has not been previously sentenced as a youthful offender by a court.<sup>2</sup>

Section 958.04, F.S., provides that courts who elect to adjudicate and sentence a defendant as a youthful offender may:

- (1) Impose probation or community control;
- (2) Impose incarceration for up to 364 days, as a condition of probation or community control;
- (3) Impose a split sentence that provides for incarceration followed by probation or community control; or
- (4) Commit the youthful offender to the custody of the Department of Corrections (department.)<sup>3</sup>

These sentencing options are the exclusive sanctions that may be imposed for a court-adjudicated youthful offender,<sup>4</sup> and, in general, the total sentence (probation or community control and incarceration) length may be no longer than six years.<sup>5</sup>

In cases where the court has elected adult, rather than youthful offender, adjudication and sentencing, the department may administratively classify a defendant as a youthful offender if that person:

- Is at least 18 years of age or has been transferred for criminal prosecution pursuant to ch. 985, F.S.;
- Has not been previously sentenced as a youthful offender by a court;
- Is less than 24 years old; and
- Has received a sentence that does not exceed 10 years.<sup>6</sup>

Unlike court youthful offender adjudication, which results in a limited sentence length and the sealing of court records, the department youthful offender classification only determines the programs and institutions in which youthful offenders may be placed.<sup>7</sup> Such classification by the department does not affect the original sentence imposed by the court.<sup>8</sup>

#### **Department of Corrections Youthful Offender Programming**

Currently here are two programming tracks for incarcerated youthful offenders:

- The Basic Training Program (BTP) for youthful offenders approved to participate by the court.

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<sup>1</sup> Sections 958.011-958.15, F.S.

<sup>2</sup> Section 958.04(1), F.S.

<sup>3</sup> Section 958.04(2), F.S.

<sup>4</sup> *Whitlock v. State*, 404 So.2d 795 (Fla. 3rd DCA 1981).

<sup>5</sup> Section 958.04(2)(c), F.S.

<sup>6</sup> Sections 958.03(5) and 958.11(4), F.S.; *Thomas v. State*, 825 So.2d 1032 (Fla. 1st DCA 2002).

<sup>7</sup> Section 958.11, F.S.; *Lezcano v. State*, 586 So.2d 1287 (Fla. 3rd DCA 1991).

<sup>8</sup> Section 958.11, F.S.; *Johnson v. State*, 586 So.2d 1322, 1324-1325 (Fla. 2nd DCA 1991).

- The Extended Day Program (EDP) created by the department for all youthful offenders who are not assigned to the boot camp.

Although BTP is a statutorily-mandated program,<sup>9</sup> EDP also emphasizes rigorous discipline, physical training, and positive personal development.

#### *Basic Training Program (BTP)*

BTP is a statutorily-mandated structured disciplinary program that lasts a minimum of 120 days and is based upon a military basic training model with:

- Marching drills,
- Calisthenics,
- A rigid dress code,
- Manual labor assignments, and
- Physical training with obstacle courses.<sup>10</sup>

In addition, training is provided in decision making and personal development, along with the required general education development and adult basic education courses, drug counseling, and other rehabilitation programs.<sup>11</sup> Successful completion of BTP results in modification of the youthful offender's sentence.<sup>12</sup> A BTP participant who fails the program is placed in the general youthful offender population.<sup>13</sup>

Candidates for BTP are selected by the department from the entire youthful offender population and not only from those recommended by the courts. Candidates cannot be impaired, must be able to engage in strenuous physical activities, and have never been imprisoned in a state or federal facility.<sup>14</sup> The department's selection process must also include review of the candidate's criminal history and assessment of the potential rehabilitative benefits of the boot camp.<sup>15</sup> If a youthful offender meets these qualifications and is selected for participation, the department must seek permission from the sentencing court to place him or her in the BTP.<sup>16</sup>

The department operates a male and female Basic Training Program (BTP) for youthful offenders, age 24 and under:

- The female BTP is a 28-bed facility located at Lowell Correctional Institution in Lowell. Currently there are currently only four inmates housed at this BTP being supervised by a staff of 14.
- The male BTP is a 112-bed facility located at Sumter Correctional Institution in Bushnell, Florida. Currently there are only 77 inmates housed at this BTP that are supervised by a staff of 36.

Approximately two-thirds of the 1147 youthful offenders who entered the BTP during the five-year period from 2005 through 2009 completed the program and had the remainder of their sentence modified.<sup>17</sup>

#### *Extended Day Program (EDP)*

Only a small percentage of youthful offenders can take part in the basic training program, but the Legislature mandates that enhanced program services be provided to all youthful offenders.<sup>18</sup> The EDP

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<sup>9</sup> Section 958.045, F.S.

<sup>10</sup> Section 958.045(1), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 958.045(8)(d), F.S.

<sup>13</sup> Section 958.045(5)(a), F.S.

<sup>14</sup> Section 958.045(2), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> "Youthful Offender Designation in the Department of Corrections." Senate Committee on Criminal Justice. Interim Report 2011-114, October 2010.

was created by the department to fulfill this mandate in a structured way.<sup>19</sup> EDP is a regimented program that takes up 16 hours a day Monday through Saturday with work, academic and vocational counseling, personal development, and self-betterment programs.<sup>20</sup> Sunday is used for religious services, visitation, parental support, and independent activities.<sup>21</sup>

EDP consists of 3 phases, with participants in each phase distinguished by the color of their cap:<sup>22</sup>

- The Orange Cap phase is a two-week orientation to familiarize the youthful offender with what is expected of him or her. It is a basic training phase characterized by physical training, regimented discipline, and constant supervision. Inmate needs assessments are conducted during this phase so that programming can begin during the next phase. An Orange Cap must pass an evaluation on the orientation materials in order to advance to Phase II.
- The Red Cap phase requires the youthful offender to participate in vocational, academic, and betterment programs and assumes a standard work assignment. Rigid discipline and structured physical training continues six days a week, but Red Caps have less personal supervision than Orange Caps and they may also be allowed limited privileges. It takes at least 4 months to complete the Red Cap phase.

Requirements for promotion to the next phase include:

- Having a good disciplinary and inspection record,
- Making positive achievement in vocational or academic courses,
- Enrolling in at least one personal achievement or substance abuse program, and
- Demonstrating high regard for positive discipline and respect toward self, staff, and others.

Promotion also requires appearance before a staff evaluation board at which the youthful offender must explain his or her personal self improvement plan to the board, including short and long term goals and how the goals will assist in improving areas of deficiency.

- The Blue Cap phase is the final level of EDP. A youthful offender who is promoted to Blue Cap status is a role model for other youthful offenders and is expected to be a positive example to his or her peers. Blue Caps are continuously evaluated to ensure that they are maintaining performance in responsibility, drill, work assignments, and education programs. Blue Caps can become peer facilitators and assist staff with certain activities, but only a few additional privileges are available to them.

Approximately 241 youthful offenders are currently in Blue Cap status.

The department is authorized by statute to recommend that the sentencing court modify the sentence of a successful EDP participant.<sup>23</sup> However, only two EDP sentences have ever been modified.<sup>24</sup> The department has apparently stopped recommending sentence modifications for successful EDP participants because of the lack of past success in obtaining sentence modifications.<sup>25</sup> It is unclear why judges have not been receptive, but it may stem from a lack of information about the additional programming and the level of discipline that is required to successfully participate in the EDP for an extended period of time.<sup>26</sup>

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<sup>18</sup> *Supra* "Youthful Offender Designation in the Department of Corrections."

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> The following information regarding EDP phases is from *supra* "Youthful Offender Designation in the Department of Corrections."

<sup>23</sup> Section 958.04(2)(d), F.S.

<sup>24</sup> *Supra* "Youthful Offender Designation in the Department of Corrections."

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

### *Youthful Offender Recidivism Rates*

In 2009, the department reported that the overall 36-month recidivism rate for inmates released from 2001 to 2008 is 33.1 percent.<sup>27</sup> Inmates who are under 25 years old at the time of release have the highest recidivism rate of any age group, increasing to 36 percent recidivism after 36 months and reaching beyond 50 percent before five years elapse.<sup>28</sup>

The department recently calculated the three year recidivism rates for male youthful offenders released from 2001 to 2008 that either successfully completed BTP or EDP participants who reached the final level in EDP.<sup>29</sup> The data reflected that the youthful offenders who had reached the final level of EDP prior to release had a recidivism rate that was approximately five percent lower than the youthful offenders who graduated from BTP.<sup>30</sup>

### **Effect of the Bill**

This bill eliminates the Basic Training Program (BTP) within the department. Youthful offenders currently enrolled in BTP will be transferred to another department program for youthful offenders called the Extended Day Program (EDP.)

Section 958.04(2)(d), F.S., authorizes the department to petition sentencing judges to modify youthful offenders' sentences for admission into EDP for qualified youthful offenders.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 945.0311, F.S., relating to employment of relatives.

**Section 2.** Amends s. 951.231, F.S., relating to county residential probation program.

**Section 3.** Amends s. 958.04, F.S., relating to judicial disposition of youthful offenders.

**Section 4.** Repeals s. 958.045, F.S., relating to youthful offender basic training program.

**Section 5.** Provides an effective date of July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None

##### **2. Expenditures:**

See "FISCAL COMMENTS"

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

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<sup>27</sup> 2009 Florida Prison Recidivism Study Releases From 2001 to 2008, Florida Department of Corrections Bureau of Research and Data Analysis, May 2010, p. 11.

<sup>28</sup> *Id.*

<sup>29</sup> *Supra* "Youthful Offender Designation in the Department of Corrections."

<sup>30</sup> *Id.*

2. Expenditures:

See "Fiscal COMMENTS"

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The elimination of the Basic Training Program (BTP) represents a savings to the General Revenue Fund of \$2.7 million.

However, successful completion of BTP allows a youthful offender to have the remainder of his or her sentence modified. Every youthful offender that does not serve his or her entire sentence with the Department of Corrections results in cost savings to the state. In order for these cost savings to be realized, the department must petition the court to modify the sentences of qualified EDP participants.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 5403

2011

1                                   A bill to be entitled  
 2           An act relating to the Department of Corrections; amending  
 3           s. 945.0311, F.S.; deleting a reference to the youthful  
 4           offender basic training program; amending s. 951.231,  
 5           F.S.; removing a reference to the youthful offender basic  
 6           training program; amending s. 958.04, F.S.; deleting  
 7           references to the youthful offender basic training  
 8           program; repealing s. 958.045, F.S., relating to the  
 9           youthful offender basic training program; providing an  
 10          effective date.

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

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 14           Section 1. Paragraph (c) of subsection (1) of section  
 15   945.0311, Florida Statutes, is amended to read:

16           945.0311   Employment of relatives.—

17           (1) For the purposes of this section, the term:

18           (c) "Organizational unit" includes:

19           1. A unit of a state correctional institution such as  
 20   security, medical, dental, classification, maintenance,  
 21   personnel, or business. A work camp, ~~boot camp,~~ or other annex  
 22   of a state correctional institution is considered part of the  
 23   institution and not a separate unit.

24           2. An area of a regional office such as personnel,  
 25   medical, administrative services, probation and parole, or  
 26   community facilities.

27           3. A correctional work center, road prison, or work  
 28   release center.



29 4. A probation and parole circuit office or a suboffice  
30 within a circuit.

31 5. A bureau of the Office of the Secretary or of any of  
32 the assistant secretaries.

33 Section 2. Subsection (1) of section 951.231, Florida  
34 Statutes, is amended to read:

35 951.231 County residential probation program.—

36 (1) Any prisoner who has been sentenced under s. 921.18 to  
37 serve a sentence in a county residential probation center as  
38 described in s. 951.23 shall:

39 (a) Reside at the center at all times other than during  
40 employment hours and reasonable travel time to and from his or  
41 her place of employment, except that supervisory personnel at a  
42 county residential probation center may extend the limits of  
43 confinement to include, but not be limited to, probation,  
44 community control, or other appropriate supervisory techniques.

45 (b) Seek and obtain employment on an 8-hours-a-day basis  
46 and retain employment throughout the period of time he or she is  
47 housed at the center.

48 ~~(c) Participate in and complete the program required by s.~~  
49 ~~958.045, if required by the supervisor of the center.~~

50 (c) ~~(d)~~ Participate in the education program provided at  
51 the center, if required by the supervisor of the center.

52 (d) ~~(e)~~ Participate in the drug treatment program provided  
53 at the center, if required by the supervisor of the center.

54 Section 3. Subsections (4) and (5) of section 958.04,  
55 Florida Statutes, are amended to read:

56 958.04 Judicial disposition of youthful offenders.—

HB 5403

2011

57 ~~(4) Due to severe prison overcrowding, the Legislature~~  
58 ~~declares the construction of a basic training program facility~~  
59 ~~is necessary to aid in alleviating an emergency situation.~~

60 ~~(5) The department shall provide a special training~~  
61 ~~program for staff selected for the basic training program.~~

62 Section 4. Section 958.045, Florida Statutes, is repealed.

63 Section 5. This act shall take effect July 1, 2011.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Justice Appropriations  
2 Subcommittee  
3 Representative(s) Glorioso offered the following:  
4

**Amendment (with title amendment)**

Between lines 62 and 63, insert:

Section 1. Subsections (3) and (19) of section 943.10, Florida Statutes, are amended to read:

943.10 Definitions; ss. 943.085-943.255.—The following words and phrases as used in ss. 943.085-943.255 are defined as follows:

(3) "Correctional probation officer" means a person who is employed full time by the state, or by any private entity which has contracted with the state pursuant to proviso in PCB APC 11-01, Section 4, in the Department of Corrections budget directing the department procure the provision comprehensive correctional services, and whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 5403 (2011)

Amendment No. 1

20 institutions of the Department of Corrections or within the  
21 community. The term includes supervisory personnel whose duties  
22 include, in whole or in part, the supervision, training, and  
23 guidance of correctional probation officers, but excludes  
24 management and administrative personnel above, but not  
25 including, the probation and parole regional administrator  
26 level.

27 (19) "Part-time correctional probation officer" means a  
28 person who is employed less than full time by the state, or by  
29 any private entity which has contracted with the state pursuant  
30 to proviso in PCB APC 11-01, Section 4, in the Department of  
31 Corrections budget directing the department procure the  
32 provision comprehensive correctional services, and whose primary  
33 responsibility is the supervised custody, surveillance, and  
34 control of assigned inmates, probationers, parolees, or  
35 community controllees within institutions of the Department of  
36 Corrections or in the community.

37 Section 2. Subsection (4) of section 944.02, Florida  
38 Statutes, is amended to read:

39 944.02 Definitions.—The following words and phrases used  
40 in this chapter shall, unless the context clearly indicates  
41 otherwise, have the following meanings:

42 (4) "Elderly offender" means a prisoner age 50 or older in  
43 a state correctional institution or a private correctional  
44 ~~facility operated by the Department of Corrections or the~~  
45 ~~Department of Management Services.~~

46 Section 3. Section 944.1051, Florida Statutes, is created  
47 to read:

Amendment No. 1

48 944.1051 Contractual arrangements with private entities  
49 for the supervision of offenders on community supervision.-

50 (1) Pursuant to proviso in PCB APC 11-01, Section 4, in the  
51 Department of Corrections budget directing the department  
52 procure the provision comprehensive correctional services, the  
53 Department of Corrections is authorized to enter into contracts  
54 with a private entity for the provision of the supervision of  
55 offenders on community supervision in Broward and Miami-Dade  
56 counties. A contract entered into pursuant to this section must:

57 (a) Offer a cost savings to the state of at least 7  
58 percent, as determined by the department. In determining the  
59 cost savings, the department shall calculate all the cost  
60 components that contribute to the offender per diem, including  
61 all administrative costs associated with central, regional, and  
62 circuit office administration. Services which are provided to  
63 the department by other government agencies without any direct  
64 cost to the department shall be assigned an equivalent cost and  
65 included in the per diem;

66 (b) Require that the private entity comply with all  
67 statutes relating to the supervision of offenders on community  
68 supervision, all rules of the department, all court orders  
69 relating to offenders on community supervision, and all American  
70 Correctional Association standards;

71 (c) Require the department, in consultation with the  
72 private vendor, to establish high, reasonable, and achievable  
73 performance standards that the private entity must meet.

Amendment No. 1

74 (d) Require the private entity to report to the department  
75 whether the private entity has met the established performance  
76 standards.

77 (e) Require the private entity to provide at least the same  
78 quality of services as that offered by the department;

79 (f) Require that correctional probation officers employed  
80 by a private entity be certified under 943.1395, at the private  
81 entity's expense; and

82 (g) Require the private entity to give first consideration  
83 for employment to employees of the department located in Broward  
84 and Miami-Dade counties.

85 (2) The private entity entering into a contract with the  
86 department pursuant to this section shall be liable in tort with  
87 respect to the supervision of offenders under its supervision  
88 and for any breach of contract with the department.

89 (3) The provisions of ss. 216.311 and 287.057 shall apply  
90 to all contracts between the department and any private entity  
91 providing community supervision services. The department shall  
92 promulgate rules pursuant to chapter 120 specifying criteria for  
93 such contractual arrangements.

94 (4) For purposes of this section, the term "community  
95 supervision" means "administrative probation," "community  
96 control," "drug offender probation," "probation," and "sex  
97 offender probation" as those terms are defined in s. 948.001.  
98 The term also includes "conditional release," "control release,"  
99 "conditional medical release," "parole," and "addiction-recovery  
100 supervision," as provided in ch. 947.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 5403 (2011)

Amendment No. 1

101 Section 4. Paragraph (b) of subsection (2) of section  
102 944.115, Florida Statutes, is amended to read:

103 944.115 Smoking prohibited inside state correctional  
104 facilities.—

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

106 (b) "Employee" means an employee of the department or a  
107 private vendor in a contractual relationship with the department  
108 ~~either the Department of Corrections or the Department of~~  
109 ~~Management Services~~, and includes persons such as contractors,  
110 volunteers, or law enforcement officers who are within a state  
111 correctional facility to perform a professional service.

112 Section 5. Subsection (1) of section 944.72, Florida  
113 Statutes, is amended to read:

114 944.72 Privately Operated Institutions Inmate Welfare  
115 Trust Fund.—

116 (1) There is hereby created in the Department of  
117 Corrections the Privately Operated Institutions Inmate Welfare  
118 Trust Fund. The purpose of the trust fund shall be the benefit  
119 and welfare of inmates incarcerated in private correctional  
120 facilities under contract with the department pursuant to this  
121 chapter or ~~the Department of Management Services pursuant to~~  
122 chapter 957. Moneys shall be deposited in the trust fund and  
123 expenditures made from the trust fund as provided in s. 945.215.

124 Section 6. Section 944.8041, Florida Statutes, is amended  
125 to read:

126 944.8041 Elderly offenders; annual review.—For the purpose  
127 of providing information to the Legislature on elderly offenders  
128 within the correctional system, the department and the

Amendment No. 1

129 Correctional Medical Authority shall each submit annually a  
130 report on the status and treatment of elderly offenders in the  
131 state-administered and private state correctional systems and  
132 the department's geriatric facilities and dorms. In order to  
133 adequately prepare the reports, the department ~~and the~~  
134 ~~Department of Management Services~~ shall grant access to the  
135 Correctional Medical Authority that includes access to the  
136 facilities, offenders, and any information the agencies require  
137 to complete their reports. The review shall also include an  
138 examination of promising geriatric policies, practices, and  
139 programs currently implemented in other correctional systems  
140 within the United States. The reports, with specific findings  
141 and recommendations for implementation, shall be submitted to  
142 the President of the Senate and the Speaker of the House of  
143 Representatives on or before December 31 of each year.

144 Section 7. Paragraphs (a) and (c) of subsection (2) of  
145 section 945.215, Florida Statutes, are amended to read:

146 945.215 Inmate welfare and employee benefit trust funds.—

147 (2) PRIVATELY OPERATED INSTITUTIONS INMATE WELFARE TRUST  
148 FUND; PRIVATE CORRECTIONAL FACILITIES.—

149 (a) For purposes of this subsection, privately operated  
150 institutions or private correctional facilities are those  
151 correctional facilities under contract with the department  
152 pursuant to chapter 944 or ~~the Department of Management Services~~  
153 ~~pursuant to~~ chapter 957.

154 (c) The department ~~Department of Management Services~~ shall  
155 annually compile a report that documents Privately Operated  
156 Institutions Inmate Welfare Trust Fund receipts and expenditures



Amendment No. 1

157 at each private correctional facility. This report must  
158 specifically identify receipt sources and expenditures. The  
159 ~~department Department of Management Services~~ shall compile this  
160 report for the prior fiscal year and shall submit the report by  
161 September 1 of each year to the chairs of the appropriate  
162 substantive and fiscal committees of the Senate and House of  
163 Representatives and to the Executive Office of the Governor.

164 Section 8. Subsection (4) of section 947.005, Florida  
165 Statutes, is amended to read:

166 947.005 Definitions.—As used in this chapter, unless the  
167 context clearly indicates otherwise:

168 (4) "Department" means the Department of Corrections or a  
169 private entity who has contracted with the Department of  
170 Corrections pursuant to s. 944.1051.

171 Section 9. Subsection (14) is added to section 948.001,  
172 Florida Statutes, to read:

173 948.001 Definitions.—As used in this chapter, the term:

174 (14) "Department" or "Department of Corrections" includes a  
175 private entity who has contracted with the Department of  
176 Corrections pursuant to s. 944.1051.

177 Section 10. Subsection (5) of section 948.01, Florida  
178 Statutes, is amended to read:

179 948.01 When court may place defendant on probation or into  
180 community control.—

181 (5) The imposition of sentence may not be suspended and  
182 the defendant thereupon placed on probation or into community  
183 control unless the defendant is placed under the custody of the  
184 department or another public or private entity. Except as

Amendment No. 1

185 provided in s. 944.1051, a private entity may not provide  
186 probationary or supervision services to felony or misdemeanor  
187 offenders sentenced or placed on probation or other supervision  
188 by the circuit court.

189 Section 11. Effective July 1, 2011, the statutory powers,  
190 duties, and functions, and the records, personnel, property, and  
191 unexpended balances of appropriations, allocations, or other  
192 funds related to the requirements of chapter 957 that are  
193 currently under the Department of Management Services are hereby  
194 transferred to the Department of Corrections by a type two  
195 transfer, pursuant to s. 20.06. The secretary of the Department  
196 of Corrections is authorized to establish units or subunits and  
197 to assign administrative authority for the responsibilities and  
198 functions transferred pursuant to this section.

199 Section 12. Paragraphs (a), (b), (e), and (g) of  
200 subsection (1), paragraph (c) of subsection (2), and subsections  
201 (5), (6), and (7) of section 957.04, Florida Statutes, are  
202 amended to read:

203 957.04 Contract requirements.—

204 (1) A contract entered into under this chapter for the  
205 operation of private correctional facilities shall maximize the  
206 cost savings of such facilities and shall:

207 (a) Be negotiated with the firm found most qualified.

208 However, a contract for private correctional services may not be  
209 entered into by the department ~~Department of Management Services~~  
210 unless the department ~~Department of Management Services~~  
211 determines that the contractor has demonstrated that it has:

## Amendment No. 1

212 1. The qualifications, experience, and management  
213 personnel necessary to carry out the terms of the contract.

214 2. The ability to expedite the siting, design, and  
215 construction of correctional facilities.

216 3. The ability to comply with applicable laws, court  
217 orders, and national correctional standards.

218 (b) Indemnify the state and the department, including  
219 their officials and agents, against any and all liability,  
220 including, but not limited to, civil rights liability. Proof of  
221 satisfactory insurance is required in an amount to be determined  
222 by the department ~~Department of Management Services~~.

223 (e) Establish operations standards for correctional  
224 facilities subject to the contract. However, if the department  
225 and the contractor disagree with an operations standard, the  
226 contractor may propose to waive any rule, policy, or procedure  
227 of the department related to the operations standards of  
228 correctional facilities which is inconsistent with the mission  
229 of the contractor to establish cost-effective, privately  
230 operated correctional facilities. The department ~~Department of~~  
231 ~~Management Services~~ shall be responsible for considering all  
232 proposals from the contractor to waive any rule, policy, or  
233 procedure and shall render a final decision granting or denying  
234 such request.

235 (g) Require the selection and appointment of a full-time  
236 contract monitor. The contract monitor shall be appointed and  
237 supervised by the department ~~Department of Management Services~~.  
238 The contractor is required to reimburse the department  
239 ~~Department of Management Services~~ for the salary and expenses of

Amendment No. 1

240 the contract monitor. It is the obligation of the contractor to  
241 provide suitable office space for the contract monitor at the  
242 correctional facility. The contract monitor shall have unlimited  
243 access to the correctional facility.

244 (2) Each contract entered into for the design and  
245 construction of a private correctional facility or juvenile  
246 commitment facility must include:

247 (c) A specific provision requiring the contractor, and not  
248 the department ~~Department of Management Services~~, to obtain the  
249 financing required to design and construct the private  
250 correctional facility or juvenile commitment facility built  
251 under this chapter.

252 (5) Each contract entered into by the department  
253 ~~Department of Management Services~~ must include substantial  
254 minority participation unless demonstrated by evidence, after a  
255 good faith effort, as impractical and must also include any  
256 other requirements the department ~~Department of Management~~  
257 ~~Services~~ considers necessary and appropriate for carrying out  
258 the purposes of this chapter.

259 (6) Notwithstanding s. 253.025(7), the Board of Trustees  
260 of the Internal Improvement Trust Fund need not approve a lease-  
261 purchase agreement negotiated by the department ~~Department of~~  
262 ~~Management Services~~ if the department ~~Department of Management~~  
263 ~~Services~~ finds that there is a need to expedite the lease-  
264 purchase.

265 (7) (a) Notwithstanding s. 253.025 or s. 287.057, whenever  
266 the department ~~Department of Management Services~~ finds it to be  
267 in the best interest of timely site acquisition, it may contract

Amendment No. 1

268 without the need for competitive selection with one or more  
269 appraisers whose names are contained on the list of approved  
270 appraisers maintained by the Division of State Lands of the  
271 Department of Environmental Protection in accordance with s.  
272 253.025(6) (b). In those instances when the department ~~Department~~  
273 ~~of Management Services~~ directly contracts for appraisal  
274 services, it shall also contract with an approved appraiser who  
275 is not employed by the same appraisal firm for review services.

276 (b) Notwithstanding s. 253.025(6), the department  
277 ~~Department of Management Services~~ may negotiate and enter into  
278 lease-purchase agreements before an appraisal is obtained. Any  
279 such agreement must state that the final purchase price cannot  
280 exceed the maximum value allowed by law.

281 Section 13. Subsection (2) of section 957.06, Florida  
282 Statutes, is amended to read:

283 957.06 Powers and duties not delegable to contractor.—A  
284 contract entered into under this chapter does not authorize,  
285 allow, or imply a delegation of authority to the contractor to:

286 (2) Choose the facility to which an inmate is initially  
287 assigned or subsequently transferred. The contractor may  
288 request, in writing, that an inmate be transferred to a facility  
289 operated by the department. The ~~Department of Management~~  
290 ~~Services, the contractor,~~ and the department shall develop and  
291 implement a cooperative agreement for transferring inmates  
292 between a correctional facility operated by the department and a  
293 private correctional facility. The department, ~~the Department of~~  
294 ~~Management Services,~~ and the contractor must comply with the  
295 cooperative agreement.

Amendment No. 1

296 Section 14. Subsections (1) and (4) and paragraph (d) of  
297 subsection (5) of section 957.07, Florida Statutes, are amended  
298 to read:

299 957.07 Cost-saving requirements.—

300 (1) The department ~~Department of Management Services~~ may  
301 not enter into a contract or series of contracts unless the  
302 department determines that the contract or series of contracts  
303 in total for the facility will result in a cost savings to the  
304 state of at least 7 percent over the public provision of a  
305 similar facility. Such cost savings as determined by the  
306 department ~~Department of Management Services~~ must be based upon  
307 the actual costs associated with the construction and operation  
308 of similar facilities or services as determined by the  
309 department ~~Department of Corrections~~ and certified by the  
310 Auditor General. The department ~~Department of Corrections~~ shall  
311 calculate all of the cost components that determine the inmate  
312 per diem in correctional facilities of a substantially similar  
313 size, type, and location that are operated by the department  
314 ~~Department of Corrections~~, including administrative costs  
315 associated with central administration. Services that are  
316 provided to the department ~~Department of Corrections~~ by other  
317 governmental agencies at no direct cost to the department shall  
318 be assigned an equivalent cost and included in the per diem.

319 (4) The department ~~Department of Corrections~~ shall provide  
320 a report detailing the state cost to design, finance, acquire,  
321 lease, construct, and operate a facility similar to the private  
322 correctional facility on a per diem basis. ~~This report shall be~~  
323 ~~provided to the Auditor General in sufficient time that it may~~

Amendment No. 1

324 ~~be certified to the Department of Management Services to be~~  
325 ~~included in the request for proposals.~~

326 (5)

327 (d) If a private vendor chooses not to renew the contract  
328 at the appropriated level, the department ~~Department of~~  
329 ~~Management Services~~ shall terminate the contract as provided in  
330 s. 957.14.

331 Section 15. Section 957.08, Florida Statutes, is amended  
332 to read:

333 957.08 Capacity requirements.—The department ~~Department of~~  
334 ~~Corrections~~ shall transfer and assign prisoners to each private  
335 correctional facility opened pursuant to this chapter in an  
336 amount not less than 90 percent or more than 100 percent of the  
337 capacity of the facility pursuant to the contract with the  
338 department ~~Department of Management Services~~. The prisoners  
339 transferred by the department ~~Department of Corrections~~ shall  
340 represent a cross-section of the general inmate population,  
341 based on the grade of custody or the offense of conviction, at  
342 the most comparable facility operated by the department.

343 Section 16. Section 957.14, Florida Statutes, is amended  
344 to read:

345 957.14 Contract termination and control of a correctional  
346 facility by the department.—A detailed plan shall be provided by  
347 a private vendor under which the department shall assume  
348 temporary control of a private correctional facility upon  
349 termination of the contract. The department ~~Department of~~  
350 ~~Management Services~~ may terminate the contract with cause after  
351 written notice of material deficiencies and after 60 workdays in

Amendment No. 1

352 order to correct the material deficiencies. If any event occurs  
353 that involves the noncompliance with or violation of contract  
354 terms and that presents a serious threat to the safety, health,  
355 or security of the inmates, employees, or the public, the  
356 department may temporarily assume control of the private  
357 correctional facility, ~~with the approval of the Department of~~  
358 ~~Management Services~~. A plan shall also be provided by a private  
359 vendor for the purchase and temporary assumption of operations  
360 of a correctional facility by the department in the event of  
361 bankruptcy or the financial insolvency of the private vendor.  
362 The private vendor shall provide an emergency plan to address  
363 inmate disturbances, employee work stoppages, strikes, or other  
364 serious events in accordance with standards of the American  
365 Correctional Association.

366 Section 17. Section 957.15, Florida Statutes, is amended  
367 to read:

368 957.15 Funding of contracts for operation, maintenance,  
369 and lease-purchase of private correctional facilities.—The  
370 request for appropriation of funds to make payments pursuant to  
371 contracts entered into by the department ~~Department of~~  
372 ~~Management Services~~ for the operation, maintenance, and lease-  
373 purchase of the private correctional facilities authorized by  
374 this chapter shall be made by the ~~Department of Management~~  
375 ~~Services in a request to the department~~. The department shall  
376 include such request in its budget request to the Legislature as  
377 a separately identified item and ~~shall forward the request of~~  
378 ~~the Department of Management Services without change~~. After an  
379 ~~appropriation has been made by the Legislature to the department~~



Amendment No. 1

380 ~~for the private correctional facilities, the department shall~~  
381 ~~have no authority over such funds other than to pay from such~~  
382 ~~appropriation to the appropriate private vendor such amounts as~~  
383 ~~are certified for payment by the Department of Management~~  
384 ~~Services.~~

385 Section 18. Section 957.16, Florida Statutes, is amended  
386 to read:

387 957.16 Expanding capacity.—The department ~~Department of~~  
388 ~~Management Services~~ is authorized to modify and execute  
389 agreements with contractors to expand up to the total capacity  
390 of contracted correctional facilities. Total capacity means the  
391 design capacity of all contracted correctional facilities  
392 increased by one-half as described under s. 944.023(1)(b). Any  
393 additional beds authorized under this section must comply with  
394 the cost-saving requirements set forth in s. 957.07. Any  
395 additional beds authorized as a result of expanded capacity  
396 under this section are contingent upon specified appropriations.

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

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Remove line 9 and insert:

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youthful offender basic training program; amends s. 943.10,

403

F.S.; expanding the definition of "correctional probation

404

officer" and "part-time correctional probation officer";

405

amending s. 944.02, F.S.; redefining the term "elderly offender"

406

to remove a reference to the Department of Management Services;

407

creating s. 944.1051, F.S.; authorizing the Department of

## COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 5403 (2011)

## Amendment No. 1

408 Corrections to contract with a private entity to supervise  
409 offenders on community supervision in Broward and Miami-Dade  
410 counties; providing contract requirements; providing  
411 definitions; amending s. 944.115, F.S.; replacing a reference to  
412 the Department of Management Services with a reference to the  
413 Department of Corrections in the definition of the term  
414 "employee"; amending s. 944.72, F.S.; removing a reference to  
415 the Department of Management Services in regards to the  
416 Privately Operated Institutions Inmate Welfare Trust Fund;  
417 amending s. 944.8041, F.S.; removing a reference to the  
418 Department of Management Services in regards to granting access  
419 to the Correctional Medical Authority; amending s. 945.215,  
420 F.S.; replacing references to the Department of Management  
421 Services with references to the Department of Corrections in  
422 regards to the Privately Operated Institutions Inmate Welfare  
423 Trust Fund; amending s. 947.005, F.S.; providing definitions;  
424 amending s. 948.001, F.S.; providing definitions; amending s.  
425 948.01, F.S.; providing an exception to the prohibition on  
426 private entities providing supervision services to certain  
427 offenders; providing for a transfer of specified duties,  
428 functions, property, and funds from the Department of Management  
429 Services to the Department of Corrections; amending s. 957.04,  
430 F.S.; replacing references to the Department of Management  
431 Services with references to the Department of Corrections in  
432 regards to contracting for the operation of private correctional  
433 facilities; amending s. 957.06, F.S.; replacing references to  
434 the Department of Management Services with references to the  
435 Department of Corrections in regards to the transfer of inmates;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 5403 (2011)

Amendment No. 1

436 amending s. 957.07, F.S.; replacing references to the Department  
437 of Management Services with references to the Department of  
438 Corrections in regards to private prison cost-savings  
439 requirements; amending s. 957.08, F.S.; replacing references to  
440 the Department of Management Services with references to the  
441 Department of Corrections in regards to capacity requirements of  
442 private prisons; amending s. 957.14, F.S.; replacing references  
443 to the Department of Management Services with references to the  
444 Department of Corrections in regards to the termination of  
445 private prison contracts; amending s. 957.15, F.S.; replacing  
446 references to the Department of Management Services with  
447 references to the Department of Corrections in regards to  
448 funding private prison contracts; amending s. 957.16, F.S.,  
449 replacing a reference to the Department of Management Services  
450 with a reference to the Department of Corrections in regards to  
451 expanding capacity in private prisons; providing an



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 5405      PCB JUAS 11-10      Trust Funds of the State Courts System  
**SPONSOR(S):** Justice Appropriations Subcommittee, Glorioso  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee	14 Y, 0 N	Toms	Jones Darity
1) Appropriations Committee		Toms <i>ST</i>	Leznoff <i>JL</i>

**SUMMARY ANALYSIS**

The bill conforms to the House of Representatives proposed Fiscal Year 2011-12 General Appropriations Act. The bill redirects moneys generated from filing fees from the state courts' Mediation and Arbitration Trust Fund and the Court Education Trust Fund to the State Courts Revenue Trust Fund. Currently, the State Courts Revenue Trust Fund has a projected deficit of \$72.3 million for Fiscal Year 2010-11. The redirection of revenues from the Mediation and Arbitration Trust Fund and the Court Education Trust Fund will help offset the projected deficit.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Currently, the monies credited to the state courts' Court Education Trust Fund are used to provide education and training for judges and other court personnel as defined and determined by the Florida Court Educational Council. The moneys credited to the trust fund include fees from trial and appellate proceedings<sup>1</sup>, service charges and filing fees in probate matters<sup>2</sup>, and filing fees from any civil action, suit, or proceeding in county court<sup>3</sup>.

The state courts' Mediation and Arbitration Trust fund is used to provide mediation and arbitration services to all parties regardless of financial status.<sup>4</sup> The moneys include filing fees for trial and appellate proceedings<sup>5</sup>, filing fees from any civil action, suit, or proceeding in county court<sup>6</sup>, clerk of district court filing fees<sup>7</sup>, and a filing fee of \$1 on all proceedings in the circuit or county courts<sup>8</sup>.

The bill redirects all funding currently being directed into the Court Education Trust Fund and the Mediation and Arbitration Trust Fund into the State Courts Revenue Trust Fund. The State Courts Revenue Trust Fund has a projected deficit of \$72.3 million for Fiscal Year 2010-11. The redirection of revenues from the Mediation and Arbitration Trust Fund and the Court Education Trust Fund will help offset this projected deficit. The moneys credited to the State Courts Revenue Trust Fund are used for the purpose of funding the activities of the state courts system.<sup>9</sup> The State Courts Revenue Trust Fund may fund mediation and arbitration services, and education and training for judges and other court personnel as determined by the Florida Court Educational Council.

#### B. SECTION DIRECTORY:

**Section 1.** Amends section 25.384, Florida Statutes, relating to the Court Education Trust fund.

**Section 2.** Amends subsection (3) of section 28.2401, Florida Statutes, relating to service charges and filing fees in probate matters.

**Section 3.** Amends paragraph (a) of subsection (1) of section 28.241, Florida Statutes, relating to filing fees for trial and appellate proceedings.

**Section 4.** Amends paragraph (b) of subsection (1) of section 34.041, Florida Statutes, relating to filing fees.

**Section 5.** Amends subsection (7) of section 35.22, Florida Statutes, relating to the Clerk of the district court, appointment, compensation, assistants, filing fees, and teleconferencing.

**Section 6.** Amends section 44.108, Florida Statutes, relating to funding of mediation and arbitration.

**Section 7.** Provides an effective date, July 1, 2011.

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<sup>1</sup> 28.241, Florida Statutes

<sup>2</sup> 28.2401, Florida Statutes

<sup>3</sup> 34.041, Florida Statutes

<sup>4</sup> 44.108(1), Florida Statutes

<sup>5</sup> 28.241, Florida Statutes

<sup>6</sup> 34.041, Florida Statutes

<sup>7</sup> 35.22(7), Florida Statutes

<sup>8</sup> 44.108, Florida Statutes

<sup>9</sup> 29.22(1), Florida Statutes

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The moneys generated from fees assessed pursuant to ss. 28.241(1), 28.2401(3), 34.041(1)(b), 35.22(7), and 44.108 will be redirected into the State Courts Revenue Trust Fund. The redirection will help offset the projected deficit of the State Courts Revenue Trust Fund for Fiscal Year 2010-11. The fees assessed pursuant to ss. 28.241(1), 28.2401(3), 34.041(1)(b), 35.22(7), and 44.108 will not be increased or decreased by this legislative proposal.

#### 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:

This is a redirect of funds; there will be no added cost to the state, local governments, or the private sector.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

None.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 23, 2011, the Justice Appropriations Subcommittee adopted an amendment to the bill and reported the bill favorably. The amendment adds a section to the bill which deletes the funding sources for the state courts' Education Trust Fund and makes other technical adjustments.

This analysis is drafted to the bill as amended.



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A bill to be entitled

An act relating to trust funds of the state courts system; amending s. 25.384, F.S.; conforming provisions to changes made by the act; amending s. 28.2401, F.S.; redirecting proceeds from a specified service charge from the Court Education Trust Fund to the State Courts Revenue Trust Fund; amending s. 28.241, F.S.; redirecting proceeds from part of a filing fee from the state courts' Mediation and Arbitration Trust Fund to the State Courts Revenue Trust Fund; redirecting the proceeds from certain additional filing fees from the Court Education Trust Fund to the State Courts Revenue Trust Fund; amending s. 34.041, F.S.; redirecting the proceeds from a part of a filing fee from the state courts' Mediation and Arbitration Trust Fund to the State Courts Revenue Trust Fund; redirecting the proceeds from a part of an additional filing fee from the Court Education Trust Fund to the State Courts Revenue Trust Fund; amending s. 35.22, F.S.; redirecting the proceeds from a fee from the Mediation/Arbitration Trust Fund to the State Courts Revenue Trust Fund; amending s. 44.108, F.S.; redirecting the proceeds from a part of specified fees from the state courts' Mediation and Arbitration Trust Fund to the State Courts Revenue Trust Fund; deleting an obsolete provision relating to use of moneys in the Mediation and Arbitration Trust Fund; providing an effective date.

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

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Section 1. Subsection (4) of section 25.384, Florida Statutes, is renumbered as subsection (3), and present subsection (3) of that section is amended to read:

25.384 Court Education Trust Fund.—

~~(3) The trust fund shall be funded with moneys generated from fees assessed pursuant to ss. 28.241(1) and 28.2401(3).~~

Section 2. Subsection (3) of section 28.2401, Florida Statutes, is amended to read:

28.2401 Service charges and filing fees in probate matters.—

(3) An additional service charge of \$4 on petitions seeking summary administration, formal administration, ancillary administration, guardianship, curatorship, and conservatorship shall be paid to the clerk. The clerk shall transfer \$3.50 to the Department of Revenue for deposit into the State Courts Revenue Court Education Trust Fund and shall transfer 50 cents to the Department of Revenue for deposit into the Department of Financial Services' Administrative Trust Fund to fund clerk education. No additional fees, charges, or costs shall be added to the service charges or filing fees imposed under this section, except as authorized by general law.

Section 3. Paragraph (a) of subsection (1) of section 28.241, Florida Statutes, is amended to read:

28.241 Filing fees for trial and appellate proceedings.—

(1)(a)1.a. Except as provided in sub-subparagraph b. and subparagraph 2., the party instituting any civil action, suit, or proceeding in the circuit court shall pay to the clerk of

57 | that court a filing fee of up to \$395 in all cases in which  
 58 | there are not more than five defendants and an additional filing  
 59 | fee of up to \$2.50 for each defendant in excess of five. Of the  
 60 | first \$280 ~~\$265~~ in filing fees, \$80 must be remitted by the  
 61 | clerk to the Department of Revenue for deposit into the General  
 62 | Revenue Fund, \$195 ~~\$180~~ must be remitted to the Department of  
 63 | Revenue for deposit into the State Courts Revenue Trust Fund,  
 64 | \$3.50 must be remitted to the Department of Revenue for deposit  
 65 | into the Clerks of the Court Trust Fund within the Justice  
 66 | Administrative Commission and used to fund the Florida Clerks of  
 67 | Court Operations Corporation created in s. 28.35, and \$1.50  
 68 | shall be remitted to the Department of Revenue for deposit into  
 69 | the Administrative Trust Fund within the Department of Financial  
 70 | Services to fund clerk budget reviews conducted by the  
 71 | Department of Financial Services. ~~The next \$15 of the filing fee~~  
 72 | ~~collected shall be deposited in the state courts' Mediation and~~  
 73 | ~~Arbitration Trust Fund.~~ One third of any filing fees collected  
 74 | by the clerk of the circuit court in excess of \$100 shall be  
 75 | remitted to the Department of Revenue for deposit into the  
 76 | Clerks of the Court Trust Fund within the Justice Administrative  
 77 | Commission.

78 |       b. The party instituting any civil action, suit, or  
 79 | proceeding in the circuit court under chapter 39, chapter 61,  
 80 | chapter 741, chapter 742, chapter 747, chapter 752, or chapter  
 81 | 753 shall pay to the clerk of that court a filing fee of up to  
 82 | \$295 in all cases in which there are not more than five  
 83 | defendants and an additional filing fee of up to \$2.50 for each  
 84 | defendant in excess of five. Of the first \$180 ~~\$165~~ in filing

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85 fees, \$80 must be remitted by the clerk to the Department of  
 86 Revenue for deposit into the General Revenue Fund, \$95 ~~\$80~~ must  
 87 be remitted to the Department of Revenue for deposit into the  
 88 State Courts Revenue Trust Fund, \$3.50 must be remitted to the  
 89 Department of Revenue for deposit into the Clerks of the Court  
 90 Trust Fund within the Justice Administrative Commission and used  
 91 to fund the Florida Clerks of Court Operations Corporation  
 92 created in s. 28.35, and \$1.50 shall be remitted to the  
 93 Department of Revenue for deposit into the Administrative Trust  
 94 Fund within the Department of Financial Services to fund clerk  
 95 budget reviews conducted by the Department of Financial  
 96 Services. ~~The next \$15 of the filing fee collected shall be~~  
 97 ~~deposited in the state courts' Mediation and Arbitration Trust~~  
 98 ~~Fund.~~

99 c. An additional filing fee of \$4 shall be paid to the  
 100 clerk. The clerk shall remit \$3.50 to the Department of Revenue  
 101 for deposit into the State Courts Revenue ~~Court Education~~ Trust  
 102 Fund and shall remit 50 cents to the Department of Revenue for  
 103 deposit into the Clerks of the Court Trust Fund within the  
 104 Justice Administrative Commission to fund clerk education. An  
 105 additional filing fee of up to \$18 shall be paid by the party  
 106 seeking each severance that is granted. The clerk may impose an  
 107 additional filing fee of up to \$85 for all proceedings of  
 108 garnishment, attachment, replevin, and distress. Postal charges  
 109 incurred by the clerk of the circuit court in making service by  
 110 certified or registered mail on defendants or other parties  
 111 shall be paid by the party at whose instance service is made. No  
 112 additional fees, charges, or costs shall be added to the filing

113 fees imposed under this section, except as authorized in this  
 114 section or by general law.

115 2.a. Notwithstanding the fees prescribed in subparagraph  
 116 1., a party instituting a civil action in circuit court relating  
 117 to real property or mortgage foreclosure shall pay a graduated  
 118 filing fee based on the value of the claim.

119 b. A party shall estimate in writing the amount in  
 120 controversy of the claim upon filing the action. For purposes of  
 121 this subparagraph, the value of a mortgage foreclosure action is  
 122 based upon the principal due on the note secured by the  
 123 mortgage, plus interest owed on the note and any moneys advanced  
 124 by the lender for property taxes, insurance, and other advances  
 125 secured by the mortgage, at the time of filing the foreclosure.  
 126 The value shall also include the value of any tax certificates  
 127 related to the property. In stating the value of a mortgage  
 128 foreclosure claim, a party shall declare in writing the total  
 129 value of the claim, as well as the individual elements of the  
 130 value as prescribed in this sub-subparagraph.

131 c. In its order providing for the final disposition of the  
 132 matter, the court shall identify the actual value of the claim.  
 133 The clerk shall adjust the filing fee if there is a difference  
 134 between the estimated amount in controversy and the actual value  
 135 of the claim and collect any additional filing fee owed or  
 136 provide a refund of excess filing fee paid.

137 d. The party shall pay a filing fee of:

138 (I) Three hundred and ninety-five dollars in all cases in  
 139 which the value of the claim is \$50,000 or less and in which  
 140 there are not more than five defendants. The party shall pay an

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141 additional filing fee of up to \$2.50 for each defendant in  
 142 excess of five. Of the first \$280 ~~\$265~~ in filing fees, \$80 must  
 143 be remitted by the clerk to the Department of Revenue for  
 144 deposit into the General Revenue Fund, \$195 ~~\$180~~ must be  
 145 remitted to the Department of Revenue for deposit into the State  
 146 Courts Revenue Trust Fund, \$3.50 must be remitted to the  
 147 Department of Revenue for deposit into the Clerks of the Court  
 148 Trust Fund within the Justice Administrative Commission and used  
 149 to fund the Florida Clerks of Court Operations Corporation  
 150 created in s. 28.35, and \$1.50 shall be remitted to the  
 151 Department of Revenue for deposit into the Administrative Trust  
 152 Fund within the Department of Financial Services to fund clerk  
 153 budget reviews conducted by the Department of Financial  
 154 Services. ~~The next \$15 of the filing fee collected shall be~~  
 155 ~~deposited in the state courts' Mediation and Arbitration Trust~~  
 156 ~~Fund;~~

157 (II) Nine hundred dollars in all cases in which the value  
 158 of the claim is more than \$50,000 but less than \$250,000 and in  
 159 which there are not more than five defendants. The party shall  
 160 pay an additional filing fee of up to \$2.50 for each defendant  
 161 in excess of five. Of the first \$785 ~~\$770~~ in filing fees, \$80  
 162 must be remitted by the clerk to the Department of Revenue for  
 163 deposit into the General Revenue Fund, \$700 ~~\$685~~ must be  
 164 remitted to the Department of Revenue for deposit into the State  
 165 Courts Revenue Trust Fund, \$3.50 must be remitted to the  
 166 Department of Revenue for deposit into the Clerks of the Court  
 167 Trust Fund within the Justice Administrative Commission and used  
 168 to fund the Florida Clerks of Court Operations Corporation

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169 described in s. 28.35, and \$1.50 shall be remitted to the  
 170 Department of Revenue for deposit into the Administrative Trust  
 171 Fund within the Department of Financial Services to fund clerk  
 172 budget reviews conducted by the Department of Financial  
 173 Services. ~~The next \$15 of the filing fee collected shall be~~  
 174 ~~deposited in the state courts' Mediation and Arbitration Trust~~  
 175 ~~Fund; or~~

176 (III) One thousand nine hundred dollars in all cases in  
 177 which the value of the claim is \$250,000 or more and in which  
 178 there are not more than five defendants. The party shall pay an  
 179 additional filing fee of up to \$2.50 for each defendant in  
 180 excess of five. Of the first \$1,785 ~~\$1,770~~ in filing fees, \$80  
 181 must be remitted by the clerk to the Department of Revenue for  
 182 deposit into the General Revenue Fund, \$1,700 ~~\$1,685~~ must be  
 183 remitted to the Department of Revenue for deposit into the State  
 184 Courts Revenue Trust Fund, \$3.50 must be remitted to the  
 185 Department of Revenue for deposit into the Clerks of the Court  
 186 Trust Fund within the Justice Administrative Commission to fund  
 187 the Florida Clerks of Court Operations Corporation created in s.  
 188 28.35, and \$1.50 shall be remitted to the Department of Revenue  
 189 for deposit into the Administrative Trust Fund within the  
 190 Department of Financial Services to fund clerk budget reviews  
 191 conducted by the Department of Financial Services. ~~The next \$15~~  
 192 ~~of the filing fee collected shall be deposited in the state~~  
 193 ~~courts' Mediation and Arbitration Trust Fund.~~

194 e. An additional filing fee of \$4 shall be paid to the  
 195 clerk. The clerk shall remit \$3.50 to the Department of Revenue  
 196 for deposit into the State Courts Revenue ~~Court Education~~ Trust

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197 Fund and shall remit 50 cents to the Department of Revenue for  
 198 deposit into the Clerks of the Court Trust Fund within the  
 199 Justice Administrative Commission to fund clerk education. An  
 200 additional filing fee of up to \$18 shall be paid by the party  
 201 seeking each severance that is granted. The clerk may impose an  
 202 additional filing fee of up to \$85 for all proceedings of  
 203 garnishment, attachment, replevin, and distress. Postal charges  
 204 incurred by the clerk of the circuit court in making service by  
 205 certified or registered mail on defendants or other parties  
 206 shall be paid by the party at whose instance service is made. No  
 207 additional fees, charges, or costs shall be added to the filing  
 208 fees imposed under this section, except as authorized in this  
 209 section or by general law.

210 Section 4. Paragraph (b) of subsection (1) of section  
 211 34.041, Florida Statutes, is amended to read:

212 34.041 Filing fees.—

213 (1)

214 (b) The first \$80 of the filing fee collected under  
 215 subparagraph (a)4. shall be remitted to the Department of  
 216 Revenue for deposit into the General Revenue Fund. The next \$15  
 217 of the filing fee collected under subparagraph (a)4., and the  
 218 first \$10 of the filing fee collected under subparagraph (a)7.,  
 219 shall be deposited in the State Courts Revenue ~~state courts~~  
 220 ~~Mediation and Arbitration~~ Trust Fund. An additional filing fee  
 221 of \$4 shall be paid to the clerk. The clerk shall transfer \$3.50  
 222 to the Department of Revenue for deposit into the State Courts  
 223 Revenue ~~Court Education~~ Trust Fund and shall transfer 50 cents  
 224 to the Department of Revenue for deposit into the Clerks of the



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225 Court Trust Fund within the Justice Administrative Commission to  
 226 fund clerk education. Postal charges incurred by the clerk of  
 227 the county court in making service by mail on defendants or  
 228 other parties shall be paid by the party at whose instance  
 229 service is made. Except as provided herein, filing fees and  
 230 service charges for performing duties of the clerk relating to  
 231 the county court shall be as provided in ss. 28.24 and 28.241.  
 232 Except as otherwise provided herein, all filing fees shall be  
 233 remitted to the Department of Revenue for deposit into the  
 234 Clerks of the Court Trust Fund within the Justice Administrative  
 235 Commission. Filing fees imposed by this section may not be added  
 236 to any penalty imposed by chapter 316 or chapter 318.

237 Section 5. Subsection (7) of section 35.22, Florida  
 238 Statutes, is amended to read:

239 35.22 Clerk of district court; appointment; compensation;  
 240 assistants; filing fees; teleconferencing.-

241 (7) The clerk of the district court of appeal is  
 242 authorized to collect a fee from the parties to an appeal  
 243 reflecting the actual cost of conducting the proceeding through  
 244 teleconferencing where the parties have requested that an oral  
 245 argument or mediation be conducted through teleconferencing. The  
 246 fee collected for this purpose shall be used to offset the  
 247 expenses associated with scheduling the teleconference and shall  
 248 be deposited in the State Courts Revenue ~~Mediation/Arbitration~~  
 249 Trust Fund.

250 Section 6. Section 44.108, Florida Statutes, is amended to  
 251 read:

252 44.108 Funding of mediation and arbitration.-

253 (1) Mediation and arbitration should be accessible to all  
 254 parties regardless of financial status. A filing fee of \$1 is  
 255 levied on all proceedings in the circuit or county courts to  
 256 fund mediation and arbitration services which are the  
 257 responsibility of the Supreme Court pursuant to the provisions  
 258 of s. 44.106. The clerk of the court shall forward the moneys  
 259 collected to the Department of Revenue for deposit in the State  
 260 Courts Revenue ~~state courts' Mediation and Arbitration~~ Trust  
 261 Fund.

262 (2) When court-ordered mediation services are provided by  
 263 a circuit court's mediation program, the following fees, unless  
 264 otherwise established in the General Appropriations Act, shall  
 265 be collected by the clerk of court:

266 (a) One-hundred twenty dollars per person per scheduled  
 267 session in family mediation when the parties' combined income is  
 268 greater than \$50,000, but less than \$100,000 per year;

269 (b) Sixty dollars per person per scheduled session in  
 270 family mediation when the parties' combined income is less than  
 271 \$50,000; or

272 (c) Sixty dollars per person per scheduled session in  
 273 county court cases.

274  
 275 No mediation fees shall be assessed under this subsection in  
 276 residential eviction cases, against a party found to be  
 277 indigent, or for any small claims action. Fees collected by the  
 278 clerk of court pursuant to this section shall be remitted to the  
 279 Department of Revenue for deposit into the State Courts Revenue  
 280 ~~state courts' Mediation and Arbitration~~ Trust Fund to fund

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281 court-ordered mediation. The clerk of court may deduct \$1 per  
 282 fee assessment for processing this fee. The clerk of the court  
 283 shall submit to the chief judge of the circuit and to the Office  
 284 of the State Courts Administrator, no later than 30 days after  
 285 the end of each quarter of the fiscal year, ~~beginning July 1,~~  
 286 ~~2008,~~ a report specifying the amount of funds collected and  
 287 remitted to the State Courts Revenue ~~state courts' Mediation and~~  
 288 ~~Arbitration~~ Trust Fund under this section and any other section  
 289 during the previous quarter of the fiscal year. In addition to  
 290 identifying the total aggregate collections and remissions from  
 291 all "statutory sources, the report must identify collections and  
 292 remissions by each statutory source.

293 ~~(3) For the 2010-2011 fiscal year only and notwithstanding~~  
 294 ~~any other provision of law to the contrary, moneys in the~~  
 295 ~~Mediation and Arbitration Trust Fund may be used as specified in~~  
 296 ~~the General Appropriations Act. This subsection expires July 1,~~  
 297 ~~2011.~~

298 Section 7. This act shall take effect July 1, 2011.


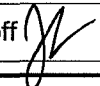


**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 5407      PCB JUAS 11-11      Juvenile Commitment

**SPONSOR(S):** Justice Appropriations Subcommittee, Glorioso

**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee	13 Y, 0 N	Toms	Jones Darity
1) Appropriations Committee		Toms 	Leznoff 

**SUMMARY ANALYSIS**

The bill conforms to the House of Representatives proposed Fiscal Year 2011-12 General Appropriations Act by amending s. 985.441, Florida Statutes.

Currently, courts may commit a child that has been adjudicated delinquent of a misdemeanor offense to a residential commitment facility.

The bill prohibits a court that has jurisdiction of an adjudicated delinquent child from committing a child adjudicated with any misdemeanor or probation violation, other than a new law violation constituting a felony where the underlying offense is a misdemeanor, at a restrictiveness level other than minimum-risk non-residential. The bill provides that a court may commit such child to a low-risk or moderate-risk residential placement for a misdemeanor if the child:

- Has previously been adjudicated for a felony offense;
- Has been adjudicated for four or more misdemeanor offenses within a year of the offense date of the offense before the court for disposition; or
- Is before the court for disposition for a violation of an offense relating to cruelty to animals, arson that results in injury to another or exposure of sexual organs.

The bill prohibits the Department of Juvenile Justice from transferring any child adjudicated solely for a misdemeanor to a residential program unless the child meets the above criteria.

The department estimates that approximately 976 fewer youth will be committed to residential facilities. This represents a savings of \$24.6 million to the General Revenue Fund. However, additional funding may be needed to allow the department to coordinate with communities to provide services in lieu of commitment.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

Section 985.441, F.S., authorizes a court that has jurisdiction of an adjudicated delinquent child to commit the child to the Department of Juvenile Justice (DJJ) at a restrictiveness level defined in s. 985.03, F.S. Such commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, urine monitoring, and treatment of the child and release of the child from residential commitment into the community in a postcommitment nonresidential conditional release program.<sup>1</sup>

Section 985.03, F.S., defines the restrictiveness levels of residential commitment as follows:

#### Low-risk residential

- Programs or program models at this commitment level are residential but may allow youth to have unsupervised access to the community. Residential facilities shall have no more than 165 beds each, including campus-style programs, unless those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Youth assessed and classified for placement in programs at this commitment level represent a low risk to themselves and public safety but do require placement and services in residential settings. Children who have been found to have committed delinquent acts that involve firearms, delinquent acts that are sexual offenses or delinquent acts that would be life felonies or first degree felonies if committed by an adult shall not be committed to a program at this level.

#### Moderate-risk residential

- Programs or program models at this commitment level are residential but may allow youth to have supervised access to the community. Facilities are either environmentally secure, staff secure, or are hardware-secure with walls, fencing, or locking doors. Residential facilities shall have no more than 165 beds each, including campus-style programs, unless those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Facilities shall provide 24-hour awake supervision, custody, care, and treatment of residents. Youth assessed and classified for placement in programs at this commitment level represent a moderate risk to public safety and require close supervision. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself or herself or others. Mechanical restraint may also be used when necessary.

#### High-risk residential

- Programs or program models at this commitment level are residential and do not allow youth to have access to the community, except that temporary release providing community access for up to 72 continuous hours may be approved by a

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<sup>1</sup> Section 985.441, F.S.

court for a youth who has made successful progress in his or her program in order for the youth to attend a family emergency or, during the final 60 days of his or her placement, to visit his or her home, enroll in school or a vocational program, complete a job interview, or participate in a community service project. High-risk residential facilities are hardware-secure with perimeter fencing and locking doors. Residential facilities shall have no more than 165 beds each, including campus-style programs, unless those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Facilities shall provide 24-hour awake supervision, custody, care, and treatment of residents. Youth assessed and classified for this level of placement require close supervision in a structured residential setting. Placement in programs at this level is prompted by a concern for public safety that outweighs placement in programs at lower commitment levels. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself or herself or others. Mechanical restraint may also be used when necessary. The facility may provide for single cell occupancy.

#### Maximum-risk residential

- Programs or program models at this commitment level include juvenile correctional facilities and juvenile prisons. The programs are long-term residential and do not allow youth to have access to the community. Facilities are maximum-custody, hardware-secure with perimeter security fencing and locking doors. Residential facilities shall have no more than 165 beds each, including campus-style programs, unless those campus-style programs include more than one level of restrictiveness, provide multilevel education and treatment programs using different treatment protocols, and have facilities that coexist separately in distinct locations on the same property. Facilities shall provide 24-hour awake supervision, custody, care, and treatment of residents. The staff at a facility at this commitment level may seclude a child who is a physical threat to himself or herself or others. Mechanical restraint may also be used when necessary. The facility shall provide for single cell occupancy, except that youth may be housed together during prerelease transition. Youth assessed and classified for this level of placement require close supervision in a maximum security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.

Currently, a child that has been adjudicated delinquent of a misdemeanor offense may be committed to the DJJ at any of the above-described restrictiveness levels.

#### **Effect of the Bill**

The bill specifies that the commitment of an adjudicated delinquent child to DJJ must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, monitoring for substance abuse, electronic monitoring, and treatment of the child and release of the child from residential commitment into the community in a postcommitment nonresidential conditional release program.

The bill also prohibits a court that has jurisdiction of an adjudicated delinquent child from committing a child adjudicated with any misdemeanor or probation violation, other than a new law violation constituting a felony where the underlying offense is a misdemeanor, at a

restrictiveness level other than minimum-risk non-residential.<sup>2</sup> The bill provides that a court may commit such child to a low-risk or moderate-risk residential placement if the child:

- Has previously been adjudicated for a felony offense;
- Has been adjudicated for four or more misdemeanor offenses within a year of the offense date of the offense before the court for disposition; or
- Is before the court for disposition for a violation of ss. 828.12,<sup>3</sup> s. 806.031,<sup>4</sup> or s. 800.03, F.S.<sup>5</sup>

The bill prohibits DJJ from transferring any child adjudicated solely for a misdemeanor to a residential program unless the child meets the above criteria.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 985.441, F.S., relating to commitment.

**Section 2.** Amends 985.0301, F.S., relating to jurisdiction

**Section 3.** Amends 985.033, F.S., relating to the right to counsel.

**Section 4.** Amends 985.46, F.S., relating to conditional release.

**Section 5.** The bill is effective July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See "Fiscal Comments"

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

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<sup>2</sup> Section 985.03, F.S., defines "minimum-risk nonresidential" as "[P]rograms or program models at this commitment level work with youth who remain in the community and participate at least 5 days per week in a day treatment program. Youth assessed and classified for programs at this commitment level represent a minimum risk to themselves and public safety and do not require placement and services in residential settings. Youth in this level have full access to, and reside in, the community. Youth who have been found to have committed delinquent acts that involve firearms, that are sexual offenses or that would be life felonies or first degree felonies if committed by an adult may not be committed to a program at this level."

<sup>3</sup> Section 828.12, F.S., relates to cruelty to animals.

<sup>4</sup> Section 806.031, F.S., relates to arson that results in injury to another.

<sup>5</sup> Section 800.03, F.S., relates to exposure of sexual organs.



None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Elimination of beds will result in the closure of contracted and state operated programs. The number and extent of such closures will be determined based on program performance.

**D. FISCAL COMMENTS:**

It is projected that the effect of the bill is a reduction to the General Revenue Fund. This reduction is based on serving approximately 976 fewer youth in residential commitment, and allows for time for youth to phase-out of the current system. This yields to a total savings of \$24.6 million to the General Revenue Fund and a reduction of 54 positions.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

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

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 23, 2011, the Justice Appropriations Subcommittee adopted an amendment to the bill and reported the bill favorably. The technical amendment corrects cross references.

This analysis is drafted to the bill as amended.

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1                                   A bill to be entitled  
 2           An act relating to juvenile commitment; amending s.  
 3           985.441, F.S.; revising language concerning active control  
 4           over a child committed to the Department of Juvenile  
 5           Justice; prohibiting a court from committing certain youth  
 6           at a restrictiveness level other than minimum-risk  
 7           nonresidential; authorizing a court to commit certain  
 8           youth to a low-risk or moderate-risk residential  
 9           placement; limiting transfers of certain youth; amending  
 10          ss. 985.0301, 985.033, and 985.46, F.S.; conforming cross-  
 11          references; providing an effective date.

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

14  
 15           Section 1.   Section 985.441, Florida Statutes, is amended  
 16   to read:

17           985.441   Commitment.—

18           (1)   The court that has jurisdiction of an adjudicated  
 19   delinquent child may, by an order stating the facts upon which a  
 20   determination of a sanction and rehabilitative program was made  
 21   at the disposition hearing:

22           (a)   Commit the child to a licensed child-caring agency  
 23   willing to receive the child; however, the court may not commit  
 24   the child to a jail or to a facility used primarily as a  
 25   detention center or facility or shelter.

26           (b)   Commit the child to the department at a  
 27   restrictiveness level defined in s. 985.03. Such commitment must  
 28   be for the purpose of exercising active control over the child,

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29 including, but not limited to, custody, care, training, ~~urine~~  
 30 monitoring for substance abuse, electronic monitoring, and  
 31 treatment of the child and release of the child from residential  
 32 commitment into the community in a postcommitment nonresidential  
 33 conditional release program. If the child is not successful in  
 34 the conditional release program, the department may use the  
 35 transfer procedure under subsection (4) ~~(3)~~.

36 (c) Commit the child to the department for placement in a  
 37 program or facility for serious or habitual juvenile offenders  
 38 in accordance with s. 985.47.

39 1. Following a delinquency adjudicatory hearing under s.  
 40 985.35 and a delinquency disposition hearing under s. 985.433  
 41 that results in a commitment determination, the court shall, on  
 42 its own or upon request by the state or the department,  
 43 determine whether the protection of the public requires that the  
 44 child be placed in a program for serious or habitual juvenile  
 45 offenders and whether the particular needs of the child would be  
 46 best served by a program for serious or habitual juvenile  
 47 offenders as provided in s. 985.47. The determination shall be  
 48 made under ss. 985.47(1) and 985.433(7).

49 2. Any commitment of a child to a program or facility for  
 50 serious or habitual juvenile offenders must be for an  
 51 indeterminate period of time, but the time may not exceed the  
 52 maximum term of imprisonment that an adult may serve for the  
 53 same offense.

54 (d) Commit the child to the department for placement in a  
 55 program or facility for juvenile sexual offenders in accordance  
 56 with s. 985.48, subject to specific appropriation for such a

57 | program or facility.

58 |       1. The child may only be committed for such placement  
59 | pursuant to determination that the child is a juvenile sexual  
60 | offender under the criteria specified in s. 985.475.

61 |       2. Any commitment of a juvenile sexual offender to a  
62 | program or facility for juvenile sexual offenders must be for an  
63 | indeterminate period of time, but the time may not exceed the  
64 | maximum term of imprisonment that an adult may serve for the  
65 | same offense.

66 |       (2) Notwithstanding subsection (1), the court with  
67 | jurisdiction over an adjudicated delinquent child whose  
68 | underlying offense was a misdemeanor may not commit the child  
69 | for any misdemeanor offense or any probation violation at a  
70 | restrictiveness level other than minimum-risk nonresidential  
71 | unless the probation violation is a new violation of law  
72 | constituting a felony. However, the court may commit such child  
73 | to a low-risk or moderate-risk residential placement if the  
74 | child:

75 |           1. Has previously been adjudicated for a felony offense;

76 |           2. Has been adjudicated for four or more misdemeanor  
77 | offenses within 1 year after the date on which the offense  
78 | before the court for disposition was committed; or

79 |           3. Is before the court for disposition for a violation of  
80 | s. 800.03, s. 806.031, or s. 828.12.

81 |       ~~(3)~~~~(2)~~ The nonconsent of the child to commitment or  
82 | treatment in a substance abuse treatment program in no way  
83 | precludes the court from ordering such commitment or treatment.

84 |       ~~(4)~~~~(3)~~ The department may transfer a child, when necessary

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85 to appropriately administer the child's commitment, from one  
 86 facility or program to another facility or program operated,  
 87 contracted, subcontracted, or designated by the department,  
 88 including a postcommitment nonresidential conditional release  
 89 program, except that the department may not transfer any child  
 90 adjudicated solely for a misdemeanor to a residential program  
 91 except as provided in subsection (2). The department shall  
 92 notify the court that committed the child to the department and  
 93 any attorney of record for the child, in writing, of its intent  
 94 to transfer the child from a commitment facility or program to  
 95 another facility or program of a higher or lower restrictiveness  
 96 level. The court that committed the child may agree to the  
 97 transfer or may set a hearing to review the transfer. If the  
 98 court does not respond within 10 days after receipt of the  
 99 notice, the transfer of the child shall be deemed granted.

100 Section 2. Paragraph (d) of subsection (5) of section  
 101 985.0301, Florida Statutes, is amended to read:

102 985.0301 Jurisdiction.—

103 (5)

104 (d) The court may retain jurisdiction over a child  
 105 committed to the department for placement in a juvenile prison  
 106 or in a high-risk or maximum-risk residential commitment program  
 107 to allow the child to participate in a juvenile conditional  
 108 release program pursuant to s. 985.46. ~~In no case shall~~ The  
 109 jurisdiction of the court may not be retained after ~~beyond~~ the  
 110 child's 22nd birthday. However, if the child is not successful  
 111 in the conditional release program, the department may use the  
 112 transfer procedure under s. 985.441 (4) ~~(3)~~.

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113 Section 3. Subsection (2) of section 985.033, Florida  
 114 Statutes, is amended to read:

115 985.033 Right to counsel.—

116 (2) This section does not apply to transfer proceedings  
 117 under s. 985.441(4)(3), unless the court sets a hearing to  
 118 review the transfer.

119 Section 4. Subsection (4) of section 985.46, Florida  
 120 Statutes, is amended to read:

121 985.46 Conditional release.—

122 (4) A juvenile under nonresidential commitment placement  
 123 continues ~~will continue to be~~ on commitment status and is  
 124 subject to ~~the transfer provision~~ under s. 985.441(4)(3).

125 Section 5. This act shall take effect July 1, 2011.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5409 PCB JUAS 11-12 Clerks of Court  
SPONSOR(S): Justice Appropriations Subcommittee, Glorioso  
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee	12 Y, 0 N	Jones Darity	Jones Darity
1) Appropriations Committee		Jones Darity <i>J. Darity</i>	Leznoff <i>[Signature]</i>

SUMMARY ANALYSIS

The bill makes conforming changes to the proposed House of Representatives proposed Fiscal Year 2011-12 General Appropriations Act by making substantial changes to the clerks of court and Clerks of Court Operations Corporation (Corporation) funding and operations. The bill primarily removes the clerks of court and the Corporation from the state budget and while restoring most budgetary functions and procedures in place in the statutes prior to the enactment of chapter 2009-004, Laws of Florida, it expands the role of the Legislative Budget Commission (LBC) in the clerks' budget process.

The net fiscal impact of this bill is estimated to be approximately \$453.1 million in reduced trust fund appropriations as reflected in the proposed House of Representatives FY 2011-12 General Appropriations Act.

There will be a loss to the General Revenue Fund due to the non assessment of the eight percent general revenue charge. This equates to a \$37.7 million loss according to the most recent Revenue Estimating Conference. However, funds in excess of the amount needed for the clerks operation will be remitted to general revenue as a function of the bill. The net of the two fiscal effects has not yet been determined by the impact conference.

The Clerks of Court Trust Fund was assessed approximately \$36 million for the eight percent general revenue charge for Fiscal Year 2009-2010. However, \$18.6 million of the assessment was paid by the State Courts Revenue Trust Fund.



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### **Revision 7 to Article V Overview**

Article V of the Florida Constitution establishes the judicial branch of state government, including the trial and appellate courts. The constitution also describes the primary participants in the courts system, including judges, state attorneys, public defenders, and the clerks of the court. To that end, “[t]hese elected independent officials interact as part of a complex interdependent system.”<sup>1</sup>

In 1998, voters approved an additional revision to Article V, referenced as Revision 7, which allocates more costs to the state.<sup>2</sup> Subsequent to this revision, Article V, section 14 of the Florida Constitution now specifies the state and county responsibilities for funding the state courts system by providing that the Supreme Court and the District Courts of Appeal are fully funded by the state, and the trial courts, the circuit and county courts, are jointly funded by the state and counties. Article V, section 14(b) provides that:

All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided . . . shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law.

Article V, section 14(c) provides that:

No county or municipality, except as provided in this subsection, shall be required to provide any funding for . . . the offices of clerks of the circuit and county courts performing court-related functions, Counties shall be required to fund the cost of communications services, . . . the cost of construction or lease, . . . and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions.

#### *Clerks’ Court-Related Functions*

Pursuant to authority granted in Article V, section 14(b) of the Florida Constitution, the list of court-related functions clerks may perform is limited to those functions expressly authorized by statute or court rule and must include the following:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Processing the assignment, reopening, and reassignment of cases;
- Processing of appeals;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing of bond forfeiture payments;
- Payment of jurors and witnesses;
- Payment of expenses for meals or lodging provided to jurors;
- Data collection and reporting;

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<sup>1</sup> Office of Program Policy Analysis and Government Accountability, *Many Article V Trial Courts Funding Issues Still Need to Be Resolved*, Report No. 01-54, 1 (Nov. 2001).

<sup>2</sup> *Id.* at 2.

- Processing of jurors;
- Determinations of indigent status; and
- Reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.<sup>3</sup>

The list of functions clerks may not fund from state appropriations include:

- Those functions not listed above;
- Functions assigned by administrative orders which are not required for the clerk to perform the functions listed above;
- Enhanced levels of service which are not required for the clerk to perform the functions listed above; and
- Functions identified as local requirements in law or local optional programs.<sup>4</sup>

### **Post- Article V: 2004-2008**

This section describes the law relating to the clerks of court after legislation was passed to implement the changes to Article V and prior to the 2009 legislation.

#### *Budget Procedure for the Court-Related Functions of the Clerk of the Court*

On or before August 15 of each fiscal year, each county clerk prepared a proposed budget which was submitted to the Florida Clerks of Court Corporation. The budget provided detailed information on the anticipated revenues and expenditures necessary for the performance of their court-related functions. The proposed budget was to be balanced, with estimated revenues equaling or exceeding anticipated expenditures.<sup>5</sup> Upon review and certification of the individual clerk of court budgets by the Clerks of Court Operations Corporation, revenues in excess of the amount needed to fund each approved clerk of court budget was to be deposited in the General Revenue Fund.

If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, the clerk was to report a revenue deficit to the Corporation. If the Corporation verified that the proposed budget was limited and a revenue deficit projected, a clerk was to increase all fees, service charges, and any other court-related clerk fees and charges to the maximum amounts specified by law to resolve the deficit. If the clerk raised fees, services charges, and any other court-related clerk fees to the maximum amounts but still had a deficit, the Corporation would notify the Department of Revenue that the clerk was authorized to retain revenues in an amount necessary to fully fund the projected deficit. If a deficit still existed after retaining all of the projected collections from court-related fines, fees, service charges, and costs, the Department of Revenue would certify the amount of the deficit to the Executive Office of the Governor and request the release of funds from the Department of Revenue Clerks of the Court Trust Fund.<sup>6</sup>

Prior to the passage of SB 2108 in the 2009 Legislative Session, the clerks of court were allowed to retain portions of the moneys collected from filing fees, service charges, court costs, and fines, while other portions were distributed to the General Revenue Fund or other trust funds. The clerks were required to remit one-third of all fines, fees, service charges, and costs collected for court-related functions to the Department of Revenue for deposit in the Department of Revenue Clerks of the Court Trust Fund.<sup>7</sup> The Department of Revenue would then transfer those funds in the Clerks of the Court Trust Fund not needed to resolve clerk deficits to the General Revenue Fund.

#### *Florida Clerks of Court Operations Corporation*

<sup>3</sup> Section 28.35(3)(a), F.S.

<sup>4</sup> Section 28.35(3)(b), F.S.

<sup>5</sup> Section 28.36(3), F.S. (2008).

<sup>6</sup> Section 28.36(4), F.S. (2008).

<sup>7</sup> Section 28.37(2), F.S. (2008).

The Corporation had responsibility for the certification of the clerks' budget. Specific tasks included:

- Calculating the maximum authorized annual budget;
- Identifying those proposed budget exceeding the maximum annual budget for the standard list of court-related functions;
- Identifying those proposed budgets containing funding for items not included on the standard list of court-related functions; and
- Identifying those clerks projected to have court-related revenue insufficient to fund their anticipated court-related expenditures.<sup>8</sup>

The Corporation, by October of each year, certified to the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Department of Revenue, the amount of proposed budget for each clerk; the revenue projection supporting each clerk's budget; each clerk's eligibility to retain some or all of the state's share of fines, fees, service charges, and costs; the amount to be paid to each clerk from the Clerks of the Court Trust Fund within the Department of Revenue; the performance measures and standards approved by the Corporation for each clerk; and the results of each clerk meeting performance standards.

### *Legislative Budget Commission*

The Legislative Budget Commission (LBC)<sup>9</sup> had authority to approve increases to the maximum annual budgets approved for individual clerks if:

- The additional funding was necessary to pay the cost of performing new or additional functions required by changes in law or court rule.
- The additional funding was necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.<sup>10</sup>

### **Chapter 2009-204, Laws of Florida**

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court and the Corporation, the Legislature passed SB 2108 during the 2009 legislative session. This bill substantially amended the statutory budget process and procedures for these entities, most noticeably by bringing the clerks and the Corporation into the state budget and appropriating their funds in the annual General Appropriations Act. While employees of the individual clerk offices remained local government employees, staff with the Corporation became state full-time equivalents.

Chapter 2009-204, Laws of Florida, provides that all revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs and service charges are considered state funds and are remitted to the Department of Revenue for deposit in to the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).<sup>11</sup> The clerk is, however, allowed to deposit 10 percent of all court-related fines in his or her Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.<sup>12</sup>

### *Florida Clerks of Court Operations Corporation*

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<sup>8</sup> See s. 28.35(1)(f), F.S. (2008).

<sup>9</sup> The Legislative Budget Commission is comprised of seven members appointed by the Senate President, and seven members appointed by the Speaker of the House. The Commission, among other things, approves budget amendments during the interim between sessions. See *generally* Section 11.90, F.S.

<sup>10</sup> See s. 28.36(6), F.S. (2008).

<sup>11</sup> Section 28.37(2), F.S.

<sup>12</sup> *Id.*

The Corporation is now considered a political subdivision of the state and is exempt from corporate income tax.<sup>13</sup> The Corporation is administratively housed within the Justice Administrative Commission and its employees are considered state employees. The Corporation is not subject to control, supervision, or direction by the JAC in the performance of its duties, but the employees of the Corporation are governed by the classification plan and salary and benefits plan of the JAC. All clerks of the circuit court are members of the Corporation and hold their position and authority in an ex officio capacity.<sup>14</sup> The Corporation's functions include:

- Developing and certifying a uniform system of performance measures and applicable performance standards and the service unit cost;
- Identifying deficiencies and corrective action plans when clerks fail to meet performance standards;
- Notify the Legislature and the Supreme Court of any clerk not meeting performance standards and provide a copy of any correction action plan;
- Recommending to the Legislature changes in the various court-related fines, fees, service charges, and court costs established by law to ensure reasonable and adequate funding of the clerks of court in the performance of their court-related functions;
- Develop the performance measures and performance standards in consultation with Legislature and the Supreme Court; and
- Review proposed budgets submitted by the clerks of the court.<sup>15</sup>

The Corporation prepares a legislative budget request for the resources necessary to perform its duties and submits the request pursuant to chapter 216, funded as a budget entity in the General Appropriations Act.<sup>16</sup>

#### *Budget procedure*

Subsequent to the statutory changes made in 2009, by October 1 of each fiscal year, each county clerk prepares a budget request for the last quarter of the county fiscal year (July 1 – September 30) and the first three quarters of the next county fiscal year (October 1 – June 30) and submits it to the Corporation and provides a copy of the budget request to the Supreme Court.<sup>17</sup>

Each clerk is required to submit in his or her budget request the number of personnel and the proposed budget for each of the following core services:<sup>18</sup>

1. Circuit criminal;
2. County criminal;
3. Juvenile delinquency;
4. Criminal traffic;
5. Circuit civil;
6. County civil;
7. Civil traffic;
8. Probate;
9. Family; and
10. Juvenile dependency.

The budget request must identify the service units to be provided within each core service and must propose a unit cost for each service unit.<sup>19</sup>

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<sup>13</sup> Section 28.35(1)(c), F.S.

<sup>14</sup> Section 28.35(1)(a), F.S.

<sup>15</sup> Section 28.35(2), F.S.

<sup>16</sup> Section 28.35(4), F.S.

<sup>17</sup> Section 28.36(1), F.S.

<sup>18</sup> The core services listed in statute were changed during the 2010 session. (ch. 2010-162, s. 14) Prior to this change, the following core services were listed: case processing; financial processing; jury management; information and reporting.

<sup>19</sup> Section 28.36(4) and (5), F.S.

The Corporation is required to compare the proposed unit costs for a given clerk to that of a peer group based on counties with similar sized population and case filings. If the proposed unit costs are higher than a clerk's peers, the clerk must justify the increased costs. Justification may include collective bargaining agreements, county civil service agreements, and the number and distribution of court houses. If the Corporation finds that the increased costs are not justified, the Corporation reduces the unit cost to the average of its peers.<sup>20</sup> The Corporation recommends to the Legislature the unit costs for each clerk and a statewide budget amount for the clerks by December 1. The Chief Financial Officer (CFO) is required to review unit costs proposed by the Corporation and makes recommendations to the Legislature and if necessary, may conduct an audit of a clerk or the Corporation.<sup>21</sup> The Legislature may reject or modify the proposed unit costs, and appropriates the total amount of the clerk budgets in the General Appropriations Act.<sup>22</sup>

In the 2010 session, legislation was passed which adjusted the way that the clerk's budget was released. Beginning in the 2010-2011 fiscal year, the corporation was required to release appropriations to each clerk quarterly. If funds in the Clerks of Court Trust Fund are insufficient to provide a release in a quarter in a single release, the corporation may release partial amounts for that quarter so long as the total of those partial amounts does not exceed that quarter's release. If funds in the Clerks of Court Trust Fund are insufficient for the first quarter release, the corporation may make a request to the Governor for a trust fund loan pursuant to chapter 215. The amount of the first three releases shall be based on one quarter of the estimated budget for each clerk as identified in the General Appropriations Act.

The corporation is required to estimate the fourth quarter's number of units to be performed by each clerk. The amount of the fourth-quarter release is to be adjusted downward if the clerk has performed fewer service units in the first three quarters of the year compared to three quarters of the estimated number of service units in the General Appropriations Act.

### **Effect of proposed changes**

Generally, this bill reverses many of the changes made in SB 2108 during the 2009 legislative session relating to the budgets of the clerks of court, but expands the role of the LBC in the clerks' budgeting process. Specifically, the bill:

- Removes the funding for the clerks of court and the Corporation from the General Appropriations Act.
- Removes the provisions describing the Corporation as a "state agency" or "agency".
- Removes the provisions that administratively housed the Corporation within the Justice Administrative Commission and their staff as state employees.
- Provides that all filing fees should be retained as fee income for the clerks.
- Transfers the Clerks of the Court Trust Fund to the Department of Revenue, and transfers fund balances.
- Deletes references for deposits from the Justice Administrative Commission to the Department of Revenue.
- Requires the clerks of court to remit funds in excess of approved budget to the Department of Revenue for deposit in the Department of Revenue Clerks of Court Trust Fund.
- Provides for the deposit of excess revenue over the amount needed to meet the approved budget amounts to be transferred from the Department of Revenue to the General Revenue Fund.
- Requires the clerks of court and the Corporation to submit annual budget requests to the LBC.
- Authorizes the Legislative Budget Commission to review, approve, disapprove or amend both the Corporations' and the clerks of court budgets.
- Provides an approved budget amount for the clerks to operate during the transition period (the last quarter of the county fiscal year) until the LBC meets in September.

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<sup>20</sup> Section 28.36(6), F.S.

<sup>21</sup> Section 28.36(8), F.S.

<sup>22</sup> Section 28.36(9), F.S.

- Provides that the clerks' budget not exceed 105 percent of the prior year's budget and provides for exceptions.
- Defines workload performance measures and workload performance standards.
- Removes the provisions allowing clerks to retain 10% of all court related fines deposited in the Public Records Modernization Trust Fund.
- Removes language declaring revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs, and service charges as state funds.
- Redirects/restores the current \$5.00 split of the filing fee collected for trial and appellate proceedings (\$1.50 to the Department of Financial Services for performing clerk audits and the \$3.50 to the Corporation for operations funding) to the Department of Financial Services' Administrative Trust Fund to fund the contract with the Corporation.
- Outlines that the contract with the Department of Financial Services will be used in determining compliance by the Corporation.
- Removes the provisions requiring the Chief Financial Officer to review and conduct audits of the clerks and the Corporation unit cost reporting.
- Outlines the budget procedures for calculating the clerks' budget, and the mechanism for counties with projected revenue deficits to request for additional funds from a surplus clerk.
- Removes the provisions requiring the Corporation to submit a legislative budget request pursuant to chapter 216, F.S.
- Removes the provisions requiring the clerks to submit a budget based on core services and unit costs.
- Removes the provisions requiring the Corporation to develop performance measures and standards in consultation with the Supreme Court.
- Requires the clerks of court and the Corporation to adhere to the procurement provisions of chapter 287.
- Provides rule making authority to the Department of Revenue.

## B. SECTION DIRECTORY:

**Section 1.** Transfers balances from the Clerks of the Court Trust Fund in the Justice Administrative Commission to the Department of Revenue.

**Section 2.** amends s. 11.90, F.S., relating to the Legislative Budget Commission.

**Section 3.** amends s.28.241, F.S., relating to the circuit civil filing.

**Section 4.** Amends 28.2455, F.S, providing technical revisions.

**Section 5.** Amends s. 28.246, F.S., relating to payment of court-related fees, charges, and costs; partial payments; distribution of funds to reflect deposits in the Department of Revenue Clerks of the Court Trust Fund.

**Section 6.** Amends s. 28.35, F.S., relating to the Florida Clerks of Court Operations Corporation.

**Section 7.** Amends s. 28.36, F.S., relating budget procedures for the court-related functions of the clerks of the court.

**Section 8.** Creates s. 28.365, F.S., relating to the procurement requirements for the clerks of court.

**Section 9.** Amends s. 28.37, F.S., relating to fines, fees, services charges, and cost remitted to the state.

**Section 10.** Amends s.28.43, F.S., authorizing the Department of Revenue to adopt rules.

**Section 11.** Amends s. 34.041, F.S., relating to filing fees collected by the clerks.

**Section 12.** Amends s. 43.16, F.S., relating to the membership, powers and duties of the Justice Administrative Commission.

**Section 13.** Amends s. 110.205, F.S., relating to exemptions for career service positions.

**Section 14.** Amends s. 142.01, F.S., relating to the fine and forfeiture funds and disposition of revenue for the clerk of the circuit court.

**Section 15.** Amends s. 213.131, F.S., relating to the creation of the Clerks of the Court Trust Fund in the Department of Revenue.

**Section 16.** Amends s. 216.011, F.S., relating to definitions for the purpose defining a "state agency" or "agency".

**Section 17.** Provides for an approved budget for the clerks of court.

**Section 18.** Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill removes the funding for the clerks of court and Clerks of Court Operations Corporation from the General Appropriations Act and redirects all revenue from the Clerks of Court Trust Fund in the Justice Administrative Commission to the Department of Revenue. Removing these entities from the budget reduces state trust fund expenditures by \$453.1 million. As a state trust fund, it is assessed an 8% service charge payable to the General Revenue Fund based on the revenue collected in the trust fund. The Article V Revenue Estimating Conference projected the trust fund will generate approximately \$441.9 million in revenue for Fiscal Year 2010-2011 and \$470.9 for Fiscal Year 2011-12. The loss of the general revenue service charge is estimated to be \$37.7 million.

By reverting to the former budget processes, the bill outlines the process for calculating the clerks' budget, collecting revenue and submitting these funds to the Department of Revenue after expenditures have been satisfied. The remaining funds are then transferred from the Department of Revenue Clerks of the Court Trust Fund to the General Revenue Fund. While the excess revenue to be transferred to the General Revenue Fund cannot be determined at this time (the Corporation would have to certify budgets), based on the last four years when these policies were in practice, an average of \$62 million was transferred.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**





29 | court; revising duties of the corporation; deleting  
 30 | provisions relating to quarterly releases of funds to  
 31 | clerks by the corporation; creating s. 28.365, F.S.;  
 32 | subjecting clerks of the courts to certain procurement  
 33 | requirements and limitations; amending s. 28.37, F.S.;  
 34 | revising requirements for distribution of fines, fees,  
 35 | service charges, and court costs collected by clerks of  
 36 | the court; amending s. 28.43, F.S.; conforming provisions  
 37 | relating to the transfer of the Clerks of the Court Trust  
 38 | Fund; amending s. 34.041, F.S.; revising requirements for  
 39 | distribution of certain filing fees collected by clerks of  
 40 | the court; requiring certain filing fees to be retained as  
 41 | fee income of the office of the clerk of the circuit  
 42 | court; amending s. 43.16, F.S.; deleting provisions  
 43 | including the Florida Clerks of Court Operations  
 44 | Corporation under provisions relating to the Justice  
 45 | Administrative Commission; amending s. 110.205, F.S.;  
 46 | deleting an exemption from career service for and  
 47 | employees of the Florida Clerks of Court Operations  
 48 | Corporation officers; amending s. 142.01, F.S.; conforming  
 49 | provisions to the transfer of the Clerks of the Court  
 50 | Trust Fund; amending s. 213.131, F.S.; specifying the  
 51 | creation of the Clerks of the Court Trust Fund within the  
 52 | Department of Revenue; providing for credit of certain  
 53 | funds to the trust fund; amending s. 216.011, F.S.;  
 54 | deleting a reference to the Florida Clerks of Court  
 55 | Operations Corporation as a state agency; providing for

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56 approved budgets of the clerks of the circuit court for a  
 57 specified period; providing an effective date.

58

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

60

61 Section 1. The Clerks of the Court Trust Fund within the  
 62 Justice Administrative Commission, FLAIR number 21-2-588, is  
 63 transferred together with all balances in the fund to the  
 64 Department of Revenue.

65

65 Section 2. Subsection (6) of section 11.90, Florida  
 66 Statutes, is amended to read:

67

11.90 Legislative Budget Commission.-

68

(6) The commission shall have the power and duty to:

69

(a) Review and approve or disapprove budget amendments  
 70 recommended by the Governor or the Chief Justice of the Supreme  
 71 Court as provided in chapter 216.

72

(b) Develop the long-range financial outlook described in  
 73 s. 19, Art. III of the State Constitution.

74

(c) Review and approve, disapprove, or amend the budget of  
 75 the Florida Clerks of Court Operations Corporation.

76

(d) Review, approve, disapprove, or amend the total  
 77 combined budgets of the clerks of court or the budget of any  
 78 individual clerk of court.

79

(e) In addition to the powers and duties specified in this  
 80 subsection, the commission shall Exercise all other powers and  
 81 perform any other duties prescribed by the Legislature.

82

82 Section 3. Paragraph (a) of subsection (1) of section  
 83 28.241, Florida Statutes, is amended to read:

84 28.241 Filing fees for trial and appellate proceedings.—  
 85 (1)(a)1.a. Except as provided in sub-subparagraph b. and  
 86 subparagraph 2., the party instituting any civil action, suit,  
 87 or proceeding in the circuit court shall pay to the clerk of  
 88 that court a filing fee of up to \$395 in all cases in which  
 89 there are not more than five defendants and an additional filing  
 90 fee of up to \$2.50 for each defendant in excess of five. Of the  
 91 first \$265 in filing fees, \$80 must be remitted by the clerk to  
 92 the Department of Revenue for deposit into the General Revenue  
 93 Fund, \$180 must be remitted to the Department of Revenue for  
 94 deposit into the State Courts Revenue Trust Fund, and \$5 ~~\$3.50~~  
 95 must be remitted to the Department of Revenue for deposit into  
 96 the Administrative Clerks of the Court Trust Fund within the  
 97 Department of Financial Services ~~Justice Administrative~~  
 98 ~~Commission~~ and used to fund the contract with the Florida Clerks  
 99 of Court Operations Corporation created in s. 28.35, ~~and \$1.50~~  
 100 ~~shall be remitted to the Department of Revenue for deposit into~~  
 101 ~~the Administrative Trust Fund within the Department of Financial~~  
 102 ~~Services to fund clerk budget reviews conducted by the~~  
 103 ~~Department of Financial Services.~~ The next \$15 of the filing fee  
 104 collected shall be deposited in the state courts' Mediation and  
 105 Arbitration Trust Fund. One third of any filing fees collected  
 106 by the clerk of the circuit court in excess of \$100 shall be  
 107 remitted to the Department of Revenue for deposit into the  
 108 department's Clerks of the Court Trust Fund ~~within the Justice~~  
 109 ~~Administrative Commission.~~  
 110 b. The party instituting any civil action, suit, or  
 111 proceeding in the circuit court under chapter 39, chapter 61,

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112 | chapter 741, chapter 742, chapter 747, chapter 752, or chapter  
 113 | 753 shall pay to the clerk of that court a filing fee of up to  
 114 | \$295 in all cases in which there are not more than five  
 115 | defendants and an additional filing fee of up to \$2.50 for each  
 116 | defendant in excess of five. Of the first \$165 in filing fees,  
 117 | \$80 must be remitted by the clerk to the Department of Revenue  
 118 | for deposit into the General Revenue Fund, \$80 must be remitted  
 119 | to the Department of Revenue for deposit into the State Courts  
 120 | Revenue Trust Fund, and \$5 ~~\$3.50~~ must be remitted to the  
 121 | Department of Revenue for deposit into the Administrative Clerks  
 122 | ~~of the Court~~ Trust Fund within the Department of Financial  
 123 | Services ~~Justice Administrative Commission~~ and used to fund the  
 124 | contract with the Florida Clerks of Court Operations Corporation  
 125 | created in s. 28.35, ~~and \$1.50 shall be remitted to the~~  
 126 | ~~Department of Revenue for deposit into the Administrative Trust~~  
 127 | ~~Fund within the Department of Financial Services to fund clerk~~  
 128 | ~~budget reviews conducted by the Department of Financial~~  
 129 | ~~Services.~~ The next \$15 of the filing fee collected shall be  
 130 | deposited in the state courts' Mediation and Arbitration Trust  
 131 | Fund.

132 |       c. An additional filing fee of \$4 shall be paid to the  
 133 | clerk. The clerk shall remit \$3.50 to the Department of Revenue  
 134 | for deposit into the Court Education Trust Fund and shall remit  
 135 | 50 cents to the Department of Revenue for deposit into the  
 136 | department's Clerks of the Court Trust Fund ~~within the Justice~~  
 137 | ~~Administrative Commission~~ to fund clerk education. An additional  
 138 | filing fee of up to \$18 shall be paid by the party seeking each  
 139 | severance that is granted. The clerk may impose an additional

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140 | filing fee of up to \$85 for all proceedings of garnishment,  
 141 | attachment, replevin, and distress. Postal charges incurred by  
 142 | the clerk of the circuit court in making service by certified or  
 143 | registered mail on defendants or other parties shall be paid by  
 144 | the party at whose instance service is made. No additional fees,  
 145 | charges, or costs shall be added to the filing fees imposed  
 146 | under this section, except as authorized in this section or by  
 147 | general law.

148 |         2.a. Notwithstanding the fees prescribed in subparagraph  
 149 | 1., a party instituting a civil action in circuit court relating  
 150 | to real property or mortgage foreclosure shall pay a graduated  
 151 | filing fee based on the value of the claim.

152 |         b. A party shall estimate in writing the amount in  
 153 | controversy of the claim upon filing the action. For purposes of  
 154 | this subparagraph, the value of a mortgage foreclosure action is  
 155 | based upon the principal due on the note secured by the  
 156 | mortgage, plus interest owed on the note and any moneys advanced  
 157 | by the lender for property taxes, insurance, and other advances  
 158 | secured by the mortgage, at the time of filing the foreclosure.  
 159 | The value shall also include the value of any tax certificates  
 160 | related to the property. In stating the value of a mortgage  
 161 | foreclosure claim, a party shall declare in writing the total  
 162 | value of the claim, as well as the individual elements of the  
 163 | value as prescribed in this sub-subparagraph.

164 |         c. In its order providing for the final disposition of the  
 165 | matter, the court shall identify the actual value of the claim.  
 166 | The clerk shall adjust the filing fee if there is a difference  
 167 | between the estimated amount in controversy and the actual value.

168 of the claim and collect any additional filing fee owed or  
 169 provide a refund of excess filing fee paid.

170 d. The party shall pay a filing fee of:

171 (I) Three hundred and ninety-five dollars in all cases in  
 172 which the value of the claim is \$50,000 or less and in which  
 173 there are not more than five defendants. The party shall pay an  
 174 additional filing fee of up to \$2.50 for each defendant in  
 175 excess of five. Of the first \$265 in filing fees, \$80 must be  
 176 remitted by the clerk to the Department of Revenue for deposit  
 177 into the General Revenue Fund, \$180 must be remitted to the  
 178 Department of Revenue for deposit into the State Courts Revenue  
 179 Trust Fund, and \$5 ~~\$3.50~~ must be remitted to the Department of  
 180 Revenue for deposit into the Administrative Clerks of the Court  
 181 Trust Fund within the Department of Financial Services Justice  
 182 ~~Administrative Commission~~ and used to fund the contract with the  
 183 Florida Clerks of Court Operations Corporation created in s.  
 184 28.35, ~~and \$1.50 shall be remitted to the Department of Revenue~~  
 185 ~~for deposit into the Administrative Trust Fund within the~~  
 186 ~~Department of Financial Services to fund clerk budget reviews~~  
 187 ~~conducted by the Department of Financial Services.~~ The next \$15  
 188 of the filing fee collected shall be deposited in the state  
 189 courts' Mediation and Arbitration Trust Fund;

190 (II) Nine hundred dollars in all cases in which the value  
 191 of the claim is more than \$50,000 but less than \$250,000 and in  
 192 which there are not more than five defendants. The party shall  
 193 pay an additional filing fee of up to \$2.50 for each defendant  
 194 in excess of five. Of the first \$770 in filing fees, \$80 must be  
 195 remitted by the clerk to the Department of Revenue for deposit

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196 into the General Revenue Fund, \$685 must be remitted to the  
 197 Department of Revenue for deposit into the State Courts Revenue  
 198 Trust Fund, and \$5 ~~\$3.50~~ must be remitted to the Department of  
 199 Revenue for deposit into the Administrative Clerks of the Court  
 200 Trust Fund within the Department of Financial Services Justice  
 201 ~~Administrative Commission~~ and used to fund the contract with the  
 202 Florida Clerks of Court Operations Corporation described in s.  
 203 28.35, ~~and \$1.50 shall be remitted to the Department of Revenue~~  
 204 ~~for deposit into the Administrative Trust Fund within the~~  
 205 ~~Department of Financial Services to fund clerk budget reviews~~  
 206 ~~conducted by the Department of Financial Services.~~ The next \$15  
 207 of the filing fee collected shall be deposited in the state  
 208 courts' Mediation and Arbitration Trust Fund; or

209 (III) One thousand nine hundred dollars in all cases in  
 210 which the value of the claim is \$250,000 or more and in which  
 211 there are not more than five defendants. The party shall pay an  
 212 additional filing fee of up to \$2.50 for each defendant in  
 213 excess of five. Of the first \$1,770 in filing fees, \$80 must be  
 214 remitted by the clerk to the Department of Revenue for deposit  
 215 into the General Revenue Fund, \$1,685 must be remitted to the  
 216 Department of Revenue for deposit into the State Courts Revenue  
 217 Trust Fund, and \$5 ~~\$3.50~~ must be remitted to the Department of  
 218 Revenue for deposit into the Administrative Clerks of the Court  
 219 Trust Fund within the Department of Financial Services Justice  
 220 ~~Administrative Commission~~ to fund the contract with the Florida  
 221 Clerks of Court Operations Corporation created in s. 28.35, ~~and~~  
 222 ~~\$1.50 shall be remitted to the Department of Revenue for deposit~~  
 223 ~~into the Administrative Trust Fund within the Department of~~



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224 ~~Financial Services to fund clerk budget reviews conducted by the~~  
 225 ~~Department of Financial Services.~~ The next \$15 of the filing fee  
 226 collected shall be deposited in the state courts' Mediation and  
 227 Arbitration Trust Fund.

228 e. An additional filing fee of \$4 shall be paid to the  
 229 clerk. The clerk shall remit \$3.50 to the Department of Revenue  
 230 for deposit into the Court Education Trust Fund and shall remit  
 231 50 cents to the Department of Revenue for deposit into the  
 232 department's Clerks of the Court Trust Fund ~~within the Justice~~  
 233 ~~Administrative Commission~~ to fund clerk education. An additional  
 234 filing fee of up to \$18 shall be paid by the party seeking each  
 235 severance that is granted. The clerk may impose an additional  
 236 filing fee of up to \$85 for all proceedings of garnishment,  
 237 attachment, replevin, and distress. Postal charges incurred by  
 238 the clerk of the circuit court in making service by certified or  
 239 registered mail on defendants or other parties shall be paid by  
 240 the party at whose instance service is made. No additional fees,  
 241 charges, or costs shall be added to the filing fees imposed  
 242 under this section, except as authorized in this section or by  
 243 general law.

244 Section 4. Section 28.2455, Florida Statutes, is amended  
 245 to read:

246 28.2455 Transfer of trust funds in excess of amount needed  
 247 for clerk budgets.—By June 20th of each year, the Florida Clerks  
 248 of Court Operations Corporation shall identify the amount of  
 249 funds in the Clerks of the Court Trust Fund in excess of the  
 250 amount needed to fund the approved clerk of court budgets for  
 251 the current state fiscal year. The Justice Administrative

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252 Commission shall transfer the amount identified by the  
 253 corporation from the Clerks of the Court Trust Fund to the  
 254 General Revenue Fund by June 25th of each year.

255 Section 5. Paragraph (b) of subsection (5) of section  
 256 28.246, Florida Statutes, is amended to read:

257 28.246 Payment of court-related fees, charges, and costs;  
 258 partial payments; distribution of funds.—

259 (5) When receiving partial payment of fees, service  
 260 charges, court costs, and fines, clerks shall distribute funds  
 261 according to the following order of priority:

262 (b) That portion of fees, service charges, court costs,  
 263 and fines which are required to be retained by the clerk of the  
 264 court or deposited into the Clerks of the Court Trust Fund  
 265 within the Department of Revenue ~~Justice Administrative~~  
 266 ~~Commission~~.

267

268 To offset processing costs, clerks may impose either a per-month  
 269 service charge pursuant to s. 28.24(26)(b) or a one-time  
 270 administrative processing service charge at the inception of the  
 271 payment plan pursuant to s. 28.24(26)(c).

272 Section 6. Section 28.35, Florida Statutes, is amended to  
 273 read:

274 28.35 Florida Clerks of Court Operations Corporation.—

275 (1)(a) The Florida Clerks of Court Operations Corporation  
 276 is created as a public corporation organized to perform the  
 277 functions specified in this section ~~and s. 28.36 and shall be~~  
 278 ~~administratively housed within the Justice Administrative~~  
 279 ~~Commission. The corporation shall be a budget entity within the~~

280 | ~~Justice Administrative Commission, and its employees shall be~~  
 281 | ~~considered state employees. The corporation is not subject to~~  
 282 | ~~control, supervision, or direction by the Justice Administrative~~  
 283 | ~~Commission in the performance of its duties, but the employees~~  
 284 | ~~of the corporation shall be governed by the classification plan~~  
 285 | ~~and salary and benefits plan of the Justice Administrative~~  
 286 | ~~Commission. The classification plan must have a separate chapter~~  
 287 | ~~for the corporation.~~ All clerks of the circuit court shall be  
 288 | members of the corporation and hold their position and authority  
 289 | in an ex officio capacity. The functions assigned to the  
 290 | corporation shall be performed by an executive council pursuant  
 291 | to the plan of operation approved by the members.

292 | (b) The executive council shall be composed of eight  
 293 | clerks of the court elected by the clerks of the courts for a  
 294 | term of 2 years, with two clerks from counties with a population  
 295 | of fewer than 100,000, two clerks from counties with a  
 296 | population of at least 100,000 but fewer than 500,000, two  
 297 | clerks from counties with a population of at least 500,000 but  
 298 | fewer than 1 million, and two clerks from counties with a  
 299 | population of more than 1 million. ~~The executive council shall~~  
 300 | ~~also include, as ex officio members, a designee of the President~~  
 301 | ~~of the Senate and a designee of the Speaker of the House of~~  
 302 | ~~Representatives. The Chief Justice of the Supreme Court shall~~  
 303 | ~~designate one additional member to represent the state courts~~  
 304 | ~~system.~~

305 | (c) The corporation shall be considered a political  
 306 | subdivision of the state and shall be exempt from the corporate  
 307 | income tax. The corporation is ~~not~~ subject to the procurement

308 provisions of chapter 287 ~~120~~.

309 (d) The functions assigned to the corporation under this  
 310 section and ss. 28.36 and 28.37 are considered to be for a valid  
 311 public purpose.

312 (2) The duties of the corporation shall include the  
 313 following:

314 (a) Adopting a plan of operation.

315 (b) Conducting the election of directors as required in  
 316 paragraph (1)(a).

317 (c) Recommending to the Legislature changes in the various  
 318 court-related fines, fees, service charges, and court costs  
 319 established by law to ensure reasonable and adequate funding of  
 320 the clerks of the court in the performance of their court-  
 321 related functions.

322 (d) Developing and certifying a uniform system of  
 323 performance measures and applicable workload performance  
 324 standards for the functions specified in paragraph (3)(a) and  
 325 ~~the service unit costs required in s. 28.36 and measures for~~  
 326 clerk workload performance in meeting the workload performance  
 327 standards. These workload performance measures and workload  
 328 performance standards shall be designed to facilitate an  
 329 objective determination of the performance of each clerk in  
 330 accordance with minimum standards for fiscal management,  
 331 operational efficiency, and effective collection of fines, fees,  
 332 service charges, and court costs. The corporation shall develop  
 333 the workload performance measures and workload performance  
 334 standards in consultation with the Legislature ~~and the Supreme~~  
 335 ~~Court. The Legislature may modify the clerk performance measures~~

336 ~~and performance standards in legislation implementing the~~  
 337 ~~General Appropriations Act or other law.~~ When the corporation  
 338 finds a clerk has not met the workload performance standards,  
 339 the corporation shall identify the nature of each deficiency and  
 340 any corrective action recommended and taken by the affected  
 341 clerk of the court. The corporation shall notify the Legislature  
 342 ~~and the Supreme Court~~ of any clerk not meeting workload  
 343 performance standards and provide a copy of any corrective  
 344 action plans. For the purposes of this section, the term:

345 1. "Workload performance measures" means the measurement  
 346 of the activities and frequency of the work required for the  
 347 clerk to adequately perform the court-related duties of the  
 348 office.

349 2. "Workload performance standards" means the standards  
 350 developed to measure the timeliness and effectiveness of the  
 351 activities that are accomplished by the clerk in the performance  
 352 of the court-related duties of the office.

353 (e) Pursuant to contract with the Chief Financial Officer,  
 354 establishing a process for the review of proposed court-related  
 355 budgets submitted by clerks of the court for completeness and  
 356 compliance with this section and ss. 28.36 and 28.37. Such  
 357 process shall be designed and be of sufficient detail to permit  
 358 independent verification and validation of such budgets. The  
 359 contract shall specify the process to be used in determining  
 360 compliance by the corporation with this section and ss. 28.36  
 361 and 28.37 and shall require the corporation to determine the  
 362 minimum amount of revenue necessary for each clerk of court to  
 363 efficiently perform the list of court-related functions

364 specified in paragraph (3)(a) in its budget review and approval  
 365 process.

366 (f) ~~(e)~~ Reviewing and certifying proposed budgets submitted  
 367 by clerks of the court using the process approved by the Chief  
 368 Financial Officer pursuant to paragraph (e) for the purpose of  
 369 making the certification in paragraph (3)(a). As part of this  
 370 process, the corporation shall: ~~pursuant to s. 28.36.~~

371 1. Calculate the minimum amount of revenue necessary for  
 372 each clerk of court to efficiently perform the list of court-  
 373 related functions specified in paragraph (3)(a).

374 2. Prepare a cost comparison of similarly situated clerks  
 375 of court, based on county population and numbers of filings,  
 376 using the standard list of court-related functions specified in  
 377 paragraph (3)(a).

378 3. Conduct an annual base budget review and an annual  
 379 budget exercise examining the total budget of each clerk of  
 380 court. The review shall examine revenues from all sources,  
 381 expenses of court-related functions, and expenses of non-court-  
 382 related functions as necessary to determine that court-related  
 383 revenues are not being used for non-court-related purposes.  
 384 Funds paid by a clerk to join or be a member of any group or  
 385 organization shall be separately listed and the benefits  
 386 received from any such group or organization described in  
 387 detail. The review and exercise shall identify potential  
 388 targeted budget reductions in the percentage amount provided in  
 389 Schedule VIII-B of the state's prior year's legislative budget  
 390 instructions, as referenced in s. 216.023(3), or an equivalent  
 391 schedule or instruction as may be adopted by the Legislature.

392 4. Identify those proposed budgets containing funding for  
 393 items not included on the standard list of court-related  
 394 functions specified in paragraph (3) (a).

395 5. Identify those clerks projected to have court-related  
 396 revenues insufficient to fund their anticipated court-related  
 397 expenditures.

398 (g) ~~(f)~~ Developing and conducting clerk education programs.

399 (h) ~~(g)~~ Publishing a uniform schedule of actual fees,  
 400 service charges, and costs charged by a clerk of the court  
 401 pursuant to general law.

402 (i) By August 1 of each year, submitting to the  
 403 Legislative Budget Commission, as provided in s. 11.90, its  
 404 proposed budget and the information described in paragraph (f),  
 405 as well as the approved budgets for each clerk of court and the  
 406 corporation. By September 15 of each year, the Legislative  
 407 Budget Commission shall consider the submitted budgets and shall  
 408 approve, disapprove, or amend the corporation's budget and shall  
 409 approve, disapprove, or amend and approve the total of the  
 410 clerks' combined budgets or any individual clerk's budget. If  
 411 the Legislative Budget Commission fails to approve or amend the  
 412 clerks' combined budgets by September 15, the clerk shall  
 413 continue to perform the court-related functions based upon the  
 414 clerk's approved budget for the preceding county fiscal year. If  
 415 the Legislative Budget Commission fails to approve or amend the  
 416 corporation's budget by September 15, the clerk shall continue  
 417 to operate based upon the corporation's approved budget for the  
 418 preceding county fiscal year.

419 (3) (a) The list of court-related functions that clerks may

420 | fund from filing fees, service charges, court costs, and fines  
 421 | ~~is perform~~ are limited to those functions expressly authorized  
 422 | by law or court rule. Those functions include the following:  
 423 | case maintenance; records management; court preparation and  
 424 | attendance; processing the assignment, reopening, and  
 425 | reassignment of cases; processing of appeals; collection and  
 426 | distribution of fines, fees, service charges, and court costs;  
 427 | processing of bond forfeiture payments; payment of jurors and  
 428 | witnesses; payment of expenses for meals or lodging provided to  
 429 | jurors; data collection and reporting; processing of jurors;  
 430 | determinations of indigent status; and reasonable administrative  
 431 | support costs to enable the clerk of the court to carry out  
 432 | these court-related functions.

433 | (b) The list of functions that clerks may not fund from  
 434 | filing fees, service charges, court costs, and fines includes  
 435 | ~~state appropriations include:~~

- 436 | 1. Those functions not specified within paragraph (a).
- 437 | 2. Functions assigned by administrative orders which are  
 438 | not required for the clerk to perform the functions in paragraph  
 439 | (a).
- 440 | 3. Enhanced levels of service which are not required for  
 441 | the clerk to perform the functions in paragraph (a).
- 442 | 4. Functions identified as local requirements in law or  
 443 | local optional programs.

444 | (4) The corporation shall ~~prepare a legislative budget~~  
 445 | ~~request for the resources necessary to perform its duties,~~  
 446 | ~~submit the request pursuant to chapter 216,~~ and be funded  
 447 | pursuant to a contract with the Chief Financial Officer. Funds



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448 shall be provided to the Chief Financial Officer for such  
 449 purpose as appropriated by general law. Such funds shall be  
 450 available to the corporation for the performance of the duties  
 451 and responsibilities as set forth in this section ~~as a budget~~  
 452 ~~entity in the General Appropriations Act.~~ The corporation may  
 453 hire staff and pay other expenses from such funds ~~state~~  
 454 ~~appropriations~~ as necessary to perform the official duties and  
 455 responsibilities of the corporation as described in this section  
 456 ~~by law.~~

457 (5) (a) The corporation shall submit an annual audited  
 458 financial statement to the Auditor General in a form and manner  
 459 prescribed by the Auditor General. The Auditor General shall  
 460 conduct an annual audit of the operations of the corporation,  
 461 including the use of funds and compliance with the provisions of  
 462 this section and ss. 28.36 and 28.37.

463 (b) Certified public accountants conducting audits of  
 464 counties pursuant to s. 218.39 shall report, as part of the  
 465 audit, whether or not the clerks of the courts have complied  
 466 with the requirements of this section and s. 28.36. ~~In addition,~~  
 467 ~~each clerk of court shall forward a copy of the portion of the~~  
 468 ~~financial audit relating to the court-related duties of the~~  
 469 ~~clerk of court to the Supreme Court.~~ The Auditor General shall  
 470 develop a compliance supplement for the audit of compliance with  
 471 the budgets and applicable workload performance standards  
 472 certified by the corporation.

473 Section 7. Section 28.36, Florida Statutes, is amended to  
 474 read:

475 28.36 Budget procedure.—There is established a budget

476 ~~procedure for preparing budget requests for funding~~ for the  
 477 court-related functions of the clerks of the court.

478 (1) Only those functions on the standard list developed  
 479 pursuant to s. 28.35(3)(a) may be funded from fees, service  
 480 charges, court costs, and fines retained by the clerks of the  
 481 court. For the county fiscal year beginning October 1, 2011, and  
 482 for each county fiscal year thereafter, each clerk of court  
 483 shall prepare a budget request for court-related expenditures  
 484 that the last quarter of the county fiscal year and the first  
 485 three quarters of the next county fiscal year. The proposed  
 486 budget shall be prepared, summarized, and submitted by the clerk  
 487 in each county to the Florida Clerks of Court Operations  
 488 Corporation in the manner and form prescribed by the corporation  
 489 to meet the requirements of law. ~~Each clerk shall forward a copy~~  
 490 ~~of his or her budget request to the Supreme Court.~~ The budget  
 491 requests must be provided to the corporation by June ~~October~~ 1  
 492 of the each year before the year of the budget.

493 (2) Each proposed budget shall also conform to the  
 494 requirements of this subsection. On or before June 1 for each  
 495 fiscal year thereafter, the clerk of the court in each county  
 496 shall prepare, summarize, and submit a proposed budget to the  
 497 Florida Clerks of Court Operations Corporation in the manner and  
 498 form prescribed by the corporation. However, at a minimum, the  
 499 proposed budgets shall include for each clerk the information  
 500 required by s. 28.35(2)(f) and shall specify any salary  
 501 increases or any bonuses anticipated to be made to employees of  
 502 the office performing court-related duties. The proposed budget  
 503 must provide detailed information on the anticipated revenues

504 available and expenditures necessary for the performance of the  
 505 standard list of court-related functions of the clerk's office  
 506 developed pursuant to s. 28.35(3)(a) for the county fiscal year  
 507 beginning the following October 1. The Florida Clerks of Court  
 508 Operations Corporation shall also prepare its proposed budget by  
 509 July 1 of each year ~~clerk shall include in his or her budget~~  
 510 ~~request a projection of the amount of court-related fees,~~  
 511 ~~service charges, and any other court-related clerk fees which~~  
 512 ~~will be collected during the proposed budget period. If the~~  
 513 ~~corporation determines that the proposed budget is limited to~~  
 514 ~~the standard list of court-related functions in s. 28.35(3)(a)~~  
 515 ~~and the projected court-related revenues are less than the~~  
 516 ~~proposed budget, the clerk shall increase all fees, service~~  
 517 ~~charges, and any other court-related clerk fees and charges to~~  
 518 ~~the maximum amounts specified by law or the amount necessary to~~  
 519 ~~resolve the deficit, whichever is less.~~

520 (3) Each proposed budget must be balanced, such that the  
 521 total of the estimated revenues available must equal or exceed  
 522 the total of the anticipated expenditures. Such revenues include  
 523 cash balances brought forward from the prior fiscal period;  
 524 revenue projected to be received from fees, service charges,  
 525 court costs, and fines for court-related functions during the  
 526 fiscal period covered by the budget; and supplemental revenue  
 527 that may be requested pursuant to subsection (4). The  
 528 anticipated expenditures must be itemized as required by the  
 529 corporation, pursuant to contract with the Chief Financial  
 530 Officer ~~clerk shall include in his or her budget request the~~  
 531 ~~number of personnel and the proposed budget for each of the~~

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532 ~~following core services:~~

533 ~~(a) Circuit criminal.~~

534 ~~(b) County criminal.~~

535 ~~(c) Juvenile delinquency.~~

536 ~~(d) Criminal traffic.~~

537 ~~(e) Circuit civil.~~

538 ~~(f) County civil.~~

539 ~~(g) Civil traffic.~~

540 ~~(h) Probate.~~

541 ~~(i) Family.~~

542 ~~(j) Juvenile dependency.~~

543

544 ~~Central administrative costs shall be allocated among the core~~  
 545 ~~services categories.~~

546 (4) If a clerk of the court estimates that available funds  
 547 plus projected revenues from fines, fees, service charges, and  
 548 costs for court-related services are insufficient to meet the  
 549 anticipated expenditures for the standard list of court-related  
 550 functions in s. 28.35(3)(a) performed by his or her office, the  
 551 clerk must report the revenue deficit to the corporation in the  
 552 manner and form prescribed by the corporation pursuant to  
 553 contract with the Chief Financial Officer. The corporation shall  
 554 verify that the proposed budget is limited to the standard list  
 555 of court-related functions in s. 28.35(3)(a) and that any  
 556 reported deficit funding is necessary for the clerk to  
 557 adequately perform the court-related duties based on workload.

558 (a) If the corporation verifies that the proposed budget  
 559 is limited to the standard list of court-related functions in s.

560 28.35(3)(a) and a revenue deficit is projected, a clerk seeking  
 561 to retain revenues pursuant to this subsection shall increase  
 562 all fees, service charges, and any other court-related clerk  
 563 fees and charges to the maximum amounts specified by law or the  
 564 amount necessary to resolve the deficit, whichever is less. If,  
 565 after increasing fees, service charges, and any other court-  
 566 related clerk fees and charges to the maximum amounts specified  
 567 by law, a revenue deficit is still projected, the corporation  
 568 shall, pursuant to the terms of the contract with the Chief  
 569 Financial Officer, certify a revenue deficit and notify the  
 570 Department of Revenue that the clerk is authorized to retain  
 571 revenues, in an amount necessary to fully fund the projected  
 572 revenue deficit, which he or she would otherwise be required to  
 573 remit to the Department of Revenue for deposit into the  
 574 department's Clerks of the Court Trust Fund pursuant to s.  
 575 28.37. If a revenue deficit is projected for that clerk after  
 576 retaining all of the projected collections from the court-  
 577 related fines, fees, service charges, and costs, the Department  
 578 of Revenue shall certify the amount of the revenue deficit  
 579 amount to the Executive Office of the Governor and request  
 580 release authority for funds appropriated for this purpose from  
 581 the department's Clerks of the Court Trust Fund. Notwithstanding  
 582 the provisions of s. 216.192 relating to the release of funds,  
 583 the Executive Office of the Governor may approve the release of  
 584 funds appropriated to resolve projected revenue deficits in  
 585 accordance with the notice, review, and objection procedures set  
 586 forth in s. 216.177 and shall provide notice to the Chief  
 587 Financial Officer. The Department of Revenue shall request

588 monthly distributions from the Chief Financial Officer in equal  
 589 amounts to each clerk certified to have a revenue deficit, in  
 590 accordance with the releases approved by the Governor.

591 (b) If the Chief Financial Officer finds the court-related  
 592 budget proposed by a clerk includes functions not included in  
 593 the standard list of court-related functions in s. 28.35(3)(a),  
 594 the Chief Financial Officer shall notify the clerk of the amount  
 595 of the proposed budget not eligible to be funded from fines,  
 596 fees, service charges, and costs for court-related functions and  
 597 shall identify appropriate corrective measures to ensure budget  
 598 integrity. The clerk shall immediately discontinue all  
 599 ineligible expenditures of court-related funds for non-court-  
 600 related functions and reimburse the Clerks of the Court Trust  
 601 Fund for any previously ineligible expenditures made for non-  
 602 court-related functions, and shall implement any corrective  
 603 actions identified by the Chief Financial Officer.

604 ~~(4) The budget request must identify the service units to~~  
 605 ~~be provided within each core service. The service units shall be~~  
 606 ~~developed by the corporation, in consultation with the Supreme~~  
 607 ~~Court, the Chief Financial Officer, and the appropriations~~  
 608 ~~committees of the Senate and the House of Representatives.~~

609 ~~(5) The budget request must propose a unit cost for each~~  
 610 ~~service unit. The corporation shall provide a copy of each~~  
 611 ~~clerk's budget request to the Supreme Court.~~

612 ~~(6) The corporation shall review each individual clerk's~~  
 613 ~~prior year expenditures, projected revenue, proposed unit costs,~~  
 614 ~~and the proposed budget for each of the core services~~  
 615 ~~categories. The corporation shall compare each clerk's prior-~~

616 ~~year expenditures and unit costs for core services with a peer~~  
 617 ~~group of clerks' offices having a population of a similar size~~  
 618 ~~and a similar number of case filings. If the corporation finds~~  
 619 ~~that the expenditures, unit costs, or proposed budget of a clerk~~  
 620 ~~is significantly higher than those of clerks in that clerk's~~  
 621 ~~peer group, the corporation shall require the clerk to submit~~  
 622 ~~documentation justifying the difference in each core services~~  
 623 ~~category. Justification for higher expenditures may include, but~~  
 624 ~~is not limited to, collective bargaining agreements, county~~  
 625 ~~civil service agreements, and the number and distribution of~~  
 626 ~~courthouses served by the clerk. If the expenditures and unit~~  
 627 ~~costs are not justified, the corporation shall recommend a~~  
 628 ~~reduction in the funding for that core services category in the~~  
 629 ~~budget request to an amount similar to the peer group of clerks~~  
 630 ~~or to an amount that the corporation determines is justified.~~

631 ~~(7) The corporation shall complete its review and~~  
 632 ~~adjustments to the clerks' budget requests and make its~~  
 633 ~~recommendations to the Legislature and the Supreme Court by~~  
 634 ~~December 1 each year.~~

635 ~~(8) The Chief Financial Officer shall review the proposed~~  
 636 ~~unit costs associated with each clerk of court's budget request~~  
 637 ~~and make recommendations to the Legislature. The Chief Financial~~  
 638 ~~Officer may conduct any audit of the corporation or a clerk of~~  
 639 ~~court as authorized by law. The Chief Justice of the Supreme~~  
 640 ~~Court may request an audit of the corporation or any clerk of~~  
 641 ~~court by the Chief Financial Officer.~~

642 ~~(9) The Legislature shall appropriate the total amount for~~  
 643 ~~the budgets of the clerks in the General Appropriations Act. The~~

644 ~~Legislature may reject or modify any or all of the unit costs~~  
 645 ~~recommended by the corporation. If the Legislature does not~~  
 646 ~~specify the unit costs in the General Appropriations Act or~~  
 647 ~~other law, the unit costs recommended by the corporation shall~~  
 648 ~~be the official unit costs for that budget period.~~

649 ~~(10)(a) Beginning in the 2010-2011 fiscal year, the~~  
 650 ~~corporation shall release appropriations to each clerk~~  
 651 ~~quarterly. If funds in the Clerks of Court Trust Fund are~~  
 652 ~~insufficient to provide a release in a quarter in a single~~  
 653 ~~release, the corporation may release partial amounts for that~~  
 654 ~~quarter so long as the total of those partial amounts does not~~  
 655 ~~exceed that quarter's release. If funds in the Clerks of Court~~  
 656 ~~Trust Fund are insufficient for the first quarter release, the~~  
 657 ~~corporation may make a request to the Governor for a trust fund~~  
 658 ~~loan pursuant to chapter 215. The amount of the first three~~  
 659 ~~releases shall be based on one quarter of the estimated budget~~  
 660 ~~for each clerk as identified in the General Appropriations Act.~~

661 ~~(b) The corporation shall estimate the fourth quarter's~~  
 662 ~~number of units to be performed by each clerk. The amount of the~~  
 663 ~~fourth quarter release shall be based on the approved unit cost~~  
 664 ~~times the estimated number of units of the fourth quarter with~~  
 665 ~~the following adjustment: the fourth quarter release shall be~~  
 666 ~~adjusted based on the first three quarter's actual number of~~  
 667 ~~service units provided as reported to the corporation by each~~  
 668 ~~clerk. If the clerk has performed fewer service units in the~~  
 669 ~~first three quarters of the year compared to three quarters of~~  
 670 ~~the estimated number of service units in the General~~  
 671 ~~Appropriations Act, the corporation shall decrease the fourth-~~



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672 ~~quarter release. The amount of the decrease shall equal the~~  
 673 ~~amount of the difference between the estimated number of service~~  
 674 ~~units for the first three quarters and the actual number of~~  
 675 ~~service units provided in the first three quarters times the~~  
 676 ~~approved unit cost.~~

677 ~~(c) No adjustment for the fourth quarter release shall be~~  
 678 ~~made if the clerk has performed more units than the estimate for~~  
 679 ~~the first three quarters.~~

680 ~~(d) If the clerk performs fewer units in the fourth~~  
 681 ~~quarter than estimated by the corporation, the corporation shall~~  
 682 ~~decrease the first quarter release for the clerk in the next~~  
 683 ~~fiscal year by the amount of the difference between the~~  
 684 ~~estimated number of service units for the fourth quarter and the~~  
 685 ~~actual number of service units performed in that quarter times~~  
 686 ~~the approved unit cost.~~

687 ~~(e) The total of all releases to the clerks of court may~~  
 688 ~~not exceed the amount appropriated in the General Appropriations~~  
 689 ~~Act. If, during the year, the corporation determines that the~~  
 690 ~~projected releases of appropriations for service units will~~  
 691 ~~exceed the estimate used in the General Appropriations Act and~~  
 692 ~~result in statewide expenditures greater than the amount~~  
 693 ~~appropriated by law, the corporation shall reduce all service~~  
 694 ~~unit costs of all clerks by the amount necessary to ensure that~~  
 695 ~~service units are funded within the total amount appropriated to~~  
 696 ~~the clerks of court. If such action is necessary, the~~  
 697 ~~corporation shall notify the Legislative Budget Commission. If~~  
 698 ~~the Legislative Budget Commission objects to the adjustments,~~  
 699 ~~the Legislative Budget Commission shall adjust all service unit~~

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700 | ~~costs by the amount necessary to ensure that projected units of~~  
 701 | ~~service are funded within the total amount appropriated to the~~  
 702 | ~~clerks of court at its next scheduled meeting.~~

703 | ~~(11) The corporation may submit proposed legislation to~~  
 704 | ~~the Governor, the President of the Senate, and the Speaker of~~  
 705 | ~~the House of Representatives relating to the preparation of~~  
 706 | ~~budget requests of the clerks of court.~~

707 | Section 8. Section 28.365, Florida Statutes, is created to  
 708 | read:

709 | 28.365 Procurement.—The clerks of court are subject to the  
 710 | procurement requirements and limitations of chapter 287 for  
 711 | expenditures made pursuant to the budget provided for in ss.  
 712 | 28.35 and 28.36.

713 | Section 9. Section 28.37, Florida Statutes, is amended to  
 714 | read:

715 | 28.37 Fines, fees, service charges, and costs remitted to  
 716 | the state.—

717 | (1) Pursuant to s. 14(b), Art. V of the State  
 718 | Constitution, selected salaries, costs, and expenses of the  
 719 | state courts system and court-related functions shall be funded  
 720 | from a portion of the revenues derived from statutory fines,  
 721 | fees, service charges, and costs collected by the clerks of the  
 722 | court.

723 | (2) Beginning July 1, 2011, except as otherwise provided  
 724 | in ss. 28.241 and 34.041, one-third of all fines, fees, service  
 725 | charges, and court costs collected by the clerks of the court  
 726 | during the prior month for the performance of court-related  
 727 | functions shall be remitted to the Department of Revenue for

728 deposit into the department's Clerks of the Court Trust Fund.  
 729 Such collections do not include funding received for the  
 730 operation of the Title IV-D child support collections and  
 731 disbursement program. The clerk of the court shall remit the  
 732 revenues collected during the prior month due to the state on or  
 733 before the 20th day of each month. The Department of Revenue  
 734 shall make a monthly transfer to the General Revenue Fund of the  
 735 funds in the department's Clerks of the Court Trust Fund that  
 736 are not needed to resolve clerk of the court revenue deficits,  
 737 as specified in s. 28.36.

738 (3) Beginning January 1, 2012, and each January 1  
 739 thereafter for the preceding county fiscal year of October 1  
 740 through September 30, the clerk of the court shall remit to the  
 741 Department of Revenue for deposit in the General Revenue Fund  
 742 the cumulative excess of all fines, fees, service charges, and  
 743 court costs retained by the clerks of the court, plus any funds  
 744 received by the clerks of the court from the department's Clerks  
 745 of the Court Trust Fund under s. 28.36(4)(a), that exceed the  
 746 amount needed to meet the approved budget amounts established  
 747 under s. 28.36.

748 (4) The Department of Revenue shall collect any funds that  
 749 the Florida Clerks of Court Operations Corporation determines  
 750 upon investigation were due on January 1 but not remitted to the  
 751 department ~~Except as otherwise provided in ss. 28.241 and~~  
 752 ~~34.041, all court-related fines, fees, service charges, and~~  
 753 ~~costs are considered state funds and shall be remitted by the~~  
 754 ~~clerk to the Department of Revenue for deposit into the Clerks~~  
 755 ~~of the Court Trust Fund within the Justice Administrative~~

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756 ~~Commission. However, 10 percent of all court-related fines~~  
 757 ~~collected by the clerk shall be deposited into the clerk's~~  
 758 ~~Public Records Modernization Trust Fund to be used exclusively~~  
 759 ~~for additional clerk court-related operational needs and program~~  
 760 ~~enhancements.~~

761 Section 10. Subsection (1) of section 28.43, Florida  
 762 Statutes, is amended to read:

763 28.43 Adoption of rules relating to ss. 28.35, 28.36, and  
 764 28.37.—

765 (1) The Department of Revenue may adopt rules necessary to  
 766 carry out its responsibilities in ss. 28.35, 28.36, and 28.37.  
 767 The rules shall include forms and procedures for transferring  
 768 funds from the clerks of the court to the Clerks of the Court  
 769 Trust Fund within the Department of Revenue ~~Justice~~  
 770 ~~Administrative Commission.~~

771 Section 11. Paragraph (b) of subsection (1) of section  
 772 34.041, Florida Statutes, is amended to read:

773 34.041 Filing fees.—

774 (1)

775 (b) The first \$80 of the filing fee collected under  
 776 subparagraph (a)4. shall be remitted to the Department of  
 777 Revenue for deposit into the General Revenue Fund. The next \$15  
 778 of the filing fee collected under subparagraph (a)4., and the  
 779 first \$10 of the filing fee collected under subparagraph (a)7.,  
 780 shall be deposited in the state courts' Mediation and  
 781 Arbitration Trust Fund. One-third of any filing fees collected  
 782 by the clerk under this section in excess of the first \$95  
 783 collected under subparagraph (a)4. shall be remitted to the

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784 Department of Revenue for deposit into the department's Clerks  
 785 of the Court Trust Fund. An additional filing fee of \$4 shall be  
 786 paid to the clerk. The clerk shall transfer \$3.50 to the  
 787 Department of Revenue for deposit into the Court Education Trust  
 788 Fund and shall transfer 50 cents to the Department of Revenue  
 789 for deposit into the department's Clerks of the Court Trust Fund  
 790 ~~within the Justice Administrative Commission~~ to fund clerk  
 791 education. Postal charges incurred by the clerk of the county  
 792 court in making service by mail on defendants or other parties  
 793 shall be paid by the party at whose instance service is made.  
 794 Except as provided herein, filing fees and service charges for  
 795 performing duties of the clerk relating to the county court  
 796 shall be as provided in ss. 28.24 and 28.241. Except as  
 797 otherwise provided herein, all filing fees shall be retained as  
 798 fee income of the office of the clerk of the circuit court  
 799 ~~remitted to the Department of Revenue for deposit into the~~  
 800 ~~Clerks of the Court Trust Fund within the Justice Administrative~~  
 801 ~~Commission.~~ Filing fees imposed by this section may not be added  
 802 to any penalty imposed by chapter 316 or chapter 318.

803 Section 12. Subsection (5) of section 43.16, Florida  
 804 Statutes, is amended to read:

805 43.16 Justice Administrative Commission; membership,  
 806 powers and duties.—

807 (5) The duties of the commission shall include, but not be  
 808 limited to, the following:

809 (a) The maintenance of a central state office for  
 810 administrative services and assistance when possible to and on  
 811 behalf of the state attorneys and public defenders of Florida,

812 | the capital collateral regional counsel of Florida, the criminal  
 813 | conflict and civil regional counsel, and the Guardian Ad Litem  
 814 | Program, ~~and the Florida Clerks of Court Operations Corporation.~~

815 |       (b) Each state attorney, public defender, criminal  
 816 | conflict and civil regional counsel, and the Guardian Ad Litem  
 817 | Program, ~~and the Florida Clerks of Court Operations Corporation~~  
 818 | shall continue to prepare necessary budgets, vouchers that  
 819 | represent valid claims for reimbursement by the state for  
 820 | authorized expenses, and other things incidental to the proper  
 821 | administrative operation of the office, such as revenue  
 822 | transmittals to the Chief Financial Officer and automated  
 823 | systems plans, but will forward same to the commission for  
 824 | recording and submission to the proper state officer. However,  
 825 | when requested by a state attorney, a public defender, a  
 826 | criminal conflict and civil regional counsel, or the Guardian Ad  
 827 | Litem Program, the commission will either assist in the  
 828 | preparation of budget requests, voucher schedules, and other  
 829 | forms and reports or accomplish the entire project involved.

830 |       Section 13. Paragraph (x) of subsection (2) of section  
 831 | 110.205, Florida Statutes, is amended to read:

832 |       110.205 Career service; exemptions.—

833 |       (2) EXEMPT POSITIONS.—The exempt positions that are not  
 834 | covered by this part include the following:

835 |       (x) All officers and employees of the Justice  
 836 | Administrative Commission, Office of the State Attorney, Office  
 837 | of the Public Defender, regional offices of capital collateral  
 838 | counsel, offices of criminal conflict and civil regional  
 839 | counsel, and Statewide Guardian Ad Litem Office, including the

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840 circuit guardian ad litem programs ~~and the Florida Clerks of~~  
 841 ~~Court Operations Corporation.~~

842 Section 14. Subsections (2) and (3) of section 142.01,  
 843 Florida Statutes, are amended to read:

844 142.01 Fine and forfeiture fund; disposition of revenue;  
 845 clerk of the circuit court.—

846 ~~(2) All revenues received by the clerk in the fine and~~  
 847 ~~forfeiture fund from court-related fees, fines, costs, and~~  
 848 ~~service charges are considered state funds and shall be remitted~~  
 849 ~~monthly to the Department of Revenue for deposit into the Clerks~~  
 850 ~~of the Court Trust Fund within the Justice Administrative~~  
 851 ~~Commission.~~

852 ~~(2)(3)~~ Notwithstanding ~~the provisions of~~ this section, all  
 853 fines and forfeitures arising from operation of ~~the provisions~~  
 854 ~~of~~ s. 318.1215 shall be disbursed in accordance with that  
 855 section.

856 Section 15. Section 213.131, Florida Statutes, is amended  
 857 to read:

858 213.131 Clerks of the Court Trust Fund within the  
 859 Department of Revenue ~~Justice Administrative Commission.~~—The  
 860 Clerks of the Court Trust Fund is created within the Department  
 861 of Revenue ~~Justice Administrative Commission.~~ Funds received by  
 862 the department from the clerks of court shall be credited to the  
 863 trust fund as provided in chapter 2001-122, Laws of Florida, to  
 864 be used for the purposes set forth in that act.

865 Section 16. Paragraph (qq) of subsection (1) of section  
 866 216.011, Florida Statutes, is amended to read:

867 216.011 Definitions.—

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868 (1) For the purpose of fiscal affairs of the state,  
 869 appropriations acts, legislative budgets, and approved budgets,  
 870 each of the following terms has the meaning indicated:

871 (qq) "State agency" or "agency" means any official,  
 872 officer, commission, board, authority, council, committee, or  
 873 department of the executive branch of state government. For  
 874 purposes of this chapter and chapter 215, "state agency" or  
 875 "agency" includes, but is not limited to, state attorneys,  
 876 public defenders, criminal conflict and civil regional counsel,  
 877 capital collateral regional counsel, ~~the Florida Clerks of Court~~  
 878 ~~Operations Corporation~~, the Justice Administrative Commission,  
 879 the Florida Housing Finance Corporation, and the Florida Public  
 880 Service Commission. Solely for the purposes of implementing s.  
 881 19(h), Art. III of the State Constitution, the terms "state  
 882 agency" or "agency" include the judicial branch.

883 Section 17. For the period of July 1, 2011, through  
 884 September 30, 2011, the approved budget for the clerks of the  
 885 circuit court shall be \$112,845,078. The Clerks of Court  
 886 Operations Corporation shall determine budget amounts for the  
 887 individual clerks.

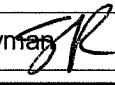

888 Section 18. This act shall take effect July 1, 2011.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 5501      PCB TEDAS 11-03      Department of Highway Safety and Motor Vehicles  
**SPONSOR(S):** Transportation & Economic Development Appropriations Subcommittee, Horner  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Economic Development Appropriations Subcommittee	13 Y, 0 N	Rayman	Davis
1) Appropriations Committee		Rayman 	Leznoff 

### SUMMARY ANALYSIS

Proposed Committee Bill TEDAS 11-03 provides for the consolidation of functions within the Department of Highway Safety and Motor Vehicles by eliminating the Divisions of Driver Licenses and Motor Vehicles and creating the Division of Motorist Services. The bill makes changes to cross references throughout Florida Statutes, conforming to the new division.

The bill continues the transition of all driver license issuance services to tax collectors who are Constitutional officers. Specifically, the bill:

- Authorizes a tax collector to establish a branch office to conduct state business;
- Authorizes all county tax collectors, who are constitutional officers, as driver license agents upon such application;
- Provides all tax collectors, who are constitutional officers, shall assume all driver license issuance services by December 31, 2013;
- Authorizes the department to adopt rules and allow counties to create agreements to provide driver license services across county lines;
- Provides for revenue sharing between the department and tax collectors for replacement driver licenses and replacement identification cards.

The bill conforms to the House of Representatives proposed General Appropriations Act by realigning the department's budget authority to accommodate their structural shift to the Division of Motorist Services, and reduces budget authority to further the transition of driver license services to tax collectors.

The bill is estimated to have a positive fiscal impact on the Highway Safety Operating Trust Fund; approximately \$2.1 million in FY 2011-12.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

Chapter 20, F.S., provides the organizational structure for the various departments.

Currently, section 20.24, F.S., provides for the establishment of the Department of Highway Safety and Motor Vehicles and three divisions within its structure to maintain safety on the highways, directly and in a supporting role. These are the Division of the Florida Highway Patrol (FHP), Division of Driver Licenses (DL), and the Division of Motor Vehicles (DMV).

Chapter 322, F.S., provides for driver license issuance, driver regulation, driver education, and problem driver improvement. Currently, the department shall authorize any or all tax collectors to serve as agents of the department upon application for specified driver's license services. However, all revenues associated with replacement driver licenses and identification cards are deposited in either the Highway Safety Operating Trust Fund or the General Revenue Fund, regardless of whether the department or a tax collector provides the service. This section also provides that the department, in conjunction with Florida Tax Collectors Association and the Florida Association of Counties, develop a plan to transition all driver license issuance services to county tax collectors and report their findings to the Legislature.

#### Proposed Changes

This bill amends section 20.24, F.S., to create a Division of Motorist Services within the department while eliminating the Division of Driver Licenses (DL) and the Division of Motor Vehicles (DMV) as two separate entities. The Division of Motorist Services is a merger of the DL and the DMV. Since the two divisions have similar functions and serve the same customers, merging the divisions will allow the department to capitalize on operational efficiencies and result in cost savings while enhancing customer service delivery.

This bill creates section 218.337, F.S. to provide that a tax collector may establish one or more branch offices by acquiring title to real property or by lease agreement. The tax collector may staff such branch offices to conduct state business only upon execution of an interagency agreement or, if authorized to do so by resolution of the county governing body, conduct business pursuant to s. (1) (k), Art. VIII of the State Constitution. The Department of Financial Services shall rely on the tax collector's determination that a branch office is necessary and shall base its approval of the tax collector's budget in accordance with the procedures of section 195.087(2), F.S.

This bill amends section 322.135, F.S., to provide that the department shall, upon application, authorize by interagency agreement all of the tax collectors who are constitutional officers to provide specified driver's license services.<sup>1</sup> All driver license issuance services shall be assumed by these tax collectors no later than December 31, 2013.

The department is authorized to adopt rules to create exceptions for small counties who cannot provide full driver license services; and counties may create inter-local agreements to provide licensing services across county lines. This section is also amended to delete language regarding the development and submittal of the transition plan.

Finally, the bill amends section 322.21(1), F.S., providing a revenue sharing arrangement between the department and the tax collector, depending on who provides the service. This bill allows the tax collector to retain the portion of funds previously deposited into the Highway Safety Highway Operating Trust Fund for all replacement driver license and identification cards issued at a tax collector office.

---

<sup>1</sup> Tax Collectors are constitutional officers in 64 of 67 counties. Dade, Broward, and Volusia counties are the three exceptions.

The Tax Collector would retain \$7 of the \$25 fee if they issue a replacement driver's license and \$9 of the \$25 fee if they issue a replacement identification card.

**B. SECTION DIRECTORY:**

**Section 1.** Amends section 20.24, F.S., conforming to the new division.

**Section 2.** Amends section 218.337, F.S., adds paragraph to allow tax collector to establish branch office to conduct state business upon execution of an interagency agreement.

**Section 3.** Amends section 288.816, F.S., conforming to the new division.

**Section 4.** Amends section 311.121, F.S., conforming to the new division.

**Section 5.** Amends section 316.1957, F.S., conforming to the new division.

**Section 6.** Amends section 316.613, F.S., conforming to the new division.

**Section 7.** Amends section 318.15, F.S., conforming to the new division.

**Section 8.** Amends section 320.05, F.S., conforming to the new division.

**Section 9.** Amends section 320.275, F.S., conforming to the new division.

**Section 10.** Amends section 322.02, F.S., conforming to the new division.

**Section 11.** Amends section 322.135, F.S., amends the section to authorize by an interagency agreement that tax collectors as constitutional officers under s. 1(d), Art. VIII of the State Constitution, may serve as the department's agent to issue driver's licenses.

**Section 12.** Amends section 322.20, F.S., conforming to the new division.

**Section 13.** Amends section 322.202, F.S., conforming to the new division.

**Section 14.** Amends section 322.21, F.S., conforming to the new division and amending language to allow for revenue sharing by the tax collector if the replacement driver's license or replacement identification card is issued by the tax collector.

**Section 15.** Amends section 413.012, F.S., conforming to the new division.

**Section 16.** Provides the bill an effective date of July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

Based on driver license and identification issuances, current projections for the revenue sharing arrangement indicate an approximate loss of revenue of \$3.1M in the Highway Safety Operating Trust Fund for FY 2011-12.

**2. Expenditures:**

Savings from facility operating costs and salaries and benefits are estimated at \$5.1M for FY 2011-12.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

Based on driver license and identification issuances, current projections for the revenue sharing arrangement indicate an approximate increase of revenue for tax collectors of \$3.1M for FY 2011-12.

2. Expenditures:

Indeterminate. Personnel and facility operating cost needs of individual tax collectors involved in this transition cannot be quantified at this time.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

Based on transition plan recommendations between the department and the tax collectors, this bill allows the tax collector to retain the portion of funds previously deposited into the Highway Safety Highway Operating Trust Fund for all replacement driver license and identification cards issued at a tax collector office. Issuance data from the fiscal year ending June 30, 2010, indicates this arrangement would provide a total additional \$5,755,177 in revenues to the tax collectors upon full transition of license services. However, the trust fund would lose the same amount in funding.

Revenue Sharing Estimate:

FY 2011-12: \$3,050,244

FY 2012-13: \$4,489,038

FY 2013-14: \$5,467,418

FY 2014-15: \$5,755,177 (when full transition annualized)

Total savings comes from salaries and benefits, and facility operating costs for the state offices that would be closed during the transition. The cumulative effect, when coupled with the revenue sharing provisions, would give the department an annualized net savings estimated at \$16 million when fully implemented.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES



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29 driver's licenses; amending s. 322.135, F.S.; revising  
 30 provisions for the department to authorize tax collectors  
 31 to act as agents for the provision of driver's license  
 32 services; providing for certain tax collectors to assume  
 33 all driver's license issuance services; authorizing the  
 34 department to adopt rules to exempt certain counties from  
 35 providing such services; providing for a county tax  
 36 collector to provide driver's license services for another  
 37 county under an interlocal agreement; amending s. 322.202,  
 38 F.S.; providing legislative findings relating to arrests  
 39 based on information obtained from the Division of  
 40 Motorist Services; amending s. 322.21, F.S.; revising  
 41 distribution of certain fees collected for issuance of  
 42 replacement driver's licenses and identification cards;  
 43 revising certain duties to conform to the reorganization  
 44 of the department; providing an effective date.

45

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

47

48 Section 1. Section 20.24, Florida Statutes, is amended to  
 49 read:

50 20.24 Department of Highway Safety and Motor Vehicles.—

51 There is created a Department of Highway Safety and Motor  
 52 Vehicles.

53 (1) The head of the Department of Highway Safety and Motor  
 54 Vehicles is the Governor and Cabinet.

55 (2) The following divisions, ~~and bureaus within the~~  
 56 ~~divisions,~~ of the Department of Highway Safety and Motor



57 Vehicles are established:

58 (a) Division of the Florida Highway Patrol.

59 (b) Division of Motorist Services.

60 ~~(b) Division of Driver Licenses.~~

61 ~~(c) Division of Motor Vehicles.~~

62 Section 2. Section 218.337, Florida Statutes, is created  
63 to read:

64 218.337 Tax collectors; branch offices.—A tax collector  
65 may establish one or more branch offices by acquiring title to  
66 real property or by lease agreement. The tax collector may staff  
67 and equip such branch offices to conduct state business only  
68 upon execution of an interagency agreement or, if authorized to  
69 do so by resolution of the county governing body, conduct  
70 business pursuant to s. (1)(k), Art. VIII of the State  
71 Constitution. The department shall rely on the tax collector's  
72 determination that a branch office is necessary and shall base  
73 its approval of the tax collector's budget in accordance with  
74 the procedures of s. 195.087(2).

75 Section 3. Paragraph (e) of subsection (2) of section  
76 288.816, Florida Statutes, is amended to read:

77 288.816 Intergovernmental relations.—

78 (2) The Office of Tourism, Trade, and Economic Development  
79 shall be responsible for all consular relations between the  
80 state and all foreign governments doing business in Florida. The  
81 office shall monitor United States laws and directives to ensure  
82 that all federal treaties regarding foreign privileges and  
83 immunities are properly observed. The office shall promulgate  
84 rules which shall:

85 (e) Verify entitlement to issuance of special motor  
 86 vehicle license plates by the ~~Division of Motor Vehicles of the~~  
 87 Department of Highway Safety and Motor Vehicles to honorary  
 88 consuls or such other officials representing foreign governments  
 89 who are not entitled to issuance of special Consul Corps license  
 90 plates by the United States Government.

91 Section 4. Paragraph (a) of subsection (3) of section  
 92 311.121, Florida Statutes, is amended to read:

93 311.121 Qualifications, training, and certification of  
 94 licensed security officers at Florida seaports.-

95 (3) The Seaport Security Officer Qualification, Training,  
 96 and Standards Coordinating Council is created under the  
 97 Department of Law Enforcement.

98 (a) The executive director of the Department of Law  
 99 Enforcement shall appoint 11 members to the council, to include:

- 100 1. The seaport administrator of the Department of Law  
 101 Enforcement.
- 102 2. The Commissioner of Education or his or her designee.
- 103 3. The director of the Division of Licensing of the  
 104 Department of Agriculture and Consumer Services.
- 105 4. The administrator of the Florida Seaport Transportation  
 106 and Economic Development Council.
- 107 5. Two seaport security directors from seaports designated  
 108 under s. 311.09.
- 109 6. One director of a state law enforcement academy.
- 110 7. One representative of a local law enforcement agency.
- 111 8. Two representatives of contract security services.
- 112 9. One representative of the ~~Division of Driver Licenses~~

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113 ~~of the~~ Department of Highway Safety and Motor Vehicles.

114 Section 5. Section 316.1957, Florida Statutes, is amended  
115 to read:

116 316.1957 Parking violations; designated parking spaces for  
117 persons who have disabilities.—When evidence is presented in any  
118 court of the fact that any motor vehicle was parked in a  
119 properly designated parking space for persons who have  
120 disabilities in violation of s. 316.1955, it is prima facie  
121 evidence that the vehicle was parked and left in the space by  
122 the person, firm, or corporation in whose name the vehicle is  
123 registered and licensed according to the records of the  
124 department ~~Division of Motor Vehicles~~.

125 Section 6. Paragraph (b) of subsection (1) of section  
126 316.613, Florida Statutes, is amended to read:

127 316.613 Child restraint requirements.—

128 (1)

129 (b) The department ~~Division of Motor Vehicles~~ shall  
130 provide notice of the requirement for child restraint devices,  
131 which notice shall accompany the delivery of each motor vehicle  
132 license tag.

133 Section 7. Paragraph (a) of subsection (1) of section  
134 318.15, Florida Statutes, is amended to read:

135 318.15 Failure to comply with civil penalty or to appear;  
136 penalty.—

137 (1)(a) If a person fails to comply with the civil  
138 penalties provided in s. 318.18 within the time period specified  
139 in s. 318.14(4), fails to enter into or comply with the terms of  
140 a penalty payment plan with the clerk of the court in accordance

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141 | with ss. 318.14 and 28.246, fails to attend driver improvement  
 142 | school, or fails to appear at a scheduled hearing, the clerk of  
 143 | the court shall notify the ~~Division of Driver Licenses of the~~  
 144 | Department of Highway Safety and Motor Vehicles of such failure  
 145 | within 10 days after such failure. Upon receipt of such notice,  
 146 | the department shall immediately issue an order suspending the  
 147 | driver's license and privilege to drive of such person effective  
 148 | 20 days after the date the order of suspension is mailed in  
 149 | accordance with s. 322.251(1), (2), and (6). Any such suspension  
 150 | of the driving privilege which has not been reinstated,  
 151 | including a similar suspension imposed outside Florida, shall  
 152 | remain on the records of the department for a period of 7 years  
 153 | from the date imposed and shall be removed from the records  
 154 | after the expiration of 7 years from the date it is imposed.

155 | Section 8. Paragraph (b) of subsection (3) and subsection  
 156 | (5) of section 320.05, Florida Statutes, are amended to read:

157 | 320.05 Records of the department; inspection procedure;  
 158 | lists and searches; fees.-

159 | (3)

160 | (b) Fees therefor shall be charged and collected as  
 161 | follows:

162 | 1. For providing lists of motor vehicle or vessel records  
 163 | for the entire state, or any part or parts thereof, divided  
 164 | according to counties, a sum computed at a rate of not less than  
 165 | 1 cent nor more than 5 cents per item.

166 | 2. For providing noncertified photographic copies of motor  
 167 | vehicle or vessel documents, \$1 per page.

168 | 3. For providing noncertified photographic copies of

169 micrographic records, \$1 per page.

170 4. For providing certified copies of motor vehicle or  
171 vessel records, \$3 per record.

172 5. For providing noncertified computer-generated printouts  
173 of motor vehicle or vessel records, 50 cents per record.

174 6. For providing certified computer-generated printouts of  
175 motor vehicle or vessel records, \$3 per record.

176 7. For providing electronic access to motor vehicle,  
177 vessel, and mobile home registration data requested by tag,  
178 vehicle identification number, title number, or decal number, 50  
179 cents per item.

180 8. For providing electronic access to driver's license  
181 status report by name, sex, and date of birth or by driver  
182 license number, 50 cents per item.

183 9. For providing lists of licensed mobile home dealers and  
184 manufacturers and recreational vehicle dealers and  
185 manufacturers, \$15 per list.

186 10. For providing lists of licensed motor vehicle dealers,  
187 \$25 per list.

188 11. For each copy of a videotape record, \$15 per tape.

189 12. For each copy of the Division of Motorist Services  
190 ~~Motor Vehicles~~ Procedures Manual, \$25.

191 (5) The creation and maintenance of records by the  
192 Division of Motorist Services within the department ~~and the~~  
193 ~~Division of Motor Vehicles~~ pursuant to this chapter shall not be  
194 regarded as law enforcement functions of agency recordkeeping.

195 Section 9. Paragraphs (a) and (b) of subsection (2) of  
196 section 320.275, Florida Statutes, are amended to read:

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197 | 320.275 Automobile Dealers Industry Advisory Board.—  
 198 | (2) MEMBERSHIP, TERMS, MEETINGS.—  
 199 | (a) The board shall be composed of 12 members. The  
 200 | executive director of the Department of Highway Safety and Motor  
 201 | Vehicles shall appoint the members from names submitted by the  
 202 | entities for the designated categories the member will  
 203 | represent. The executive director shall appoint one  
 204 | representative of the Department of Highway Safety and Motor  
 205 | Vehicles, ~~who must represent the Division of Motor Vehicles;~~ two  
 206 | representatives of the independent motor vehicle industry as  
 207 | recommended by the Florida Independent Automobile Dealers  
 208 | Association; two representatives of the franchise motor vehicle  
 209 | industry as recommended by the Florida Automobile Dealers  
 210 | Association; one representative of the auction motor vehicle  
 211 | industry who is from an auction chain and is recommended by a  
 212 | group affiliated with the National Auto Auction Association; one  
 213 | representative of the auction motor vehicle industry who is from  
 214 | an independent auction and is recommended by a group affiliated  
 215 | with the National Auto Auction Association; one representative  
 216 | from the Department of Revenue; a Florida tax collector  
 217 | representative recommended by the Florida Tax Collectors  
 218 | Association; one representative from the Better Business Bureau;  
 219 | one representative from the Department of Agriculture and  
 220 | Consumer Services, who must represent the Division of Consumer  
 221 | Services; and one representative of the insurance industry who  
 222 | writes motor vehicle dealer surety bonds.  
 223 | (b)1. The executive director shall appoint the following  
 224 | initial members to 1-year terms: one representative from the

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225 | motor vehicle auction industry who represents an auction chain,  
 226 | one representative from the independent motor vehicle industry,  
 227 | one representative from the franchise motor vehicle industry,  
 228 | one representative from the Department of Revenue, one Florida  
 229 | tax collector, and one representative from the Better Business  
 230 | Bureau.

231 |         2. The executive director shall appoint the following  
 232 | initial members to 2-year terms: one representative from the  
 233 | motor vehicle auction industry who represents an independent  
 234 | auction, one representative from the independent motor vehicle  
 235 | industry, one representative from the franchise motor vehicle  
 236 | industry, one representative from the Division of Consumer  
 237 | Services, one representative from the insurance industry, and  
 238 | one representative from the department ~~Division of Motor~~  
 239 | ~~Vehicles~~.

240 |         3. As the initial terms expire, the executive director  
 241 | shall appoint successors from the same designated category for  
 242 | terms of 2 years. If renominated, a member may succeed himself  
 243 | or herself.

244 |         4. The board shall appoint a chair and vice chair at its  
 245 | initial meeting and every 2 years thereafter.

246 |         Section 10. Subsection (3) of section 322.02, Florida  
 247 | Statutes, is amended to read:

248 |         322.02 Legislative intent; administration.—

249 |         (3) The department shall employ a director, who is charged  
 250 | with the duty of serving as the executive officer of the  
 251 | Division of Motorist Services ~~Driver Licenses~~ of the department  
 252 | insofar as the administration of this chapter is concerned. He

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253 or she shall be subject to the supervision and direction of the  
 254 department, and his or her official actions and decisions as  
 255 executive officer shall be conclusive unless the same are  
 256 superseded or reversed by the department or by a court of  
 257 competent jurisdiction.

258 Section 11. Subsections (1) and (5) of section 322.135,  
 259 Florida Statutes, are amended, and subsection (7) is added to  
 260 that section, to read:

261 322.135 Driver's license agents.—

262 (1) The department shall, upon application, authorize by  
 263 interagency agreement ~~any or~~ all of the tax collectors who are  
 264 constitutional officers under s. 1(d), Art. VIII of the State  
 265 Constitution in the several counties of the state, subject to  
 266 the requirements of law, in accordance with rules of the  
 267 department, to serve as its agent for the provision of specified  
 268 driver's license services.

269 (a) These services shall be limited to the issuance of  
 270 driver's licenses and identification cards as authorized by this  
 271 chapter.

272 (b) Each tax collector who is authorized by the department  
 273 to provide driver's license services shall bear all costs  
 274 associated with providing those services.

275 (c) A service fee of \$6.25 shall be charged, in addition  
 276 to the fees set forth in this chapter, for providing all  
 277 services pursuant to this chapter. The service fee may not be  
 278 charged:

279 1. More than once per customer during a single visit to a  
 280 tax collector's office.



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281 2. For a reexamination requested by the Medical Advisory  
 282 Board or required pursuant to s. 322.221.

283 3. For a voter registration transaction.

284 4. In violation of any federal or state law.

285 (5) All driver's license issuance services shall be  
 286 assumed by the tax collectors who are constitutional officers  
 287 under s. 1(d), Art. VIII of the State Constitution no later than  
 288 December 31, 2013. The department, in conjunction with the  
 289 Florida Tax Collectors Association and the Florida Association  
 290 of Counties, shall develop a plan to transition all driver's  
 291 license issuance services to the county tax collectors who are  
 292 constitutional officers under s. 1(d), Art. VIII of the State  
 293 Constitution. The transition plan must be submitted to the  
 294 President of the Senate and the Speaker of the House of  
 295 Representatives on or before February 1, 2011. The transition  
 296 plan must include a timeline to complete the full transition of  
 297 all driver's license issuance services no later than June 30,  
 298 2015, and may include, but is not limited to, recommendations on  
 299 the use of regional service centers, interlocal agreements, and  
 300 equipment.

301 (7) The department may adopt rules to create exceptions  
 302 for counties that cannot provide full driver's license services  
 303 due to their small population. In addition, counties may enter  
 304 into interlocal agreements providing for a county tax collector  
 305 to provide driver's license services for another county.

306 Section 12. Subsections (9), (10), (13), (14), and (16) of  
 307 section 322.20, Florida Statutes, are amended to read:

308 322.20 Records of the department; fees; destruction of

309 records.—

310 (9) The department may, upon application, furnish to any  
 311 person, from its records ~~the records of the Division of Driver~~  
 312 ~~licenses~~, a list of the names, addresses, and birth dates of the  
 313 licensed drivers of the entire state or any portion thereof by  
 314 age group. In addition, the department may furnish to the  
 315 courts, for the purpose of establishing jury selection lists,  
 316 the names, addresses, and birth dates of the persons of the  
 317 entire state or any portion thereof by age group having  
 318 identification cards issued by the department. Each person who  
 319 requests such information shall pay a fee, set by the  
 320 department, of 1 cent per name listed, except that the  
 321 department shall furnish such information without charge to the  
 322 courts for the purpose of jury selection or to any state agency  
 323 or to any state attorney, sheriff, or chief of police. Such  
 324 court, state agency, state attorney, or law enforcement agency  
 325 may not sell, give away, or allow the copying of such  
 326 information. Noncompliance with this prohibition shall authorize  
 327 the department to charge the noncomplying court, state agency,  
 328 state attorney, or law enforcement agency the appropriate fee  
 329 for any subsequent lists requested. The department may adopt  
 330 rules necessary to implement this subsection.

331 (10) The department ~~Division of Driver Licenses~~ is  
 332 authorized, upon application of any person and payment of the  
 333 proper fees, to search and to assist such person in the search  
 334 of the records of the department and make reports thereof and to  
 335 make photographic copies of the departmental records and  
 336 attestations thereof.

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337 |       (13) The department ~~Division of Driver Licenses~~ shall  
 338 | implement a system that allows either parent of a minor, or a  
 339 | guardian, or other responsible adult who signed a minor's  
 340 | application for a driver's license to have Internet access  
 341 | through a secure website to inspect the minor's driver history  
 342 | record. Internet access to driver history records granted to a  
 343 | minor's parents, guardian, or other responsible adult shall be  
 344 | furnished by the department at no fee and shall terminate when  
 345 | the minor attains 18 years of age.

346 |       (14) The department is authorized in accordance with  
 347 | chapter 257 to destroy reports, records, documents, papers, and  
 348 | correspondence ~~in the Division of Driver Licenses~~ which are  
 349 | considered obsolete.

350 |       (16) The creation and maintenance of records by the  
 351 | Division of Motorist Services within the department ~~and the~~  
 352 | ~~Division of Driver Licenses~~ pursuant to this chapter shall not  
 353 | be regarded as law enforcement functions of agency  
 354 | recordkeeping.

355 |       Section 13. Section 322.202, Florida Statutes, is amended  
 356 | to read:

357 |       322.202 Admission of evidence obtained from the Division  
 358 | of Motorist Services ~~Driver Licenses and the Division of Motor~~  
 359 | ~~Vehicles.-~~

360 |       (1) The Legislature finds that the Division of Motorist  
 361 | Services ~~Driver Licenses and the Division of Motor Vehicles~~ of  
 362 | the Department of Highway Safety and Motor Vehicles is ~~are~~ not a  
 363 | law enforcement agency ~~agencies~~. The Legislature also finds that  
 364 | the division is not an adjunct ~~divisions are not adjuncts~~ of any

365 law enforcement agency in that employees have no stake in  
 366 particular prosecutions. The Legislature further finds that  
 367 errors in records maintained by the division ~~divisions~~ are not  
 368 within the collective knowledge of any law enforcement agency.  
 369 The Legislature also finds that the missions of the division of  
 370 ~~Driver Licenses, the Division of Motor Vehicles,~~ and the  
 371 department of ~~Highway Safety and Motor Vehicles~~ provide a  
 372 sufficient incentive to maintain records in a current and  
 373 correct fashion.

374 (2) The Legislature finds that the purpose of the  
 375 exclusionary rule is to deter misconduct on the part of law  
 376 enforcement officers and law enforcement agencies.

377 (3) The Legislature finds that the application of the  
 378 exclusionary rule to cases where a law enforcement officer  
 379 effects an arrest based on objectively reasonable reliance on  
 380 information obtained from the division ~~divisions~~ is repugnant to  
 381 the purposes of the exclusionary rule and contrary to the  
 382 decisions of the United States Supreme Court in Arizona v.  
 383 Evans, 514 U.S. 1 (1995) and United States v. Leon, 468 U.S. 897  
 384 (1984).

385 (4) In any case where a law enforcement officer effects an  
 386 arrest based on objectively reasonable reliance on information  
 387 obtained from the division ~~divisions~~, evidence found pursuant to  
 388 such an arrest shall not be suppressed by application of the  
 389 exclusionary rule on the grounds that the arrest is subsequently  
 390 determined to be unlawful due to erroneous information obtained  
 391 from the division ~~divisions~~.

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392 Section 14. Paragraphs (e) and (f) of subsection (1) and  
 393 subsection (2) of section 322.21, Florida Statutes, are amended  
 394 to read:

395 322.21 License fees; procedure for handling and collecting  
 396 fees.—

397 (1) Except as otherwise provided herein, the fee for:

398 (e) A replacement driver's license issued pursuant to s.  
 399 322.17 is \$25. Of this amount \$7 shall be deposited into the  
 400 Highway Safety Operating Trust Fund if issued by the department  
 401 or retained by the tax collector if issued by the tax collector  
 402 and \$18 shall be deposited into the General Revenue Fund.

403 (f) An original, renewal, or replacement identification  
 404 card issued pursuant to s. 322.051 is \$25. Funds collected from  
 405 these fees shall be distributed as follows:

406 1. For an original identification card issued pursuant to  
 407 s. 322.051 the fee is \$25. This amount shall be deposited into  
 408 the General Revenue Fund.

409 2. For a renewal identification card issued pursuant to s.  
 410 322.051 the fee is \$25. Of this amount, \$6 shall be deposited  
 411 into the Highway Safety Operating Trust Fund and \$19 shall be  
 412 deposited into the General Revenue Fund.

413 3. For a replacement identification card issued pursuant  
 414 to s. 322.051 the fee is \$25. Of this amount, \$9 shall be  
 415 deposited into the Highway Safety Operating Trust Fund if issued  
 416 by the department or retained by the tax collector if issued by  
 417 the tax collector and \$16 shall be deposited into the General  
 418 Revenue Fund.

419 (2) It is the duty of the Division of Motorist Services to

420 provide ~~Director of the Division of Driver Licenses to set up a~~  
 421 ~~division in the department with~~ the necessary personnel to  
 422 perform the ~~necessary~~ clerical and routine work for the  
 423 department in issuing and recording applications, licenses, and  
 424 certificates of eligibility, including the receiving and  
 425 accounting of all license funds and their payment into the State  
 426 Treasury, and other incidental clerical work connected with the  
 427 administration of this chapter. The department may use such  
 428 electronic, mechanical, or other devices as necessary to  
 429 accomplish the purposes of this chapter.

430 Section 15. Subsection (2) of section 413.012, Florida  
 431 Statutes, is amended to read:

432 413.012 Confidential records disclosure prohibited;  
 433 exemptions.—

434 (2) It is unlawful for any person to disclose, authorize  
 435 the disclosure, solicit, receive, or make use of any list of  
 436 names and addresses or any record containing any information set  
 437 forth in subsection (1) and maintained in the division. The  
 438 prohibition provided for in this subsection shall not apply to  
 439 the use of such information for purposes directly connected with  
 440 the administration of the vocational rehabilitation program or  
 441 with the monthly dispatch to the ~~Division of Driver Licenses of~~  
 442 ~~the~~ Department of Highway Safety and Motor Vehicles of the name  
 443 in full, place and date of birth, sex, social security number,  
 444 and resident address of individuals with central visual acuity  
 445 20/200 or less in the better eye with correcting glasses, or a  
 446 disqualifying field defect in which the peripheral field has  
 447 contracted to such an extent that the widest diameter or visual

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448 | field subtends an angular distance no greater than 20 degrees.  
449 | When requested in writing by an applicant or client, or her or  
450 | his representative, the Division of Blind Services shall release  
451 | confidential information to the applicant or client or her or  
452 | his representative.



453 |       Section 16. This act shall take effect July 1, 2011.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5601 PCB GOAS 11-06 Public Employees Relations Commission  
SPONSOR(S): Government Operations Appropriations Subcommittee, Hooper  
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee	15 Y, 0 N	Dykes	Topp
1) Appropriations Committee		Dykes 	Leznoff 

SUMMARY ANALYSIS

The Public Employees Relations Commission ("Commission") is a quasi-judicial agency created in 1975. Its purpose is to resolve public sector labor and employment disputes in a fair, impartial and efficient manner and to otherwise effectuate the state's labor policy of promoting harmonious and cooperative relationships between government and its employees and protecting the public by preventing work stoppages.

The Commission is composed of a chair and two full time members appointed by the Governor, subject to Senate confirmation, for overlapping terms of four years, and a staff of 25 full time employees. The chair, as agency head, is responsible for the full time administrative and operational functions of the agency.

The Commission is generally appropriated General Revenue that represents approximately 45% of its total operating budget and 55% in budget authority from its PERC Trust Fund. The revenue source for the Commission's trust fund is .1 percent of the Local Government Half-Cent Sales Tax. The chair and the two full time Commission members are paid from general revenue funding.

The bill amends statutes relating to the Commission to conform to the proposed House General Appropriations Act by changing the composition of the Commission to consist of a chair and two part-time members, which will result in a cost savings for the Commission in the Salaries & Benefits appropriation category of \$125,534 in general revenue funding.

This bill takes effect on July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The Commission is a quasi-judicial agency created in 1975. Its purpose is to resolve public sector labor and employment disputes in a fair, impartial and efficient manner and to otherwise effectuate the state's labor policy of promoting harmonious and cooperative relationships between government and its employees and protecting the public by preventing work stoppages.

The Commission is composed of a chair and two full time members appointed by the Governor, subject to Senate confirmation, for overlapping terms of four years, and a staff of 25 full time employees. The chair, as agency head, is responsible for the full time administrative and operational functions of the agency. The Commission's hearing officers (who must be members of The Florida Bar for at least five years) hold formal evidentiary hearings throughout the state on public sector labor and employment disputes and issue recommended orders to the Commission. The Commission reviews the record in each case to determine whether there is competent, substantial evidence to support the hearing officer's factual findings and whether the law was applied correctly by the hearing officer. The Commission then issues a final order, which can be appealed directly to a state district court of appeal.

The Commission is generally appropriated General Revenue that represents approximately 45% of its total operating budget and 55% in budget authority from its PERC Trust Fund. The revenue source for the Commission's trust fund is .1 percent of the Local Government Half-Cent Sales Tax. The chair and the two full time Commission members are paid from general revenue funding.

##### Effect of Proposed Changes

The bill changes the composition of the Commission to consist of a chair and two part-time members, which will result in operating cost savings for the Commission due to the corresponding reduction in the Salaries & Benefits appropriation category of \$125,534 in general revenue funding. The salaries of the Commission members are fixed by law<sup>1</sup> and are set forth in the General Appropriations Act.

This bill does not affect the current law requiring the chair to devote full time to commission duties and not engage in any other business, vocation, or employment while in such office. The chair will continue to devote full time to commission duties as that position maintains an equal division of the caseload in addition to the performance of administrative and operational duties as the agency head. This bill does prohibit the part-time members from engaging in any business, vocation, or employment that conflicts with their duties while in such office.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 447.205, F.S., requiring the commission to be comprised of a chair and two part-time members. Requires the chair of the Commission to devote full time to Commission duties and not engage in any other business, vocation, or employment while in such office. Prohibits the part-time members from engaging in any business, vocation, or employment that conflicts with their duties while in such office.

**Section 2:** Provides an effective date of July 1, 2011.

---

<sup>1</sup> Section 447.205(2), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Commission is generally appropriated General Revenue that represents approximately 45% of its total operating budget and 55% in budget authority from its PERC Trust Fund. The revenue source for the Commission's trust fund is .1 percent of the Local Government Half-Cent Sales Tax. The chair and the two full time Commission members are paid from general revenue funding.

The salaries of the Commission members are fixed by law<sup>2</sup> and are set forth in the General Appropriations Act. Changing the two full time Commission members to part-time status will result in operating cost savings for the Commission due to corresponding reductions in the Salaries & Benefits appropriation category.

Salaries & Benefits Appropriation Category

Commission Member: (.50 FTE) - (\$62,767) Recurring General Revenue Fund

Commission Member: (.50 FTE) - (\$62,767) Recurring General Revenue Fund

Total: (1.00 FTE) - (\$125,534) Recurring General Revenue Fund

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

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<sup>2</sup> Section 447.205(2), F.S.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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1                   A bill to be entitled  
 2           An act relating to the Public Employees Relations  
 3           Commission; amending s. 447.205, F.S.; requiring the  
 4           commission to be comprised of a chair and two part-time  
 5           members; requiring the chair of the commission to devote  
 6           full time to commission duties and not engage in any other  
 7           business, vocation, or employment while in such office;  
 8           prohibiting the part-time members from engaging in any  
 9           business, vocation, or employment that conflicts with  
 10          their duties while in such office; providing an effective  
 11          date.

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

14  
 15           Section 1. Subsection (1) of section 447.205, Florida  
 16   Statutes, is amended to read:

17           447.205 Public Employees Relations Commission.—

18           (1) The Public Employees Relations Commission, hereinafter  
 19   referred to as the "commission," shall be composed of a chair  
 20   and two part-time ~~full-time~~ members to be appointed by the  
 21   Governor, subject to confirmation by the Senate, from persons  
 22   representative of the public and known for their objective and  
 23   independent judgment, who shall not be employed by, or hold any  
 24   commission with, any governmental unit in the state or any  
 25   employee organization, as defined in this part, while in such  
 26   office. In no event shall more than one appointee be a person  
 27   who, on account of previous vocation, employment, or  
 28   affiliation, is, or has been, classified as a representative of

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29 | employers; and in no event shall more than one such appointee be  
 30 | a person who, on account of previous vocation, employment, or  
 31 | affiliation, is, or has been, classified as a representative of  
 32 | employees or employee organizations. The chair of the commission  
 33 | ~~commissioners~~ shall devote full time to commission duties and  
 34 | shall not engage in any other business, vocation, or employment  
 35 | while in such office. The part-time members shall not engage in  
 36 | any business, vocation, or employment that conflicts with their  
 37 | duties while in such office. Beginning January 1, 1980, the  
 38 | chair shall be appointed for a term of 4 years, one commissioner  
 39 | for a term of 1 year, and one commissioner for a term of 2  
 40 | years. Thereafter, every term of office shall be for 4 years;  
 41 | and each term of the office of chair shall commence on January 1  
 42 | of the second year following each regularly scheduled general  
 43 | election at which a Governor is elected to a full term of  
 44 | office. In the event of a vacancy prior to the expiration of a  
 45 | term of office, an appointment shall be made for the unexpired  
 46 | term of that office. The chair shall be responsible for the  
 47 | administrative functions of the commission and shall have the  
 48 | authority to employ such personnel as may be necessary to carry  
 49 | out the provisions of this part. Once appointed to the office of  
 50 | chair, the chair shall serve as chair for the duration of the  
 51 | term of office of chair. Nothing contained herein prohibits a  
 52 | chair or commissioner from serving multiple terms.

53 |       Section 2. This act shall take effect July 1, 2011.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 5603      PCB GOAS 11-07      Department of Management Services  
**SPONSOR(S):** Government Operations Appropriations Subcommittee, Hooper  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee	14 Y, 1 N	Dykes	Topp
1) Appropriations Committee		Dykes <i>13-7</i>	Leznoff <i>W</i>

**SUMMARY ANALYSIS**

The Department of Management Services (department) is the administrative arm of Florida's state government. The bill amends statutes relating to the department to conform to the proposed House General Appropriations Act by:

- Revising provisions relating to the reimbursement of the department for actual costs of coordinating the annual Florida State Employees' Charitable Campaign.
- Providing for the transfer of funds generated by fees collected for the use of the department's online procurement system and electronic information services (commonly known as MyFloridaMarketPlace) from the department to the Department of Financial Services to support statewide purchasing operations associated with the online procurement system and electronic information services.
- Providing for an annual transfer of specified excess revenue from fees collected from private sector vendors for the use of the online procurement systems and electronic information services (commonly known as MyFloridaMarketPlace) to the General Revenue Fund.
- Repealing the statute which establishes the executive aircraft pool within the department, and terminating the Bureau of Aircraft Trust Fund and transferring balances to the General Revenue Fund.

To conform to the proposed House General Appropriations Act, this bill ensures that the department is fully reimbursed the actual cost for coordinating the annual Florida State Employees' Charitable Campaign; transfers an amount of fees collected, not to exceed \$1 million, from the department to the Department of Financial Services; transfers the estimated amount of \$1.3 million of fees collected to the General Revenue Fund; and reduces the departments recurring operating budget by \$1.5 million through the elimination of the executive aircraft pool.

This bill takes effect on July 1, 2011.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Effect of Bill:

##### Florida State Employees' Charitable Campaign

Background:

Pursuant to s. 110.181, F.S., the Department of Management Services (department) is required to establish and maintain, in coordination with the payroll system of the Department of Financial Services, an annual Florida State Employees' Charitable Campaign. The annual fundraising drive is authorized to be directed toward state employees within work areas during work hours. The state provides payroll deduction based upon employee elections.

The department is responsible for selecting through the competitive procurement process a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations. Pursuant to s. 110.181(2)(b), F.S., the fiscal agent is required to withhold the reasonable costs for conducting the campaign and for accounting and distribution to the participating organizations. The fiscal agent is further required to reimburse the department the actual cost, not to exceed 1 percent of gross pledges, for coordinating the campaign in accordance with the rules of the department.

Department analysis shows that approximately \$100,000 in out-of-pocket costs was not reimbursable to the department in each of the two recently completed fiscal years due to the reimbursement limit of 1 percent of gross pledges.<sup>1</sup>

Effect of Bill:

This bill amends s. 110.181, F.S., to require the fiscal agent to reimburse the department the actual cost of conducting the campaign; thus, removing the limitation that the department's reimbursement will not exceed 1 percent of gross pledges.

##### Electronic Procurement System Transaction Fees Collected by the Department

Background:

Pursuant to sections 287.042 and 287.057, F.S., the Department of Management Services (department) has the authority to impose and collect transaction fees from private sector vendors for the use of its online procurement system and electronic information services (commonly known as MyFloridaMarketPlace). Accordingly, the department has established and imposed a transaction fee in an amount sufficient to cover the projected costs of services, including administrative and project service costs. All transaction fees collected under the statutory provisions are required to be used for disbursements as provided by law.

The transaction fees are collected and used for the purpose of making contractor payments associated with the online procurement system and electronic information services and for department administrative costs for functions and services within the department's Support Program – i.e., The Office of Supplier Diversity, Fleet Management, and the Division of State Purchasing.

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<sup>1</sup> Department of Management Services' analysis is on file with the Government Operations Appropriations Subcommittee.

Transaction fees collected from vendors in excess of what is needed to fund the legislatively authorized disbursements accumulate in the Purchasing Oversight account in the Operating Trust Fund and become unobligated cash balances. These cash balances are deposited with the State Treasury and earn modest rates of return. Excess cash balances have been transferred to the General Revenue Fund in past years.

#### Effect of Bill:

This bill amends sections 287.042 and 287.057, F.S., to require the department to transfer funds generated by fees collected from private sector vendors for the use of its online procurement system and electronic information services (commonly known as MyFloridaMarketPlace) from the Purchasing Oversight account in the Operating Trust Fund to the Administrative Trust Fund in the Department of Financial Services to fund staff that support statewide purchasing operations associated with the online procurement system and electronic information services.

This bill specifies that the amount of transfer must be established each year in the department's nonoperating budget based upon the estimated cost of staff support provided by the Department of Financial Services, not to exceed \$1 million.

This bill also requires the department to calculate by June 5 each year the amount of fees collected and remaining in the Operating Trust Fund in excess of all obligations and encumbrances to cover the costs of providing services and transfer excess revenue to the General Revenue Fund before June 30 of each year. The bill sets forth a cash balance limit of \$1.25 million the department is authorized to maintain in the Purchasing Oversight account in the Operating Trust Fund on June 30 of each year.

As a result, it is estimated that \$1.3 million will be transferred to the General Revenue Fund, on a recurring basis, to avoid excess cash accumulation in the Operating Trust Fund. The funds transferred to the General Revenue Fund will help balance the state's General Revenue Fund.

#### Executive Aircraft Pool

##### Background:

The Department of Management Services (department) established an executive aircraft pool for the purpose of furnishing executive air travel pursuant to s 287.161, F.S. Most recently, the aircraft pool consisted of a state-owned Beechcraft King Air 350 Turbo-Prop and a leased Cessna Citation Bravo business jet.

Upon taking office, the Governor directed the department to sell both aircraft and to terminate employment of the 11-member crew of pilots, mechanics, and administrative staff. Both aircraft have been sold.

The Bureau of Aircraft Trust Fund, FLAIR number 72-2-066, has been used as the depository for fee collections for persons traveling on an executive aircraft and for expenditures associated with the costs incurred to operate aircraft management activities of the department. In light of the department's actions, the trust fund is no longer needed.

##### Effect of Bill:

This bill repeals s. 287.161, F.S., which establishes the executive aircraft pool within the department, and terminates the Bureau of Aircraft Trust Fund and transfers balances to the General Revenue Fund. State officials will seek alternative air travel to meet their transportation needs.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 110.181, F.S., revising provisions relating to the reimbursement of the Department of Management Services for actual costs of coordinating the Florida State Employees' Charitable Campaign.

**Section 2.** Amends s. 287.042, F.S., providing for the transfer of funds generated by fees collected for the use of the Department of Management Services' online procurement systems and electronic information services (commonly known as MyFloridaMarketPlace) from the department to the Department of Financial Services to support statewide purchasing operations; establishing the amount of transfer; providing for annual transfer of specified excess revenue from fees collected for the use of such systems and services to the General Revenue Fund; and setting an annual limitation on the cash balance in the Operating Trust Fund of the department.

**Section 3.** Amends s. 287.057, F.S., providing for the transfer of funds generated by fees collected for the use of the Department of Management Services' online procurement systems and electronic information services (commonly known as MyFloridaMarketPlace) from the department to the Department of Financial Services to support statewide purchasing operations; establishing the amount of transfer; providing for annual transfer of specified excess revenue from fees collected for the use of such systems and services to the General Revenue Fund; and setting an annual limitation on the cash balance in the Operating Trust Fund of the department.

**Section 4.** Amends s. 287.16, F.S., eliminating a duty of the Department of Management Services to provide an annual report concerning utilization of aircraft in the executive aircraft pool.

**Section 5.** Repeals s. 287.161, F.S., which establishes the executive aircraft pool within the Department of Management Services and provides procedures and requirements thereto.

**Section 6.** Terminating the Bureau of Aircraft Trust Fund within the Department of Management Services; providing for the disposition of balances in and revenues of the trust fund; and prescribing procedures for terminating the trust fund.

**Section 7.** Providing an effective date of July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See "Fiscal Comments" section.

2. Expenditures:

Executive Aircraft Pool

The proposed House General Appropriations Act will provide for the elimination of 11 FTE (pilots, mechanics, and administrative staff) and all operating appropriations. The total reduction in recurring operating budget is \$1.5 million comprised of \$898,576 in recurring General Revenue and \$629,764 in recurring costs in the Bureau of Aircraft Trust Fund.

See "Fiscal Comments" section.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Florida State Employees' Charitable Campaign

- An analysis prepared by the Department of Management Services (department) shows that an additional amount up to \$100,000 in out-of-pocket costs will be reimbursable to the department beyond the amount of reimbursements for the two recently completed fiscal years - assuming the same level of department effort to conduct the campaign.

Electronic Procurement System Transaction Fees Collected by the Department

- An amount not to exceed \$1 million per year will be transferred from the Purchasing Oversight account in the Operating Trust Fund in the department to the Administrative Trust Fund in the Department of Financial Services to fund staff that support statewide purchasing operations associated with the department's online procurement systems and electronic information services (commonly known as MyFloridaMarketPlace).
- Based on an accrual fund balance analysis of the Purchasing Oversight account in the Operating Trust Fund, it is estimated that \$1.3 million will be transferred to the General Revenue Fund, on a recurring basis, to avoid excess cash accumulation in the Operating Trust Fund. The funds transferred to the General Revenue Fund will help balance the state's General Revenue Fund.

### 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/ COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to the Department of Management Services;  
 3           amending s. 110.181, F.S.; revising provisions relating to  
 4           reimbursement of the department for actual costs of  
 5           coordinating the Florida State Employees' Charitable  
 6           Campaign; amending ss. 287.042 and 287.057, F.S.;  
 7           providing for the transfer of funds generated by fees  
 8           collected for the use of the department's online  
 9           procurement systems and electronic information services  
 10          from the department to the Department of Financial  
 11          Services to support statewide purchasing operations;  
 12          establishing the amount of transfer; providing for annual  
 13          transfer of specified excess revenue from fees collected  
 14          for the use of such systems and services to the General  
 15          Revenue Fund; setting an annual limitation on the cash  
 16          balance in the Operating Trust Fund of the department;  
 17          amending s. 287.16, F.S.; eliminating a duty of the  
 18          department to provide an annual report concerning  
 19          utilization of aircraft in the executive aircraft pool;  
 20          repealing s. 287.161, F.S., which establishes the  
 21          executive aircraft pool within the department and provides  
 22          procedures and requirements with respect thereto;  
 23          terminating the Bureau of Aircraft Trust Fund within the  
 24          department; providing for the disposition of balances in  
 25          and revenues of the trust fund; prescribing procedures for  
 26          terminating the trust fund; providing an effective date.

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

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

110.181 Florida State Employees' Charitable Campaign.—

(2) SELECTION OF FISCAL AGENTS; COST.—

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

Section 2. Paragraph (h) of subsection (1) of section 287.042, Florida Statutes, is amended to read:

287.042 Powers, duties, and functions.—The department shall have the following powers, duties, and functions:

(1)

(h)1. The department may collect fees for the use of its electronic information services. The fees may be imposed on an individual transaction basis or as a fixed subscription for a designated period of time. At a minimum, the fees shall be determined in an amount sufficient to cover the department's projected costs of the services, including overhead in

57 | accordance with the policies of the Department of Management  
 58 | Services for computing its administrative assessment. All fees  
 59 | collected under this paragraph shall be deposited in the  
 60 | Operating Trust Fund for disbursement as provided by law.

61 | 2. The department shall transfer funds generated by fees  
 62 | collected for the use of the department's electronic information  
 63 | services from the Purchasing Oversight Account in the Operating  
 64 | Trust Fund to the Administrative Trust Fund in the Department of  
 65 | Financial Services to support statewide purchasing operations.  
 66 | The amount of transfer shall be established each year in the  
 67 | department's nonoperating budget based upon the estimated cost  
 68 | of statewide purchasing operations provided by the Department of  
 69 | Financial Services and may not exceed \$1 million.

70 | 3. The department shall calculate by June 5 each year the  
 71 | amount of fees collected pursuant to subparagraph 1. remaining  
 72 | in the Operating Trust Fund after satisfaction of all  
 73 | obligations and encumbrances to cover the costs of providing  
 74 | services pursuant to subparagraph 1. and shall transfer the  
 75 | excess revenue to the General Revenue Fund before June 30 of  
 76 | each year. The cash balance in the Operating Trust Fund on June  
 77 | 30 of each year may not exceed \$1.25 million.

78 | Section 3. Paragraph (c) of subsection (22) of section  
 79 | 287.057, Florida Statutes, is amended to read:

80 | 287.057 Procurement of commodities or contractual  
 81 | services.—

82 | (22) The department, in consultation with the Agency for  
 83 | Enterprise Information Technology and the Comptroller, shall  
 84 | develop a program for online procurement of commodities and

85 contractual services. To enable the state to promote open  
 86 competition and to leverage its buying power, agencies shall  
 87 participate in the online procurement program, and eligible  
 88 users may participate in the program. Only vendors prequalified  
 89 as meeting mandatory requirements and qualifications criteria  
 90 may participate in online procurement.

91 (c) The department may impose and shall collect all fees  
 92 for the use of the online procurement systems.

93 1. The fees may be imposed on an individual transaction  
 94 basis or as a fixed percentage of the cost savings generated. At  
 95 a minimum, the fees must be set in an amount sufficient to cover  
 96 the projected costs of the services, including administrative  
 97 and project service costs in accordance with the policies of the  
 98 department.

99 2. If the department contracts with a provider for online  
 100 procurement, the department, pursuant to appropriation, shall  
 101 compensate the provider from the fees after the department has  
 102 satisfied all ongoing costs. The provider shall report  
 103 transaction data to the department each month so that the  
 104 department may determine the amount due and payable to the  
 105 department from each vendor.

106 3. All fees that are due and payable to the state on a  
 107 transactional basis or as a fixed percentage of the cost savings  
 108 generated are subject to s. 215.31 and must be remitted within  
 109 40 days after receipt of payment for which the fees are due. For  
 110 fees that are not remitted within 40 days, the vendor shall pay  
 111 interest at the rate established under s. 55.03(1) on the unpaid  
 112 balance from the expiration of the 40-day period until the fees



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113 are remitted.

114 4. All fees and surcharges collected under this paragraph  
115 shall be deposited in the Operating Trust Fund for disbursement  
116 as provided by law.

117 5. The department shall transfer funds generated by fees  
118 collected for the use of the department's online procurement  
119 systems from the Purchasing Oversight Account in the Operating  
120 Trust Fund to the Administrative Trust Fund in the Department of  
121 Financial Services to support statewide purchasing operations.  
122 The amount of transfer shall be established each year in the  
123 department's nonoperating budget based upon the estimated cost  
124 of statewide purchasing operations provided by the Department of  
125 Financial Services and may not exceed \$1 million.

126 6. The department shall calculate by June 5 each year the  
127 amount of fees collected pursuant to subparagraph 1. remaining  
128 in the Operating Trust Fund after satisfaction of all  
129 obligations and encumbrances to cover the costs of providing  
130 services pursuant to subparagraph 1. and shall transfer the  
131 excess revenue to the General Revenue Fund before June 30 of  
132 each year. The cash balance in the Operating Trust Fund on June  
133 30 of each year may not exceed \$1.25 million.

134 Section 4. Subsection (10) of section 287.16, Florida  
135 Statutes, is amended, and subsections (11) and (12) of that  
136 section are renumbered as subsections (10) and (11),  
137 respectively, to read:

138 287.16 Powers and duties of department.—The Department of  
139 Management Services shall have the following powers, duties, and  
140 responsibilities:

141 ~~(10) To provide the Legislature annual reports at the end~~  
 142 ~~of each calendar year concerning the utilization of all aircraft~~  
 143 ~~in the executive pool.~~

144 Section 5. Section 287.161, Florida Statutes, is repealed.

145 Section 6. (1) The Bureau of Aircraft Trust Fund within  
 146 the Department of Management Services, FLAIR number 72-2-066, is  
 147 terminated on November 1, 2011.

148 (2) All current balances remaining in, and all revenues  
 149 of, the Bureau of Aircraft Trust Fund on the date of termination  
 150 shall be transferred to the General Revenue Fund.

151 (3) The Department of Management Services shall pay any  
 152 outstanding debts and obligations of the terminated fund as soon  
 153 as practicable, and the Chief Financial Officer shall close out  
 154 and remove the terminated fund from various state accounting  
 155 systems using generally accepted accounting principles  
 156 concerning warrants outstanding, assets, and liabilities.

157 Section 7. This act shall take effect July 1, 2011.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 5605    PCB GOAS 11-08    Department of Financial Services  
**SPONSOR(S):** Government Operations Appropriations Subcommittee, Hooper  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 1068

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee	15 Y, 0 N	Fox	Topp
1) Appropriations Committee		Fox <i>R.F.</i>	Leznoff <i>[Signature]</i>

**SUMMARY ANALYSIS**

The Department of Financial Services (DFS) manages and oversees several major functions of state government, including the Treasury, State Fire Marshall, Insurance Fraud, State Accounting and Auditing, Workers' Compensation, Risk Management and Funeral, Cemetery and Consumer Services. This bill amends the statutes related to Risk Management and Workers' Compensation to achieve efficiencies and cost savings measures linked to the proposed House of Representatives' General Appropriations Act for Fiscal Year 2011-2012. The bill also revises language related to consumer services. Specifically, the bill includes the following provisions:

Amends s. 20.121, F.S., to codify the transfer of responsibilities related to consumer complaints from the Department of Financial Services to the Office of Financial Regulation.

Amends s. 284.50, F.S., by requiring the Department of Financial Services and all state agencies and state universities with more than 3,500 employees who are provided insurance coverage from the Division of Risk Management (Division) to establish and maintain a return-to-work program for injured state workers. Presently, each agency and state university with more than 3,500 employees, with the exception of Florida International University (FIU), has some form of a return-to-work program. However, DFS indicates that FIU will begin implementation of a return-to-work program in April, 2011.

The Fiscal Year 2010-2011 General Appropriations Act included a nonrecurring appropriation of \$17.1 million (section 112) to address the deficit in the Risk Management Trust Fund for Fiscal Year 2009-2010. In addition, the Fiscal Year 2010-2011 General Appropriations Act included a recurring \$39.1 million appropriation (Specific Appropriation 2180) to cover the Fiscal Year 2010-2011 estimated short-fall. The deficits for the previous and the current fiscal years are primarily attributable to the rising costs of workers' compensation. This bill implements a statewide return-to-work program with the goal of reducing the state's workers' compensation expenditures. The DFS has estimated the savings from the implementation of a return-to-work program to be approximately \$1.0 million annually to the Risk Management Trust Fund. The bill amends s. 440.50, F.S., to require that funds that are transferred from the Workers' Compensation Administration Trust Fund (WCATF) to other agencies (that by statute are to be funded from the WCATF) that remain unencumbered as of June 30 or undisbursed as of September 30 each year, shall revert back to the Workers' Compensation Administration Trust Fund. This change in statute is necessary to insure that sufficient cash balance will be available in the WCATF to fund the various appropriations made by the Legislature in support of the administration of the workers' compensation provisions in law and to avoid increases in the assessment on workers' compensation premiums as provided for in s. 440.51(1), F.S.

The bill provides an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

**Office of Financial Regulation/Consumer Services:** Presently, the Department of Financial Services provides for consumer assistance and complaint processing for functions and programs regulated by the department as well as providing the same functions for the Office of Insurance Regulation. The Office of Financial Regulation currently handles all functions related to consumer assistance and complaint intake for the programs and regulatory functions it has oversight thereof. However, ch. 20, F.S. indicates that the Department of Financial Services will be responsible for consumer assistance for “offices” (Office of Insurance Regulation and Office of Financial Regulation) of the Financial Services Commission.

**Division of Risk Management:** The State of Florida through the Division of Risk Management provides insurance coverage to 48 state agencies and state universities. Specifically, the Division of Risk Management provides insurance coverage in the areas of workers’ compensation, general liability, federal civil rights, automobile liability, and property insurance. The Division is funded with premiums paid by each agency and state university based on their respective loss history. The premiums are deposited in to the State Risk Management Trust Fund.

The Division’s mission is three-fold: 1) provide agencies and state universities with cost-effective insurance coverage either through the state’s self insurance program or purchasing commercial insurance; 2) to administer claims; and 3) to provide loss prevention program assistance and training.

Within the organizational structure of the Division of Risk Management is the Bureau of Loss Prevention, which provides professional safety training, quality evaluation tools along with other loss prevention and cost control programs for the agencies and state universities. Section 216.251(2)(b)(2), F.S., authorizes agencies and state universities to maintain return-to-work programs. However, the statute does not require them to do so.

Currently, state agency participants in the state’s self insurance program have no responsibility to engage in loss prevention activities, including return-to-work programs. Additionally, there is no accountability or evaluation of such programs. While lost time workers’ compensation claims account for only 10% of the state’s self insurance program, those claims account for 80% of workers’ compensation claims cost. Current law provides agencies no incentive to reduce claims cost or return injured workers to work.<sup>1</sup> The primary goal of a return-to-work program is to enable injured workers to remain at work or return to work to perform job duties within the physical and mental functional limitations and restrictions established by the treating physician.

In recent years, the Division has seen a rapid increase in the cost of workers’ compensation. In Fiscal Year 2004-2005, the workers’ compensation expenditures to the State Risk Management Trust Fund were \$91.3 million.<sup>2</sup> In Fiscal Year 2009-2010, the workers’ compensation expenditures totaled \$131.6 million – a 44% increase in five years.<sup>3</sup>

The DFS reports that other states such as Texas and Georgia have actively required all state agencies to maintain return-to-work programs. In fact, Georgia mandates that an agency loses the position of an

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<sup>1</sup> Department of Financial Services - Division of Risk Management Bill Analysis and Fiscal Impact Statement dated March 8, 2010 on file with the Government Operations Appropriation Subcommittee.

<sup>2</sup> Department of Financial Services Risk Management – Non-operating Budget FY 2005-2009, on file with the Government Operations Appropriations Subcommittee.

<sup>3</sup> Risk Management Trust Fund Revenue Estimating Conference data, dated March 1, 2011.

injured worker, if they do not provide alternative or modified duties for injured workers to return to work.<sup>4</sup>

**Workers' Compensation Administration Trust Fund:** The Workers' Compensation Administration Trust Fund (WCATF) within Department of Financial Services has the purpose of providing for the payment of expenses in respect to the administration of the workers' compensation program in the state.<sup>5</sup> Additionally, each fiscal year, funds are appropriated from the Workers' Compensation Administration Trust Fund to be transferred to other agencies to support related programs. Specifically, funds from the WCATF are transferred annually to the following agencies: Department of Education, Agency for Health Care Administration, Department of Business and Professional Regulation, Department of Management Services/Division of Administrative Hearings, First District Court of Appeal, and Justice Administration Commission (for use by the State Attorney in the 11<sup>th</sup> Judicial Circuit for the prosecution of workers' compensation fraud).

The major revenue source (other than fines imposed by the Division of Workers' Compensation) for the WCATF are assessments on workers' compensation insurance premiums as provided for in s. 440.51(1), F.S. Each year, by July 1<sup>st</sup> the department is required to notify insurance carriers and self-insurers of the assessment rate necessary for the enforcement of ch. 440, F.S. The assessment rate is effective the following January 1<sup>st</sup>.

Presently, at the conclusion of each fiscal year there is no statutory requirement or mechanism by which the agencies to which WCATF cash has been transferred and which remains unobligated and unspent must be returned to the WCATF. At the conclusion of Fiscal Year 2008-2009, an estimated \$2.5 million in WCATF cash remained unobligated and unspent in the agencies to which it had been transferred.

In recent years, the cash balance of the WCATF has declined considerably, with expenditures exceeding revenues. In Fiscal Year 2008-2009, expenditures exceeded revenues by \$41.1 million. In Fiscal Year 2009-2010, revenues fell short of expenditures by \$35.6 million. The forecast for Fiscal Year 2010-2011, indicates yet another year where expenditures will exceed revenues by \$51.1 million.<sup>6</sup> With the decline in revenues and the need to fund the programs that had been appropriated, the Chief Financial Officer on June 26, 2009, ordered an increase in the assessment on worker's compensation insurers and self-insurers premiums from one-quarter of one percent (0.25) to eight-tenths of one percent (0.80%) to insure that sufficient cash would be available to fund the appropriations set by the Legislature in the Fiscal Year 2009-2010 General Appropriations Act.<sup>7</sup> Due to the continuing decline in the trust fund balance, effective January 1, 2011, the assessment rate for the Workers' Compensation Administration Trust Fund was increased to ninety-eight hundredths of one percent (.98%) based on an order signed by the Chief Financial Officer June 17, 2010.<sup>8</sup>

### **Effects of Proposed Changes**

**Office of Financial Regulation / Consumer Assistance:** The bill amends s. 20.121, F.S., to update the statute to reflect that the Department of Financial Services will provide consumer assistance and compliant intake for programs and regulatory functions for which the department has oversight as well as for programs and functions under the Office of Insurance Regulation. The Office of Financial Regulation will continue to handle consumer assistance and compliant intake for programs and functions for which it has oversight responsibilities. The proposed House of Representatives General Appropriations Act for Fiscal Year 2011-2012, reflects appropriations for positions and budget in accordance with the proposed changes to s. 20.121, F.S.

<sup>4</sup> Division of Risk Management Presentation to the House Government Appropriations Subcommittee, dated February 10, 2010.

<sup>5</sup> Section 440.50, F.S.

<sup>6</sup> Department of Financial Services, Updated Schedule I of the Workers' Compensation Administration Trust Fund - submitted January 24, 2011.

<sup>7</sup> Department of Financial Services, Assessment Rate Order for Worker's Compensation Administration Trust Fund, June 26, 2009 (Case No. 105011-09-WC).

<sup>8</sup> Department of Financial Services, Assessment Rate Order for Workers' Compensation Administration Trust Fund, June 17, 2010

**Division of Risk Management:** The bill amends s. 284.50, F.S., by requiring the Department of Financial Services and all state agencies and state universities with 3,500 or more employees who are provided insurance coverage from the Division to establish and maintain a return-to-work program for injured state workers. Presently, each of the impacted agencies and state universities, with the exception of FIU, has some form of a return-to-work program. However, DFS indicates that FIU will begin implementation of a return-to-work program in April, 2011.<sup>9</sup> The impacted agencies and state universities include: Department of Corrections, University of Florida, Department of Health, Department of Children and Families, Florida State University, Agency for Workforce Innovation, University of South Florida, Department of Transportation, University of Central Florida, State Attorneys, Florida International University, Department of Revenue, Florida Atlantic University, Department of Juvenile Justice, Department of Highway Safety and Motor Vehicles, Department of Environmental Protection, State Court Systems, Agency for Persons with Disabilities, and Department of Agriculture and Consumer Services.

The return-to-work program will have the primary goal of enabling injured state workers to remain at work or return to work to perform job duties within the physical and mental functional limitations and restrictions established by the treating physician.

The bill also provides that the Division will evaluate each agency's return-to-work and loss prevention program at least once every 5 years. The Division's evaluation report on any recommended corrective action of an agency's return-to-work or loss prevention program will be submitted to the agency head, the Chief Financial Officer, and the Director of the Division of Risk Management. The affected agency head must provide a response to the Division within 45 days with a plan to implement corrective action. If the agency disagrees with the Division's final report recommendations or fails to take corrective action, the Division's final report recommendations will be submitted to the chairs of the legislative appropriations committees.

The bill amends s. 284.42, F.S., to clarify that the Division's annual report will be due each year (based on the prior fiscal year) on or before January 1<sup>st</sup> to the Governor, President of the Senate, and Speaker of the House of Representatives. Additionally, the annual report must include, beginning January 1, 2013, an analysis of return-to-work efforts by agency. The return-to-work analysis must include specific benchmarks to indicate the measurable outcomes and change from year to year by agency of return-to-work efforts.

The bill also amends ss. 284.01 and 284.36, F.S., to include that agency Risk Management premiums will be calculated and charged based on loss prevention results as well as actual losses as they currently are calculated and charged.

The DFS indicates that the benefits of a return-to-work program will have a positive impact by reducing costs and returning injured state workers to the workplace faster and keeping them at work. Further, the DFS estimates that there will be an indirect cost savings to the agencies by having increased productivity from reducing the loss of workers over an extended period of time along with producing lower rehiring and training costs.<sup>10</sup>

The Fiscal Year 2010-2011 General Appropriations Act, included a nonrecurring appropriation of \$17.1 million (section 112) to address the projected deficit in the Risk Management Trust Fund for Fiscal Year 2009-2010. In addition, the GAA included a recurring \$39.1 million appropriation (Specific Appropriation 2180) to cover the Fiscal Year 2010-2011 estimated short-fall. The projected deficits for the previous and the current fiscal years are primarily attributable to the rising costs of workers' compensation. This bill implements a statewide return-to-work program with the goal of reducing the

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<sup>9</sup> Correspondence with R.J. Castellanos, Director of Division of Risk Management, dated March 14, 2011, on file with the House Government Operations Appropriations Subcommittee.

<sup>10</sup> Division of Risk Management Presentation to the House Government Operations Appropriations Subcommittee dated Feb.10, 2010.

state's workers' compensation expenditures.<sup>11</sup> The DFS estimates the savings from the implementation of a return-to-work program to be approximately \$1.0 million annually.<sup>12</sup>

The Legislature appropriated three positions and \$298,478, in the Fiscal Year 2010-2011 General Appropriations Act, to begin implementation of a state return-to-work program. However, without specific authority to require agencies to proactively engage in return-to-work activities the potential cost savings are not likely to be realized. The return-to-work program conforms to the proposed House General Appropriations Act by providing the Risk Management Program with additional authority to implement a statewide return-to-work program in all agencies and universities with 3,500 or more employees with the potential to reduce costs thereby achieve cost savings to the Risk Management Trust Fund.

**Workers' Compensation Administration Trust Fund:** The bill amends s. 440.50, F.S., to require that funds transferred from the WCATF to the various agencies (that by statute are to be funded from the WCATF) that remain unencumbered as of June 30 or undisbursed as of September 30 each year, shall revert to the Workers' Compensation Administration Trust Fund.

The language in this section of the bill conforms to the House Proposed General Appropriations Act for Fiscal Year 2011-2012, by insuring that a potentially larger trust fund balance will be considered by the Chief Financial Officer when determining the rate of assessment on insurance carriers to support the appropriations made by the Legislature for administration of the workers' compensation laws as provided for in section 440.51(1), F.S.

#### B. SECTION DIRECTORY:

**Section 1** Amends s. 20.121, F.S., to codify the transfer of responsibilities related to consumer complaints for the Office of Financial Regulation from the Department of Financial Services to the Office of Financial Regulation.

**Section 2** Amends s. 284.01, F.S., to provide that the Division of Risk Management shall include loss prevention results in premium charges.

**Section 3** Amends s. 284.36, F.S., to provide that the Division of Risk Management will include loss prevention results in computing premium charges for all agencies.

**Section 4** Amends s. 284.42, F.S., to provide that the annual Risk Management Report is due on or before January 1 of each year. In addition, beginning January 1, 2013, the annual report shall include an analysis of return-to-work efforts by agency.

**Section 5** Amends s. 284.50, F.S., to provide that the Department of Financial Services and all agencies employing more than 3,500 employees must have a return-to-work program for employees receiving workers' compensation benefits.

**Section 6** Amends s. 440.50, F.S., to provide that funds appropriated from the Workers' Compensation Administration Trust Fund by operating or nonoperating transfer to other agencies that remain unencumbered on June 30 or undisbursed on September 30 shall revert to the Workers' Compensation Administration Trust Fund.

**Section 7** Provides an effective date of July 1, 2011.

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<sup>11</sup> Division of Risk Management Presentation to the House Government Operations Appropriations Subcommittee dated Feb. 8, 2011.

<sup>12</sup> Correspondence with R.J. Castellanos, Director of Division of Risk Management, dated March 15, 2011, on file with the House Government Operations Appropriations Subcommittee.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 6 requires agencies that receive funding from the Workers' Compensation Administration Trust Fund to return the cash, if remaining unobligated and unspent at the end of the fiscal year. With increased cash flow (with the reverted cash being returned) in the WCATF, the Chief Financial Officer may be able to set lower assessment rates on insurance carriers as provided for in s. 440.51(1), F.S. for the administration of the state's workers' compensation provisions contained in ch. 440, F.S.

### D. FISCAL COMMENTS:

The bill will likely have a positive fiscal impact on state government and the Department of Financial Services, more specifically:

The bill will likely achieve cost savings in the Risk Management Trust Fund with the implementation of a return-to-work program. In recent years the state has seen a dramatic increase in workers' compensation costs within the state's Risk Management Program. The Legislature appropriated in the Fiscal Year 2010-2011 General Appropriations Act a total of \$56.1 million for projected deficits (\$17.1 million for Fiscal Year 2009-2010 and \$39.1 million for Fiscal Year 2010-2011) in the Risk Management Trust Fund primarily due to the rise in workers' compensation costs. The DFS has estimated that a return-to-work program could potentially save \$1.0 million annually.<sup>13</sup>

Section 6 of the bill requires that agencies that receive cash transfers from the Workers' Compensation Administration Trust Fund to fund related workers' compensation activities must return unobligated and unspent cash at the conclusion of each fiscal year. This provision may allow the Chief Financial Officer to take into consider a potentially larger trust fund balance when determining the rate assessment on insurance carriers to support the appropriations made by the Legislature for administration of the workers' compensation laws.

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<sup>13</sup> Correspondence with R.J. Castellanos, Director of Division of Risk Management, dated March 15, 2011, on file with the House Government Operations Appropriations Subcommittee.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

None.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The primary contents of this bill (return-to-work) were included in House Bill 5603, which was passed by the Legislature during the 2010 Session. However, House Bill 5603 was amended during the Budget Conference to include language limiting the amount that may be charged for repackaged drugs provided to workers' compensation claimants. Governor Crist vetoed House Bill 5603. In his veto message the governor stated that while he supported the provisions in the bill, "that would help control the state's risk management and workers' compensation costs," he did not support the drug repackaging provisions.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to the Department of Financial Services;  
 3           amending s. 20.121, F.S.; revising duties of the Division  
 4           of Consumer Services; amending ss. 284.01 and 284.36,  
 5           F.S.; revising criteria for premiums charged to agencies  
 6           and departments for purposes of the State Risk Management  
 7           Trust Fund; amending s. 284.42, F.S.; revising reporting  
 8           requirements on the state insurance program; requiring the  
 9           Division of Risk Management to analyze and report on  
 10          certain agency return-to-work programs and activities;  
 11          amending s. 284.50, F.S.; requiring certain agencies to  
 12          establish and maintain return-to-work programs for certain  
 13          employees; providing program goals; requiring the Division  
 14          of Risk Management to evaluate agency risk management  
 15          programs; requiring reports; requiring agencies to respond  
 16          to the division's evaluation and recommendations;  
 17          requiring the division to submit a report of an evaluation  
 18          to the appropriations committees of the Legislature under  
 19          certain circumstances; amending s. 440.50, F.S.; providing  
 20          for reversion of certain unencumbered and undisbursed  
 21          funds to the Workers' Compensation Administration Trust  
 22          Fund; providing an effective date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:

25  
 26           Section 1. Paragraph (h) of subsection (2) of section  
 27   20.121, Florida Statutes, is amended to read:  
 28           20.121 Department of Financial Services.—There is created

29 a Department of Financial Services.

30 (2) DIVISIONS.—The Department of Financial Services shall  
 31 consist of the following divisions:

32 (h) The Division of Consumer Services.

33 1. The Division of Consumer Services shall perform the  
 34 following functions concerning products or services regulated by  
 35 the department ~~of Financial Services~~ or by ~~either office of the~~  
 36 Office of Insurance Regulation ~~Financial Services Commission~~:

37 a. Receive inquiries and complaints from consumers.

38 b. Prepare and disseminate such information as the  
 39 department deems appropriate to inform or assist consumers.

40 c. Provide direct assistance and advocacy for consumers  
 41 who request such assistance or advocacy.

42 d. With respect to apparent or potential violations of law  
 43 or applicable rules by a person or entity licensed by the  
 44 department or office ~~by either office of the commission~~, report  
 45 ~~such~~ apparent or potential violations ~~violation~~ to the office or  
 46 the appropriate division of the department ~~or office of the~~  
 47 ~~commission~~, which may take such further action as it deems  
 48 appropriate.

49 e. Designate an employee of the division as primary  
 50 contact for consumers on issues relating to sinkholes.

51 2. Any person licensed or issued a certificate of  
 52 authority by the department or by the Office of Insurance  
 53 Regulation shall respond, in writing, to the Division of  
 54 Consumer Services within 20 days after receipt of a written  
 55 request for information from the division concerning a consumer  
 56 complaint. The response must address the issues and allegations

57 | raised in the ~~this~~ complaint. The division may, ~~in its~~  
 58 | ~~discretion,~~ impose an administrative penalty for failure to  
 59 | comply with this subparagraph of ~~in an amount~~ up to \$2,500 per  
 60 | violation upon any entity licensed by the department or the  
 61 | office ~~of Insurance Regulation~~ and \$250 for the first violation,  
 62 | \$500 for the second violation, and up to \$1,000 per violation  
 63 | thereafter upon any individual licensed by the department or the  
 64 | office ~~of Insurance Regulation~~.

65 |         3. The department may adopt rules to implement the  
 66 | provisions of this paragraph.

67 |         4. The powers, duties, and responsibilities expressed or  
 68 | granted in this paragraph do ~~shall~~ not limit the powers, duties,  
 69 | and responsibilities of the department ~~of Financial Services,~~  
 70 | the Financial Services Commission, the Office of Insurance  
 71 | Regulation, or the Office of Financial Regulation set forth  
 72 | elsewhere in the Florida Statutes.

73 |         Section 2. Subsection (5) of section 284.01, Florida  
 74 | Statutes, is amended to read:

75 |         284.01 State Risk Management Trust Fund; coverages to be  
 76 | provided.—

77 |         (5) Premiums charged to agencies for coverage shall be  
 78 | adopted ~~promulgated~~ on a retrospective rating arrangement based  
 79 | upon actual losses accruing to the fund and loss prevention  
 80 | results, taking into account reasonable expectations,  
 81 | maintenance, and stability of the fund and cost of reinsurance.

82 |         Section 3. Section 284.36, Florida Statutes, is amended to  
 83 | read:

84 284.36 Appropriation deposits; premium payment.—Premiums  
 85 for coverage by the State Risk Management Trust Fund as  
 86 calculated on all coverages shall be billed and charged to each  
 87 state agency according to coverages obtained by the fund for  
 88 their benefit, and such obligations shall be paid promptly by  
 89 each agency from its operating budget upon presentation of a  
 90 bill therefor. After the first year of operation, premiums to be  
 91 charged to all departments of the state are to be computed on a  
 92 retrospective rating arrangement based upon actual losses  
 93 accruing to the fund and loss prevention results, taking into  
 94 account reasonable expectations, the maintenance and stability  
 95 of the fund, and the cost of insurance.

96 Section 4. Subsection (1) of section 284.42, Florida  
 97 Statutes, is amended to read:

98 284.42 Reports on state insurance program.—

99 (1) (a) The Department of Financial Services, with the  
 100 Department of Management Services, shall conduct ~~make~~ an  
 101 analysis of the state insurance program each year and, on or  
 102 before January 1, submit a report containing the results of the  
 103 analysis to the Governor, the President of the Senate, and the  
 104 Speaker of the House of Representatives annually, which shall  
 105 include:

106 1.(a) Complete underwriting information as to the nature  
 107 of the risks accepted for self-insurance and those risks that  
 108 are transferred to the insurance market.

109 2.(b) The funds allocated to the Florida Casualty Risk  
 110 Management Trust Fund and premiums paid for insurance through  
 111 the market.

112 |       ~~3.(e)~~ The method of handling legal matters and the cost  
 113 | allocated.

114 |       ~~4.(d)~~ The method and cost of handling inspection and  
 115 | engineering of risks.

116 |       ~~5.(e)~~ The cost of risk management service purchased.

117 |       ~~6.(f)~~ The cost of managing the State Insurance Program by  
 118 | the Department of Financial Services and the Department of  
 119 | Management Services.

120 |       (b) Beginning January 1, 2013, the Division of Risk  
 121 | Management must include in its annual report an analysis of  
 122 | agency return-to-work efforts, including, but not limited to,  
 123 | agency return-to-work program performance metrics and a status  
 124 | report on participating return-to-work programs. The report must  
 125 | specify benchmarks, including, but not limited to, the average  
 126 | lost-time claims per year for each agency; the total number of  
 127 | lost claims; and specific agency measurable outcomes indicating  
 128 | the change in performance from year to year.

129 |       Section 5. Subsections (3) and (4) are added to section  
 130 | 284.50, Florida Statutes, to read:

131 |       284.50 Loss prevention program; safety coordinators;  
 132 | Interagency Advisory Council on Loss Prevention; employee  
 133 | recognition program.—

134 |       (3) The Department of Financial Services and all agencies  
 135 | that employ more than 3,500 full-time employees and are provided  
 136 | workers' compensation insurance coverage by the State Risk  
 137 | Management Trust Fund shall establish and maintain return-to-  
 138 | work programs for employees who are receiving workers'  
 139 | compensation benefits. The primary goal of such programs is to

140 | enable injured workers to remain at work or return to work to  
 141 | perform job duties within the physical or mental functional  
 142 | limitations and restrictions established by the workers'  
 143 | treating physicians. If limitations or restrictions are not  
 144 | established in writing by a worker's treating physician, the  
 145 | worker is deemed fully able to perform the same work duties he  
 146 | or she performed before the injury.

147 |       (4) The Division of Risk Management must evaluate each  
 148 | agency's risk management programs, including, but not limited  
 149 | to, return-to-work, safety, and loss prevention programs, at  
 150 | least once every 5 years. A report, including, but not limited  
 151 | to, any recommended corrective action, that results from an  
 152 | evaluation must be provided to the head of the agency being  
 153 | evaluated, the Chief Financial Officer, and the Director of the  
 154 | Division of Risk Management. The agency head must provide to the  
 155 | Division of Risk Management a response to all recommendations in  
 156 | the report within 45 days after receipt of the report and a plan  
 157 | for implementing any corrective action the agency intends to  
 158 | take in response to the report. If the agency disagrees with any  
 159 | final recommendations in the report, including, but not limited  
 160 | to, any recommended corrective action or the agency fails to  
 161 | implement any recommended corrective action within a reasonable  
 162 | time, the division must submit a report of the evaluation to the  
 163 | appropriations committees of the Legislature.

164 |       Section 6. Subsection (5) is added to section 440.50,  
 165 | Florida Statutes, to read:

166 |       440.50 Workers' Compensation Administration Trust Fund.—



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167 |       (5) Funds appropriated by operating appropriation or  
 168 | nonoperating transfer from the Workers' Compensation  
 169 | Administration Trust Fund to the Department of Education, the  
 170 | Agency for Health Care Administration, the Department of  
 171 | Business and Professional Regulation, the Department of  
 172 | Management Services, the First District Court of Appeal, and the  
 173 | Justice Administrative Commission remaining unencumbered on June  
 174 | 30 or undisbursed on September 30 each year revert to the  
 175 | Workers' Compensation Administration Trust Fund.

176 |       Section 7. This act shall take effect July 1, 2011.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5701 PCB ANRAS 11-02 Management of Funds for Water Pollution Control Loans and Grants

SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee, Williams

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Appropriations Subcommittee	14 Y, 0 N	Perkins	Massengale
1) Appropriations Committee		Perkins <i>RMP</i>	Leznoff <i>[Signature]</i>

SUMMARY ANALYSIS

The bill makes statutory changes to conform to the funding decisions included in the House proposed General Appropriations Act (GAA) for Fiscal Year 2011-2012.

The Department of Environmental Protection (DEP) provides low interest loans and grants to local government agencies within Florida's Water Pollution Control Financial Assistance program for the purposes of planning, design, construction, and implementation of wastewater management systems, stormwater management systems, nonpoint source pollution management systems and estuary conservation and management.

Funds to establish or capitalize the Water Pollution Control Financial Assistance program are provided through federal government grants and state matching funds. Repayments from earlier loans are recycled back into the program to make new loans, allowing the program to operate in perpetuity.

The bill expands the authorized use of the service fees paid by loan recipients from only program administration to include other water quality activities, such as monitoring activities, total maximum daily loads development, watershed restoration best management practices and source water assessments. This authorized expansion of service fee uses allows DEP to transfer salary appropriations from the General Revenue Fund and the Florida Permit Fee Trust Fund to the Federal Grants Trust Fund. This transfer will align the budget to more accurately reflect the responsibilities the staff performs. The bill also amends the depository requirements of revenues received from the revolving loan program to be deposited into the Federal Grants Trust Fund rather than the Grants and Donations Trust Fund.

The bill has a \$2.1 million positive fiscal impact on state funds by reducing state expenditures, but the amount of funding available for loans or grants to local governments may decrease subject to the availability of funds.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

The Department of Environmental Protection (DEP) provides low interest loans and grants to local government agencies within Florida's Water Pollution Control Financial Assistance program for the purposes of planning, design, construction, and implementation of wastewater management systems, stormwater management systems, nonpoint source pollution management systems and estuary conservation and management.

Funds to establish or capitalize the Water Pollution Control Financial Assistance program are provided through federal government grants and state matching funds. Repayments from earlier loans are recycled back into the program to make new loans, allowing the program to operate in perpetuity.

Section 403.1835, F.S., authorizes DEP to assess loan recipients a service fee, which is restricted to support program administration. The revenues are deposited into DEP's Grants and Donations Trust Fund. Under federal Clean Water Act regulation, however, the service fees may be used for various water quality activities, as well as administration of the program.

The bill expands the authorized use of the service fees to other water quality activities, such as monitoring activities, developing total maximum daily loads, watershed restoration best management practices and source water assessments. This authorized expansion of service fee uses allows DEP to transfer salary appropriations from the General Revenue Fund and the Florida Permit Fee Trust Fund to the Federal Grants Trust Fund. This transfer will align the budget to more accurately reflect the responsibilities the staff performs. The bill also amends the depository requirements of revenues received from the revolving loan program to be deposited into the Federal Grants Trust Fund rather than the Grants and Donations Trust Fund.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 403.1835, F.S., revising depository requirements of revenues received from the administration of the water pollution control financial assistance programs and revising service fee use.

**Section 2.** Provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

The bill makes statutory changes to conform to the funding decisions included in the House proposed General Appropriations Act (GAA) for Fiscal Year 2011-2012.

1. Revenues:

None.

2. Expenditures:

	<u>FY 2011-12</u>	<u>FY 2012-13</u>
Department of Environmental Protection		
Salary and Benefits		
General Revenue Fund	(\$1,766,390)	(\$1,766,390)
Florida Permit Fee Trust Fund	(\$290,181)	(\$290,181)
Federal Grants Trust Fund	<u>\$2,056,571</u>	<u>\$2,056,571</u>
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See fiscal comments below.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

See fiscal comments below.

**D. FISCAL COMMENTS:**

By placing more direct salary cost against the collection of service fee revenue, the amount of funding available for loans or grants to local governments may decrease subject to the availability of funds. In the event funding declines, private sector jobs associated with the revolving loan program projects, such as construction engineering, project management, and associated service industries may be adversely affected. DEP indicates that the use of service fees will have to be carefully monitored so that alternative funding sources can be timely identified in the event funding declines.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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A bill to be entitled  
 An act relating to the management of funds for water  
 pollution control loans and grants; amending s. 403.1835,  
 F.S.; providing for the deposit of specified revenues into  
 the Department of Environmental Protection's Federal  
 Grants Trust Fund; requiring service fees to be used for  
 specified water quality activities in addition to program  
 administration; clarifying the purposes for which certain  
 federal appropriations and state matching funds must be  
 used; providing an effective date.

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

Section 1. Paragraph (b) of subsection (9) of section  
 403.1835, Florida Statutes, is amended to read:  
 403.1835 Water pollution control financial assistance.—  
 (9) Funds for the loans and grants authorized under this  
 section must be managed as follows:  
 (b) Revenues from the loan grant allocations authorized  
 under subsection (4), federal appropriations used for the  
purpose of administering this section, state matching funds for  
~~grants authorized by federal statute or other federal action,~~  
 and service fees, and all earnings thereon, shall be deposited  
 into the department's Federal Grants and Donations Trust Fund.  
 Service fees and all earnings thereon must be used solely for  
 program administration and other water quality activities  
specifically authorized pursuant to the Federal Water Pollution  
Control Act (Clean Water Act). The loan grant allocation

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29 | revenues and earnings thereon must be used solely for the  
 30 | purpose of making grants to financially disadvantaged small  
 31 | communities. Federal appropriations and state matching funds for  
 32 | grants authorized by federal statute or other federal action,  
 33 | and all earnings thereon, must be used solely for the purposes  
 34 | authorized under this section. All deposits into the  
 35 | department's Federal Grants ~~and Donations~~ Trust Fund under this  
 36 | section~~7~~ and all earnings thereon~~7~~ must be accounted for  
 37 | separately from all other moneys deposited into the fund.

38 |       Section 2. This act shall take effect July 1, 2011.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB APC 11-03 Auditor General  
**SPONSOR(S):** Appropriations Committee  
**TIED BILLS:**           **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee		Kramer <i>JK</i>	Leznoff <i>Y</i>

**SUMMARY ANALYSIS**

The bill modifies statutory requirements relating to the frequency of certain operational and financial audits conducted by the Auditor General. The bill requires the Auditor General to submit an annual report which includes a projected two-year work plan.

The bill conforms to the House proposed General Appropriations Act for the 2011-2012 fiscal year. The Auditor General's budget is being reduced by \$1.5 million in fiscal year 2011-12. The provisions of the bill will allow the Auditor General to be better positioned to absorb the budget reduction and focus attention where most needed.

The bill has an effective date of July 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

Article III, s. 2 of the Florida Constitution provides that “the legislature shall appoint an auditor to serve at its pleasure who shall audit public records and perform related duties as prescribed by law or concurrent resolution.” Currently, s. 11.42, F.S. sets forth the process for appointment and required qualifications of the Auditor General.<sup>1</sup>

#### Frequency of Audits:

Section 11.45(3), F.S. provides that the Auditor General must conduct audits of records and perform related duties as prescribed by law, concurrent resolution of the Legislature, or as directed by the Legislative Auditing Committee. The section also requires that the Auditor General must conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law.

The section requires that the Auditor General must conduct the following once every three years:

- Performance audits of the Department of Revenue’s administration of the ad valorem tax laws.
- Financial audits of the accounts and records of all district school boards in counties with populations of 125,000 or more, according to the most recent federal decennial statewide census.
- Reviews of a sample of each state agency’s internal audit reports to determine compliance with current Standards for the Professional Practice of Internal Auditing or, if appropriate, government auditing standards.

The section provides that the Auditor General must conduct the following at least once every two years:

- Operational audits of the accounts and records of state agencies and universities.
- A performance audit of the local government financial reporting system.

The section requires the Auditor General to conduct the following annually:

- Financial audit of state government.
- Financial audits of all universities and district boards of trustees of community colleges.
- Financial audits of the accounts and records of all district school boards in counties with populations of fewer than 150,000, according to the most recent federal decennial statewide census.
- Audits of the accounts and records of the Florida School for the Deaf and the Blind.

The bill modifies the requirements relating to the frequency of audits as described in the chart below:

Type of Audit	Frequency in current law	Frequency in bill
State government financial audit	Annually	unchanged
State agency operational audit	At least every 2 years	At least every 3 years
University/college financial audit	Annually	unchanged
University operational audit	At least every 2 years	At least every 3 years
College operational audit	Not specified	At least every 3 years
Florida Clerks of Court	Annually <sup>2</sup>	At least every 3 years

<sup>1</sup> See also, Joint Rule Five – Auditor General.

<sup>2</sup> Currently, the audit requirements relating the Florida Clerks of Court Operations Corporation may be found in s. 28.35, F.S. The bill amends this section to conform to the changes made in s. 11.45, F.S.

Operations Corporation operational audit		
Florida School for the Deaf and the Blind operational audit	Annually <sup>3</sup>	At least every 3 years
District school board financial audits – counties of fewer than 150,000	Annually	unchanged
District school board financial audits – counties of more than 150,000	Once every three years <sup>4</sup>	unchanged
District school board operational audit	Not specified	At least every 3 years
Local government financial reporting system	At least every 2 years	At least every 3 years

The bill modifies the definition of the term “financial audit” and 218.31(17), F.S. to provide that when applicable, the scope of financial audits must encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996 and other applicable federal law.<sup>5</sup> The bill modifies the definition of the term “operational audit” to mean an audit whose purpose is to evaluate management’s performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste and abuse, and in administering assigned responsibilities in accordance with applicable laws, rules, regulations, contracts, grant agreements and other guidelines. The bill further provides that all audits must be conducted in accordance with government auditing standards and identify weaknesses in internal controls.

The bill removes the requirement that the Auditor General give appropriate consideration to reports issued by agencies’ or universities’ inspectors general and the resolution of the finding of the reports.

**Florida Bright Futures Scholarship Program:**

Section 1009.53, F.S. provides that each institution that receives moneys through the Florida Bright Futures Scholarship Program must prepare an annual report that includes an annual financial audit conducted by an independent certified public accountant or the Auditor General.

The bill requires that the audit must be performed for each fiscal year in which the institution expends program moneys in excess of \$100,000 and provides that at least every two years the audit must include an examination of the institution’s accounting of the moneys for the program since the last examination. The bill also provides that any institution not subject to an audit must attest, under penalties of perjury, that proceeds received under the program were used in compliance with the applicable law. The attestation will be made annually in a form determined by the Department of Education.

**Virtual Education Providers:**

Currently s. 11.45(3), F.S. provides that the Auditor General may conduct audits of an extensive list of specified entities or types of records. Included in the list is the Florida Virtual School. The bill adds virtual education providers receiving state funds or funds from local ad valorem taxes.

**Reporting Requirements:**

<sup>3</sup> Currently this requirement may be found in s. 1002.36(3), F.S. and s. 11.45(2)(f), F.S. The bill amends s. 1002.36(3), F.S. to conform to the changes made in s. 11.45, F.S.

<sup>4</sup> Currently this requirement may be found in s. 11.45(2)(j), F.S. and has been moved to paragraph (e).

<sup>5</sup> 31 U.S.C. ss. 7501-7507

Currently, s. 11.45(7)(h), F.S. requires the Auditor General to provide a list of statutory and fiscal changes recommended by the office to the legislature each year. The bill requires the Auditor General to produce an annual report which will include a projected 2 year work plan identifying the audits and other accountability activities to be undertaken during that time.

**Other changes:**

The bill also makes other changes including:

- Transferring from s. 195.096, F.S. to s. 11.45, F.S., requirements relating to the Auditor General's performance audit of the Department of Revenue's administration of the ad valorem tax laws.
- Eliminating the requirement that the Auditor General conduct an annual audit the Emergency Communications Number System Fund.
- Eliminating the requirement in s. 11.45(2)(e), F.S., that the Auditor General annually audit, through fiscal year 2008-2009, the Wireless Emergency Telephone System Fund.
- Removes requirement that the Auditor General audit the Investment Fraud Restoration Financing Corporation as the program has been eliminated in statute.
- Changing to cross-references.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 11.45, F.S., relating to definitions; duties; authorities; reports; rules.

Section 2. Amends s. 25.075, F.S., relating to uniform case reporting system.

Section 3. Amends s. 28.35, F.S., relating to Florida Clerks of Court Operations Corporation.

Section 4. Amends s. 195.096, F.S., relating to review of assessment rolls.

Section 5. Amends s. 218.31, F.S., relating to definitions.

Section 6. Amends s. 273.05, F.S., relating to surplus supply.

Section 7. Amends s. 365.173, F.S., relating to emergency communications number E911 system fund.

Section 8. Amends s. 943.25, F.S. relating to criminal justice trust funds; source of funds; use of funds.

Section 9. Amends s. 1002.36, F.S., relating to the Florida School for the Deaf and Blind.

Section 10. Amends s. 1009.53, F.S., relating to Florida Bright Futures Scholarship Program.

Section 11. Amends s. 938.01, F.S., relating to Additional Court Cost Clearing Trust Fund.

Section 12. Amends s. 943.17, F.S., relating to basic recruit, advanced, and career development training programs; participation; cost; evaluation.

Section 13. Provides an effective date of July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

In the House proposed budget, the Auditor General's budget for fiscal year 2011-12 is reduced by \$1.5 million, in great part due to the provisions of this bill giving the Auditor General more flexibility in the scheduling of certain types of audits.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. Local governments may be impacted by reduced audit coverage by the Auditor General. However, because the Auditor General will have greater flexibility to base audits on risk assessments, it is more likely that entities that require increased attention will receive it.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to the Auditor General; amending s. 11.45,  
 3           F.S.; requiring that financial audits be conducted in  
 4           accordance with certain auditing standards and activities;  
 5           expanding the definition and standards of "operational  
 6           audit"; revising the duties of the Auditor General  
 7           pertaining to financial audits of district boards of  
 8           trustees of community colleges, district school boards,  
 9           universities, the Florida Clerks of Court Operations  
 10          Corporation, and the Florida School for the Deaf and  
 11          Blind; revising the time for conducting certain  
 12          operational audits; revising the requirements for  
 13          conducting a performance audit of the ad valorem tax laws;  
 14          deleting the authority of the Auditor General to conduct  
 15          an audit of the Investment Fraud Restoration Financing  
 16          Corporation; authorizing the Auditor General to conduct  
 17          audits or other engagements of certain virtual education  
 18          providers; expanding the requirements of the annual report  
 19          to the legislative leadership and Legislative Auditing  
 20          Committee; amending s. 25.075, F.S.; deleting the  
 21          requirement that the Auditor General audit certain reports  
 22          made to the Supreme Court in accordance with the uniform  
 23          case reporting system established by the court; amending  
 24          s. 28.35, F.S.; deleting the requirements that the Florida  
 25          Clerks of Court Operations Corporation submit an annual  
 26          audited financial statement to the Auditor General and  
 27          that the Auditor General conduct an audit of the  
 28          corporation; amending s. 195.096, F.S.; deleting the

29 requirement that the Auditor General conduct a performance  
 30 audit of the administration of ad valorem tax laws;  
 31 amending s. 218.31, F.S.; requiring that financial audits  
 32 be conducted in accordance with certain auditing standards  
 33 and activities; amending s. 273.05, F.S.; transferring the  
 34 responsibility of developing rules for surplus property  
 35 records from the Auditor General to the Chief Financial  
 36 Officer; amending s. 365.173, F.S.; deleting certain  
 37 responsibilities of the Auditor General for the Emergency  
 38 Communications Number E911 System Fund; amending s.  
 39 943.25, F.S.; deleting certain responsibilities of the  
 40 Auditor General pertaining to criminal justice trust  
 41 funds; amending s. 1002.36, F.S.; deleting the requirement  
 42 that the Auditor General perform annual audits of the  
 43 Florida School for the Deaf and the Blind; amending s.  
 44 1009.53, F.S.; revising the criteria for audits for  
 45 institutions which receive a certain amount of funds from  
 46 the Bright Futures Scholarship program; providing a date  
 47 by which certain reports must be submitted; providing that  
 48 an institution that is not subject to the audit shall  
 49 attest, under penalty of perjury, that the scholarship  
 50 proceeds were used in compliance with law; providing that  
 51 the Department of Education may establish the form and  
 52 format for the attestation; amending ss. 938.01 and  
 53 943.17, F.S.; conforming cross-references to changes made  
 54 by the act; providing an effective date.

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

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Section 1. Paragraphs (c) and (g) of subsection (1), subsection (2), paragraphs (u), (v), (w), and (x) of subsection (3), and paragraph (h) of subsection (7) of section 11.45, Florida Statutes, are amended, and a new paragraph (x) is added to subsection (3) of that section, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. 11.40-11.513, the term:

(c) "Financial audit" means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States ~~auditing standards~~ and government auditing standards as adopted by the Board of Accountancy. When applicable, the scope of financial audits shall encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C.A. ss. 7501-7507 and other applicable federal law.

(g) "Operational audit" means an ~~a financial-related~~ audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, regulations, contracts, grant agreements, and other guidelines. Operational



85 audits must be conducted in accordance with government auditing  
 86 standards. Operational audits examine and to determine the  
 87 extent to which the internal controls control, as designed and  
 88 placed in operation to, promote ~~promotes~~ and encourage  
 89 ~~encourages~~ the achievement of management's control objectives in  
 90 the categories of compliance, economic and efficient operations,  
 91 reliability of financial records and reports, and safeguarding  
 92 of assets and the identification of weaknesses in those internal  
 93 controls.

94 (2) DUTIES.—The Auditor General shall:

95 (a) Conduct audits of records and perform related duties  
 96 as prescribed by law, concurrent resolution of the Legislature,  
 97 or as directed by the Legislative Auditing Committee.

98 (b) Annually conduct a financial audit of state  
 99 government.

100 (c) Annually conduct financial audits of all state  
 101 ~~universities and district boards of trustees of community~~  
 102 ~~colleges.~~

103 (d) Annually conduct financial audits of the accounts and  
 104 records of all district school boards in counties with  
 105 populations of fewer than 150,000, according to the most recent  
 106 federal decennial statewide census.

107 (e) Once every 3 years, conduct financial audits of the  
 108 accounts and records of all district school boards in counties  
 109 with populations of 150,000 or more, according to the most  
 110 recent federal decennial statewide census. ~~Through fiscal year~~  
 111 ~~2008-2009, annually conduct an audit of the Wireless Emergency~~  
 112 ~~Telephone System Fund as described in s. 365.173.~~

113 ~~(f) Annually conduct audits of the accounts and records of~~  
 114 ~~the Florida School for the Deaf and the Blind.~~

115 (f)(g) At least every 3 ~~2~~ years, conduct operational  
 116 audits of the accounts and records of state agencies, and  
 117 universities, colleges, district school boards, the Florida  
 118 Clerks of Court Operations Corporation, and the Florida School  
 119 for the Deaf and the Blind. ~~In connection with these audits, the~~  
 120 ~~Auditor General shall give appropriate consideration to reports~~  
 121 ~~issued by state agencies' inspectors general or universities'~~  
 122 ~~inspectors general and the resolution of findings therein.~~

123 (g)(h) At least every 3 ~~2~~ years, conduct a performance  
 124 audit of the local government financial reporting system, which,  
 125 for the purpose of this chapter, means any statutory provisions  
 126 related to local government financial reporting. The purpose of  
 127 such an audit is to determine the accuracy, efficiency, and  
 128 effectiveness of the reporting system in achieving its goals and  
 129 to make recommendations to the local governments, the Governor,  
 130 and the Legislature as to how the reporting system can be  
 131 improved and how program costs can be reduced. The Auditor  
 132 General shall determine the scope of such audits. The local  
 133 government financial reporting system should provide for the  
 134 timely, accurate, uniform, and cost-effective accumulation of  
 135 financial and other information that can be used by the members  
 136 of the Legislature and other appropriate officials to accomplish  
 137 the following goals:

- 138 1. Enhance citizen participation in local government;
- 139 2. Improve the financial condition of local governments;
- 140 3. Provide essential government services in an efficient

141 and effective manner; and

142 4. Improve decisionmaking on the part of the Legislature,  
143 state agencies, and local government officials on matters  
144 relating to local government.

145 (h)-(i) At least Once every 3 years, conduct a performance  
146 audit audits of the Department of Revenue's administration of  
147 the ad valorem tax laws as described in s. 195.096. The  
148 performance audit shall report on the activities of the ad  
149 valorem tax program of the Department of Revenue related to the  
150 ad valorem tax rolls. The Auditor General shall include, for at  
151 least four counties so reviewed, findings as to the accuracy of  
152 assessment procedures, projections, and computations made by the  
153 division, using the same generally accepted appraisal standards  
154 and procedures to which the division and the property appraisers  
155 are required to adhere. However, the report may not include any  
156 findings or statistics related to any ad valorem tax roll that  
157 is in litigation between the state and county officials at the  
158 time the report is to be issued.

159 ~~(j) Once every 3 years, conduct financial audits of the~~  
160 ~~accounts and records of all district school boards in counties~~  
161 ~~with populations of 125,000 or more, according to the most~~  
162 ~~recent federal decennial statewide census.~~

163 (i)-(k) Once every 3 years, review a sample of each state  
164 agency's internal audit reports at each state agency, as defined  
165 in s. 20.0551(1)(a), to determine compliance with current  
166 Standards for the Professional Practice of Internal Auditing or,  
167 if appropriate, government auditing standards.

168 (j)-(l) Conduct audits of local governmental entities when

169 determined to be necessary by the Auditor General, when directed  
 170 by the Legislative Auditing Committee, or when otherwise  
 171 required by law. No later than 18 months after the release of  
 172 the audit report, the Auditor General shall perform such  
 173 appropriate followup procedures as he or she deems necessary to  
 174 determine the audited entity's progress in addressing the  
 175 findings and recommendations contained within the Auditor  
 176 General's previous report. The Auditor General shall notify  
 177 ~~provide a copy of his or her determination to~~ each member of the  
 178 audited entity's governing body and ~~to~~ the Legislative Auditing  
 179 Committee of the results of his or her determination.

180  
 181 The Auditor General shall perform his or her duties  
 182 independently but under the general policies established by the  
 183 Legislative Auditing Committee. This subsection does not limit  
 184 the Auditor General's discretionary authority to conduct other  
 185 audits or engagements of governmental entities as authorized in  
 186 subsection (3).

187 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The  
 188 Auditor General may, pursuant to his or her own authority, or at  
 189 the direction of the Legislative Auditing Committee, conduct  
 190 audits or other engagements as determined appropriate by the  
 191 Auditor General of:

192 ~~(u) The Investment Fraud Restoration Financing Corporation~~  
 193 ~~created pursuant to chapter 517.~~

194 (u) ~~(v)~~ The books and records of any permitholder that  
 195 conducts race meetings or jai alai exhibitions under chapter  
 196 550.

197 | ~~(v)-(w)~~ The corporation defined in part II of chapter 946,  
 198 | known as the Prison Rehabilitative Industries and Diversified  
 199 | Enterprises, Inc., or PRIDE Enterprises.

200 | ~~(w)-(x)~~ The Florida Virtual School pursuant to s. 1002.37.  
 201 | (x) Virtual education providers receiving state funds or  
 202 | funds from local ad valorem taxes.

203 | (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

204 | (h) The Auditor General shall compile and transmit to the  
 205 | President of the Senate, the Speaker of the House of  
 206 | Representatives, and the Legislative Auditing Committee by  
 207 | December 1 of each year an annual report, which shall include a  
 208 | projected 2-year work plan identifying the audits and other  
 209 | accountability activities to be undertaken and a list of  
 210 | statutory and fiscal changes recommended by the Auditor General.  
 211 | The Auditor General may also transmit recommendations at other  
 212 | times of the year when the information would be timely and  
 213 | useful for the Legislature.

214 | Section 2. Subsection (3) of section 25.075, Florida  
 215 | Statutes, is amended to read:

216 | 25.075 Uniform case reporting system.—

217 | ~~(3) The Auditor General shall audit the reports made to~~  
 218 | ~~the Supreme Court in accordance with the uniform system~~  
 219 | ~~established by the Supreme Court.~~

220 | Section 3. Subsection (5) of section 28.35, Florida  
 221 | Statutes, is amended to read:

222 | 28.35 Florida Clerks of Court Operations Corporation.—

223 | ~~(5)(a) The corporation shall submit an annual audited~~  
 224 | ~~financial statement to the Auditor General in a form and manner~~

225 ~~prescribed by the Auditor General. The Auditor General shall~~  
 226 ~~conduct an annual audit of the operations of the corporation,~~  
 227 ~~including the use of funds and compliance with the provisions of~~  
 228 ~~this section and ss. 28.36 and 28.37.~~

229 (b) Certified public accountants conducting audits of  
 230 counties pursuant to s. 218.39 shall report, as part of the  
 231 audit, whether or not the clerks of the courts have complied  
 232 with the requirements of this section and s. 28.36. In addition,  
 233 each clerk of court shall forward a copy of the portion of the  
 234 financial audit relating to the court-related duties of the  
 235 clerk of court to the Supreme Court. The Auditor General shall  
 236 develop a compliance supplement for the audit of compliance with  
 237 the budgets and applicable performance standards certified by  
 238 the corporation.

239 Section 4. Subsections (7), (8), and (9) of section  
 240 195.096, Florida Statutes, are amended to read:

241 195.096 Review of assessment rolls.—

242 ~~(7) The Auditor General shall conduct a performance audit~~  
 243 ~~of the administration of ad valorem tax laws by the department~~  
 244 ~~triennially following completion of reviews conducted pursuant~~  
 245 ~~to this section. The audit report shall be submitted to the~~  
 246 ~~Legislature no later than April 1, on a triennial basis,~~  
 247 ~~reporting on the activities of the ad valorem tax program of the~~  
 248 ~~Department of Revenue related to the ad valorem tax rolls. The~~  
 249 ~~Auditor General shall include, for at least four counties so~~  
 250 ~~reviewed, findings as to the accuracy of assessment procedures,~~  
 251 ~~projections, and computations made by the division, utilizing~~  
 252 ~~the same generally accepted appraisal standards and procedures~~

253 ~~to which the division and the property appraisers are required~~  
 254 ~~to adhere. However, the report shall not include any findings or~~  
 255 ~~statistics related to any ad valorem tax roll which is in~~  
 256 ~~litigation between the state and county officials at the time~~  
 257 ~~the report is to be issued.~~

258 ~~(7)-(8)~~ When a roll is prepared as an interim roll pursuant  
 259 to s. 193.1145, the department shall compute assessment levels  
 260 for both the interim roll and the final approved roll.

261 ~~(8)-(9)~~ Chapter 120 does ~~shall~~ not apply to this section.

262 Section 5. Subsection (17) of section 218.31, Florida  
 263 Statutes, is amended to read:

264 218.31 Definitions.—As used in this part, except where the  
 265 context clearly indicates a different meaning:

266 (17) "Financial audit" means an examination of financial  
 267 statements in order to express an opinion on the fairness with  
 268 which they are presented in conformity with generally accepted  
 269 accounting principles and an examination to determine whether  
 270 operations are properly conducted in accordance with legal and  
 271 regulatory requirements. Financial audits must be conducted in  
 272 accordance with auditing standards generally accepted in the  
 273 United States auditing standards and government auditing  
 274 standards as adopted by the Board of Accountancy and as  
 275 prescribed by rules promulgated by the Auditor General. When  
 276 applicable, the scope of financial audits shall encompass the  
 277 additional activities necessary to establish compliance with the  
 278 Single Audit Act Amendments of 1996, 31 U.S.C.A. ss. 7501-7507  
 279 and other applicable federal law.

280 Section 6. Subsection (5) of section 273.05, Florida

281 Statutes, is amended to read:

282 273.05 Surplus property.—

283 (5) The custodian shall maintain records of property that  
 284 is certified as surplus with information indicating the value  
 285 and condition of the property. Agency records for property  
 286 certified as surplus shall comply with rules issued by the Chief  
 287 Financial Officer Auditor General.

288 Section 7. Subsection (3) of section 365.173, Florida  
 289 Statutes, is amended to read:

290 365.173 Emergency Communications Number E911 System Fund.—

291 ~~(3) The Auditor General shall annually audit the fund to~~  
 292 ~~ensure that moneys in the fund are being managed in accordance~~  
 293 ~~with this section and s. 365.172. The Auditor General shall~~  
 294 ~~provide a report of the annual audit to the board.~~

295 Section 8. Subsections (3) and (4) and paragraph (d) of  
 296 subsection (5) of section 943.25, Florida Statutes, are amended,  
 297 and present subsections (4) through (12) are renumbered as  
 298 subsections (3) through (11), respectively, to read:

299 943.25 Criminal justice trust funds; source of funds; use  
 300 of funds.—

301 ~~(3) The Auditor General is directed in her or his audit of~~  
 302 ~~courts to ascertain that such assessments have been collected~~  
 303 ~~and remitted and shall report to the Legislature. All such~~  
 304 ~~records of the courts shall be open for her or his inspection.~~  
 305 ~~The Auditor General is further directed to conduct audits of the~~  
 306 ~~expenditures of the trust funds and to report to the~~  
 307 ~~Legislature. Such audits shall be conducted in accordance with~~  
 308 ~~s. 11.45.~~



309 |        ~~(3)-(4)~~ The commission shall, by rule, establish,  
 310 | implement, supervise, and evaluate the expenditures of the  
 311 | Criminal Justice Standards and Training Trust Fund for approved  
 312 | advanced and specialized training program courses. Criminal  
 313 | justice training school enhancements may be authorized by the  
 314 | commission subject to the provisions of subsection (6) ~~(7)~~. The  
 315 | commission may approve the training of appropriate support  
 316 | personnel when it can be demonstrated that these personnel  
 317 | directly support the criminal justice function.

318 |        ~~(4)-(5)~~ The commission shall authorize the establishment of  
 319 | regional training councils to advise and assist the commission  
 320 | in developing and maintaining a plan assessing regional criminal  
 321 | justice training needs and to act as an extension of the  
 322 | commission in the planning, programming, and budgeting for  
 323 | expenditures of the moneys in the Criminal Justice Standards and  
 324 | Training Trust Fund.

325 |        (d) A public criminal justice training school must be  
 326 | designated by the commission to receive and distribute the  
 327 | disbursements authorized under subsection (8) ~~(9)~~.

328 |        Section 9. Subsection (3) of section 1002.36, Florida  
 329 | Statutes, is amended to read:

330 |        1002.36 Florida School for the Deaf and the Blind.—

331 |        (3) AUDITS.—The Auditor General shall conduct ~~annual~~  
 332 | audits of the accounts and records of the Florida School for the  
 333 | Deaf and the Blind as provided in s. 11.45. The Department of  
 334 | Education's Inspector General is authorized to conduct  
 335 | investigations at the school as provided in s. 1001.20(4)(e).

336 |        Section 10. Paragraph (c) of subsection (5) of section

337 1009.53, Florida Statutes, is amended, and paragraph (d) is  
 338 added to that subsection, to read:

339 1009.53 Florida Bright Futures Scholarship Program.—

340 (5) The department shall issue awards from the scholarship  
 341 program annually. Annual awards may be for up to 45 semester  
 342 credit hours or the equivalent. Before the registration period  
 343 each semester, the department shall transmit payment for each  
 344 award to the president or director of the postsecondary  
 345 education institution, or his or her representative, except that  
 346 the department may withhold payment if the receiving institution  
 347 fails to report or to make refunds to the department as required  
 348 in this section.

349 (c) Each institution that receives moneys through this  
 350 program shall provide for a prepare an annual report that  
 351 includes an annual financial audit, as defined in s.  
 352 11.45(1)(c), conducted by an independent certified public  
 353 accountant or the Auditor General, for each fiscal year in which  
 354 the institution expends program moneys in excess of \$100,000. At  
 355 least every 2 years, the audit ~~The report~~ shall include an  
 356 examination ~~audit~~ of the institution's administration of the  
 357 program and the institution's a complete accounting of the  
 358 moneys for the program since the last examination of the  
 359 institution's administration of the program. The This report on  
 360 the audit must be submitted to the department within 9 months  
 361 after the end of the fiscal year annually by March 1. The  
 362 department may conduct its own annual audit of an institution's  
 363 administration of the program. The department may request a  
 364 refund of any moneys overpaid to the institution for the

365 program. The department may suspend or revoke an institution's  
 366 eligibility to receive future moneys for the program if the  
 367 department finds that an institution has not complied with this  
 368 section. The institution must remit within 60 days any refund  
 369 requested in accordance with this subsection.

370 (d) Any institution not subject to audit pursuant to this  
 371 subsection shall attest, under penalties of perjury, that  
 372 proceeds received under this subsection were used in compliance  
 373 with the applicable law. The attestation shall be made annually  
 374 in a form and format determined by the department.

375 Section 11. Paragraph (b) of subsection (1) of section  
 376 938.01, Florida Statutes, is amended to read:

377 938.01 Additional Court Cost Clearing Trust Fund.—

378 (1) All courts created by Art. V of the State Constitution  
 379 shall, in addition to any fine or other penalty, require every  
 380 person convicted for violation of a state penal or criminal  
 381 statute or convicted for violation of a municipal or county  
 382 ordinance to pay \$3 as a court cost. Any person whose  
 383 adjudication is withheld pursuant to the provisions of s.  
 384 318.14(9) or (10) shall also be liable for payment of such cost.  
 385 In addition, \$3 from every bond estreature or forfeited bail  
 386 bond related to such penal statutes or penal ordinances shall be  
 387 remitted to the Department of Revenue as described in this  
 388 subsection. However, no such assessment may be made against any  
 389 person convicted for violation of any state statute, municipal  
 390 ordinance, or county ordinance relating to the parking of  
 391 vehicles.

392 (b) All funds in the Department of Law Enforcement

393 Criminal Justice Standards and Training Trust Fund shall be  
 394 disbursed only in compliance with s. 943.25(8)~~(9)~~.

395 Section 12. Paragraph (c) of subsection (1) of section  
 396 943.17, Florida Statutes, is amended to read:

397 943.17 Basic recruit, advanced, and career development  
 398 training programs; participation; cost; evaluation.—The  
 399 commission shall, by rule, design, implement, maintain,  
 400 evaluate, and revise entry requirements and job-related  
 401 curricula and performance standards for basic recruit, advanced,  
 402 and career development training programs and courses. The rules  
 403 shall include, but are not limited to, a methodology to assess  
 404 relevance of the subject matter to the job, student performance,  
 405 and instructor competency.

406 (1) The commission shall:

407 (c) Design, implement, maintain, evaluate, revise, or  
 408 adopt a career development training program which is limited to  
 409 those courses related to promotion to a higher rank or position.  
 410 Career development courses will not be eligible for funding as  
 411 provided in s. 943.25(8)~~(9)~~.

412 Section 13. This act shall take effect July 1, 2011.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB APC 11-04 Commission on Capital Cases

SPONSOR(S): Appropriations Committee

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee		Kramer <i>TK</i>	Leznoff <i>jl</i>

SUMMARY ANALYSIS

The bill repeals s. 27.709, F.S. which establishes the Commission on Capital Cases, a legislative commission which is housed within the Office of Legislative Services. The bill requires that the Justice Administrative Commission (JAC), rather than the Commission on Capital Cases, maintain the registry of private attorneys who are eligible to be appointed to represent indigent capital defendants.

This bill conforms to the House proposed General Appropriations Act for the 2011-2012 fiscal year which reduces the Legislature's budget by \$405,704 in General Revenue. Remaining statutorily required responsibilities will be absorbed by the JAC with existing resources.

The bill has an effective date of July 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background:

*Commission on Capital Cases:* Section 27.709, F.S. creates the Commission on Capital Cases housed within the Office of Legislative Services. The commission was created in 1997 and was originally called the Commission on the Administration of Justice in Capital Cases.<sup>1</sup>

According to s. 27.709, F.S., the Commission has six members; two members appointed by the Governor; two members appointed by the President of the Senate from the membership of the Senate and two members appointed by the Speaker of the House of Representatives from the membership of the House of Representatives.<sup>2</sup> The chair of the commission is selected by the members for a term of 1 year. The commission is required to meet quarterly. The Office of Legislative Services provides staff support for the commission.

The commission is required to:<sup>3</sup>

- review the administration of justice in capital collateral cases;
- receive relevant public input, review the operation of the capital collateral regional counsel and private counsel appointed in capital postconviction cases; and
- advise and make recommendations to the Governor, Legislature, and Supreme Court.

The commission is required to receive complaints regarding the practice of any office of regional counsel and private counsel appointed in capital postconviction cases and must refer any complaint to The Florida Bar, the State Supreme Court, or the Commission on Ethics, as appropriate.

*Capital collateral attorney registry:* A defendant who is convicted of a crime in which the death penalty is imposed receives a direct appeal of his or her sentence and conviction to the Florida Supreme Court. If the Supreme Court refuses to hear or rejects the defendant's appeal, the defendant is entitled to begin postconviction proceedings, also known as collateral proceedings. In the middle and southern regions of Florida, the Capital Collateral Regional Counsel and private attorneys appointed by the court from a registry provide postconviction representation to indigent capital defendants.<sup>4</sup> Since 2003, in the northern region of the state, representation is exclusively provided by private attorneys appointed by the court from the registry. The registry of attorneys is maintained by the Commission on Capital Cases and is comprised of lawyers who have met certain statutory criteria.<sup>5</sup> According to the commission's website, there are currently 137 attorneys on the registry.<sup>6</sup>

*Justice Administrative Commission:* The Justice Administrative Commission (JAC) provides administrative services to the state attorneys and public defenders, the capital collateral regional counsel, the criminal conflict and civil regional counsel, the Guardian Ad Litem Program, and the Florida Clerks of Court Operations Corporation.<sup>7</sup> For criminal defense representation in non-capital cases in which neither the Public Defender's office or the office of criminal conflict and civil regional counsel are able to provide representation due to conflicts of interest, an attorney is appointed from a registry maintained by the clerk of court of each circuit and must sign a contract with the Justice Administrative Commission.<sup>8</sup>

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<sup>1</sup> Ch. 97-313, s. 9

<sup>2</sup> A member from the majority party and a member from the minority party must be appointed from the House and the Senate. The current members of the commission are Senator Storms, Senator Joyner, Representative Waldman, Representative Eisnagle, Charles Harris (retired judge) and Jeffrey Swartz (former judge). <http://www.floridacapitalcases.state.fl.us/c-members.cfm>

<sup>3</sup> s. 27.709, F.S.

<sup>4</sup> s. 27.701, F.S.

<sup>5</sup> s. 27.710(2), F.S.

<sup>6</sup> <http://www.floridacapitalcases.state.fl.us/c-registry-attorney.cfm>

<sup>7</sup> s. 43.16, F.S.

<sup>8</sup> s. 27.40, F.S.

**Effect of bill:**

The bill repeals s. 27.709, F.S. which establishes the Commission on Capital Cases. The bill amends s. 27.710, F.S. to require that the Justice Administrative Commission, rather than the Commission on Capital Cases, maintain the registry of private attorneys who are eligible to be appointed to represent indigent capital defendants. Other statutory requirements found in s. 27.7002, 27.702 and 27.711, relating to the registry are transferred from the Commission on Capital Cases to the Justice Administrative Commission.

**B. SECTION DIRECTORY:**

Section 1. Repeals s. 27.709, F.S., relating to the Commission on Capital Cases.

Section 2. Amends s. 27.7002, F.S., relating to limitation on collateral representation; lawyer disqualification; use of state funds for excess fees not authorized.

Section 3. Amends s. 27.702, F.S., relating to the duties of the capital collateral regional counsel; reports.

Section 4. Amends s. 27.710, F.S., relating to the registry of attorneys applying to represent persons in postconviction capital collateral proceedings; certification of minimum requirements; appointment by trial court.

Section 5. Amends s. 27.711, F.S., relating to terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.

Section 6. Provides effective date of July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The budget of the Legislature is reduced by \$405,704 in General Revenue in the proposed House General Appropriations Act for Fiscal Year 2011-12. 5 positions (4 FTE and 2 half-time positions) in the Office of Legislative Support associated with the budget reduction are to be eliminated. Statutorily required responsibilities related to maintenance of the registry of attorneys, will be performed by the JAC within existing resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.



**D. FISCAL COMMENTS:**

See above.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal government.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1 A bill to be entitled  
 2 An act relating to the Commission on Capital Cases;  
 3 repealing s. 27.709, F.S., relating to the creation of the  
 4 Commission on Capital Cases; amending ss. 27.7002, 27.702,  
 5 27.710, and 27.711, F.S.; providing for assumption of  
 6 certain duties of the Commission on Capital Cases by the  
 7 Justice Administrative Commission; conforming provisions  
 8 to changes made by the act; providing an effective date.  
 9

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

12 Section 1. Section 27.709, Florida Statutes, is repealed.

13 Section 2. Subsections (6) and (7) of section 27.7002,  
 14 Florida Statutes, are amended to read:

15 27.7002 Limitation on collateral representation; lawyer  
 16 disqualification; use of state funds for excess fees not  
 17 authorized.—

18 (6) The executive director of the Justice Administrative  
 19 ~~Commission on Capital Cases~~ is authorized to permanently remove  
 20 from the registry of attorneys provided in ss. 27.710 and 27.711  
 21 any attorney who seeks compensation for services above the  
 22 amounts provided in s. 27.711.

23 (7) Any attorney who notifies any court, judge, state  
 24 attorney, the Attorney General, or the executive director of the  
 25 Justice Administrative Commission ~~on Capital Cases~~, that he or  
 26 she cannot provide adequate or proper representation under the  
 27 terms and conditions set forth in s. 27.711 shall be permanently  
 28 disqualified from any attorney registry created under this

29 chapter unless good cause arises after a change in  
30 circumstances.

31 Section 3. Subsection (4) of section 27.702, Florida  
32 Statutes, is amended to read:

33 27.702 Duties of the capital collateral regional counsel;  
34 reports.—

35 (4) (a) The capital collateral regional counsel or private  
36 counsel shall give written notification of each pleading filed  
37 by that office and the name of the person filing the pleading to  
38 ~~the Commission on Capital Cases and to~~ the trial court assigned  
39 to the case.

40 (b) Each capital collateral regional counsel and each  
41 attorney participating in the pilot program in the northern  
42 region pursuant to s. 27.701(2) shall provide a quarterly report  
43 to the President of the Senate and, the Speaker of the House of  
44 Representatives, ~~and the Commission on Capital Cases~~ which  
45 details the number of hours worked by investigators and legal  
46 counsel per case and the amounts per case expended during the  
47 preceding quarter in investigating and litigating capital  
48 collateral cases.

49 Section 4. Subsections (1) and (4) of section 27.710,  
50 Florida Statutes, are amended to read:

51 27.710 Registry of attorneys applying to represent persons  
52 in postconviction capital collateral proceedings; certification  
53 of minimum requirements; appointment by trial court.—

54 (1) The executive director of the Justice Administrative  
55 ~~Commission on Capital Cases~~ shall compile and maintain a  
56 statewide registry of attorneys in private practice who have

57 certified that they meet the minimum requirements of s.  
 58 27.704(2), who are available for appointment by the court under  
 59 this section to represent persons convicted and sentenced to  
 60 death in this state in postconviction collateral proceedings,  
 61 and who have attended within the last year a continuing legal  
 62 education program of at least 10 hours' duration devoted  
 63 specifically to the defense of capital cases, if available.  
 64 Continuing legal education programs meeting the requirements of  
 65 this rule offered by The Florida Bar or another recognized  
 66 provider and approved for continuing legal education credit by  
 67 The Florida Bar shall satisfy this requirement. The failure to  
 68 comply with this requirement may be cause for removal from the  
 69 list until the requirement is fulfilled. To ensure that  
 70 sufficient attorneys are available for appointment by the court,  
 71 when the number of attorneys on the registry falls below 50, the  
 72 executive director shall notify the chief judge of each circuit  
 73 by letter and request the chief judge to promptly submit the  
 74 names of at least three private attorneys who regularly practice  
 75 criminal law in that circuit and who appear to meet the minimum  
 76 requirements to represent persons in postconviction capital  
 77 collateral proceedings. The executive director shall send an  
 78 application to each attorney identified by the chief judge so  
 79 that the attorney may register for appointment as counsel in  
 80 postconviction capital collateral proceedings. As necessary, the  
 81 executive director may also advertise in legal publications and  
 82 other appropriate media for qualified attorneys interested in  
 83 registering for appointment as counsel in postconviction capital  
 84 collateral proceedings. Not later than September 1 of each year,

85 and as necessary thereafter, the executive director shall  
 86 provide to the Chief Justice of the Supreme Court, the chief  
 87 judge and state attorney in each judicial circuit, and the  
 88 Attorney General a current copy of its registry of attorneys who  
 89 are available for appointment as counsel in postconviction  
 90 capital collateral proceedings. The registry must be indexed by  
 91 judicial circuit and must contain the requisite information  
 92 submitted by the applicants in accordance with this section.

93 (4) Each private attorney who is appointed by the court to  
 94 represent a capital defendant must enter into a contract with  
 95 the Chief Financial Officer. If the appointed attorney fails to  
 96 execute the contract within 30 days after the date the contract  
 97 is mailed to the attorney, the executive director ~~of the~~  
 98 ~~Commission on Capital Cases~~ shall notify the trial court. The  
 99 Chief Financial Officer shall develop the form of the contract,  
 100 function as contract manager, and enforce performance of the  
 101 terms and conditions of the contract. By signing such contract,  
 102 the attorney certifies that he or she intends to continue the  
 103 representation under the terms and conditions set forth in the  
 104 contract until the sentence is reversed, reduced, or carried out  
 105 or until released by order of the trial court.

106 Section 5. Paragraph (b) of subsection (1) of section  
 107 27.711, Florida Statutes, is amended to read:

108 27.711 Terms and conditions of appointment of attorneys as  
 109 counsel in postconviction capital collateral proceedings.—

110 (1) As used in s. 27.710 and this section, the term:

111 (b) "Executive director" means the executive director of  
 112 the Justice Administrative ~~Commission on Capital Cases~~.

PCB APC 11-04

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113

Section 6. This act shall take effect July 1, 2011.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB APC 11-05 State Employees

**SPONSOR(S):** Appropriations Committee

**TIED BILLS:**           **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee		Kramer 	Leznoff 

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**SUMMARY ANALYSIS**

The bill directs the resolution of the economic collective bargaining issues at impasse for the 2011-2012 fiscal year regarding state employees. These economic issues will be resolved based on the spending decisions included in the General Appropriations Act for the 2011-2012 fiscal year.

The bill has an effective date of July 1, 2011.



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### *Background:*

Chapter 447, F.S., specifies the process for collective bargaining for public employees. The bargaining agent and the negotiator for the state must bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the employees within the bargaining unit. Any collective bargaining agreement reached must be reduced to writing, signed by the chief executive officer for the state and the bargaining agent for the union, and submitted to the members of the bargaining unit for ratification.

Upon execution of the collective bargaining agreement, the Governor must request the legislative body to appropriate amounts sufficient to fund the provisions of the agreement. If the Legislature appropriates funds that are not sufficient to fund the agreement, the agreement must be administered on the basis of the amounts actually appropriated.

Typically, at the state level, an agreement is not reached. In that instance, and pursuant to s.216.163(6), F.S., an impasse is declared on all unresolved issues when the Governor's budget recommendations are released to the Legislature. Within five days of the start of the impasse period, each party is required to notify the presiding officers of the Legislature of the unresolved issues. A joint select committee of members of the Florida House of Representatives and the Senate is appointed to review the positions of the parties. The committee's recommendation to the Legislature regarding the resolution of those issues is presented to the presiding officers no later than ten days before the start of the regular legislative session. During the session, the Legislature may take action to address the issues. Any actions taken by the Legislature are binding upon the parties.

Following the resolution of the impasse issues, the parties are required to reduce to writing an agreement that includes those issues agreed to by the parties as well as those issues resolved by the Legislature. The agreement must be signed by the chief executive officer and the bargaining agent and then presented to the members of the bargaining unit for ratification.

If the members ratify the agreement, all the provisions of the agreement take effect. If the members do not ratify the agreement, the issues resolved by the Legislature take effect for the first fiscal year which was the subject of the negotiations.

The certified bargaining units for state employees and the respective bargaining agents include:

#### **American Federation of State, County and Municipal Employees, Council 79**

- Administrative and Clerical Unit
- Operational Services Unit
- Human Services Unit
- Professional Unit

#### **Florida Nurses Association**

- Professional Health Care Unit

#### **Police Benevolent Association**

- Security Services Unit
- Special Agent Unit
- Law Enforcement Unit
- Lottery Law Enforcement Unit

- Florida Highway Patrol Unit

#### **Florida State Fire Service Association**

- Fire Service Unit

#### **Federation of Physicians and Dentists**

- Supervisory Nonprofessional Unit
- Physicians Unit
- State Employees Attorneys Guild

#### **Federation of Public Employees**

- Lottery Administrative and Support Unit

#### *Provisions of bill:*

The bill provides that all economic collective bargaining issues at impasse for the 2011-2012 fiscal year regarding state employees will be resolved pursuant to the instructions provided in the General Appropriations Act for the 2011-2012 fiscal year and the relevant provisions of any legislation enacted to implement the General Appropriations Act.

#### **B. SECTION DIRECTORY:**

Section 1. Provides for resolution of collective bargaining issues at impasse between the State of Florida and certified bargaining units pursuant to specified instructions.

Section 2. Provides effective date of July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

#### **D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to affect county or municipal government.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to state employees; providing for the  
 3           resolution of collective bargaining issues at impasse  
 4           between the State of Florida and certified bargaining  
 5           units for state employees pursuant to specified  
 6           instructions; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. All collective bargaining issues for which  
 11 negotiations have reached an impasse for the 2011-2012 fiscal  
 12 year between the State of Florida and the legal representatives  
 13 of the certified bargaining units for state employees shall be  
 14 resolved pursuant to the instructions provided in the General  
 15 Appropriations Act and the relevant provisions of any  
 16 legislation enacted to implement the General Appropriations Act  
 17 for the 2010-2011 fiscal year.

18           Section 2. This act shall take effect July 1, 2011.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB APC 11-06 Office of Drug Control

**SPONSOR(S):** Appropriations Committee

**TIED BILLS:**           **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee		Kramer 	Leznoff 

**SUMMARY ANALYSIS**

This PCB eliminates the Office of Drug Control (ODC) within the Executive Office of the Governor. The PCB makes necessary conforming changes to Florida Statutes to implement the repeal of the ODC. The Statewide Office of Suicide Prevention is moved to Department of Children and Family Services, and receives ODC's suicide-related functions. ODC roles on various task forces, work groups, and councils are eliminated or assigned to other entities.

The bill conforms to the House proposed General Appropriations Act for Fiscal Year 2011-2012 which eliminates 7 FTEs and \$581,743 in General Revenue from the Executive Office of the Governor. The proposed budget also transfers \$439,062 in Federal Grants to the Department of Business Regulation relating to enforcing underage drinking laws.

The bill has an effective date of July 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Office of Drug Control

Section 397.332, F.S., created the Office of Drug Control within the Executive Office of the Governor (EOG) in 1999.<sup>1</sup> The Governor is required to appoint a director of the Office of Drug Control (ODC), who is subject to confirmation by the Florida Senate. The purpose of the Office of Drug Control is to work, in collaboration with the Office of Planning and Budgeting (OPB), to:

- Coordinate drug control efforts and enlist the assistance of the public and private sectors in those efforts, including, but not limited to, federal, state, and local agencies.
- Provide information to the public about the problem of substance abuse and the substance abuse programs and services that are available.
- Act as the Governor's liaison with state agencies, other state governments, the federal Office of National Drug Control Policy, federal agencies, and with the public and private sectors on matters that relate to substance abuse.
- Work to secure funding and other support for the state's drug control efforts, including, but not limited to, establishing cooperative relationships among state and private agencies.
- Develop a strategic program and funding initiative that links the separate jurisdictional activities of state agencies with respect to drug control. The office may designate lead and contributing agencies to develop such initiatives.
- Advise the Governor and the Legislature on substance abuse trends in this state, the status of current substance abuse programs and services, the funding of those programs and services, and the status of the Office of Drug Control in developing and implementing the state drug control strategy.
- Make recommendations to the Governor on measures that the director considers advisable for the effective implementation of the state drug control strategy.

The ODC participates in various statutory task forces, councils, and work groups:<sup>2</sup>

- Drug Policy Advisory Council (1999)
- Seaport Security Standards Advisory Council (2000)
- Violent Crime and Drug Control Council (2000)
- Drug Free Workplace Advisory Panel (2004)
- Florida Alliance for Drug Endangered Children (2005)
- Methamphetamine Work Group (2005)
- Governor's State Leadership Task Force on Reducing Underage Drinking (2005)
- State Epidemiology Work Group (2005)
- Gender-Specific Substance Abuse Services Workgroup (2006)
- Suicide Prevention Coordinating Council (2007)
- Drug Paraphernalia Abatement Task Force (2007)
- Remediation of Illicit Drug Labs Task Force (2007)
- Attorney General's Gang Reduction Executive Workgroup (2007)
- Prescription Drug Monitoring Program (PDMP) Implementation and Oversight Task Force (2009)

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<sup>1</sup> Ch. 99-187, s. 2, Laws of Fla. (1999). According to the session law creating the office

The intent of the Legislature [was] to establish and institutionalize a rational process for long-range planning, information gathering, strategic decisionmaking, and funding for the purpose of limiting substance abuse. The Legislature finds that the creation of a state Office of Drug Control and a Statewide Drug Policy Advisory Council affords the best means of establishing and institutionalizing such a process."

<sup>2</sup> The Director of the Office of Drug Control chairs the Drug Policy Advisory Council, Seaport Security Standards Advisory Council, the 28-member Suicide Prevention Coordinating Council and the Prescription Drug Monitoring Program Oversight and Implementation Task Force.

## The Statewide Office for Suicide Prevention

Section 14.2019, F.S., creates the Statewide Office of Suicide Prevention (Office) as a unit of the ODC. Its statutory mission is to reduce the suicide rate in Florida. The Office produces a Suicide Prevention Strategy to provide a framework for activities to reduce Florida's suicide rate.<sup>3</sup> The goals of the Strategy are to:

- Promote awareness that suicide is a preventable public health problem.
- Reduce the stigma associated with being a consumer of mental health, substance abuse and suicide prevention services.
- Create collaborations and networks that support common goals in suicide prevention.
- Develop and implement evidence-based suicide prevention, intervention and 'postvention' programs.
- Develop and promote clinical and professional practices for delivery of effective treatment.
- Improve community access to mental health and substance abuse services.
- Reduce access to lethal means and methods of self-harm.
- Support suicide prevention research and improve surveillance systems.

The Office of Suicide Prevention also oversees the Suicide Prevention Coordinating Council, a 28-member council appointed by the Executive Office of the Governor.

### Effect of bill:

The PCB repeals s. 397.332, F.S., eliminating the ODC. The PCB makes necessary conforming changes to Florida Statutes to implement the repeal of the ODC. The Statewide Office of Suicide Prevention is moved to Department of Children and Family Services, and receives ODC's suicide-related functions.

ODC roles on various task forces, work groups, and councils are eliminated or assigned to other entities. Specifically, ODC's role relating to seaport security is eliminated; the Seaport Security Standards Advisory Council will be housed in the Executive Office of the Governor; the Department of Health will staff the Statewide Drug Policy Advisory Council and a staff person from the Governor's Office of Planning and Budgeting will become a member of the Florida Violent Crime and Drug Control Council.

## B. SECTION DIRECTORY:

Section 1. Amends s. 14.2019, F.S., relating to the statewide office for suicide prevention.

Section 2. Amends s. 14.20195, F.S., relating to the Suicide Prevention Coordinating Council; membership; duties.

Section 3. Amends s. 311.115, F.S., relating to the Seaport Security Standards Advisory Council.

Section 4. Amends s. 311.12, F.S., relating to seaport standards.

Section 5. Amends s. 311.123, F.S., relating to maritime domain security awareness training program.

Section 6. Amends s. 397.331, F.S., relating to definitions; legislative intent.

Section 7. Repeals s. 397.332, F.S., relating to the Office of Drug Control.

Section 8. Amends s. 397.333, F.S., relating to the Statewide Drug Policy Advisory Council.

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<sup>3</sup> Statewide Office of Suicide Prevention, Suicide Prevention Strategy 2011-2015, *available at* <http://www.helppromotehope.com/strategy/index.php> (last viewed March 12, 2011).



Section 9. Amends s. 943.031, F.S., relating to the Florida Violent Crime and Drug Control Council.

Section 10. Amends s. 943.042, F.S., relating to the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account.

Section 11. Provides effective date of July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: None

2. Expenditures:

The House proposed General Appropriations Act for Fiscal Year 2011-2012 eliminates 7 FTEs and \$581,743 in General Revenue from the Executive Office of the Governor. The proposed budget also transfers \$439,062 in Federal Grants to the Department of Business Regulation relating to enforcing underage drinking laws.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: None

2. Expenditures: None

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

N/A

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1 A bill to be entitled  
2 An act relating to the Office of Drug Control; amending s.  
3 14.2019, F.S.; placing the Statewide Office for Suicide  
4 Prevention within the Department of Children and Family  
5 Services; redirecting revenues from grants to the Grants  
6 and Donations Trust Fund within the department; amending  
7 s. 14.20195, F.S.; naming the director of the Statewide  
8 Office for Suicide Prevention as chair and a nonvoting  
9 member of the Suicide Prevention Coordinating Council;  
10 providing for the appointment of members of the council by  
11 the director of the Statewide Office for Suicide  
12 Prevention; amending s. 311.115, F.S.; conforming  
13 provisions to changes made by the act; placing the Seaport  
14 Security Standards Advisory Council within the Executive  
15 Office of the Governor; providing for the appointment of  
16 the chair of the Seaport Security Standards Advisory  
17 Council by the Governor; amending ss. 311.12, 311.123, and  
18 397.331, F.S.; conforming provisions to changes made by  
19 the act; repealing s. 397.332, F.S., relating to creation  
20 of the Office of Drug Control; amending s. 397.333, F.S.;  
21 placing the Statewide Drug Policy Advisory Council within  
22 the Department of Health; revising the membership of the  
23 council; directing the Department of Health to provide  
24 staff support for the advisory council; amending s.  
25 943.031, F.S.; naming the Policy Coordinator of the Public  
26 Safety Unit of the Governor's Office of Planning and  
27 Budgeting, or a designee, as a member of the Florida  
28 Violent Crime and Drug Control Council and the Drug

29 Control Strategy and Criminal Gang Committee within the  
 30 council; conforming provisions to changes made by the act;  
 31 amending s. 943.042, F.S.; conforming provisions to  
 32 changes made by the act; providing an effective date.

33

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

35

36 Section 1. Subsections (1), (3), (4), and (5) of section  
 37 14.2019, Florida Statutes, are amended to read:

38 14.2019 Statewide Office for Suicide Prevention.—

39 (1) The Statewide Office for Suicide Prevention is created  
 40 ~~as a unit of the Office of Drug Control~~ within the Department of  
 41 Children and Family Services Executive Office of the Governor.

42 ~~(3) Contingent upon a specific appropriation, the director~~  
 43 ~~of the Office of Drug Control shall employ a coordinator for the~~  
 44 ~~Statewide Office for Suicide Prevention who shall work under the~~  
 45 ~~direction of the director to achieve the goals and objectives~~  
 46 ~~set forth in this section.~~

47 (3)(4) The Statewide Office for Suicide Prevention may  
 48 seek and accept grants or funds from any federal, state, or  
 49 local source to support the operation and defray the authorized  
 50 expenses of the office and the Suicide Prevention Coordinating  
 51 Council. Revenues from grants shall be deposited in the Grants  
 52 and Donations Trust Fund within the Department of Children and  
 53 Family Services Executive Office of the Governor. In accordance  
 54 with s. 216.181(11), the Executive Office of the Governor may  
 55 request changes to the approved operating budget to allow the  
 56 expenditure of any additional grant funds collected pursuant to

57 | this subsection.

58 |       (4)~~(5)~~ Agencies under the control of the Governor or the  
 59 | Governor and Cabinet are directed, and all others are  
 60 | encouraged, to provide information and support to the Statewide  
 61 | Office for Suicide Prevention as requested.

62 |       Section 2. Paragraphs (a), (d), and (e) of subsection (2)  
 63 | of section 14.20195, Florida Statutes, are amended to read:

64 |       14.20195 Suicide Prevention Coordinating Council;  
 65 | creation; membership; duties.—There is created within the  
 66 | Statewide Office for Suicide Prevention a Suicide Prevention  
 67 | Coordinating Council. The council shall develop strategies for  
 68 | preventing suicide.

69 |       (2) MEMBERSHIP.—The Suicide Prevention Coordinating  
 70 | Council shall consist of 28 voting members.

71 |       (a) Thirteen members shall be appointed by the director of  
 72 | the Statewide Office for Suicide Prevention ~~Office of Drug~~  
 73 | ~~Control~~ and shall represent the following organizations:

- 74 |       1. The Florida Association of School Psychologists.
- 75 |       2. The Florida Sheriffs Association.
- 76 |       3. The Suicide Prevention Action Network USA.
- 77 |       4. The Florida Initiative of Suicide Prevention.
- 78 |       5. The Florida Suicide Prevention Coalition.
- 79 |       6. The American Foundation of Suicide Prevention.
- 80 |       7. The Florida School Board Association.
- 81 |       8. The National Council for Suicide Prevention.
- 82 |       9. The state chapter of AARP.
- 83 |       10. The Florida Alcohol and Drug Abuse Association.
- 84 |       11. The Florida Council for Community Mental Health.

85 12. The Florida Counseling Association.

86 13. NAMI Florida.

87 (d) ~~For the~~ Members appointed by the director of the  
 88 Statewide Office for Suicide Prevention ~~Office of Drug Control,~~  
 89 ~~seven members shall be appointed to initial terms of 3 years,~~  
 90 ~~and seven members shall be appointed to initial terms of 4~~  
 91 ~~years. For the members appointed by the Governor, two members~~  
 92 ~~shall be appointed to initial terms of 4 years, and two members~~  
 93 ~~shall be appointed to initial terms of 3 years. Thereafter, such~~  
 94 ~~members~~ shall be appointed to terms of 4 years. Any vacancy on  
 95 the coordinating council shall be filled in the same manner as  
 96 the original appointment, and any member who is appointed to  
 97 fill a vacancy occurring because of death, resignation, or  
 98 ineligibility for membership shall serve only for the unexpired  
 99 term of the member's predecessor. A member is eligible for  
 100 reappointment.

101 (e) The director of the Statewide Office for Suicide  
 102 Prevention ~~Office of Drug Control~~ shall be a nonvoting member of  
 103 the coordinating council and shall act as chair.

104 Section 3. Section 311.115, Florida Statutes, is amended  
 105 to read:

106 311.115 Seaport Security Standards Advisory Council.—The  
 107 Seaport Security Standards Advisory Council is created within  
 108 under the Executive Office of the Governor ~~Office of Drug~~  
 109 ~~Control~~. The council shall serve as an advisory council as  
 110 provided in s. 20.03(7).

111 (1) The members of the council shall be appointed by the  
 112 Governor and consist of the following:

- 113 (a) Two seaport directors.
- 114 (b) Two seaport security directors.
- 115 (c) One representative of seaport tenants.
- 116 (d) One representative of seaport workers:
- 117 (e) One member from the Department of Law Enforcement.
- 118 (f) One member from the Office of Motor Carrier Compliance
- 119 of the Department of Transportation.
- 120 (g) One member from the Office of the Attorney General.
- 121 (h) One member from the Department of Agriculture and
- 122 Consumer Services.
- 123 (i) One member from the Office of Tourism, Trade, and
- 124 Economic Development.
- 125 ~~(j) One member from the Office of Drug Control.~~
- 126 (j) ~~(k)~~ One member from the Fish and Wildlife Conservation
- 127 Commission.
- 128 (k) ~~(l)~~ The Director of the Division of Emergency
- 129 Management, or his or her designee.
- 130 (2) In addition to the members designated in subsection
- 131 (1), the council may invite a representative of the United
- 132 States Coast Guard to attend and participate in council meetings
- 133 as an ex officio, nonvoting member of the council.
- 134 (3) Members of the council shall be appointed to 4-year
- 135 terms. A vacancy shall be filled by the Governor for the balance
- 136 of the unexpired term.
- 137 (4) The council chair shall be designated by the Governor
- 138 from among the appointed members of the council ~~shall be chaired~~
- 139 ~~by the member from the Office of Drug Control.~~
- 140 (5) At least every 4 years after January 15, 2007, the

141 Governor Office of Drug Control shall convene the council to  
 142 review the minimum security standards referenced in s. 311.12(1)  
 143 for applicability to and effectiveness in combating current  
 144 narcotics and terrorism threats to the state's seaports. All  
 145 sources of information allowed by law shall be used in assessing  
 146 the applicability and effectiveness of the standards.

147 (6) Council members shall serve without pay, but shall be  
 148 entitled to per diem and travel expenses for attendance at  
 149 officially called meetings as provided in s. 112.061.

150 (7) The council shall consult with the appropriate area  
 151 maritime security committees to assess possible impacts to  
 152 commerce and trade contained in the council's nonclassified  
 153 recommendations and findings.

154 (8) The recommendations and findings of the council shall  
 155 be transmitted to the Governor, the President of the Senate, and  
 156 the Speaker of the House of Representatives.

157 Section 4. Paragraph (a) of subsection (1), paragraph (b)  
 158 of subsection (3), subsections (8) and (10), and paragraph (d)  
 159 of subsection (11) of section 311.12, Florida Statutes, are  
 160 amended to read:

161 311.12 Seaport security.—

162 (1) SECURITY STANDARDS.—

163 (a) The statewide minimum standards for seaport security  
 164 applicable to seaports listed in s. 311.09 shall be those based  
 165 on the Florida Seaport Security Assessment 2000 and set forth in  
 166 the Port Security Standards Compliance Plan delivered to the  
 167 Speaker of the House of Representatives and the President of the  
 168 Senate on December 11, 2000. ~~The Office of Drug Control within~~

169 ~~the Executive Office of the Governor shall maintain a sufficient~~  
 170 ~~number of copies of the standards at its offices for~~  
 171 ~~distribution to the public and provide copies to each affected~~  
 172 ~~seaport upon request.~~

173 (3) SECURITY PLAN.—Each seaport listed in s. 311.09 shall  
 174 adopt and maintain a security plan specific to that seaport  
 175 which provides for a secure seaport infrastructure that promotes  
 176 the safety and security of state residents and visitors and the  
 177 flow of legitimate trade and travel.

178 (b) Each adopted or revised security plan must be reviewed  
 179 and approved by the ~~Office of Drug Control~~ and the Department of  
 180 Law Enforcement for compliance with federal facility security  
 181 assessment requirements under 33 C.F.R. s. 105.305 and the  
 182 minimum security standards established under subsection (1).  
 183 Within 30 days after completion, a copy of the written review  
 184 shall be delivered to the United States Coast Guard, the  
 185 Regional Domestic Security Task Force, and the Domestic Security  
 186 Oversight Council.

187 (8) WAIVER FROM SECURITY REQUIREMENTS.—~~The Office of Drug~~  
 188 ~~Control~~ and the Department of Law Enforcement may modify or  
 189 waive any physical facility requirement or other requirement  
 190 contained in the minimum security standards upon a determination  
 191 that the purposes of the standards have been reasonably met or  
 192 exceeded by the seaport requesting the modification or waiver.  
 193 An alternate means of compliance must not diminish the safety or  
 194 security of the seaport and must be verified through an  
 195 extensive risk analysis conducted by the seaport director.

196 (a) Waiver requests shall be submitted in writing, along



197 with supporting documentation, to the ~~Office of Drug Control and~~  
 198 ~~the~~ Department of Law Enforcement. The ~~office and the~~ department  
 199 has have 90 days to jointly grant or reject the waiver, in whole  
 200 or in part.

201 (b) The seaport may submit any waivers that are not  
 202 granted or are ~~jointly~~ rejected to the Domestic Security  
 203 Oversight Council for review within 90 days. The council shall  
 204 recommend that the ~~Office of Drug Control and the~~ Department of  
 205 Law Enforcement grant the waiver or reject the waiver, in whole  
 206 or in part. The ~~office and the~~ department shall give great  
 207 weight to the council's recommendations.

208 (c) A request seeking a waiver from the seaport law  
 209 enforcement personnel standards established under s. 311.122(3)  
 210 may not be granted for percentages below 10 percent.

211 (d) Any modifications or waivers granted under this  
 212 subsection shall be noted in the annual report submitted by the  
 213 Department of Law Enforcement pursuant to subsection (10).

214 (10) REPORTS.—The Department of Law Enforcement, ~~in~~  
 215 ~~consultation with the Office of Drug Control,~~ shall annually  
 216 complete a report indicating the observations and findings of  
 217 all reviews, inspections, or other operations relating to the  
 218 seaports conducted during the year and any recommendations  
 219 resulting from such reviews, inspections, and operations. A copy  
 220 of the report shall be provided to the Governor, the President  
 221 of the Senate, the Speaker of the House of Representatives, the  
 222 governing body of each seaport or seaport authority, and each  
 223 seaport director. The report must include each director's  
 224 response indicating what actions, if any, have been taken or are

225 | planned to be taken pursuant to the observations, findings, and  
 226 | recommendations reported by the department.

227 | (11) FUNDING.—

228 | (d) If funds are appropriated for seaport security, ~~the~~  
 229 | ~~Office of Drug Control,~~ the Department of Law Enforcement, and  
 230 | the Florida Seaport Transportation and Economic Development  
 231 | Council shall mutually determine the allocation of such funds  
 232 | for security project needs identified in the approved seaport  
 233 | security plans. Any seaport that receives state funds for  
 234 | security projects must enter into a joint participation  
 235 | agreement with the appropriate state entity and use the seaport  
 236 | security plan as the basis for the agreement.

237 | 1. If funds are made available over more than 1 fiscal  
 238 | year, the agreement must reflect the entire scope of the project  
 239 | approved in the security plan and, as practicable, allow for  
 240 | reimbursement for authorized projects over more than 1 year.

241 | 2. The agreement may include specific timeframes for  
 242 | completion of a security project and the applicable funding  
 243 | reimbursement dates. The agreement may also require a  
 244 | contractual penalty of up to \$1,000 per day to be imposed for  
 245 | failure to meet project completion dates if state funding is  
 246 | available. Any such penalty shall be deposited into the State  
 247 | Transportation Trust Fund and used for seaport security  
 248 | operations and capital improvements.

249 | Section 5. Subsection (1) of section 311.123, Florida  
 250 | Statutes, is amended to read:

251 | 311.123 Maritime domain security awareness training  
 252 | program.—

253 (1) The Florida Seaport Transportation and Economic  
 254 Development Council, in conjunction with the Department of Law  
 255 Enforcement ~~and the Office of Drug Control within the Executive~~  
 256 ~~Office of the Governor~~, shall create a maritime domain security  
 257 awareness training program to instruct all personnel employed  
 258 within a seaport's boundaries about the security procedures  
 259 required of them for implementation of the seaport security plan  
 260 required under s. 311.12(3).

261 Section 6. Subsection (2) of section 397.331, Florida  
 262 Statutes, is amended to read:

263 397.331 Definitions; legislative intent.—

264 (2) It is the intent of the Legislature to establish and  
 265 institutionalize a rational process for long-range planning,  
 266 information gathering, strategic decisionmaking, and funding for  
 267 the purpose of limiting substance abuse. The Legislature finds  
 268 that the creation of a ~~state Office of Drug Control and a~~  
 269 Statewide Drug Policy Advisory Council affords the best means of  
 270 establishing and institutionalizing such a process.

271 Section 7. Section 397.332, Florida Statutes, is repealed.

272 Section 8. Paragraphs (a), (b), and (c) of subsection (1)  
 273 of section 397.333, Florida Statutes, are amended to read:

274 397.333 Statewide Drug Policy Advisory Council.—

275 (1) (a) The Statewide Drug Policy Advisory Council is  
 276 created within the Department of Health ~~Executive Office of the~~  
 277 ~~Governor~~. The Surgeon General or his or her designee ~~director of~~  
 278 ~~the Office of Drug Control~~ shall be a nonvoting, ex officio  
 279 member of the advisory council and shall act as chairperson. The  
 280 director of the Office of Planning and Budgeting or his or her

281 designee shall be a nonvoting, ex officio member of the advisory  
 282 council. The department shall provide staff support for the  
 283 council. ~~The Office of Drug Control and the Office of Planning~~  
 284 ~~and Budgeting shall provide staff support for the advisory~~  
 285 ~~council.~~

286 (b) The following state officials shall be appointed to  
 287 serve on the advisory council:

- 288 1. The Attorney General, or his or her designee.
- 289 2. The executive director of the Department of Law  
 290 Enforcement, or his or her designee.
- 291 3. The Secretary of Children and Family Services, or his  
 292 or her designee.
- 293 ~~4. The State Surgeon General, or his or her designee.~~
- 294 4.5. The Secretary of Corrections, or his or her designee.
- 295 ~~5.6.~~ The Secretary of Juvenile Justice, or his or her  
 296 designee.
- 297 ~~6.7.~~ The Commissioner of Education, or his or her  
 298 designee.
- 299 ~~7.8.~~ The executive director of the Department of Highway  
 300 Safety and Motor Vehicles, or his or her designee.
- 301 ~~8.9.~~ The Adjutant General of the state as the Chief of the  
 302 Department of Military Affairs, or his or her designee.

303 (c) In addition, the Governor shall appoint 7 ~~11~~ members  
 304 of the public to serve on the advisory council. Of the 7 ~~11~~  
 305 appointed members, one member must have professional or  
 306 occupational expertise in drug enforcement, one member must have  
 307 professional or occupational expertise in substance abuse  
 308 prevention, one member must have professional or occupational

309 expertise in substance abuse treatment, and two members must  
 310 have professional or occupational expertise in faith-based  
 311 substance abuse treatment services. The remainder of the members  
 312 appointed should have professional or occupational expertise in,  
 313 or be generally knowledgeable about, issues that relate to drug  
 314 enforcement and substance abuse programs and services. The  
 315 members appointed by the Governor must, to the extent possible,  
 316 equitably represent all geographic areas of the state.

317 Section 9. Paragraph (g) of subsection (2), paragraph (a)  
 318 of subsection (5), and paragraph (a) of subsection (6) of  
 319 section 943.031, Florida Statutes, are amended to read:

320 943.031 Florida Violent Crime and Drug Control Council.—

321 (2) MEMBERSHIP.—The council shall consist of 14 members,  
 322 as follows:

323 (g) The Policy Coordinator of the Public Safety Unit of  
 324 the Governor's Office of Planning and Budgeting ~~director of the~~  
 325 ~~Office of Drug Control within the Executive Office of the~~  
 326 ~~Governor~~, or a designate.

327  
 328 The Governor, when making appointments under this subsection,  
 329 must take into consideration representation by geography,  
 330 population, ethnicity, and other relevant factors to ensure that  
 331 the membership of the council is representative of the state at  
 332 large. Designates appearing on behalf of a council member who is  
 333 unable to attend a meeting of the council are empowered to vote  
 334 on issues before the council to the same extent the designating  
 335 council member is so empowered.

336 (5) DUTIES OF COUNCIL.—The council shall provide advice

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337 and make recommendations, as necessary, to the executive  
338 director of the department.

339 (a) The council may advise the executive director on the  
340 feasibility of undertaking initiatives which include, but are  
341 not limited to, the following:

342 1. Establishing a program which provides grants to  
343 criminal justice agencies that develop and implement effective  
344 violent crime prevention and investigative programs and which  
345 provides grants to law enforcement agencies for the purpose of  
346 drug control, criminal gang, and illicit money laundering  
347 investigative efforts or task force efforts that are determined  
348 by the council to significantly contribute to achieving the  
349 state's goal of reducing drug-related crime ~~as articulated by~~  
350 ~~the Office of Drug Control~~, that represent significant criminal  
351 gang investigative efforts, that represent a significant illicit  
352 money laundering investigative effort, or that otherwise  
353 significantly support statewide strategies developed by the  
354 Statewide Drug Policy Advisory Council established under s.  
355 397.333, subject to the limitations provided in this section.  
356 The grant program may include an innovations grant program to  
357 provide startup funding for new initiatives by local and state  
358 law enforcement agencies to combat violent crime or to implement  
359 drug control, criminal gang, or illicit money laundering  
360 investigative efforts or task force efforts by law enforcement  
361 agencies, including, but not limited to, initiatives such as:

- 362 a. Providing enhanced community-oriented policing.
- 363 b. Providing additional undercover officers and other
- 364 investigative officers to assist with violent crime

365 investigations in emergency situations.

366 c. Providing funding for multiagency or statewide drug  
367 control, criminal gang, or illicit money laundering  
368 investigative efforts or task force efforts that cannot be  
369 reasonably funded completely by alternative sources and that  
370 significantly contribute to achieving the state's goal of  
371 reducing drug-related crime ~~as articulated by the Office of Drug~~  
372 ~~Control~~, that represent significant criminal gang investigative  
373 efforts, that represent a significant illicit money laundering  
374 investigative effort, or that otherwise significantly support  
375 statewide strategies developed by the Statewide Drug Policy  
376 Advisory Council established under s. 397.333.

377 2. Expanding the use of automated fingerprint  
378 identification systems at the state and local level.

379 3. Identifying methods to prevent violent crime.

380 4. Identifying methods to enhance multiagency or statewide  
381 drug control, criminal gang, or illicit money laundering  
382 investigative efforts or task force efforts that significantly  
383 contribute to achieving the state's goal of reducing drug-  
384 related crime ~~as articulated by the Office of Drug Control~~, that  
385 represent significant criminal gang investigative efforts, that  
386 represent a significant illicit money laundering investigative  
387 effort, or that otherwise significantly support statewide  
388 strategies developed by the Statewide Drug Policy Advisory  
389 Council established under s. 397.333.

390 5. Enhancing criminal justice training programs which  
391 address violent crime, drug control, illicit money laundering  
392 investigative techniques, or efforts to control and eliminate

393 criminal gangs.

394 6. Developing and promoting crime prevention services and  
395 educational programs that serve the public, including, but not  
396 limited to:

397 a. Enhanced victim and witness counseling services that  
398 also provide crisis intervention, information referral,  
399 transportation, and emergency financial assistance.

400 b. A well-publicized rewards program for the apprehension  
401 and conviction of criminals who perpetrate violent crimes.

402 7. Enhancing information sharing and assistance in the  
403 criminal justice community by expanding the use of community  
404 partnerships and community policing programs. Such expansion may  
405 include the use of civilian employees or volunteers to relieve  
406 law enforcement officers of clerical work in order to enable the  
407 officers to concentrate on street visibility within the  
408 community.

409 (6) DRUG CONTROL STRATEGY AND CRIMINAL GANG COMMITTEE.—

410 (a) The Drug Control Strategy and Criminal Gang Committee  
411 is created within the Florida Violent Crime and Drug Control  
412 Council, consisting of the following council members:

413 1. The Attorney General or a designate.

414 2. The designate of the executive director of the  
415 Department of Law Enforcement.

416 3. The secretary of the Department of Corrections or a  
417 designate.

418 4. The Policy Coordinator of the Public Safety Unit of the  
419 Governor's Office of Planning and Budgeting, ~~director of the~~  
420 Office of Drug Control within the Executive Office of the



421 ~~Governor~~ or a designate.

422 5. The state attorney, the two sheriffs, and the two  
423 chiefs of police, or their designates.

424 Section 10. Paragraph (a) of subsection (1) of section  
425 943.042, Florida Statutes, is amended to read:

426 943.042 Violent Crime Investigative Emergency and Drug  
427 Control Strategy Implementation Account.—

428 (1) There is created a Violent Crime Investigative  
429 Emergency and Drug Control Strategy Implementation Account  
430 within the Department of Law Enforcement Operating Trust Fund.  
431 The account shall be used to provide emergency supplemental  
432 funds to:




433 (a) State and local law enforcement agencies which are  
434 involved in complex and lengthy violent crime investigations, or  
435 matching funding to multiagency or statewide drug control or  
436 illicit money laundering investigative efforts or task force  
437 efforts that significantly contribute to achieving the state's  
438 goal of reducing drug-related crime ~~as articulated by the Office~~  
439 ~~of Drug Control~~, that represent a significant illicit money  
440 laundering investigative effort, or that otherwise significantly  
441 support statewide strategies developed by the Statewide Drug  
442 Policy Advisory Council established under s. 397.333;

443 Section 11. This act shall take effect July 1, 2011.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB APC 11-07 Agency for Enterprise Information Technology  
**SPONSOR(S):** Appropriations Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee		Potvin  Delaney 	Leznoff 

**SUMMARY ANALYSIS**

The bill amends statutory provisions necessary to conform statutes to appropriations made in the General Appropriations Act for the 2011-2012 fiscal year.

The bill amends statutes relating to:

- Clarifying the duties of the Agency for Enterprise Information Technology.
- Clarifying the required components of the Agency for Enterprise Information Technology's annual work plan.
- Clarifying the duties of the Agency for Enterprise Information Technology pertaining to the state data center system, to include developing rules relating to its operation and requiring the agency to provide notice of the development of its proposed rules no later than October 1, 2011.
- Codifying in statute the agency schedule for data center consolidations, the requirement for the development and submission of appropriate transition plans, the requirement for the execution of new or updated service level agreements, and agency limitations pertaining to their agency data centers.
- Designating the Northwest Regional Data Center as a primary data center.
- Repealing the requirement to appoint or contract for an agency chief information officer and the establishment of the Agency Chief Information Officers Council.

**Fiscal Impact:** The bill establishes the schedule of data center consolidations for 2011-12 which supports a \$4.3 million reduction taken in the proposed House Appropriations Act, which is spread across numerous agencies.

Effective date: July 1, 2011

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Agency for Enterprise Information Technology**

##### **Current Situation**

In 2007 the Legislature created the Agency for Enterprise Information Technology (AEIT) to oversee policies for the design, planning, project management, and implementation of enterprise information technology services, to include information technology security policy.<sup>1</sup> The AEIT is administratively housed within the Executive Office of the Governor, with the Governor and Cabinet as the head of the agency. The AEIT is required to recommend strategies to the Governor, the Cabinet, and the Legislature that would make enterprise information technology services more cost effective and secure. In 2008 specific duties and responsibilities pertaining to information technology security were assigned to the AEIT;<sup>2</sup> but the Office of Information Security was still housed within the Department of Management Services (DMS). In 2009 the Office of Information Security was created within the AEIT,<sup>3</sup> with the 8 full-time equivalents (FTE) transferred from the DMS budget to the AEIT in the Fiscal Year 2009-2010 General Appropriations Act. The Office of Information Security is headed by the chief information security officer who reports directly to the executive director of the AEIT. In the Fiscal Year 2010-2011 General Appropriations Act, the AEIT was appropriated 14 FTE which includes the 8 information security FTE transferred in 2009.

In 2009 the AEIT was specifically authorized to establish rules relating to the operation of the state data center system which must comply with applicable federal regulations, including 2 C.F.R. part 225 and 45 C.F.R.<sup>4</sup>; however, such rules have not been promulgated.

##### **Proposed Change**

The bill eliminates the designation of the Office of Information Security but retains the authority of the executive director of the AEIT to designate a chief information security officer and aligns the information technology security duties and responsibilities with the AEIT instead of the Office. The bill also requires the AEIT to provide notice of the development of its proposed rules by publication in the Florida Administrative Weekly no later than October 1, 2011. These rules must address implementing standards for the hardware, operations software, including security, and network infrastructure for the primary data centers.

#### **Agency Chief Information Officer**

##### **Current Situation**

In 1997, section 282.3055, Florida Statutes, was created<sup>5</sup> which required each agency head to appoint or contract for an agency chief information officer (CIO) at a level commensurate with the role and importance of information technology resources in the agency.<sup>6</sup> This section of law also required that each agency CIO have knowledge and experience in both management and information technology resources, and identified the minimum duties of the agency CIO.

In 2000 and 2001, section 282.3055, Florida Statutes was amended to conform to overall changes enacted by the Legislature in the area of information technology governance.<sup>7</sup>

---

<sup>1</sup> 2007-105, Laws of Florida.

<sup>2</sup> 2008-116, Laws of Florida.

<sup>3</sup> 2009-80, Laws of Florida.

<sup>4</sup> 2009-80, Laws of Florida.

<sup>5</sup> 1997-286, Laws of Florida.

<sup>6</sup> The only other position required by Florida law to be established within an agency is the agency inspector general as defined in s. 20.055, Florida Statutes.

<sup>7</sup> 2000-164 and 2001-261, Laws of Florida.

In 2007, the Legislature amended section 282.0041, Florida Statutes, to define enterprise information technology services<sup>8</sup> and to align the role and responsibilities of an agency CIO with the deployment of such services.<sup>9</sup> The overall goal for establishing enterprise information technology services is to minimize the state investment required to provide the service and eliminate the need for each state agency to maintain its own staff and resources to support these services.

Currently the Legislature has established three enterprise information technology services: data center; e-mail, messaging, and calendaring; and information technology security. These enterprise information technology services and potentially others that may be established by the Legislature mitigate the need for certain information technology staff and resources at the agency level.

### **Proposed Change**

The bill repeals section 282.3055, Florida Statutes; this will allow the agency head to make the decision regarding the appointment of an agency CIO based upon the amount and type of information technology services remaining at the agency.

### **Agency Chief Information Officer Council**

#### **Current Situation**

Section 282.315, Florida Statutes, creates the Agency Chief Information Officers (CIO) Council. The Council was created in 1997 and is structured to enhance communications among the agency CIOs by identifying and recommending efficient best practices among state agencies.

#### **Proposed Change**

The bill repeals section 282.315, Florida Statutes; however, such repeal does not prohibit designated agency CIOs and other staff performing similar functions, from establishing an organizational structure for purposes of collaboration and meetings similar to the agency budget officers (Florida Association of State Budget Officers) and the agency administrative services directors (Florida Association of Agency Administrative Services Directors).

### **Schedule for Agency Data Center Consolidation**

#### **Current Situation**

In 2009 the state data center system was created and the Legislature directed that all agency data centers and computing facilities be consolidated into primary data centers to the extent possible by 2019.<sup>10</sup> Wave 1 of data center consolidation was initiated in 2009 with proviso included in the fiscal year 2009-2010 General Appropriations Act that required the:

- Florida Parole Commission to transfer its information technology services, to include its data center functions, to the Department of Corrections by July 1, 2009.
- Department of Juvenile Justice to consolidate its data center functions into the Northwood Shared Resource Center (NSRC) by July 1, 2010.
- Department of Business and Professional Regulation to consolidate its data center functions into the NSRC by November 30, 2010.

By October 1 of each year beginning in 2009, the AEIT is required to recommend to the Governor and Legislature at least two agency data centers or computing facilities for consolidation into a primary data center.<sup>11</sup> AEIT submitted its recommendations on September 30, 2009,<sup>12</sup> for the Wave 2

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<sup>8</sup> Section 282.0041, Florida Statutes, defines enterprise information technology services to mean “an information technology service that is used in all agencies or a subset of agencies and is established in law to be designed, delivered, and managed at the enterprise level.”

<sup>9</sup> 2007-105, Laws of Florida.

<sup>10</sup> 2008-116, Laws of Florida.

<sup>11</sup> s. 282.201(2), F.S.

<sup>12</sup> *Recommendation of Non-primary Data Centers for Consolidation into Primary Data Centers*. Agency for Enterprise Information Technology, September 30, 2009.

consolidations and the Legislature directed via proviso in the fiscal year 2010-2011 General Appropriations Act the following consolidations:

*To the Northwood Shared Resource Center (NSRC)*

- Department of Juvenile Justice by July 1, 2010
- Department of Business and Professional Regulation by November 30, 2010
- Department of Children and Families' Winewood Office Complex by June 30, 2012
- Department of Transportation's Motor Carrier Compliance Office by July 1, 2011.

*To the Southwood Shared Resource Center (SSRC)*

- Department of Transportation Burns Office Building by March 31, 2012.
- Department of Transportation Survey and Mapping Office by March 31, 2012.

*To the Northwest Regional Data Center (NWRDC)*

- Department of Education by December 31, 2011.
- College Center for Library Automation by December 31, 2011.
- Florida Center for Library Automation by December 31, 2011.

*To the NSRC or SSRC*

- Agency for Health Care Administration by June 30, 2012.
- Department of Highway Safety and Motor Vehicles by December 31, 2011.

On December 23, 2010, the AEIT submitted its *Recommendation of Non-primary Data Centers for Consolidation into Primary Data Centers by 2019*. This document provides recommendations for the consolidation of the remaining agency data centers and computing facilities after Wave 2. AEIT's recommendations show the final wave (Wave 6) would be implemented in fiscal year 2015-2016 and it would include all isolated servers and groups of service not sizable enough to comprise a computing facility or data center.

### **Proposed Change**

The bill codifies in statute the schedule for agency data center consolidations; this will negate the need to annually include proviso in the General Appropriations Act identifying the agencies required to consolidate into a primary data center within that fiscal year. Additionally, the bill requires AEIT by October 1 of each year beginning in 2011, to provide recommendations to the Governor and Legislature regarding changes to the schedule for agency data center consolidations; such recommendations must be based on the goal of maximizing current and future cost savings.

The bill requires the consolidations of the Department of Education, the Florida Center for Library Automation, and the College Center for Library Automation to the Northwest Regional Data Center are contingent upon the AEIT completing a cost benefit analysis to determine whether additional savings can be achieved.

The bill requires all agencies consolidating data centers into a primary data center must execute a new or update an existing service level agreement not later than 60 days after the identified consolidation date.

The bill requires the AEIT, beginning September 1, 2011, and every six months thereafter, to provide a status report to the Governor and Legislature on the status of the consolidations.

And finally, the bill clarifies that during the fiscal year prior to its consolidation to a primary data center and for the following full fiscal year, an agency shall have a single trustee with one vote on the board of the primary data center.

### **Transition Plans**

#### **Current Situation**

In the fiscal years 2009-2010 and 2010-2011 General Appropriations Acts (GAA), proviso was included that directed the completion and submission of transition plans for both the agencies identified for consolidation and the primary data centers identified to receive the consolidations; based on the

requirements established by the AEIT. For the agency transition plans, the proviso in the fiscal year 2010-2011 GAA requires agencies to include:

- Inventory of all resources;
- Description of resources proposed to remain at the agency;
- Budget, full-time personnel, and contracted services associated with the cost of the agency's current computing services;
- Necessary budget adjustments required to accomplish the transfer of computing resources; and
- Timetable with significant milestones for completion of the relocation.

Additionally, proviso was included that required the primary data centers to develop and submit a transition plan for absorbing the transfer of customer agency data center resources into their centers. Primary data center transition plans are required to describe and make recommendations relating to issues which need to be resolved to accomplish the transfer.

### **Proposed Change**

The bill codifies in statute the requirement for the development and submission of:

- *Agency transition plans.* Requires plans to be submitted to the AEIT not later than September 1 of the fiscal year prior to the agency's scheduled consolidation and identifies the required components of the plan.
- *Primary data center transition plans.* Requires plans to be submitted to the AEIT not later than September 30 of the fiscal year prior to the scheduled consolidation and identifies the required components of the plan.
- *Comprehensive transition plan.* Requires the AEIT to develop a comprehensive plan that must be submitted not later than October 15 of the fiscal year prior to the scheduled consolidations to the Governor and the chairs of the House Appropriations Committee and the Senate Budget Committee. The comprehensive transition plan must be developed in consultation with the agencies submitting their agency transition plans and the affected primary data center. The required components of the comprehensive transition plan are also identified.

### **Northwest Regional Data Center**

#### **Current Situation**

Section 282.201(2)(f), Florida Statutes, authorizes the AEIT to establish rules relating to the operation of the state data center; such rules may address the AEIT designating any non-state data center as a primary data center if the center:

- Has an established governance structure that represents customer entities proportionally.
- Maintains an appropriate cost-allocation methodology that accurately bills a customer entity based on the actual direct and indirect costs to the customer entity, and prohibits the subsidization of one customer entity's costs by another entity.
- Has sufficient raised floor space, cooling, and redundant power capacity, including uninterruptible power supply and backup power generation, to accommodate the computer processing platforms and support necessary to host the computing requirements of additional customer entities.

In a letter dated October 27, 2008, the executive director of the Northwest Regional Data Center (NWRDC)<sup>13</sup> sent a letter to the executive director of the AEIT requesting that the NWRDC be granted the status as a non-state primary data center. The NWRDC provided information in support of its request related to its governance structure, cost allocation methodology, and data center configuration and capacity.

The executive director of AEIT sent a letter (July 17, 2009) to the executive director of the NWRDC stating: "*To date, no administrative rule has been created to define the policy for determining the*

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<sup>13</sup> Northwest Regional Data Center (NWRDC) was created by Florida State University in 1972 to provide centralized computing support to public entities within the state of Florida in a utility mode operation. October 27, 2008, letter from executive director of NWRDC.

*criteria for designating a non-state primary data center beyond those specified in statute. Regardless, using the specific requirements outlined in Ch/ 282.201(2)(f)(70), F.S., the AEIT has determined that the Northwest Regional Data Center meets those minimum requirements and is hereby designated a non-state primary data center."*

Approximately one-third of the NWRDC current customer base is comprised of state agencies, with the Department of Education its biggest customer.

### **Proposed Change**

The bill designates the NWRDC as a primary data center and specifically requires the NWRDC to be managed by a board of trustees and to comply with all the requirements of the section of law related to the operation of the center and with the rules of the AEIT relating to primary data centers.

## **B. SECTION DIRECTORY:**

Section 1: Amends s. 14.204, F.S., clarifying the duties of the Agency for Enterprise Information Technology.

Section 2: Amends s. 20.315, F.S., replacing the "Justice Data Center" with "Office of Information Technology".

Section 3: Amends s. 282.0041, F.S., deleting the definitions for "Agency chief information officer" and "Agency Chief Information Officers Council"; and changing the definition for "Primary data center".

Section 4: Amends s. 282.0056, F.S., clarifying the required components of the Agency for Enterprise Information Technology's work plan and deleting the reference to Agency Chief Information Officers Council.

Section 5: Amends s. 282.201, F.S., by:

- Clarifying the duties of the Agency for Enterprise Information Technology pertaining to the state data center system, to include developing rules relating to its operation and requiring the agency to provide notice of the development of its proposed rules no later than October 1, 2011.
- Codifying the schedule for agency data center consolidations; the requirement for agency, primary data center, and Agency for Enterprise Information Technology transition plans; and the execution of new or updated service level agreements.
- Clarifying the agency limitations pertaining to their agency data centers.

Section 6: Amends s. 282.203, F.S., by:

- Clarifying the duties of the primary data centers to include assuming administrative access rights to the resources and equipment that are consolidated into the primary data center.
- Clarifying the membership of the primary data center's board of trustees during an agency's transition to the primary data center.

Section 7: Creates s. 282.206, F.S., designating the Northwest Regional Data Center in law and requiring it to comply with all requirements of s. 282.203, F.S., and the rules of the Agency for Enterprise Information Technology.

Section 8: Repeals ss. 282.3055 and 282.315, F.S., eliminating the required appointment of an agency chief information officer and the establishment of the Agency Chief Information Officers Council.

Section 9: Amends s. 282.318, F.S., aligning terminology with changes made in s. 14.204, F.S.

Section 10: Amends s. 282.34, F.S., aligning terminology with repeal of s. 282.3055, F.S.

Section 11: Amends s.282.042, F.S., aligning terminology with repeal of s. 282.315, F.S.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

While the exact amount is indeterminate at this time, it is anticipated that there would be a decrease in data processing expenditures paid by state agencies after their consolidation into a primary data center. See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

### D. FISCAL COMMENTS:

This bill establishes in statute the agency data center consolidation schedule which includes the agencies required to consolidate into a primary data center in the 2011-2012 fiscal year. The 2011-2012 proposed House General Appropriations Act includes \$4.3 million in budget reductions spread across a number of agencies associated with the consolidation.

The bill requires the Agency for Enterprise Information Technology (AEIT) to develop standards for hardware and operations software, including security and network infrastructure, for the primary data centers. Such standards are necessary to ensure that the appropriated reductions and future savings can be realized through the standardization of hardware and operations software within the primary data centers.

Additionally, the bill requires that agencies scheduled for data center consolidation may not expend appropriated funds prior its consolidation for the purchase of hardware or operations software that do not comply with the standards established by the AEIT and without consultation with the primary data center.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Clarification provided to existing rule-making authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1 A bill to be entitled  
 2 An act relating to the Agency for Enterprise Information  
 3 Technology; amending s. 14.204, F.S.; revising duties and  
 4 responsibilities of the agency; removing provisions for  
 5 the Office of Information Security and the Agency Chief  
 6 Information Officers Council; amending s. 20.315, F.S.,  
 7 relating to the Department of Corrections; providing for  
 8 the department's data system to be managed through the  
 9 department's Office of Information Technology; removing  
 10 reference to the Justice Data Center; amending s.  
 11 282.0041, F.S.; removing the definitions of the terms  
 12 "agency chief information officer" and "Agency Chief  
 13 Information Officers Council"; revising the definition of  
 14 the term "primary data center"; amending s. 282.0056,  
 15 F.S.; revising requirements for development of an annual  
 16 work plan by the agency; amending s. 282.201, F.S.;  
 17 revising duties of the agency; providing for submission of  
 18 certain recommendations to the Executive Office of the  
 19 Governor, the Legislature, and primary data centers;  
 20 removing a provision for an overall consolidation plan;  
 21 revising provisions for adoption of rules by the agency;  
 22 requiring publication of notice; revising duties of state  
 23 agencies; providing a schedule for state agency data  
 24 center consolidation; providing conditions for  
 25 consolidations; requiring the agency to make certain  
 26 reports; requiring development of transition plans;  
 27 amending s. 282.203, F.S.; revising duties of primary data  
 28 centers; revising provisions for service-level agreements;

29 | revising provisions for membership of boards of trustees  
 30 | of primary data centers; creating s. 282.206, F.S.;  
 31 | designating the Northwest Regional Data Center as a  
 32 | primary data center; repealing s. 282.3055, F.S., relating  
 33 | to agency chief information officers; repealing s.  
 34 | 282.315, F.S., relating to the Agency Chief Information  
 35 | Officers Council; amending s. 282.318, F.S., relating to  
 36 | enterprise security of data and information technology;  
 37 | conforming to changes made by the act; deleting an  
 38 | obsolete provision; amending ss. 282.34 and 287.042, F.S.,  
 39 | relating to statewide e-mail service and powers, duties,  
 40 | and functions of the Department of Management Services,  
 41 | respectively; conforming provisions to changes made by the  
 42 | act; providing an effective date.

43

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

45

46 | Section 1. Paragraphs (a), (g), (h), (i), (j), and (k) of  
 47 | subsection (4) and subsections (5) and (6) of section 14.204,  
 48 | Florida Statutes, are amended to read:

49 | 14.204 Agency for Enterprise Information Technology.—The  
 50 | Agency for Enterprise Information Technology is created within  
 51 | the Executive Office of the Governor.

52 | (4) The agency shall have the following duties and  
 53 | responsibilities:

54 | (a) Develop strategies for the planning, design, delivery,  
 55 | implementation, and management of the enterprise information  
 56 | technology services established in law, including the state data

57 | center system services established pursuant to s. 282.201, the  
 58 | information technology security service established in s.  
 59 | 282.318, and the statewide e-mail service established in s.  
 60 | 282.34.

61 | (g) Coordinate technology resource acquisition planning  
 62 | and assist the Division of Purchasing of the Department of  
 63 | Management Services in procurement negotiations for technology  
 64 | hardware and software products and services in order to improve  
 65 | the efficiency and reduce the cost of enterprise information  
 66 | technology services.

67 | ~~(h) In consultation with the Division of Purchasing in the~~  
 68 | ~~Department of Management Services, coordinate procurement~~  
 69 | ~~negotiations for information technology products as defined in~~  
 70 | ~~s. 282.0041 which will be used by multiple agencies.~~

71 | (h)(i) In coordination with, and through the services of,  
 72 | the Division of Purchasing in the Department of Management  
 73 | Services, establish best practices for the procurement of  
 74 | information technology products as defined in s. 282.0041 in  
 75 | order to achieve savings for the state.

76 | (i)(j) Develop information technology standards for  
 77 | enterprise information technology services as defined in s.  
 78 | 282.0041.

79 | (j)(k) Provide annually, by December 31, recommendations  
 80 | to the Legislature relating to techniques for consolidating the  
 81 | purchase of information technology commodities and services,  
 82 | which result in savings for the state, and for establishing a  
 83 | process to achieve savings through consolidated purchases.

84 | ~~(5) The Office of Information Security shall be created~~

85 ~~within the agency.~~ The agency shall designate a state Chief  
 86 Information Security Officer who shall ~~eversee the office and~~  
 87 report directly to the executive director.

88 (6) The agency shall operate in a manner that ensures the  
 89 participation and representation of state agencies and the  
 90 ~~Agency Chief Information Officers Council established in s.~~  
 91 ~~282.315.~~

92 Section 2. Subsection (10) of section 20.315, Florida  
 93 Statutes, is amended to read:

94 20.315 Department of Corrections.—There is created a  
 95 Department of Corrections.

96 (10) SINGLE INFORMATION AND RECORDS SYSTEM.—There shall be  
 97 only one offender-based information and records computer system  
 98 maintained by the Department of Corrections for the joint use of  
 99 the department and the Parole Commission. This data system shall  
 100 be managed through the department's Office of Information  
 101 Technology Justice Data Center. The department shall develop and  
 102 maintain, in consultation with the Criminal and Juvenile Justice  
 103 Information Systems Council under s. 943.08, such offender-based  
 104 information, including clemency administration information and  
 105 other computer services to serve the needs of both the  
 106 department and the Parole Commission. The department shall  
 107 notify the commission of all violations of parole and the  
 108 circumstances thereof.

109 Section 3. Subsections (4) through (30) of section  
 110 282.0041, Florida Statutes, are renumbered as subsections (2)  
 111 through (28), respectively, and present subsections (2), (3),  
 112 and (19) of that section are amended to read:

113 282.0041 Definitions.—As used in this chapter, the term:  
 114 ~~(2) "Agency chief information officer" means the person~~  
 115 ~~employed by the agency head to coordinate and manage the~~  
 116 ~~information technology functions and responsibilities applicable~~  
 117 ~~to that agency, to participate and represent the agency in~~  
 118 ~~developing strategies for implementing enterprise information~~  
 119 ~~technology services established pursuant to this part, and to~~  
 120 ~~develop recommendations for enterprise information technology~~  
 121 ~~policy.~~

122 ~~(3) "Agency Chief Information Officers Council" means the~~  
 123 ~~council created in s. 282.315.~~

124 (17) ~~(19)~~ "Primary data center" means a ~~state or nonstate~~  
 125 ~~agency data center that is a recipient entity for consolidation~~  
 126 ~~of nonprimary data centers and computing facilities and is~~  
 127 established. ~~A primary data center may be authorized in law or~~  
 128 ~~designated by the Agency for Enterprise Information Technology~~  
 129 ~~pursuant to s. 282.201.~~

130 Section 4. Subsection (1) of section 282.0056, Florida  
 131 Statutes, is amended to read:

132 282.0056 Development of work plan; development of  
 133 implementation plans; and policy recommendations.—

134 (1) For the purposes of carrying out its responsibilities  
 135 under s. 282.0055, the Agency for Enterprise Information  
 136 Technology shall develop an annual work plan within 60 days  
 137 after the beginning of the fiscal year describing the activities  
 138 that the agency intends to undertake for that year, including  
 139 proposed outcomes and completion timeframes for the planning and  
 140 implementation of all enterprise information technology

141 services. The work plan must be presented at a public hearing  
 142 ~~and that includes the Agency Chief Information Officers Council,~~  
 143 ~~which may review and comment on the plan. The work plan must~~  
 144 thereafter be approved by the Governor and Cabinet and submitted  
 145 to the President of the Senate and the Speaker of the House of  
 146 Representatives. The work plan may be amended as needed, subject  
 147 to approval by the Governor and Cabinet.

148 Section 5. Subsections (2) through (5) of section 282.201,  
 149 Florida Statutes, are amended to read:

150 282.201 State data center system; agency duties and  
 151 limitations.—A state data center system that includes all  
 152 primary data centers, other nonprimary data centers, and  
 153 computing facilities, and that provides an enterprise  
 154 information technology service as defined in s. 282.0041, is  
 155 established.

156 (2) AGENCY FOR ENTERPRISE INFORMATION TECHNOLOGY DUTIES.—  
 157 The Agency for Enterprise Information Technology shall:

158 (a) Collect and maintain information necessary for  
 159 developing policies relating to the data center system,  
 160 including, but not limited to, an inventory of facilities.

161 (b) Annually approve cost-recovery mechanisms and rate  
 162 structures for primary data centers which recover costs through  
 163 charges to customer entities.

164 (c) By September ~~December~~ 31 of each year, submit to the  
 165 Legislature, the Executive Office of the Governor, and the  
 166 primary data centers recommendations to improve the efficiency  
 167 and cost-effectiveness ~~effectiveness~~ of computing services  
 168 provided by state data center system facilities. Such



- 169 | recommendations may include, but need not be limited to:
- 170 |       1. Policies for improving the cost-effectiveness and
- 171 | efficiency of the state data center system and the projected
- 172 | cost savings resulting from their implementation.
- 173 |       2. Infrastructure improvements supporting the
- 174 | consolidation of facilities or preempting the need to create
- 175 | additional data centers or computing facilities.
- 176 |       3. Standards for an objective, credible energy performance
- 177 | rating system that data center boards of trustees can use to
- 178 | measure state data center energy consumption and efficiency ~~on a~~
- 179 | ~~biannual~~ basis.
- 180 |       4. Uniform disaster recovery standards.
- 181 |       5. Standards for primary data centers to provide cost-
- 182 | effective services and ~~providing~~ transparent financial data to
- 183 | user agencies.
- 184 |       6. Consolidation of contract practices or coordination of
- 185 | software, hardware, or other technology-related procurements and
- 186 | the projected cost savings.
- 187 |       7. Improvements to data center governance structures.
- 188 |       (d) By October 1 of each year beginning in 2011 ~~2009~~,
- 189 | provide recommendations ~~recomm~~end to the Governor and
- 190 | Legislature regarding changes to the schedule for agency data
- 191 | center consolidation established in subsection (4) ~~at least two~~
- 192 | ~~nonprimary data centers for consolidation into a primary data~~
- 193 | ~~center or nonprimary data center facility.~~
- 194 |       ~~1. The consolidation proposal must provide a transition~~
- 195 | ~~plan that includes:~~
- 196 |       ~~a. Estimated transition costs for each data center or~~

197 ~~computing facility recommended for consolidation;~~  
 198       ~~b. Detailed timeframes for the complete transition of each~~  
 199 ~~data center or computing facility recommended for consolidation;~~  
 200       ~~c. Proposed recurring and nonrecurring fiscal impacts,~~  
 201 ~~including increased or decreased costs and associated budget~~  
 202 ~~impacts for affected budget entities;~~  
 203       ~~d. Substantive legislative changes necessary to implement~~  
 204 ~~the transition; and~~  
 205       ~~e. Identification of computing resources to be transferred~~  
 206 ~~and those that will remain in the agency. The transfer of~~  
 207 ~~resources must include all hardware, software, staff, contracted~~  
 208 ~~services, and facility resources performing data center~~  
 209 ~~management and operations, security, backup and recovery,~~  
 210 ~~disaster recovery, system administration, database~~  
 211 ~~administration, system programming, job control, production~~  
 212 ~~control, print, storage, technical support, help desk, and~~  
 213 ~~managed services but excluding application development.~~  
 214       ~~1.2.~~ Recommendations shall be based on the goal of  
 215 maximizing current and future cost savings by. ~~The agency shall~~  
 216 ~~consider the following criteria in selecting consolidations that~~  
 217 ~~maximize efficiencies by providing the ability to:~~  
 218       a. Consolidating ~~Consolidate~~ purchase decisions;  
 219       b. Leveraging ~~Leverage~~ expertise and other resources to  
 220 gain economies of scale;  
 221       c. Implementing ~~Implement~~ state information technology  
 222 policies more effectively; and  
 223       d. Maintaining ~~Maintain~~ or improving ~~improve~~ the level of  
 224 service provision to customer entities; and

225 ~~e. Make progress towards the state's goal of consolidating~~  
 226 ~~data centers and computing facilities into primary data centers.~~

227 ~~2.3-~~ The agency shall establish workgroups as necessary to  
 228 ensure participation by affected agencies in the development of  
 229 recommendations related to consolidations.

230 ~~(e) By December 31, 2010, the agency shall develop and~~  
 231 ~~submit to the Legislature an overall consolidation plan for~~  
 232 ~~state data centers. The plan shall indicate a timeframe for the~~  
 233 ~~consolidation of all remaining nonprimary data centers into~~  
 234 ~~primary data centers, including existing and proposed primary~~  
 235 ~~data centers, by 2019.~~

236 ~~(e)-(f)~~ Develop and establish rules relating to the  
 237 operation of the state data center system which comply with  
 238 applicable federal regulations, including 2 C.F.R. part 225 and  
 239 45 C.F.R. The agency shall provide notice of the development of  
 240 its proposed rules by publication of a notice of development in  
 241 the Florida Administrative Weekly no later than October 1, 2011.

242 The rules shall may address:

243 1. Ensuring that financial information is captured and  
 244 reported consistently and accurately.

245 2. Implementing standards for hardware, operations  
 246 software, including security, and network infrastructure for the  
 247 primary data centers ~~Requiring the establishment of service-~~  
 248 ~~level agreements executed between a data center and its customer~~  
 249 ~~entities for services provided.~~

250 3. Requiring annual full cost recovery on an equitable  
 251 rational basis. The cost-recovery methodology must ensure that  
 252 no service is subsidizing another service and may include

253 adjusting the subsequent year's rates as a means to recover  
254 deficits or refund surpluses from a prior year.

255 4. Requiring that any special assessment imposed to fund  
256 expansion is based on a methodology that apportions the  
257 assessment according to the proportional benefit to each  
258 customer entity.

259 5. Requiring that rebates be given when revenues have  
260 exceeded costs, that rebates be applied to offset charges to  
261 those customer entities that have subsidized the costs of other  
262 customer entities, and that such rebates may be in the form of  
263 credits against future billings.

264 6. Requiring that all service-level agreements have a  
265 contract term of up to 3 years, but may include an option to  
266 renew for up to 3 additional years contingent on approval by the  
267 board, and require at least a 180-day notice of termination.

268 ~~7. Designating any nonstate data center as a primary data  
269 center if the center:~~

270 ~~a. Has an established governance structure that represents  
271 customer entities proportionally.~~

272 ~~b. Maintains an appropriate cost allocation methodology  
273 that accurately bills a customer entity based on the actual  
274 direct and indirect costs to the customer entity, and prohibits  
275 the subsidization of one customer entity's costs by another  
276 entity.~~

277 ~~c. Has sufficient raised floor space, cooling, and  
278 redundant power capacity, including uninterruptible power supply  
279 and backup power generation, to accommodate the computer  
280 processing platforms and support necessary to host the computing~~

281 ~~requirements of additional customer entities.~~

282 ~~8. Removing a nonstate data center from primary data~~  
 283 ~~center designation if the nonstate data center fails to meet~~  
 284 ~~standards necessary to ensure that the state's data is~~  
 285 ~~maintained pursuant to subparagraph 7.~~

286 (3) STATE AGENCY DUTIES.—

287 (a) For the purpose of completing its work activities as  
 288 described in subsection (1), each state agency shall provide to  
 289 the Agency for Enterprise Information Technology all requested  
 290 information and any other information relevant to the agency's  
 291 ability to effectively transition its computer services into a  
 292 primary data center. The agency shall also participate as  
 293 required in workgroups relating to specific consolidation  
 294 planning and implementation tasks as assigned by the Agency for  
 295 Enterprise Information Technology and determined necessary to  
 296 accomplish consolidation goals.

297 (b) Each state agency shall submit to the Agency for  
 298 Enterprise Information Technology information relating to its  
 299 data centers and computing facilities as required in  
 300 instructions issued by July 1 of each year by the Agency for  
 301 Enterprise Information Technology. The information required may  
 302 include:

- 303 1. Amount of floor space used and available.
- 304 2. Numbers and capacities of mainframes and servers.
- 305 3. Storage and network capacity.
- 306 4. Amount of power used and the available capacity.
- 307 5. Estimated expenditures by service area, including
- 308 hardware and software, numbers of full-time equivalent

309 positions, personnel turnover, and position reclassifications.

310 6. A list of contracts in effect for the fiscal year,  
 311 including, but not limited to, contracts for hardware, software  
 312 and maintenance, including the expiration date, the contract  
 313 parties, and the cost of the contract.

314 7. Service-level agreements by customer entity.

315 ~~(c) The chief information officer of each state agency~~  
 316 ~~shall assist the Agency for Enterprise Information Technology at~~  
 317 ~~the request of the Agency for Enterprise Information Technology.~~

318 (c) ~~(d)~~ Each state agency customer of a primary data center  
 319 shall notify the data center, by May 31 and November 30 of each  
 320 year, of any significant changes in anticipated utilization of  
 321 data center services pursuant to requirements established by the  
 322 boards of trustees of each primary data center.

323 (4) SCHEDULE FOR AGENCY DATA CENTER CONSOLIDATION.-

324 (a) State agency data center consolidations shall be made  
 325 in accordance with budget adjustments contained in the General  
 326 Appropriations Act no later than the date provided and to the  
 327 specified primary data center as provided in this subsection.

328 (b) For consolidation during fiscal year 2011-2012 into  
 329 the Northwest Regional Data Center:

330 1. College Center for Library Automation (CCLA) no later  
 331 than December 31, 2011.

332 2. Florida Center for Library Automation (FCLA) no later  
 333 than December 31, 2011.

334 3. Department of Education no later than December 31,  
 335 2011, including the computing services and resources of:

336 a. The Knott Data Center located in the Turlington

337 Building.

338 b. The Division of Blind Services.

339 c. The Division of Vocational Rehabilitation.

340 d. FCAT Explorer.

341 e. FACTS.org.

342

343 Such consolidations are contingent upon the Agency for  
344 Enterprise Information Technology's completion of a cost-benefit  
345 analysis to determine whether additional savings can be  
346 achieved. The cost-benefit analysis shall compare the costs and  
347 savings estimates provided by the Northwest Regional Data  
348 Center, the Northwood Shared Resource Center, and the Southwood  
349 Shared Resource Center for the consolidation of the College  
350 Center for Library Automation, the Florida Center for Library  
351 Automation, and the Department of Education to their respective  
352 data centers. The cost-benefit analysis shall be submitted no  
353 later than August 1, 2011, to the Executive Office of the  
354 Governor and the chairs of the House Appropriations Committee  
355 and the Senate Budget Committee. Any actions recommended as a  
356 result of the cost-benefit analysis are subject to the notice,  
357 review, and objection requirements of s. 216.177.

358 (c) For consolidation during fiscal year 2011-2012 into  
359 the Southwood Shared Resource Center:

360 1. The Department of Corrections no later than September  
361 30, 2011.

362 2. The Department of Transportation Survey and Mapping  
363 Office no later than March 31, 2012.

364 3. The Department of Transportation Burns Office Building

365 no later than March 31, 2012.

366 (d) For consolidation during fiscal year 2011-2012 into  
 367 the Northwood Shared Resource Center:

368 1. The Department of Transportation Motor Carrier  
 369 Compliance Office no later than July 1, 2011.

370 2. The Department of Highway Safety and Motor Vehicles no  
 371 later than March 31, 2012.

372 (e) For consolidation during fiscal year 2012-2013 into  
 373 the Southwood Shared Resource Center:

374 1. The Department of Community Affairs, including the  
 375 Division of Emergency Management, no later than September 30,  
 376 2012.

377 2. The Department of Revenue data centers no later than  
 378 September 30, 2012.

379 3. The Department of Health Test and Development Lab and  
 380 all remaining data center resources no later than December 31,  
 381 2012.

382 (f) For consolidation during fiscal year 2012-2013 into  
 383 the Northwood Shared Resource Center:

384 1. The Agency for Health Care Administration no later than  
 385 July 1, 2012.

386 2. The Department of Environmental Protection no later  
 387 than December 31, 2012.

388 3. The Department of Law Enforcement no later than March  
 389 30, 2013.

390 (g) The following agencies shall work with the Agency for  
 391 Enterprise Information Technology to begin preliminary planning  
 392 for consolidation of their data centers into a primary data



- 393 center during fiscal year 2013-2014:
- 394 1. The Department of the Lottery.
- 395 2. The Department of Legal Affairs.
- 396 3. The Fish and Wildlife Conservation Commission.
- 397 4. The Executive Office of the Governor, excluding all
- 398 resources, equipment, and applications supported within the
- 399 Legislative Appropriations System/Planning and Budget Subsystem.
- 400 5. The Department of Veterans' Affairs.
- 401 6. The Department of Elderly Affairs.
- 402 7. The Department of Financial Services Hartman, Larson,
- 403 and Fletcher Buildings data centers.
- 404 8. The Department of Agriculture and Consumer Services
- 405 Agriculture Management Information Center in the Mayo Building
- 406 and the Division of Licensing.
- 407 (h) The following agencies shall work with the Agency for
- 408 Enterprise Information Technology to begin preliminary planning
- 409 for consolidation of their data centers into a primary data
- 410 center during fiscal year 2014-2015:
- 411 1. The Department of Health Jacksonville Lab Data Center.
- 412 2. The Department of Transportation District, Toll,
- 413 Materials Office.
- 414 3. The Department of Military Affairs Camp Blanding Joint
- 415 Training Center, Starke.
- 416 4. The Department of Community Affairs Camp Blanding
- 417 Emergency Operations Center, Starke.
- 418 5. The Department of Education Division of Blind Services,
- 419 Disaster Recovery site, Daytona Beach.
- 420 6. The Department of Education Disaster Recovery site,

421 Sante Fe College.

422 7. The Department of the Lottery Disaster Recovery Backup  
 423 Data Center, Orlando.

424 8. The Fish and Wildlife Conservation Commission Research  
 425 Institute, St. Petersburg.

426 9. The Department of Children and Family Services Suncoast  
 427 Data Center, Tampa.

428 10. The Department of Children and Family Services Florida  
 429 State Hospital, Chattahoochee.

430 (i) All computing facilities as defined in s. 282.0041 or  
 431 groups of servers remaining in an agency shall be transferred to  
 432 a primary data center for consolidation during fiscal year 2015-  
 433 2016 unless required to remain in the agency for specific  
 434 business reasons.

435 (j) All agencies consolidating data centers into a primary  
 436 data center shall execute a new or update an existing service-  
 437 level agreement no later than 60 days after the identified  
 438 consolidation date, as required by s. 282.203, that specifies  
 439 the services and levels of services the agency is to receive  
 440 from the primary data center as a result of the consolidation.  
 441 Any agency that is unable to execute the service-level agreement  
 442 by the required date must submit a report to the Executive  
 443 Office of the Governor and to the chairs of the House  
 444 Appropriations Committee and the Senate Budget Committee within  
 445 5 working days after such date that explains the specific issues  
 446 preventing execution and describing the agency's plan and  
 447 schedule for resolving the issues.

448 (k) Beginning September 1, 2011, and every 6 months

449 thereafter, until all data center consolidations are complete,  
 450 the Agency for Enterprise Information Technology shall provide a  
 451 status report on the implementation of consolidation required to  
 452 be completed during the fiscal year. The report shall be  
 453 submitted to the Executive Office of the Governor and the chairs  
 454 of the House Appropriations Committee and the Senate Budget  
 455 Committee. The status report shall describe:

456 1. Whether the consolidation is on schedule, including the  
 457 progress on achieving milestones necessary for successful and  
 458 timely consolidation of scheduled agency data centers and  
 459 computing facilities; and

460 2. Risks that may affect the progress or outcomes of the  
 461 consolidation and how such risks are being addressed, mitigated,  
 462 or managed.

463 (1) Each agency identified in this subsection for  
 464 consolidation into a primary data center must submit a  
 465 transition plan to the Agency for Enterprise Information  
 466 Technology not later than September 1 of the fiscal year prior  
 467 to its scheduled consolidation. Transition plans shall be  
 468 developed in consultation with the appropriate primary data  
 469 center and the Agency for Enterprise Information Technology and  
 470 must include:

471 1. An inventory of all resources of the agency data center  
 472 being consolidated, including all hardware, software, staff,  
 473 contracted services, and facility resources performing data  
 474 center management and operations, security, backup and recovery,  
 475 disaster recovery, system administration, database  
 476 administration, system programming, job control, production

477 control, print, storage, technical support, help desk, and  
478 managed services, excluding application development.

479 2. A description of the level of services needed to meet  
480 the technical and operational requirements of the platforms  
481 being consolidated and a cost estimate for the primary data  
482 center's provision of such services.

483 3. A description of resources for computing services  
484 proposed to remain in the department.

485 4. A timetable with significant milestones for the  
486 completion of the consolidation.

487 5. The fiscal year adjustments to budget categories  
488 currently supporting agency costs to accomplish the transfer of  
489 sufficient budget resources into the appropriate data processing  
490 category pursuant to the legislative budget request instructions  
491 provided in s. 216.023.

492 (m) Each primary data center shall develop a transition  
493 plan for absorbing the transfer of agency data center resources  
494 based upon the timetables for transition as provided in this  
495 subsection. The plan shall be submitted to the Agency for  
496 Enterprise Information Technology no later than September 30 of  
497 the fiscal year prior to the scheduled consolidation. Each plan  
498 shall include:

499 1. An estimate of the cost of providing data center  
500 services for each agency scheduled for consolidation.

501 2. A staffing plan that identifies the projected staffing  
502 needs and requirements based on the estimated workload  
503 identified in the agency transition plans.

504 3. An analysis of the cost impacts to existing agency

505 customers resulting from the planned consolidations.

506 4. The fiscal year adjustments to budget categories to  
 507 absorb the transfer of agency data center resources pursuant to  
 508 the legislative budget request instructions provided in s.  
 509 216.023.

510 5. A description of any issues that must be resolved to  
 511 accomplish all consolidations required during the fiscal year as  
 512 efficiently and effectively as possible.

513 (n) The Agency for Enterprise Information Technology shall  
 514 develop a comprehensive transition plan, which shall be  
 515 submitted no later than October 15 of the fiscal year prior to  
 516 the scheduled consolidations to the Executive Office of the  
 517 Governor and the chairs of the House Appropriations Committee  
 518 and the Senate Budget Committee. The comprehensive transition  
 519 plan shall be developed in consultation with the agencies  
 520 submitting their agency transition plans and the affected  
 521 primary data center. The comprehensive transition plan shall  
 522 include:

523 1. Recommendations for accomplishing the proposed  
 524 consolidations as efficiently and effectively as possible with  
 525 minimal disruption to the agency's business processes.

526 2. Strategies to minimize risks associated with any of the  
 527 proposed consolidations.

528 3. A compilation of the agency transition plans scheduled  
 529 for consolidation in the following fiscal year.

530 4. Revisions to any budget adjustments provided in the  
 531 agency or primary data center transition plans pursuant to the  
 532 legislative budget request instructions provided in s. 216.023.

533 (5)-(4) AGENCY LIMITATIONS.—

534 (a) Unless authorized by the Legislature or as provided in  
535 paragraphs (b) and (c), a state agency may not:

536 1. Create a new computing facility or data center, ~~or~~  
537 expand the capability to support additional computer equipment  
538 in an existing computing facility or nonprimary data center, or  
539 purchase equipment or other resources necessary to expand the  
540 capabilities of the agency data center;

541 2. Expend funds prior to the agency's scheduled  
542 consolidation into a primary data center for the purchase or  
543 modification of hardware or operations software that do not  
544 comply with the standards established for efficient  
545 consolidation and without consultation with the primary data  
546 center;

547 3.2. ~~Transfer existing computer services to a nonprimary~~  
548 ~~data center or computing facility, including outsourced computer~~  
549 ~~service providers;~~

550 4.3. ~~Terminate services with a primary data center or~~  
551 ~~transfer services between primary data centers without giving~~  
552 ~~written notice of intent to terminate or transfer services 180~~  
553 ~~days before such termination or transfer and completing a cost-~~  
554 ~~benefit analysis that documents that the requested transfer will~~  
555 ~~not increase the agency's data center costs; or~~

556 5.4. ~~Initiate a new computer service if it does not~~  
557 ~~currently have an internal data center except with a primary~~  
558 ~~data center.~~

559 (b) Exceptions to the limitations in subparagraphs (a)1.,  
560 2., 3., and 5. ~~4.~~ may be granted by the Agency for Enterprise

561 Information Technology if there is insufficient capacity in a  
 562 primary data center to absorb the workload associated with  
 563 agency computing services.

564 1. A request for an exception must be submitted in writing  
 565 to the Agency for Enterprise Information Technology. The agency  
 566 must accept, accept with conditions, or deny the request within  
 567 60 days after receipt of the written request. The agency's  
 568 decision is not subject to chapter 120.

569 2. At a minimum, the agency may not approve a request  
 570 unless it includes:

571 a. Documentation approved by the primary data center's  
 572 board of trustees which confirms that the center cannot meet the  
 573 capacity requirements of the agency requesting the exception  
 574 within the current fiscal year.

575 b. A description of the capacity requirements of the  
 576 agency requesting the exception.

577 c. Documentation from the agency demonstrating why it is  
 578 critical to the agency's mission that the expansion or transfer  
 579 must be completed within the fiscal year rather than when  
 580 capacity is established at a primary data center.

581 (c) Exceptions to subparagraph (a)4.3- may be granted by  
 582 the board of trustees of the primary data center if the  
 583 termination or transfer of services can be absorbed within the  
 584 current cost-allocation plan.

585 (d) Upon the termination of or transfer of agency  
 586 computing services from the primary data center, the primary  
 587 data center shall require information sufficient to determine  
 588 compliance with this section. If a primary data center

589 determines that an agency is in violation of this section, it  
 590 shall report the violation to the Agency for Enterprise  
 591 Information Technology.

592 ~~(6)(5)~~ RULES.—The Agency for Enterprise Information  
 593 Technology is authorized to adopt rules pursuant to ss.  
 594 120.536(1) and 120.54 to administer the provisions of this part  
 595 relating to the state data center system including the primary  
 596 data centers.

597 Section 6. Subsection (1) and paragraph (a) of subsection  
 598 (2) of section 282.203, Florida Statutes, are amended to read:

599 282.203 Primary data centers.—

600 (1) DATA CENTER DUTIES.—Each primary data center shall:

601 (a) Serve customer entities as an information-system  
 602 utility.

603 (b) Cooperate with customer entities to offer, develop,  
 604 and support the services and applications as defined and  
 605 provided by the center's board of trustees and customer  
 606 entities.

607 (c) Comply with standards and rules adopted by the Agency  
 608 for Enterprise Information Technology, pursuant to this section,  
 609 and coordinate with the agency in the consolidation of data  
 610 centers.

611 (d) Provide transparent financial statements to customer  
 612 entities, the center's board of trustees, and the Agency for  
 613 Enterprise Information Technology. The financial statements  
 614 shall be provided as follows:

615 1. Annually, by July 30 for the current fiscal year and by  
 616 December 1 for the subsequent fiscal year, the data center must



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617 provide the total annual budgeted costs by major expenditure  
618 category, including, but not limited to, salaries, expense,  
619 operating capital outlay, contracted services, or other  
620 personnel services, which directly relate to the provision of  
621 each service and which separately indicate the administrative  
622 overhead allocated to each service.

623 2. Annually, by July 30 for the current fiscal year and by  
624 December 1 for the subsequent fiscal year, the data center must  
625 provide total projected billings for each customer entity which  
626 are required to recover the costs of the data center.

627 3. Annually, by January 31, the data center must provide  
628 updates of the financial statements required under subparagraphs  
629 1. and 2. for the current fiscal year.

630 4. By February 15, for proposed legislative budget  
631 increases, the data center must provide updates of the financial  
632 statements required under subparagraphs 1. and 2. for the  
633 subsequent fiscal year.

634  
635 The financial information required under subparagraphs 1., 2.,  
636 and 3. must be based on current law and current appropriations.

637 (e) Annually, by October 1, submit to the board of  
638 trustees cost-reduction proposals, including strategies and  
639 timetables for lowering customer entities' costs without  
640 reducing the level of services.

641 ~~(f) By December 31, 2010, submit organizational plans that~~  
642 ~~minimize the annual recurring cost of center operations and~~  
643 ~~eliminate the need for state agency customers to maintain data~~  
644 ~~center skills and staff within their agency. The plans shall:~~

645 ~~1. Establish an efficient organizational structure~~  
 646 ~~describing the roles and responsibilities of all positions and~~  
 647 ~~business units in the centers;~~

648 ~~2. Define a human resources planning and management~~  
 649 ~~process that shall be used to make required center staffing~~  
 650 ~~decisions; and~~

651 ~~3. Develop a process for projecting staffing requirements~~  
 652 ~~based on estimated workload identified in customer agency~~  
 653 ~~service level agreements.~~

654 (f) ~~(g)~~ Maintain the performance of the facility, which  
 655 includes ensuring proper data backup, data backup recovery, an  
 656 effective disaster recovery plan, and appropriate security,  
 657 power, cooling and fire suppression, and capacity.

658 (g) ~~(h)~~ Develop a business continuity plan and conduct a  
 659 live exercise of the plan at least annually. The plan must be  
 660 approved by the board and the Agency for Enterprise Information  
 661 Technology.

662 (h) ~~(i)~~ Enter into a service-level agreement with each  
 663 customer entity to provide services as defined and approved by  
 664 the board in compliance with rules of the Agency for Enterprise  
 665 Information Technology. A service-level agreement may not have a  
 666 term exceeding 3 years but may include an option to renew for up  
 667 to 3 years contingent on approval by the board.

668 1. A service-level agreement, at a minimum, must:

669 a. Identify the parties and their roles, duties, and  
 670 responsibilities under the agreement;

671 b. Identify the legal authority under which the service-  
 672 level agreement was negotiated and entered into by the parties;

- 673 |       c. State the duration of the contractual term and specify
- 674 | the conditions for contract renewal;
- 675 |       d. Prohibit the transfer of computing services between
- 676 | primary data center facilities without at least 180 days' notice
- 677 | of service cancellation;
- 678 |       e. Identify the scope of work;
- 679 |       f. Identify the products or services to be delivered with
- 680 | sufficient specificity to permit an external financial or
- 681 | performance audit;
- 682 |       g. Establish the services to be provided, the business
- 683 | standards that must be met for each service, the cost of each
- 684 | service, and the process by which the business standards for
- 685 | each service are to be objectively measured and reported;
- 686 |       h. Identify applicable funds and funding streams for the
- 687 | services or products under contract;
- 688 |       i. Provide a timely billing methodology for recovering the
- 689 | cost of services provided to the customer entity;
- 690 |       j. Provide a procedure for modifying the service-level
- 691 | agreement to address changes in projected costs of service;
- 692 |       k. Provide that a service-level agreement may be
- 693 | terminated by either party for cause only after giving the other
- 694 | party and the Agency for Enterprise Information Technology
- 695 | notice in writing of the cause for termination and an
- 696 | opportunity for the other party to resolve the identified cause
- 697 | within a reasonable period; and
- 698 |       1. Provide for mediation of disputes by the Division of
- 699 | Administrative Hearings pursuant to s. 120.573.
- 700 |       2. A service-level agreement may include:

701 a. A dispute resolution mechanism, including alternatives  
702 to administrative or judicial proceedings; or

703 ~~b. The setting of a surety or performance bond for~~  
704 ~~service-level agreements entered into with nonstate agency~~  
705 ~~primary data centers, which may be designated by the Agency for~~  
706 ~~Enterprise Information Technology; or~~

707 b.e. Additional terms and conditions as determined  
708 advisable by the parties if such additional terms and conditions  
709 do not conflict with the requirements of this section or rules  
710 adopted by the Agency for Enterprise Information Technology.

711 3. The failure to execute a service-level agreement within  
712 60 days after service commencement shall, in the case of an  
713 existing customer entity, result in a continuation of the terms  
714 of the service-level agreement from the prior fiscal year,  
715 including any amendments that were formally proposed to the  
716 customer entity by the primary data center within the 3 months  
717 before service commencement, and a revised cost-of-service  
718 estimate. If a new customer entity fails to execute an agreement  
719 within 60 days after service commencement, the data center may  
720 cease services.

721 ~~(i)-(j)~~ Plan, design, establish pilot projects for, and  
722 conduct experiments with information technology resources, and  
723 implement enhancements in services if such implementation is  
724 cost-effective and approved by the board.

725 ~~(j)-(k)~~ Enter into a memorandum of understanding with the  
726 agency where the primary data center is administratively located  
727 which establishes the services to be provided by that agency to  
728 the primary data center and the cost of such services.

729 (k)~~(l)~~ Be the custodian of resources and equipment that  
 730 are located, operated, supported, and managed by the center for  
 731 the purposes of chapter 273, except resources and equipment  
 732 located, operated, supported, and managed by Northwest Regional  
 733 Data Center.

734 (l) Assume administrative access rights to the resources  
 735 and equipment, such as servers, network components, and other  
 736 devices, that are consolidated into the primary data center.  
 737 Upon the date of each consolidation specified in s. 282.201 or  
 738 as provided in the General Appropriations Act, each agency shall  
 739 relinquish all administrative access rights. Each primary data  
 740 center shall provide its customer agencies with the appropriate  
 741 level of access to applications, servers, network components,  
 742 and other devices necessary for the agency to perform core  
 743 business activities and functions.

744 (2) BOARD OF TRUSTEES.—Each primary data center shall be  
 745 headed by a board of trustees as defined in s. 20.03.

746 (a) The members of the board shall be appointed by the  
 747 agency head or chief executive officer of the representative  
 748 customer entities of the primary data center and shall serve at  
 749 the pleasure of the appointing customer entity.

750 1. During the fiscal year prior to its consolidation into  
 751 a primary data center and for the following full fiscal year, an  
 752 agency shall have a single trustee having one vote on the board  
 753 of the primary data center into which it is to consolidate,  
 754 unless in the second year it is entitled to a greater number of  
 755 votes as provided in subparagraphs 3. and 4. ~~For each of the~~  
 756 ~~first 2 fiscal years that a center is in operation, membership~~

757 ~~shall be as provided in subparagraph 3. based on projected~~  
 758 ~~customer entity usage rates for the fiscal operating year of the~~  
 759 ~~primary data center. However, at a minimum:~~

760 ~~a. During the Southwood Shared Resource Center's first 2~~  
 761 ~~operating years, the Department of Transportation, the~~  
 762 ~~Department of Highway Safety and Motor Vehicles, the Department~~  
 763 ~~of Health, and the Department of Revenue must each have at least~~  
 764 ~~one trustee.~~

765 ~~b. During the Northwood Shared Resource Center's first~~  
 766 ~~operating year, the Department of State and the Department of~~  
 767 ~~Education must each have at least one trustee.~~

768 ~~2. Board After the second full year of operation,~~  
 769 membership shall be as provided in subparagraph 3. based on the  
 770 most recent estimate of customer entity usage rates for the  
 771 prior year and a projection of usage rates for the first 9  
 772 months of the next fiscal year. Such calculation must be  
 773 completed before the annual budget meeting held before the  
 774 beginning of the next fiscal year so that any decision to add or  
 775 remove board members can be voted on at the budget meeting and  
 776 become effective on July 1 of the subsequent fiscal year.

777 ~~3. Each customer entity that has a projected usage rate of~~  
 778 ~~4 percent or greater during the fiscal operating year of the~~  
 779 ~~primary data center shall have one trustee on the board.~~

780 ~~4. The total number of votes for each trustee shall be~~  
 781 ~~apportioned as follows:~~

782 ~~a. Customer entities of a primary data center whose usage~~  
 783 ~~rate represents 4 but less than 15 percent of total usage shall~~  
 784 ~~have one vote.~~

785           b. Customer entities of a primary data center whose usage  
786 rate represents 15 but less than 30 percent of total usage shall  
787 have two votes.

788           c. Customer entities of a primary data center whose usage  
789 rate represents 30 but less than 50 percent of total usage shall  
790 have three votes.

791           d. A customer entity of a primary data center whose usage  
792 rate represents 50 percent or more of total usage shall have  
793 four votes.

794           e. A single trustee having one vote shall represent those  
795 customer entities that represent less than 4 percent of the  
796 total usage. The trustee shall be selected by a process  
797 determined by the board.

798           Section 7. Section 282.206, Florida Statutes, is created  
799 to read:

800           282.206 Northwest Regional Data Center.—Northwest Regional  
801 Data Center is designated as a primary data center as defined in  
802 s. 282.0041. The center shall be managed by a board of trustees  
803 as provided in s. 282.203, who shall comply with all  
804 requirements of that section related to the operation of the  
805 center and with the rules of the Agency for Enterprise  
806 Information Technology relating to primary data centers.

807           Section 8. Sections 282.3055 and 282.315, Florida  
808 Statutes, are repealed.

809           Section 9. Subsections (3) through (7) of section 282.318,  
810 Florida Statutes, are amended to read:

811           282.318 Enterprise security of data and information  
812 technology.—

813           (3) ~~The Office of Information Security within the Agency~~  
 814           for Enterprise Information Technology is responsible for  
 815           establishing rules and publishing guidelines for ensuring an  
 816           appropriate level of security for all data and information  
 817           technology resources for executive branch agencies. The Agency  
 818           for Enterprise Information Technology ~~office~~ shall also perform  
 819           the following duties and responsibilities:

820           (a) Develop, and annually update by February 1, an  
 821           enterprise information security strategic plan that includes  
 822           security goals and objectives for the strategic issues of  
 823           information security policy, risk management, training, incident  
 824           management, and survivability planning.

825           (b) Develop enterprise security rules and published  
 826           guidelines for:

827           1. Comprehensive risk analyses and information security  
 828           audits conducted by state agencies.

829           2. Responding to suspected or confirmed information  
 830           security incidents, including suspected or confirmed breaches of  
 831           personal information or exempt data.

832           3. Agency security plans, including strategic security  
 833           plans and security program plans.

834           4. The recovery of information technology and data  
 835           following a disaster.

836           5. The managerial, operational, and technical safeguards  
 837           for protecting state government data and information technology  
 838           resources.

839           (c) Assist agencies in complying with ~~the provisions of~~  
 840           this section.



841 (d) Pursue appropriate funding for the purpose of  
 842 enhancing domestic security.

843 (e) Provide training for agency information security  
 844 managers.

845 (f) Annually review the strategic and operational  
 846 information security plans of executive branch agencies.

847 (4) To assist the Agency for Enterprise Information  
 848 Technology Office of Information Security in carrying out its  
 849 responsibilities, each agency head shall, at a minimum:

850 (a) Designate an information security manager to  
 851 administer the security program of the agency for its data and  
 852 information technology resources. This designation must be  
 853 provided annually in writing to the Agency for Enterprise  
 854 Information Technology office by January 1.

855 (b) Submit to the Agency for Enterprise Information  
 856 Technology, office annually by July 31, the agency's strategic  
 857 and operational information security plans developed pursuant to  
 858 the rules and guidelines established by the Agency for  
 859 Enterprise Information Technology office.

860 1. The agency strategic information security plan must  
 861 cover a 3-year period and define security goals, intermediate  
 862 objectives, and projected agency costs for the strategic issues  
 863 of agency information security policy, risk management, security  
 864 training, security incident response, and survivability. The  
 865 plan must be based on the enterprise strategic information  
 866 security plan created by the Agency for Enterprise Information  
 867 Technology office. Additional issues may be included.

868 2. The agency operational information security plan must

869 include a progress report for the prior operational information  
870 security plan and a project plan that includes activities,  
871 timelines, and deliverables for security objectives that,  
872 subject to current resources, the agency will implement during  
873 the current fiscal year. The cost of implementing the portions  
874 of the plan which cannot be funded from current resources must  
875 be identified in the plan.

876 (c) Conduct, and update every 3 years, a comprehensive  
877 risk analysis to determine the security threats to the data,  
878 information, and information technology resources of the agency.  
879 The risk analysis information is confidential and exempt from  
880 ~~the provisions of~~ s. 119.07(1), except that such information  
881 shall be available to the Auditor General and the Agency for  
882 Enterprise Information Technology for performing postauditing  
883 duties.

884 (d) Develop, and periodically update, written internal  
885 policies and procedures, which include procedures for notifying  
886 the Agency for Enterprise Information Technology ~~office~~ when a  
887 suspected or confirmed breach, or an information security  
888 incident, occurs. Such policies and procedures must be  
889 consistent with the rules and guidelines established by the  
890 Agency for Enterprise Information Technology ~~office~~ to ensure  
891 the security of the data, information, and information  
892 technology resources of the agency. The internal policies and  
893 procedures that, if disclosed, could facilitate the unauthorized  
894 modification, disclosure, or destruction of data or information  
895 technology resources are confidential information and exempt  
896 from s. 119.07(1), except that such information shall be

897 available to the Auditor General and the Agency for Enterprise  
898 Information Technology for performing postauditing duties.

899 (e) Implement appropriate cost-effective safeguards to  
900 address identified risks to the data, information, and  
901 information technology resources of the agency.

902 (f) Ensure that periodic internal audits and evaluations  
903 of the agency's security program for the data, information, and  
904 information technology resources of the agency are conducted.  
905 The results of such audits and evaluations are confidential  
906 information and exempt from s. 119.07(1), except that such  
907 information shall be available to the Auditor General and the  
908 Agency for Enterprise Information Technology for performing  
909 postauditing duties.

910 (g) Include appropriate security requirements in the  
911 written specifications for the solicitation of information  
912 technology and information technology resources and services,  
913 which are consistent with the rules and guidelines established  
914 by the Agency for Enterprise Information Technology office.

915 (h) Provide security awareness training to employees and  
916 users of the agency's communication and information resources  
917 concerning information security risks and the responsibility of  
918 employees and users to comply with policies, standards,  
919 guidelines, and operating procedures adopted by the agency to  
920 reduce those risks.

921 (i) Develop a process for detecting, reporting, and  
922 responding to suspected or confirmed security incidents,  
923 including suspected or confirmed breaches consistent with the  
924 security rules and guidelines established by the Agency for

925 Enterprise Information Technology office.

926 1. Suspected or confirmed information security incidents

927 and breaches must be immediately reported to the Agency for

928 Enterprise Information Technology office.

929 2. For incidents involving breaches, agencies shall

930 provide notice in accordance with s. 817.5681 and to the Agency

931 for Enterprise Information Technology office in accordance with

932 this subsection.

933 (5) Each state agency shall include appropriate security

934 requirements in the specifications for the solicitation of

935 contracts for procuring information technology or information

936 technology resources or services which are consistent with the

937 rules and guidelines established by the Agency for Enterprise

938 Information Technology ~~Office of Information Security~~.

939 (6) The Agency for Enterprise Information Technology may

940 adopt rules relating to information security and to administer

941 ~~the provisions of~~ this section.

942 ~~(7) By December 31, 2010, the Agency for Enterprise~~

943 ~~Information Technology shall develop, and submit to the~~

944 ~~Governor, the President of the Senate, and the Speaker of the~~

945 ~~House of Representatives a proposed implementation plan for~~

946 ~~information technology security. The agency shall describe the~~

947 ~~scope of operation, conduct costs and requirements analyses,~~

948 ~~conduct an inventory of all existing security information~~

949 ~~technology resources, and develop strategies, timeframes, and~~

950 ~~resources necessary for statewide migration.~~

951 Section 10. Subsection (5) of section 282.34, Florida

952 Statutes, is amended to read:

953           282.34 Statewide e-mail service.—A state e-mail system  
 954 that includes the delivery and support of e-mail, messaging, and  
 955 calendaring capabilities is established as an enterprise  
 956 information technology service as defined in s. 282.0041. The  
 957 service shall be designed to meet the needs of all executive  
 958 branch agencies. The primary goals of the service are to  
 959 minimize the state investment required to establish, operate,  
 960 and support the statewide service; reduce the cost of current e-  
 961 mail operations and the number of duplicative e-mail systems;  
 962 and eliminate the need for each state agency to maintain its own  
 963 e-mail staff.

964           (5) In order to develop the implementation plan for the  
 965 statewide e-mail service, the Agency for Enterprise Information  
 966 Technology shall establish and coordinate a statewide e-mail  
 967 project team. The agency shall also consult with and, as  
 968 necessary, form workgroups consisting of agency e-mail  
 969 management staff, ~~agency chief information officers,~~ agency  
 970 budget directors, and other administrative staff. The statewide  
 971 e-mail implementation plan must be submitted to the Governor,  
 972 the President of the Senate, and the Speaker of the House of  
 973 Representatives by July 1, 2011.

974           Section 11. Paragraph (h) of subsection (3) and paragraph  
 975 (b) of subsection (4) of section 287.042, Florida Statutes, are  
 976 amended to read:

977           287.042 Powers, duties, and functions.—The department  
 978 shall have the following powers, duties, and functions:

979           (3) To establish a system of coordinated, uniform  
 980 procurement policies, procedures, and practices to be used by

981 agencies in acquiring commodities and contractual services,  
 982 which shall include, but not be limited to:

983 (h) Development, ~~in consultation with the Agency Chief~~  
 984 ~~Information Officers Council,~~ of procedures to be used by state  
 985 agencies when procuring information technology commodities and  
 986 contractual services to ensure compliance with public records  
 987 requirements and records retention and archiving requirements.

988 (4)

989 (b) To prescribe, ~~in consultation with the Agency Chief~~  
 990 ~~Information Officers Council,~~ procedures for procuring  
 991 information technology and information technology consultant  
 992 services which provide for public announcement and  
 993 qualification, competitive solicitations, contract award, and  
 994 prohibition against contingent fees. Such procedures shall be  
 995 limited to information technology consultant contracts for which  
 996 the total project costs, or planning or study activities, are  
 997 estimated to exceed the threshold amount provided for in s.  
 998 287.017, for CATEGORY TWO.

999 Section 12. This act shall take effect July 1, 2011.