

Appropriations Committee

Wednesday, February 1, 2012
11:00 AM – 6:00 PM
212 Knott Building

Meeting Packet

Volume 3

Dean Cannon
Speaker

Denise Grimsley
Chair



The Florida House of Representatives

Appropriations Committee

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AGENDA

Wednesday, February 1, 2012
212 Knott Building
11:00 AM – 6:00 PM

- I. Call to order/Roll Call
- II. Opening Remarks by Chair Grimsley
- III. **Consideration of the following bills:**

HB 5701 Corporate Income Tax by Finance & Tax Committee, Precourt

HB 5703 Tax on Communications and Utility Services by Finance & Tax Committee, Precourt

PCB APC 12-01 – Appropriations

HB 5101 Prekindergarten through Grade 12 Education Funding by PreK-12 Appropriations Subcommittee, Coley

HB 5103 School Readiness Programs by PreK-12 Appropriations Subcommittee, Coley

HB 5201 Postsecondary Education Funding by Higher Education Appropriations Subcommittee, O'Toole

HB 5203 Reemployment Services by Higher Education Appropriations Subcommittee, O'Toole

HB 5301 Medicaid Services by Health Care Appropriations Subcommittee, Hudson

HB 5303 Department of Children and Family Services by Health Care Appropriations Subcommittee, Hudson

HB 7053 Florida Drug, Device, and Cosmetic Trust Fund by Health Care Appropriations Subcommittee, Hudson

HB 5401 Juvenile Detention by Justice Appropriations Subcommittee, Glorioso

HB 5403 State Court Revenues by Justice Appropriations Subcommittee, Glorioso

HB 5405 Clerks of the Court by Justice Appropriations Subcommittee, Glorioso

HB 7061 Capital Collateral Regional Counsel Trust Fund/Justice Administrative Commission by Justice Appropriations Subcommittee, Glorioso

CS/HB 843 Department of the Lottery by Government Operations Appropriations Subcommittee, Roberson, K.

HB 5501 One-Stop Business Registration Portal by Government Operations Appropriations Subcommittee, Hooper

HB 5503 One-Stop Business Registration Clearing Trust Fund by Government Operations Appropriations Subcommittee, Hooper

HB 5505 Department of Financial Services by Government Operations Appropriations Subcommittee, Hooper

HB 5507 Department of Management Services by Government Operations Appropriations Subcommittee, Hooper

HB 5509 State Data Center System by Government Operations Appropriations Subcommittee, Hooper

HB 5511 Department of Business and Professional Regulation by Government Operations Appropriations Subcommittee, Hooper

HB 5601 License to Carry a Concealed Weapon or Firearm by Agriculture & Natural Resources Appropriations Subcommittee, Williams, T.

HB 7067 Trust Funds/Termination/DOT by Transportation & Economic Development Appropriations Subcommittee, Horner

PCB APC 12-02 -- Implementing the 2012-2013 General Appropriations Act

PCB APC 12-03 -- Retirement

PCB APC 12-04 -- State Employees

PCB APC 12-05 -- Health Insurance Benefits for State Employees



PCB APC 12-06 -- State Information Technology

HB 7083 Correctional Privatization by Justice Appropriations Subcommittee, McBurney

IV. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5203 PCB HEAS 12-02 Reemployment Services
SPONSOR(S): Higher Education Appropriations Subcommittee, O'Toole
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Higher Education Appropriations Subcommittee	13 Y, 0 N	Butler	Heflin
1) Appropriations Committee		Butler 	Leznoff 

SUMMARY ANALYSIS

The bill provides substantive changes in law to conform to budgetary reductions in the House of Representatives proposed Fiscal Year 2012-13 General Appropriations Act (GAA).

The Division of Vocational Rehabilitation (DVR), Bureau of Rehabilitation and Reemployment Services (BRRS) in the Department of Education provides reemployment services to injured workers who are not able to return to their usual and customary occupation due to their work injury and require additional services. Services provided include vocational counseling; job-seeking training skills; transferable skills analysis; job placement; labor market information; and, if qualified, training and education, which includes payment for books, tuition, tools, uniforms, and authorized supplies.

The bill repeals s. 440.491, F.S., relating to reemployment of injured workers, effective July 1, 2012. Repealing this section of law eliminates duties of the BRRS. The House proposed GAA for Fiscal Year 2012-13 includes a reduction of 27 full-time equivalent positions and \$2.3 million from the Workers' Compensation Administration Trust Fund through elimination of the BRRS Injured Worker Program. A balance of approximately \$200,000 remains in the budget to allow for the payment of anticipated program expenditures in Fiscal Year 2012-13. DVR suggests that, of its active caseload, approximately half would qualify for general VR services. Some could be eligible for services by the Department of Economic Opportunity.

Effective June 30, 2013, the Workers' Compensation Trust Fund within the Department of Education is terminated. Provisions are made for transferring the remaining fund balance and all revenues of the trust fund to the Worker's Compensation Administration Trust Fund within the Department of Financial Services.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Education Division of Vocational Rehabilitation's Bureau of Rehabilitation and Reemployment Services (BRRS) provides reemployment services to injured employees in accordance with s. 440.491, Florida Statutes (Florida Workers' Compensation Law), and Rule Chapter 6A-22, Florida Administrative Code. Reemployment Services are provided to injured employees who are not able to return to their usual and customary occupation due to their work injury and require additional services to return to suitable gainful employment as defined in ss. 440.491(1)(h). Reemployment services include vocational counseling; job-seeking skills training; transferable skills analysis; job placement; labor market information; and training and education, including payment for books, tuition, tools, uniforms, and authorized supplies. Additional services may include referrals to other entities for services to assist with needs outside the scope of the Workers' Compensation System. The program organized by this section has existed since 1993.

The Workers' Compensation Administration Trust Fund (WCATF) within Department of Financial Services provides for the payment of expenses in respect to the administration of the workers' compensation program in the state.¹ Additionally, each fiscal year, funds are appropriated from the Workers' Compensation Administration Trust Fund to be transferred to other agencies to support related programs. Besides the Department of Education's Division of Vocational Rehabilitation, funds from the WCATF are also transferred annually to other agencies which include the 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 11th 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 1st 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 1st. In an economic downturn, worker's compensation claims can exceed revenues produced, which in turn requires either expenditures to be reduced where possible, or imposition of assessment rate increases.

During the 2011 legislative session, budgetary reductions were made to the Injured Worker Program, and certain investigative, monitoring and regulatory duties of the Division of Vocational Rehabilitation related to the program were eliminated. The program was reduced by 55 full-time-equivalent (FTE) positions, and \$5.5 million in funding. These reductions were the result of declining cash balances in the Workers' Compensation Administrative Trust Fund (WCATF).

According to the Division of Vocational Rehabilitation, the BRRS has approximately 1,800 active open cases. Injured workers are referred to the BRRS program by insurance carriers, attorneys, health care providers, and rehabilitation providers. Per the Division of Vocational Rehabilitation, "We are not aware of other states that have a program similar to the Florida Workers' Compensation Reemployment Services Program. It is our understanding that most of the states we are familiar with refer clients to their state's General VR Program for vocational services."²

The BRRS program's current remaining budget includes \$2.5 million in Worker's Compensation Administrative Trust Funds to support the remaining 27 FTE who assist Florida's injured workers with reemployment services to return them to suitable gainful employment.

¹ Section 440.50, F.S.

² Email Correspondence, Division of Vocational Rehabilitation (11/7/2011)

Effect of Changes

The bill repeals s. 440.491, Florida Statutes, relating to reemployment/rehabilitative services for injured workers. Reemployment services include vocational counseling, job seeking skills training, ergonomic job analysis, labor market surveys, and arranging other services such as education or training, vocational and on-the-job, which may be needed by the employee to secure suitable employment.

It is anticipated that approximately half of the active injured employees currently receiving BRRS services would be eligible for general services provided by the Division of Vocational Rehabilitation (DVR). DVR assists people who have a physical or mental disability with preparing for a job, finding a job, or retaining employment.

The bill repeals the Workers' Compensation Administration Trust Fund within the Department of Education, effective June 30, 2013.

The bill provides procedures for transferring balances remaining in, and all revenues of the trust fund to the Workers' Compensation Administrative Trust Fund within the Department of Financial Services; provides procedures for payment of outstanding debts and obligations of the trust fund; and requires the Chief Financial Officer to close out and remove the trust fund from the various state accounting systems upon the trust funds termination.

B. SECTION DIRECTORY:

Section 1. Repeals s. 440.491, F.S., relating to reemployment of injured workers.

Section 2. Repeals s. 1010.87, F.S., relating to Worker's Compensation Administrative Trust Fund in the Department of Education, providing an effective date.

Section 3. Terminates the Worker's Compensation Administrative Trust Fund in the Department of Education; provides for accounting procedures relating to the fund; and, provides an effective date.

Section 4. Amends s. 287.057, F.S., deleting a provision related to the repealed program.

Section 5. Amends s. 402.7305, F.S., conforming a cross reference as a result of changes in the bill.

Section 6. Amends s. 427.0135, F.S., conforming a cross reference as a result of changes in the bill.

Section 7. Amends s. 440.15, F.S., deleting a provision related to the repealed program.

Section 8. Amends s. 440.33, F.S., deleting a provision related to the repealed program.

Section 9. Amends s., 440.50, F.S., deleting a reference related to the Worker's Compensation Trust Fund in the Department of Education.

Section 10. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may result in a lesser adjustment to the assessments on workers' compensation insurance premiums by the Chief Financial Officer.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Reemployment and training services, which included payment of costs for tuition, books, and supplies, will no longer be available for injured workers. These individuals may not qualify for services under Division of Vocational Rehabilitation.

The bill may result in a lesser adjustment to the assessments on workers' compensation insurance premiums by the Chief Financial Officer which will likely be a savings to private businesses.

D. FISCAL COMMENTS:

A budget reduction of \$2.3 million in the Worker's Compensation Trust Fund and elimination of 27 full-time-equivalent positions are included in the House proposed Fiscal Year 2012-13 GAA relating elimination of the Injured Worker Program. Approximately \$200,000 is left in the trust fund to allow for the payment of anticipated program expenditures such as employee leave payouts and payment of unemployment compensation.

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

1 A bill to be entitled
 2 An act relating to reemployment services; repealing s.
 3 440.491, F.S., relating to reemployment of injured
 4 workers; repealing s. 1010.87, F.S., relating to the
 5 Workers' Compensation Administration Trust Fund within
 6 the Department of Education; terminating the trust
 7 fund and transferring the balance remaining in, and
 8 all revenues of, the terminated fund; requiring the
 9 Division of Vocational Rehabilitation within the
 10 Department of Education to pay any outstanding debts
 11 or obligations of the terminated fund; requiring the
 12 Chief Financial Officer to close out and remove the
 13 terminated fund from the various state accounting
 14 systems; amending ss. 287.057, 402.7305, 427.0135,
 15 440.15, 440.33, and 440.50, F.S.; conforming cross-
 16 references; providing effective dates.

17
 18 Be It Enacted by the Legislature of the State of Florida:

- 19
 20 Section 1. Section 440.491, Florida Statutes, is repealed.
 21 Section 2. Effective June 30, 2013, section 1010.87,
 22 Florida Statutes, is repealed.
 23 Section 3. (1) The Workers' Compensation Administration
 24 Trust Fund, FLAIR number 48-2-795, within the Department of
 25 Education is terminated.
 26 (2) The balance remaining in, and all revenues of, the
 27 trust fund shall be transferred to the Workers' Compensation

28 Administration Trust Fund within the Department of Financial
 29 Services.

30 (3) The Division of Vocational Rehabilitation within the
 31 Department of Education shall pay any outstanding debts or
 32 obligations of the terminated trust fund as soon as practicable,
 33 and the Chief Financial Officer shall close out and remove the
 34 terminated trust fund from the various state accounting systems
 35 using generally accepted accounting principles concerning
 36 warrants outstanding, assets, and liabilities.

37 (4) This section shall take effect June 30, 2013.

38 Section 4. Paragraph (f) of subsection (3) of section
 39 287.057, Florida Statutes, is amended to read:

40 287.057 Procurement of commodities or contractual
 41 services.—

42 (3) When the purchase price of commodities or contractual
 43 services exceeds the threshold amount provided in s. 287.017 for
 44 CATEGORY TWO, no purchase of commodities or contractual services
 45 may be made without receiving competitive sealed bids,
 46 competitive sealed proposals, or competitive sealed replies
 47 unless:

48 (f) The following contractual services and commodities are
 49 not subject to the competitive-solicitation requirements of this
 50 section:

51 1. Artistic services. For the purposes of this subsection,
 52 the term "artistic services" does not include advertising or
 53 typesetting. As used in this subparagraph, the term
 54 "advertising" means the making of a representation in any form
 55 in connection with a trade, business, craft, or profession in

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56 | order to promote the supply of commodities or services by the
57 | person promoting the commodities or contractual services.

58 | 2. Academic program reviews if the fee for such services
59 | does not exceed \$50,000.

60 | 3. Lectures by individuals.

61 | 4. Legal services, including attorney, paralegal, expert
62 | witness, appraisal, or mediator services.

63 | 5.a. Health services involving examination, diagnosis,
64 | treatment, prevention, medical consultation, or administration.

65 | b. Beginning January 1, 2011, health services, including,
66 | but not limited to, substance abuse and mental health services,
67 | involving examination, diagnosis, treatment, prevention, or
68 | medical consultation, when such services are offered to eligible
69 | individuals participating in a specific program that qualifies
70 | multiple providers and uses a standard payment methodology.

71 | Reimbursement of administrative costs for providers of services
72 | purchased in this manner shall also be exempt. For purposes of
73 | this sub-subparagraph, "providers" means health professionals,
74 | health facilities, or organizations that deliver or arrange for
75 | the delivery of health services.

76 | 6. Services provided to persons with mental or physical
77 | disabilities by not-for-profit corporations which have obtained
78 | exemptions under the provisions of s. 501(c)(3) of the United
79 | States Internal Revenue Code or when such services are governed
80 | by the provisions of Office of Management and Budget Circular A-
81 | 122. However, in acquiring such services, the agency shall
82 | consider the ability of the vendor, past performance,
83 | willingness to meet time requirements, and price.

84 7. Medicaid services delivered to an eligible Medicaid
85 recipient unless the agency is directed otherwise in law.

86 8. Family placement services.

87 9. Prevention services related to mental health, including
88 drug abuse prevention programs, child abuse prevention programs,
89 and shelters for runaways, operated by not-for-profit
90 corporations. However, in acquiring such services, the agency
91 shall consider the ability of the vendor, past performance,
92 willingness to meet time requirements, and price.

93 ~~10. Training and education services provided to injured~~
94 ~~employees pursuant to s. 440.491(6).~~

95 10.11. Contracts entered into pursuant to s. 337.11.

96 11.12. Services or commodities provided by governmental
97 agencies.

98 Section 5. Paragraph (a) of subsection (2) of section
99 402.7305, Florida Statutes, is amended to read:

100 402.7305 Department of Children and Family Services;
101 procurement of contractual services; contract management.-

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

103 (a) Notwithstanding s. 287.057(3)(f)11. ~~287.057(3)(f)12.~~,
104 whenever the department intends to contract with a public
105 postsecondary institution to provide a service, the department
106 must allow all public postsecondary institutions in this state
107 that are accredited by the Southern Association of Colleges and
108 Schools to bid on the contract. Thereafter, notwithstanding any
109 other provision to the contrary, if a public postsecondary
110 institution intends to subcontract for any service awarded in
111 the contract, the subcontracted service must be procured by

112 competitive procedures.

113 Section 6. Subsection (3) of section 427.0135, Florida
 114 Statutes, is amended to read:

115 427.0135 Purchasing agencies; duties and
 116 responsibilities.—Each purchasing agency, in carrying out the
 117 policies and procedures of the commission, shall:

118 (3) Not procure transportation disadvantaged services
 119 without initially negotiating with the commission, as provided
 120 in s. 287.057(3)(f)11. ~~287.057(3)(f)12.~~, or unless otherwise
 121 authorized by statute. If the purchasing agency, after
 122 consultation with the commission, determines that it cannot
 123 reach mutually acceptable contract terms with the commission,
 124 the purchasing agency may contract for the same transportation
 125 services provided in a more cost-effective manner and of
 126 comparable or higher quality and standards. The Medicaid agency
 127 shall implement this subsection in a manner consistent with s.
 128 409.908(18) and as otherwise limited or directed by the General
 129 Appropriations Act.

130 Section 7. Paragraph (c) of subsection (2) of section
 131 440.15, Florida Statutes, is amended to read:

132 440.15 Compensation for disability.—Compensation for
 133 disability shall be paid to the employee, subject to the limits
 134 provided in s. 440.12(2), as follows:

135 (2) TEMPORARY TOTAL DISABILITY.—

136 (c) Temporary total disability benefits paid pursuant to
 137 this subsection shall include such period as may be reasonably
 138 necessary for training in the use of artificial members and
 139 appliances, ~~and shall include such period as the employee may be~~

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140 ~~receiving training and education under a program pursuant to s.~~
 141 ~~440.491.~~

142 Section 8. Subsection (3) of section 440.33, Florida
 143 Statutes, is amended to read:

144 440.33 Powers of judges of compensation claims.—

145 ~~(3) Before adjudicating a claim for permanent total~~
 146 ~~disability benefits, the judge of compensation claims may~~
 147 ~~request an evaluation pursuant to s. 440.491(6) for the purpose~~
 148 ~~of assisting the judge of compensation claims in the~~
 149 ~~determination of whether there is a reasonable probability that,~~
 150 ~~with appropriate training or education, the employee may be~~
 151 ~~rehabilitated to the extent that such employee can achieve~~
 152 ~~suitable gainful employment and whether it is in the best~~
 153 ~~interest of the employee to undertake such training or~~
 154 ~~education.~~

155 Section 9. Subsection (5) of section 440.50, Florida
 156 Statutes, is amended to read:

157 440.50 Workers' Compensation Administration Trust Fund.—

158 (5) Funds appropriated by an operating appropriation or a
 159 nonoperating transfer from the Workers' Compensation
 160 Administration Trust Fund to ~~the Department of Education,~~ the
 161 Agency for Health Care Administration, the Department of
 162 Business and Professional Regulation, the Department of
 163 Management Services, the First District Court of Appeal, and the
 164 Justice Administrative Commission remaining unencumbered as of
 165 June 30 or undisbursed as of September 30 each year shall revert
 166 to the Workers' Compensation Administration Trust Fund.

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167 Section 10. Except as otherwise expressly provided in this
168 act and except for this section, which shall take effect upon
169 this act becoming a law, this act shall take effect July 1,
170 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 5203 (2012)

Amendment No. 1

20 necessary for training in the use of artificial members and
21 appliances, and shall include such period as the employee may be
22 receiving training and education ~~under a program pursuant to s.~~
23 440.491. When an employee who has attained maximum medical
24 improvement is unable to earn at least 80 percent of the
25 compensation rate and requires training and education to obtain
26 suitable gainful employment, the employer or carrier shall pay
27 the employee additional training and education temporary total
28 compensation benefits while the employee receives such training
29 and education for a period not to exceed 26 weeks, which period
30 may be extended for an additional 26 weeks or less, if such
31 extended period is determined to be necessary and proper by a
32 judge of compensation claims. The benefits provided under this
33 paragraph shall not be in addition to the 104 weeks as specified
34 in s. 440.15(2). However, a carrier or employer is not precluded
35 from voluntarily paying additional temporary total disability
36 compensation beyond that period.

37 Section 8. Subsection (3) of section 440.33, Florida
38 Statutes, is amended to read:

39 440.33 Powers of judges of compensation claims.—

40 (3) Before adjudicating a claim for permanent total
41 disability benefits, the judge of compensation claims may
42 request an evaluation ~~pursuant to s. 440.491(6)~~ for the purpose
43 of assisting the judge of compensation claims in the
44 determination of whether there is a reasonable probability that,
45 with appropriate training or education, the employee may be
46 rehabilitated to the extent that such employee can achieve
47 suitable gainful employment and whether it is in the best

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 5203 (2012)

Amendment No. 1

48 | interest of the employee to undertake such training or
49 | education.

50

51

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5301 PCB HCAS 12-02 Medicaid Services
SPONSOR(S): Health Care Appropriations Subcommittee, Hudson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Care Appropriations Subcommittee	10 Y, 4 N	Hicks	Pridgeon
1) Appropriations Committee		Hicks <i>alsh</i>	Leznoff <i>J</i>

SUMMARY ANALYSIS

This bill conforms statutes to the funding decisions included in the proposed General Appropriations Act (GAA) for Fiscal Year 2012-2013. The bill:

- Directs the Department of Children and Families (DCF) and the Agency for Health Care Administration (AHCA) to work cooperatively to develop a new system of eligibility determination for Medicaid and the Children’s Health Insurance Program (CHIP) consistent with federal and state laws; specifies the business objectives, system components, executive management team and timeline for the project; directs that the system must be developed in a manner that is approved by the Legislative Budget Commission; and, provides that development of the system is subject to appropriation.
- Limits payment for emergency room services for non-pregnant Medicaid recipients 21 years of age or older.
- Eliminates optional Medicaid coverage for chiropractic and podiatric services for adult Medicaid recipients 21 years of age or older.
- Continues the years of audited data used in determining Medicaid and charity care days for hospitals in the Disproportionate Share Hospital (DSH) Program and changes the distribution criteria for Medicaid DSH payments to implement funding decisions for the DSH program.
- Deletes references to the Adult Day Health Care Waiver program.
- Authorizes the expansion of the home health agency monitoring pilot project.
- Authorizes the expansion of the comprehensive care management pilot project for home health services.
- Authorizes two additional Program of All-inclusive Care for the Elderly (PACE) sites and approves up to 150 initial enrollees for each site, subject to a specific appropriation:
 - Duval, Clay, and Alachua counties, and
 - Manatee, Sarasota, and DeSoto counties.

The House Proposed GAA appropriates:

- \$246.6 million to implement the changes in DSH program funding;
- \$1.4 million to expand the scope of the two home health agency services pilot projects; and
- \$700,000 to develop a new the Medicaid and CHIP eligibility system.

The House Proposed GAA includes the following reductions:

- \$16.3 million due to limitations placed on emergency room visits;
- \$5.8 million due to expansion of scope of the two fraud prevention pilot projects;
- \$4.3 million for the elimination of chiropractic and podiatry coverage for adults; and
- \$1.9 million due to the sunset of the Adult Day Health Care Waiver program.

This bill has an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The FLORIDA System and the Patient Protection and Affordable Care Act (PPACA)

The Agency for Health Care Administration (AHCA) is designated as the single state agency authorized to administer the Medicaid program for the state. State law delegates certain functions to other state agencies, including the Department of Children and Families, the Agency for Persons with Disabilities, and the Department of Elderly Affairs. The Department of Children and Families (DCF) is given the responsibility for Medicaid eligibility determinations.

The Florida Medicaid Management Information System (FMMIS) is operated by AHCA and is used to enroll providers, process Medicaid claims, adjudicate claims, accept and process encounter claims for data collection and reimburse providers. The DCF operates the Florida Online Recipients Integrated Data Access (FLORIDA) system to determine eligibility for Medicaid, Children's Health Insurance Program (CHIP), and other public assistance. The FLORIDA System sends data to FMMIS nightly to add and remove individuals based on changes in eligibility.

The FLORIDA System was implemented in 1992. The system was transfer technology from the State of Ohio which was originally designed in the early 1980s. The FLORIDA System was designed to support a service model where face-to-face interviews were conducted at area offices and relies heavily on manual data entry by state employees with no option for direct input by clients. The DCF is facing problems related to the aging of the system including limited availability of hardware and software support; limited pool of trained users; and declining availability of third-party support for new technology and functions.

The DCF has identified risks related to continuing to operate the FLORIDA System without modification including the escalation of system maintenance and modification costs; potential of system failures due to aging infrastructure; and inability to comply with federal law. Since the Medicaid program is a partnership between the state and the Federal government, the program must comply with all Federal requirements, including those outlined in the Patient Protection and Affordable Care Act (PPACA).

The U.S. Congress passed PPACA, and President Barack Obama signed the bill into law on March 23, 2010¹. Key policy areas of reform include: mandated individual coverage; mandated employer offers of coverage; expansion of Medicaid; individual cost-sharing subsidies and tax penalties for non-compliance; employer tax penalties for non-compliance; health insurance exchanges; expanded regulation of the private insurance market; and revision of the Medicare and Medicaid programs.

On the same day that PPACA was signed into law by the President, Florida's Attorney General filed a federal lawsuit in Pensacola challenging the constitutionality of the new law.² On January 31, 2011, the Federal District Court for the Northern District of Florida, Pensacola Division, declared the individual mandate provision of PPACA unconstitutional, and since the law lacks a severability clause, the entire Act was void.³

This decision was appealed to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit affirmed the decision that the individual mandate violates the Commerce Clause, but

¹ P.L. 111-148, 124 Stat. 119 (2010).

² State of Florida v. U.S. Dept. of Health and Human Services, Case No.: 3:10-cv-91-RV/EMT (N.D. Fla.)

³ See Florida v. U.S. Dept. of HHS, Case No. 3:10-cv-91-RV/EMT (N.D. Fla.), *Order and Memorandum Opinion on Defendants' Motion to Dismiss*, October 14, 2010.

upheld the remaining portions of PPACA.⁴ The Supreme Court of the United States has granted review of the case.⁵ In addition to reviewing the constitutionality of the individual mandate, the Court will also review whether the changes to the Medicaid program are an unlawful coercion. The Court has scheduled oral arguments on March 26, 27, and 28. The Court will likely render its decision before the end of this year.

If the Medicaid provisions of PPACA are upheld, the state must comply with certain provisions of PPACA or risk the loss of federal funding. Specifically, PPACA requires that as condition of a state's continued participation in the Medicaid program that by January 1, 2014, the state must:⁶

- Maintain a web site that allows individuals to apply for and enroll in Medicaid and CHIP and to apply for cost sharing benefits through a health benefits exchange. The system must allow for the use of electronic signatures.
- Maintain a web site that allows individuals to compare benefits, premiums, and cost-sharing available to the individual under Medicaid, CHIP, and a health benefits exchange.
- Be able to accept application for and enrollment in Medicaid and CHIP from individuals who applied through a health benefits exchange.
- Provide information to individuals about a health benefits exchange, including premium assistance, to individuals who apply for Medicaid or CHIP but are not eligible.
- Utilize a secure electronic interface with a health benefits exchange sufficient to share information sufficient to allow for determination of an individual's eligibility for Medicaid, CHIP, and premium assistance.

To the extent funds are appropriated, the bill directs the DCF to collaborate with the AHCA to develop a system for eligibility determination for Medicaid and the Children's Health Insurance Program (CHIP) that complies with all applicable federal and state laws and requirements. The AHCA must complete a feasibility study of two alternative methods of compliance and submit a system development plan to the Legislative Budget Commission for approval. The system must be completed by October 1, 2013 and be ready for implementation by January 1, 2014.

In addition to timely and accurately enrolling individuals in public assistance programs, the bills directs that the system must provide a single point of access to information that explains benefits, premiums, and cost-sharing available through Medicaid, CHIP, or any state or federal health insurance exchange, prevent eligibility fraud, and provide fiscal analysis of eligibility cost drivers.

The bill requires the following functions for the system:

- Allow completion and submission of an online application for eligibility determination that includes the use of electronic signatures.
- Allow automatic enrollment of qualified individuals in Medicaid, CHIP, or other state or federal exchanges.
- Allow for the determination of Medicaid eligibility that is based on the Modified Adjusted Gross Income.
- Allow determination of specific categories of Medicaid eligibility and interface with the FMMIS to support a determination.
- Produce transaction data, reports, and performance information.

The bill designates the Director of Economic Self-Sufficiency for the DCF as having overall responsibility for the project. The project will be governed by an executive steering committee that is comprised of: three staff members of the DCF appointed by the DCF Secretary and three staff members of the AHCA, including at least two Medicaid program staff, appointed by the AHCA Secretary. The executive steering committee shall have the overall responsibility for ensuring that the

⁴ State of Florida v. U.S. Dept. of Health and Human Services, 780 F. 3d 1235 (2011).

⁵ NFIB v. Sebelius (No. 11-393), HHS v. Florida (No. 11-398), Florida v. HHS (No. 11-400)

⁶ See PPACA at Sec. 2201 and Medicaid Program: Eligibility Changes Under the Affordable Care Act of 2010, Proposed Rule, 76 Fed. Reg. 51148-51199 (April 17, 2011)

project meets its primary business objectives. If the executive steering committee determines that the primary business objectives cannot be achieved, it shall recommend suspension or termination of the project to the Governor, President of the Senate, and Speaker of the House of Representatives.

Expand Fraud and Abuse Pilot Projects

Chapter 2009-223, Laws of Florida, establishes two pilot projects relating to home health services to combat an increase in fraud and abuse relating to Medicaid-enrolled home health agencies. Miami-Dade County was designated as the health care fraud area of special concern.

The AHCA was authorized to enter into a contractual arrangement to develop and implement a home health agency monitoring pilot project by January 1, 2010 to verify the utilization and the delivery of home health services and provide an electronic billing interface. The AHCA was also authorized to implement a comprehensive care management pilot project for home health services by January 1, 2010 using face-to-face assessments by a state-licensed nurse, consultation with physicians ordering services to substantiate the medical necessity for services, and on-site or desk reviews of recipients' medical records.

The AHCA was directed to submit a report evaluating the home health agency monitoring pilot project by February 1, 2011. The initial evaluation of the pilot project indicates that Medicaid expenditures for home health visits in Miami-Dade County and statewide have decreased due to onsite reviews of home health agencies and strict enforcement of prior authorization requirements. Medicaid expenditures for home health visits in Miami-Dade County have decreased by over 35% since 2006-2007.

The vendor for the comprehensive care management pilot project has the responsibility of identifying potential problem areas through data analysis and monitoring of selected cases, verifying through medical record review the existence of problems or violations of provider obligations, and reporting findings to the provider and the AHCA. The vendor has completed 3,450 recipient face-to-face assessments, made 116 recommendations for termination of services, and made 114 recommendations for reduction in services.

Since the implementation of these two pilot projects in July 2010, the AHCA has terminated two large home health providers (each serving over 250 Medicaid recipients with annual reimbursement exceeding \$1 million) from participation in the Medicaid program and suspended another provider. The number of Medicaid recipients receiving home health visits and the number of home health agencies in Miami-Dade County have also declined. Medicaid expenditures for home health visits in Miami-Dade County for Fiscal Year 2010-2011 are approximately 50 percent lower than the Medicaid expenditures incurred for Fiscal Year 2009-2010.

This bill expands the scope of the two pilot projects to include additional services and counties that have the highest Medicaid expenditures for home health visits, effective July 1, 2012. The home health agency monitoring pilot project in Miami-Dade County is expanded to include Broward, Escambia, Martin, and Palm Beach counties. The comprehensive care management pilot project for home health services is expanded to include private duty nursing and personal care services in Miami-Dade, Broward, Orange, and Palm Beach counties.

Medicaid Services

Current law allows Medicaid reimbursement for medical assistance and related services for recipients deemed eligible subject to income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible recipients is subject to the availability of moneys and any limitations established by the GAA or chapter 216, F.S.

States can choose to limit the amount, duration and scope of mandatory and optional services for non-pregnant adults, and may amend the state plan (upon federal approval) to modify coverage of these services at any time. However, states must provide services at a level sufficient to achieve their purpose. Limits must be sufficient to provide services to a vast majority of recipients. Current Medicaid reimbursement to providers is as follows for chiropractic, podiatric, and emergency room services.

- **Chiropractic Services** – Medicaid reimburses for chiropractic services rendered by a licensed, Medicaid participating chiropractic physician. Chiropractic services include manual manipulation of the spine, initial services and screening, and x-rays provided by a licensed chiropractic physician. Medicaid reimbursement for chiropractic services is limited to one visit per provider, per recipient, per day. For Fiscal Year 2012-2013, it is estimated that approximately 8,708 adult recipients will utilize this Medicaid coverage.
- **Podiatric Services** – Medicaid reimburses for podiatry services rendered by licensed podiatrists, as defined in chapter 461, F.S., who are participating in Medicaid. Medicaid reimburses for routine foot care if the recipient is under a physician's care for a metabolic disease, has conditions of circulatory impairment, or has conditions of desensitization of the legs or feet. Medicaid reimbursement for podiatry services is limited to one visit per podiatrist or podiatrist group, per recipient, per day, except for emergency services. For Fiscal Year 2012-2013, it is estimated that approximately 25,091 adult recipients will utilize this Medicaid coverage.
- **Emergency Room Services** – There is no limit on the number of emergency room visits for which Medicaid will reimburse during a fiscal year. Any person needing emergency medical care or any woman in active labor shall not be denied access to appropriate emergency medical services and care. Emergency services and care means medical screening, examination and evaluation by a physician, or by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists. Current statutory authority authorizes a \$15 copayment for the use of a hospital emergency department for non-emergency services. A recently enacted provision in Florida law directs the AHCA to seek federal approval to require Medicaid recipients to pay a \$100 copayment for non-emergency services and care furnished in a hospital emergency department.⁷ Federal approval is pending. For Fiscal Year 2012-2013, it is estimated that a limitation on reimbursement would impact approximately 2,000 non-pregnant adult Medicaid recipients and decrease the number of emergency room visits by 15,000.

The bill eliminates Medicaid optional coverage for chiropractic and podiatric services for an adult Medicaid recipient 21 years of age or older, effective August 1, 2012. This bill also limits reimbursement for emergency room visits for non-pregnant Medicaid recipients to 12 visits per fiscal year.

Disproportionate Share Program (DSH)

Each year the Low-Income Pool Council (formerly Disproportionate Share Council) makes recommendations to the Legislature on the Medicaid Disproportionate Share Hospital Program funding distributions to hospitals that provide a disproportionate share of the Medicaid or charity care services to uninsured individuals. However, the legislature delineates how the funds will be distributed to each eligible facility.

The bill amends several provisions of chapter 409, F.S., to implement the changes in DSH program funding for Fiscal Year 2012-2013. The bill:

- Continues to use the 2004, 2005, and 2006 audited data in calculating disproportionate share payments to hospitals for Fiscal Year 2012-2013;
- Continues disproportionate share payments for any non-state government owned or operated hospital eligible for payment on July 1, 2011 for Fiscal Year 2012-2013;
- Revises the time period from Fiscal Year 2011-2012 to 2012-2013 during which the AHCA is prohibited from distributing funds under the Disproportionate Share Program for regional perinatal intensive care centers;
- Requires that funds for statutorily defined teaching hospitals in Fiscal Year 2012-2013 be distributed as provided in the GAA; and

⁷ Section 409.9081(1)(c), F.S.

- Revises the time period from Fiscal Year 2011-2012 to Fiscal Year 2012-2013 during which the AHCA is prohibited from distributing funds under the primary care disproportionate share program.

Program of All-Inclusive Care for the Elderly (PACE)

PACE is a capitated benefit model authorized by the federal Balanced Budget Act of 1997 that features a comprehensive service delivery system and integrated federal Medicare and state Medicaid financing. The model was tested through CMS demonstration projects that began in the mid-1980s.⁸ The PACE model was developed to address the needs of long-term care clients, providers, and payors.

For most participants, the comprehensive service package permits them to continue living at home while receiving services rather than receiving services in other more costly long term care settings. Capitated financing allows providers to deliver all the services that participants need rather than being limited to those services reimbursable under the Medicare and Medicaid fee-for-service systems.⁹

The Balanced Budget Act of 1997 established the PACE model of care as a permanent entity within the Medicare program and enabled states to provide the PACE services to Medicaid beneficiaries as an optional state plan service without a Medicaid waiver. The state plan must include PACE as an optional Medicaid benefit before the State and the Secretary of the Department of Health and Human Services can enter into program agreements with PACE providers.¹⁰

A PACE organization is a not-for-profit private or public entity that is primarily engaged in providing the PACE services and must:¹¹

- Have a governing board that includes community representation;
- Be able to provide the complete service package regardless of frequency or duration of services;
- Have a physical site to provide adult day services;
- Have a defined service area;
- Have safeguards against conflicts of interest;
- Have demonstrated fiscal soundness; and
- Have a formal participant bill of rights.

The PACE project is a unique federal/state partnership. The federal government establishes the PACE organization requirements and application process. The state Medicaid agency or other state agency is responsible for oversight of the entire application process, which includes reviewing the initial application and providing an on-site readiness review before a PACE organization can be authorized to serve patients. An approved PACE organization must sign a contract with the CMS and the state Medicaid agency.¹²

Florida PACE Project

The Florida PACE project is one project among many that provide alternative, long-term care options for elders who qualify for Medicare and the state Medicaid program. The PACE project was initially authorized in chapter 98-327, Laws of Florida, and is codified in s. 430.707(2), F.S. The PACE model targets individuals who would otherwise qualify for Medicaid nursing home placement and provides

⁸ Centers for Medicare and Medicaid Services website: <http://www.cms.hhs.gov/PACE/> (last visited on January 17, 2012).

⁹ *Id.*

¹⁰ *Id.*

¹¹ PACE Fact Sheet, available at <http://www.cms.hhs.gov/PACE/Downloads/PACEFactSheet.pdf>.

¹² *Id.*

them with a comprehensive array of home and community based services at a cost less than the cost of nursing home care. The PACE project is administered by DOEA in consultation with AHCA.

Section 3, chapter 2006-25, L.O.F., included proviso language in the 2006-2007 GAA to authorize 150 additional clients for the existing PACE project in Miami-Dade County and funding for the development of PACE projects to serve 200 clients in Martin and St. Lucie counties, and 200 clients in Lee County.

Section 3, chapter 2008-152, L.O.F., included proviso language in the 2008-09 GAA to reallocate 150 unused PACE slots to Miami-Dade, Lee and Pinellas Counties. Each site received 50 slots.

Section 20, chapter 2009-55, L.O.F., directed the AHCA, upon federal approval of an application to be a site for PACE, to contract with one private, not-for-profit hospice organization located in Hillsborough County, which provides comprehensive services, including hospice care for frail and elderly persons. This section also authorized the AHCA, in consultation with DOEA and subject to an appropriation, to approve up to 100 slots for the program.

Section 14, chapter 2010-156, L.O.F., directed the AHCA to contract with a private health care organization to provide comprehensive services to frail and elderly persons residing in Polk, Highlands, Hardee, and Hillsborough Counties. This section also authorized 150 initial slots for the program.

Section 15, chapter 2010-156, L.O.F., directed AHCA to contract for a new PACE site in Southwest Miami-Dade County and approved 50 initial slots for the program.

Section 17, chapter 2011-61, L.O.F., directed AHCA to contract for a new PACE site in Palm Beach County and authorized up to 150 initial enrollee slots.

In addition to receiving the necessary legislative authority, the development of a new PACE organization or the expansion of an existing program is a lengthy process that includes: identifying a service area, acquiring and renovating a PACE facility and processing the PACE application through the state and the federal review system.

The bill authorizes, subject to an appropriation, up to 150 initial enrollee slots each to two new PACE projects in Duval, Clay, and Alachua counties and Manatee, Sarasota, and DeSoto counties.

Medicaid Home and Community Based Services Waiver Program

In 1981, the U.S. Congress approved the use of Medicaid home and community-based-services (HCBS) waiver programs to allow states to provide certain Medicaid services in the home for persons who would otherwise require institutional care in a hospital, nursing facility, or intermediate care facility. These programs are federally-approved Medicaid initiatives authorized by Title XIX of the Social Security Act, Section 1915.

The HCBS waiver programs are initially approved for 3 years and may be renewed at 5-year intervals. If a state terminates an HCBS waiver, federal law requires that recipients receive continued services in an amount that does not violate the comparability of service requirements established in the Social Security Act.¹³ In effect, the state has to transition recipients into programs with comparable services. Florida currently operates 15 home and community-based-services waiver programs.¹⁴

¹³ 42 C.F.R. 441.356.

¹⁴ Found at: http://www.fdhc.state.fl.us/Medicaid/hcbs_waivers/index.shtml (last visited on January 17, 2012).

The Adult Day Health Care Waiver program, initially implemented in April 2004, is designed to meet the health and supportive needs of adults with functional and/or cognitive impairments through an individual plan of care implemented at an adult day health care center. This program serves adults who are physically impaired or mentally confused and may require supervision, increased social opportunities, and assistance with personal care or other daily living activities. Adult day health care services allow frail elders to remain in their home or community instead of going to a nursing facility.

The Adult Day Health Care Waiver program is available only to residents of Lee County. Currently, there are approximately 25 recipients enrolled in this waiver program, and it is set to expire in March 2012. It is anticipated that the 25 recipients will choose to transition into either the Nursing Home Diversion Waiver or the Aged and Disabled Adult Waiver programs. Both programs offer comparable services.

The bill modifies statutory authority by deleting references to the Adult Day Health Care Waiver in provisions relating to Medicaid eligibility and duties and responsibilities of the DOEA.

B. SECTION DIRECTORY:

Section 1: Amends s. 409.902, F.S., creating, subject to appropriation, an Internet-based system for eligibility determination for Medicaid and the CHIP Program; requiring the system to accomplish specified business objectives; requiring the department to develop the system contingent upon an appropriation; requiring the system to be completed and implemented by specified dates; requiring the department to implement governance structure pending implementation of the program; providing for the membership and duties of an executive steering committee.

Section 2: Amends s. 409.905, F.S., limiting payment for emergency room services for a non-pregnant Medicaid recipient 21 years of age or older under certain circumstances.

Section 3: Amends s. 409.906, F.S., eliminating Medicaid optional coverage for chiropractic and podiatric services for a Medicaid recipient 21 years of age or older.

Section 4: Amends s. 409.911, F.S., continuing the audited data specified for use in calculating amounts due to hospitals under the disproportionate share program.

Section 5: Amends s. 409.9112, F.S., continuing the prohibition against distributing moneys under the disproportionate share program for regional perinatal intensive care centers.

Section 6: Amends s. 409.9113, F.S., continuing the authorization for the distribution of moneys to certain teaching hospitals under the disproportionate share program.

Section 7: Amends s. 409.9117, F.S., continuing the prohibition against distributing moneys under the primary care disproportionate share program.

Section 8: Amends s. 409.979, F.S., deleting references to the Adult Day Health Care Waiver in provisions relating to Medicaid eligibility.

Section 9: Amends s. 430.04, F.S., deleting references to the Adult Day Health Care Waiver in provisions relating to duties and responsibilities of the Department of Elderly Affairs.

Section 10: Amends s. 31, ch. 2009-223, Laws of Florida, as amended, and redesignate the section as s. 409.9132, F.S., expanding the scope of the home health agency monitoring pilot project.

Section 11: Amends s. 32, ch. 2009-223, Laws of Florida, and redesignate the section as s. 409.9133, F.S., expanding the scope of the comprehensive care management pilot project for home health services.

Section 12: Amends s. 430.707, F.S., providing for an additional PACE site in Duval, Clay, and Alachua counties.

Section 13: Amends s. 430.707, F.S., providing for an additional PACE site in Manatee, Sarasota, and DeSoto counties.

Section 14: Providing an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

\$143,208,191 million in federal Medicaid funds will be generated through the implementation of the DSH programs.

2. Expenditures:

	<u>FY 2012-13</u>
DISPROPORTIONATE SHARE PROGRAM	
General Revenue	\$ 750,000
Grants & Donations Trust Fund	\$102,613,386
Medical Care Trust Fund	<u>\$143,208,191</u>
Total	\$246,571,577
EXPAND FRAUD PREVENTION PILOT PROJECTS	
General Revenue	\$ 707,813
Medical Care Trust Fund	<u>\$ 707,813</u>
Total	\$ 1,415,626
MEDICAID ELIGIBILITY SYSTEM EVALUATION	
General Revenue	\$ 350,000
Medical Care Trust Fund	<u>\$ 350,000</u>
Total	\$ 700,000
LIMIT EMERGENCY ROOM VISITS	
General Revenue	(\$ 6,798,783)
Medical Care Trust Fund	(\$ 9,470,479)
Refugee Asst Trust Fund	<u>(\$ 38,391)</u>
Total	(\$ 16,307,653)
SAVINGS FROM EXPANSION OF FRAUD PREVENTION PILOT PROJECTS	
General Revenue	(\$ 2,327,948)
Medical Care Trust Fund	(\$ 3,438,317)
Refugee Asst Trust Fund	<u>(\$ 370)</u>
Total	(\$ 5,766,635)
ELIMINATE CHIROPRACTIC SERVICES	
General Revenue	(\$ 394,960)
Medical Care Trust Fund	(\$ 541,932)
Refugee Asst Trust Fund	<u>(\$ 2,459)</u>
Total	(\$ 939,351)

ELIMINATE PODIATRIC SERVICES

General Revenue	(\$ 1,406,723)
Medical Care Trust Fund	(\$ 1,921,224)
Refugee Asst Trust Fund	(\$ 8,733)
Total	(\$ 3,336,680)

SUNSET OF ADULT DAY HEALTH CARE WAIVER PROGRAM

General Revenue	(\$ 822,937)
Operations & Maintenance Trust Fund	(\$ 1,123,921)
Total	(\$ 1,946,858)

BUDGETARY INCREASES

General Revenue	\$ 1,807,813
Grants & Donations Trust Fund	\$102,613,386
Medical Care Trust Fund	\$144,266,004
Grand Total of Increases	\$248,687,203

BUDGETARY DECREASES

General Revenue	(\$ 11,751,351)
Medical Care Trust Fund	(\$ 15,371,952)
Refugee Asst Trust Fund	(\$ 49,953)
Operations & Maintenance Trust Fund	(\$ 1,123,921)
Grand Total of Decreases	(\$ 28,297,177)

TOTAL BUDGETARY IMPACT

General Revenue	(\$ 9,943,538)
Grants & Donations Trust Fund	\$102,613,386
Medical Care Trust Fund	\$128,894,052
Refugee Asst Trust Fund	(\$ 49,953)
Operations & Maintenance Trust Fund	(\$ 1,123,921)
Grand Total of All	\$220,390,026

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments and other local political subdivisions may provide \$102,612,386 million in contributions for the DSH programs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Hospitals providing a disproportionate share of Medicaid or charity care services will receive additional reimbursement towards the cost of providing care to uninsured individuals.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This legislation does not appear to require counties or municipalities to take an 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:

The AHCA has sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

29 program for regional perinatal intensive care centers;
 30 amending s. 409.9113, F.S.; continuing the
 31 authorization for the distribution of moneys to
 32 certain teaching hospitals under the disproportionate
 33 share program; amending s. 409.9117, F.S.; continuing
 34 the prohibition against distributing moneys under the
 35 primary care disproportionate share program; amending
 36 ss. 409.979 and 430.04, F.S.; deleting references to
 37 the Adult Day Health Care Waiver in provisions
 38 relating to Medicaid eligibility and duties and
 39 responsibilities of the Department of Elderly Affairs;
 40 amending s. 31, ch. 2009-223, Laws of Florida, as
 41 amended, and redesignating the section as s. 409.9132,
 42 F.S.; expanding the scope of the home health agency
 43 monitoring pilot project; amending s. 32, ch. 2009-
 44 223, Laws of Florida, and redesignating the section as
 45 s. 409.9133, F.S.; expanding the scope of the
 46 comprehensive care management pilot project for home
 47 health services; authorizing the Agency for Health
 48 Care Administration to contract with certain
 49 organizations to provide services under the federal
 50 Program of All-inclusive Care for the Elderly in
 51 specified counties; exempting such organizations from
 52 ch. 641, F.S., relating to health care services
 53 programs; authorizing, subject to appropriation,
 54 enrollment slots for the program in such counties;
 55 providing an effective date.

56

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

58

59 Section 1. Subsections (3) through (8) are added to
60 section 409.902, Florida Statutes, to read:

61 409.902 Designated single state agency; payment
62 requirements; program title; release of medical records.-

63 (3) To the extent that funds are appropriated, the
64 department shall collaborate with the Agency for Health Care
65 Administration to develop an Internet-based system for
66 eligibility determination for Medicaid and the Children's Health
67 Insurance Program (CHIP) that complies with all applicable
68 federal and state laws and requirements.

69 (4) The system shall accomplish the following primary
70 business objectives:

71 (a) Provide individuals and families with a single point
72 of access to information that explains benefits, premiums, and
73 cost-sharing available through Medicaid, the Children's Health
74 Insurance Program, or any other state or federal health
75 insurance exchange.

76 (b) Enable timely, accurate, and efficient enrollment of
77 eligible persons into available assistance programs.

78 (c) Prevent eligibility fraud.

79 (d) Allow for detailed financial analysis of eligibility-
80 based cost drivers.

81 (5) The system shall include, but is not limited to, the
82 following business and functional requirements:

83 (a) Allow for the completion and submission of an online
84 application for eligibility determination that accepts the use

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85 of electronic signatures.

86 (b) Include a process that enables automatic enrollment of
87 qualified individuals in Medicaid, the Children's Health
88 Insurance Program, or any other state or federal exchange that
89 offers cost-sharing benefits for the purchase of health
90 insurance.

91 (c) Allow for the determination of Medicaid eligibility
92 based on modified adjusted gross income by using information
93 submitted in the application and information accessed and
94 verified through automated and secure interfaces with authorized
95 databases.

96 (d) Include the ability to determine specific categories
97 of Medicaid eligibility and interfaces with the Florida Medicaid
98 Management Information System to support a determination, using
99 federally approved assessment methodologies, of state and
100 federal financial participation rates for persons in each
101 eligibility category.

102 (e) Allow for the accurate and timely processing of
103 eligibility claims and adjudications.

104 (f) Align with and incorporate all applicable state and
105 federal laws, requirements, and standards to include the
106 information technology security requirements established
107 pursuant to s. 282.318 and the accessibility standards
108 established under part II of chapter 282.

109 (g) Produce transaction data, reports, and performance
110 information that contribute to an evaluation of the program,
111 continuous improvement in business operations, and increased
112 transparency and accountability.

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113 (6) The department shall develop the system subject to the
114 approval by the Legislative Budget Commission and as required by
115 the General Appropriations Act for the 2012-2013 fiscal year.

116 (7) The system must be completed by October 1, 2013, and
117 ready for implementation by January 1, 2014.

118 (8) The department shall implement the following project-
119 governance structure until the system is implemented:

120 (a) The director of the Economic Self-Sufficiency Services
121 program office of the department shall have overall
122 responsibility for the project.

123 (b) The project shall be governed by an executive steering
124 committee that is composed of three staff members of the
125 department appointed by the Secretary of Children and Family
126 Services and three staff members of the Agency for Health Care
127 Administration, including at least two Florida Medicaid program
128 staff members, appointed by the Secretary of Health Care
129 Administration.

130 (c) The executive steering committee shall have the
131 overall responsibility for ensuring that the project meets its
132 primary business objectives and shall:

133 1. Provide management direction and support to the project
134 management team.

135 2. Review and approve any changes to the project's scope,
136 schedule, and budget.

137 3. Review, approve, and determine whether to proceed with
138 any major deliverable project.

139 4. Recommend suspension or termination of the project to
140 the Governor, the President of the Senate, and the Speaker of

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141 the House of Representatives if the committee determines that
 142 the primary business objectives cannot be achieved.

143 (d) A project management team shall be appointed by and
 144 work under the direction of the executive steering committee.
 145 The project management team shall:

146 1. Provide planning, management, and oversight of the
 147 project.

148 2. Submit an operational work plan and provide quarterly
 149 updates to the plan to the executive steering committee. The
 150 plan must specify project milestones, deliverables, and
 151 expenditures.

152 3. Submit written monthly project status reports to the
 153 executive steering committee.

154 Section 2. Subsection (5) of section 409.905, Florida
 155 Statutes, is amended to read:

156 409.905 Mandatory Medicaid services.—The agency may make
 157 payments for the following services, which are required of the
 158 state by Title XIX of the Social Security Act, furnished by
 159 Medicaid providers to recipients who are determined to be
 160 eligible on the dates on which the services were provided. Any
 161 service under this section shall be provided only when medically
 162 necessary and in accordance with state and federal law.

163 Mandatory services rendered by providers in mobile units to
 164 Medicaid recipients may be restricted by the agency. Nothing in
 165 this section shall be construed to prevent or limit the agency
 166 from adjusting fees, reimbursement rates, lengths of stay,
 167 number of visits, number of services, or any other adjustments
 168 necessary to comply with the availability of moneys and any

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169 limitations or directions provided for in the General
 170 Appropriations Act or chapter 216.

171 (5) HOSPITAL INPATIENT SERVICES.—The agency shall pay for
 172 all covered services provided for the medical care and treatment
 173 of a recipient who is admitted as an inpatient by a licensed
 174 physician or dentist to a hospital licensed under part I of
 175 chapter 395. However, the agency shall limit the payment for
 176 inpatient hospital services for a Medicaid recipient 21 years of
 177 age or older to 45 days or the number of days necessary to
 178 comply with the General Appropriations Act. The agency shall
 179 also limit the payment for emergency room services for a
 180 nonpregnant Medicaid recipient 21 years of age or older to 12
 181 visits per fiscal year or the number of visits necessary to
 182 comply with the General Appropriations Act.

183 (a) The agency may ~~is authorized to~~ implement
 184 reimbursement and utilization management reforms in order to
 185 comply with any limitations or directions in the General
 186 Appropriations Act, which may include, but are not limited to:
 187 prior authorization for inpatient psychiatric days; prior
 188 authorization for nonemergency hospital inpatient admissions for
 189 individuals 21 years of age and older; authorization of
 190 emergency and urgent-care admissions within 24 hours after
 191 admission; enhanced utilization and concurrent review programs
 192 for highly utilized services; reduction or elimination of
 193 covered days of service; adjusting reimbursement ceilings for
 194 variable costs; adjusting reimbursement ceilings for fixed and
 195 property costs; and implementing target rates of increase. The
 196 agency may limit prior authorization for hospital inpatient

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197 services to selected diagnosis-related groups, based on an
 198 analysis of the cost and potential for unnecessary
 199 hospitalizations represented by certain diagnoses. Admissions
 200 for normal delivery and newborns are exempt from requirements
 201 for prior authorization. In implementing the provisions of this
 202 section related to prior authorization, the agency shall ensure
 203 that the process for authorization is accessible 24 hours per
 204 day, 7 days per week and authorization is automatically granted
 205 when not denied within 4 hours after the request. Authorization
 206 procedures must include steps for review of denials. Upon
 207 implementing the prior authorization program for hospital
 208 inpatient services, the agency shall discontinue its hospital
 209 retrospective review program.

210 (b) A licensed hospital maintained primarily for the care
 211 and treatment of patients having mental disorders or mental
 212 diseases is not eligible to participate in the hospital
 213 inpatient portion of the Medicaid program except as provided in
 214 federal law. However, the department shall apply for a waiver,
 215 within 9 months after June 5, 1991, designed to provide
 216 hospitalization services for mental health reasons to children
 217 and adults in the most cost-effective and lowest cost setting
 218 possible. Such waiver shall include a request for the
 219 opportunity to pay for care in hospitals known under federal law
 220 as "institutions for mental disease" or "IMD's." The waiver
 221 proposal shall propose no additional aggregate cost to the state
 222 or Federal Government, and shall be conducted in Hillsborough
 223 County, Highlands County, Hardee County, Manatee County, and
 224 Polk County. The waiver proposal may incorporate competitive

225 bidding for hospital services, comprehensive brokering, prepaid
 226 capitated arrangements, or other mechanisms deemed by the
 227 department to show promise in reducing the cost of acute care
 228 and increasing the effectiveness of preventive care. When
 229 developing the waiver proposal, the department shall take into
 230 account price, quality, accessibility, linkages of the hospital
 231 to community services and family support programs, plans of the
 232 hospital to ensure the earliest discharge possible, and the
 233 comprehensiveness of the mental health and other health care
 234 services offered by participating providers.

235 (c) The agency shall implement a methodology for
 236 establishing base reimbursement rates for each hospital based on
 237 allowable costs, as defined by the agency. Rates shall be
 238 calculated annually and take effect July 1 of each year based on
 239 the most recent complete and accurate cost report submitted by
 240 each hospital. Adjustments may not be made to the rates after
 241 September 30 of the state fiscal year in which the rate takes
 242 effect. Errors in cost reporting or calculation of rates
 243 discovered after September 30 must be reconciled in a subsequent
 244 rate period. The agency may not make any adjustment to a
 245 hospital's reimbursement rate more than 5 years after a hospital
 246 is notified of an audited rate established by the agency. The
 247 requirement that the agency may not make any adjustment to a
 248 hospital's reimbursement rate more than 5 years after a hospital
 249 is notified of an audited rate established by the agency is
 250 remedial and shall apply to actions by providers involving
 251 Medicaid claims for hospital services. Hospital rates shall be
 252 subject to such limits or ceilings as may be established in law

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253 or described in the agency's hospital reimbursement plan.
 254 Specific exemptions to the limits or ceilings may be provided in
 255 the General Appropriations Act.

256 (d) The agency shall implement a comprehensive utilization
 257 management program for hospital neonatal intensive care stays in
 258 certain high-volume participating hospitals, select counties, or
 259 statewide, and replace existing hospital inpatient utilization
 260 management programs for neonatal intensive care admissions. The
 261 program shall be designed to manage the lengths of stay for
 262 children being treated in neonatal intensive care units and must
 263 seek the earliest medically appropriate discharge to the child's
 264 home or other less costly treatment setting. The agency may
 265 competitively bid a contract for the selection of a qualified
 266 organization to provide neonatal intensive care utilization
 267 management services. The agency may seek federal waivers to
 268 implement this initiative.

269 (e) The agency may develop and implement a program to
 270 reduce the number of hospital readmissions among the non-
 271 Medicare population eligible in areas 9, 10, and 11.

272 (f) The agency shall develop a plan to convert inpatient
 273 hospital rates to a prospective payment system that categorizes
 274 each case into diagnosis-related groups (DRG) and assigns a
 275 payment weight based on the average resources used to treat
 276 Medicaid patients in that DRG. To the extent possible, the
 277 agency shall propose an adaptation of an existing prospective
 278 payment system, such as the one used by Medicare, and shall
 279 propose such adjustments as are necessary for the Medicaid
 280 population and to maintain budget neutrality for inpatient.

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281 hospital expenditures. The agency shall submit the Medicaid DRG
 282 plan, identifying all steps necessary for the transition and any
 283 costs associated with plan implementation, to the Governor, the
 284 President of the Senate, and the Speaker of the House of
 285 Representatives no later than January 1, 2013.

286 Section 3. Subsections (7) and (19) of section 409.906,
 287 Florida Statutes, are amended to read:

288 409.906 Optional Medicaid services.—Subject to specific
 289 appropriations, the agency may make payments for services which
 290 are optional to the state under Title XIX of the Social Security
 291 Act and are furnished by Medicaid providers to recipients who
 292 are determined to be eligible on the dates on which the services
 293 were provided. Any optional service that is provided shall be
 294 provided only when medically necessary and in accordance with
 295 state and federal law. Optional services rendered by providers
 296 in mobile units to Medicaid recipients may be restricted or
 297 prohibited by the agency. Nothing in this section shall be
 298 construed to prevent or limit the agency from adjusting fees,
 299 reimbursement rates, lengths of stay, number of visits, or
 300 number of services, or making any other adjustments necessary to
 301 comply with the availability of moneys and any limitations or
 302 directions provided for in the General Appropriations Act or
 303 chapter 216. If necessary to safeguard the state's systems of
 304 providing services to elderly and disabled persons and subject
 305 to the notice and review provisions of s. 216.177, the Governor
 306 may direct the Agency for Health Care Administration to amend
 307 the Medicaid state plan to delete the optional Medicaid service
 308 known as "Intermediate Care Facilities for the Developmentally

309 Disabled." Optional services may include:

310 (7) CHIROPRACTIC SERVICES.—Effective August 1, 2012, the
 311 agency may pay for manual manipulation of the spine and initial
 312 services, screening, and X rays provided to a Medicaid recipient
 313 under the age of 21 by a licensed chiropractic physician.

314 (19) PODIATRIC SERVICES.—Effective August 1, 2012, the
 315 agency may pay for services, including diagnosis and medical,
 316 surgical, palliative, and mechanical treatment, related to
 317 ailments of the human foot and lower leg, if provided to a
 318 Medicaid recipient under the age of 21 by a podiatric physician
 319 licensed under state law.

320 Section 4. Paragraph (a) of subsection (2) and paragraph
 321 (d) of subsection (4) of section 409.911, Florida Statutes, are
 322 amended to read:

323 409.911 Disproportionate share program.—Subject to
 324 specific allocations established within the General
 325 Appropriations Act and any limitations established pursuant to
 326 chapter 216, the agency shall distribute, pursuant to this
 327 section, moneys to hospitals providing a disproportionate share
 328 of Medicaid or charity care services by making quarterly
 329 Medicaid payments as required. Notwithstanding the provisions of
 330 s. 409.915, counties are exempt from contributing toward the
 331 cost of this special reimbursement for hospitals serving a
 332 disproportionate share of low-income patients.

333 (2) The Agency for Health Care Administration shall use
 334 the following actual audited data to determine the Medicaid days
 335 and charity care to be used in calculating the disproportionate
 336 share payment:

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337 (a) The average of the 2004, 2005, and 2006 audited
 338 disproportionate share data to determine each hospital's
 339 Medicaid days and charity care for the 2012-2013 ~~2011-2012~~ state
 340 fiscal year.

341 (4) The following formulas shall be used to pay
 342 disproportionate share dollars to public hospitals:

343 (d) Any nonstate government owned or operated hospital
 344 eligible for payments under this section on July 1, 2011,
 345 remains eligible for payments during the 2012-2013 ~~2011-2012~~
 346 state fiscal year.

347 Section 5. Section 409.9112, Florida Statutes, is amended
 348 to read:

349 409.9112 Disproportionate share program for regional
 350 perinatal intensive care centers.—In addition to the payments
 351 made under s. 409.911, the agency shall design and implement a
 352 system for making disproportionate share payments to those
 353 hospitals that participate in the regional perinatal intensive
 354 care center program established pursuant to chapter 383. The
 355 system of payments must conform to federal requirements and
 356 distribute funds in each fiscal year for which an appropriation
 357 is made by making quarterly Medicaid payments. Notwithstanding
 358 s. 409.915, counties are exempt from contributing toward the
 359 cost of this special reimbursement for hospitals serving a
 360 disproportionate share of low-income patients. For the 2012-2013
 361 ~~2011-2012~~ state fiscal year, the agency may not distribute
 362 moneys under the regional perinatal intensive care centers
 363 disproportionate share program.

364 (1) The following formula shall be used by the agency to

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365 calculate the total amount earned for hospitals that participate
 366 in the regional perinatal intensive care center program:

367
$$TAE = HDSP/THDSP$$

368 Where:

369 TAE = total amount earned by a regional perinatal intensive
 370 care center.

371 HDSP = the prior state fiscal year regional perinatal
 372 intensive care center disproportionate share payment to the
 373 individual hospital.

374 THDSP = the prior state fiscal year total regional
 375 perinatal intensive care center disproportionate share payments
 376 to all hospitals.

377 (2) The total additional payment for hospitals that
 378 participate in the regional perinatal intensive care center
 379 program shall be calculated by the agency as follows:

380
$$TAP = TAE \times TA$$

381 Where:

382 TAP = total additional payment for a regional perinatal
 383 intensive care center.

384 TAE = total amount earned by a regional perinatal intensive
 385 care center.

386 TA = total appropriation for the regional perinatal
 387 intensive care center disproportionate share program.

388 (3) In order to receive payments under this section, a
 389 hospital must be participating in the regional perinatal
 390 intensive care center program pursuant to chapter 383 and must
 391 meet the following additional requirements:

392 (a) Agree to conform to all departmental and agency

393 requirements to ensure high quality in the provision of
 394 services, including criteria adopted by departmental and agency
 395 rule concerning staffing ratios, medical records, standards of
 396 care, equipment, space, and such other standards and criteria as
 397 the department and agency deem appropriate as specified by rule.

398 (b) Agree to provide information to the Department of
 399 Health and the agency, in a form and manner prescribed by rule
 400 of the department and agency, concerning the care provided to
 401 all patients in neonatal intensive care centers and high-risk
 402 maternity care.

403 (c) Agree to accept all patients for neonatal intensive
 404 care and high-risk maternity care, regardless of ability to pay,
 405 on a functional space-available basis.

406 (d) Agree to develop arrangements with other maternity and
 407 neonatal care providers in the hospital's region for the
 408 appropriate receipt and transfer of patients in need of
 409 specialized maternity and neonatal intensive care services.

410 (e) Agree to establish and provide a developmental
 411 evaluation and services program for certain high-risk neonates,
 412 as prescribed and defined by rule of the department.

413 (f) Agree to sponsor a program of continuing education in
 414 perinatal care for health care professionals within the region
 415 of the hospital, as specified by rule.

416 (g) Agree to provide backup and referral services to the
 417 county health departments and other low-income perinatal
 418 providers within the hospital's region, including the
 419 development of written agreements between these organizations
 420 and the hospital.

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421 (h) Agree to arrange for transportation for high-risk
 422 obstetrical patients and neonates in need of transfer from the
 423 community to the hospital or from the hospital to another more
 424 appropriate facility.

425 (4) Hospitals that fail to comply with any of the
 426 conditions in subsection (3) or the applicable rules of the
 427 Department of Health and the agency may not receive any payments
 428 under this section until full compliance is achieved. A hospital
 429 that is not in compliance in two or more consecutive quarters
 430 may not receive its share of the funds. Any forfeited funds
 431 shall be distributed by the remaining participating regional
 432 perinatal intensive care center program hospitals.

433 Section 6. Section 409.9113, Florida Statutes, is amended
 434 to read:

435 409.9113 Disproportionate share program for teaching
 436 hospitals.—In addition to the payments made under ss. 409.911
 437 and 409.9112, the agency shall make disproportionate share
 438 payments to teaching hospitals, as defined in s. 408.07, for
 439 their increased costs associated with medical education programs
 440 and for tertiary health care services provided to the indigent.
 441 This system of payments must conform to federal requirements and
 442 distribute funds in each fiscal year for which an appropriation
 443 is made by making quarterly Medicaid payments. Notwithstanding
 444 s. 409.915, counties are exempt from contributing toward the
 445 cost of this special reimbursement for hospitals serving a
 446 disproportionate share of low-income patients. For the 2012-2013
 447 ~~2011-2012~~ state fiscal year, the agency shall distribute the
 448 moneys provided in the General Appropriations Act to statutorily

449 defined teaching hospitals and family practice teaching
 450 hospitals, as defined in s. 395.805, pursuant to this section.
 451 The funds provided for statutorily defined teaching hospitals
 452 shall be distributed as provided in the General Appropriations
 453 Act. The funds provided for family practice teaching hospitals
 454 shall be distributed equally among family practice teaching
 455 hospitals.

456 (1) On or before September 15 of each year, the agency
 457 shall calculate an allocation fraction to be used for
 458 distributing funds to statutory teaching hospitals. Subsequent
 459 to the end of each quarter of the state fiscal year, the agency
 460 shall distribute to each statutory teaching hospital an amount
 461 determined by multiplying one-fourth of the funds appropriated
 462 for this purpose by the Legislature times such hospital's
 463 allocation fraction. The allocation fraction for each such
 464 hospital shall be determined by the sum of the following three
 465 primary factors, divided by three:

466 (a) The number of nationally accredited graduate medical
 467 education programs offered by the hospital, including programs
 468 accredited by the Accreditation Council for Graduate Medical
 469 Education and the combined Internal Medicine and Pediatrics
 470 programs acceptable to both the American Board of Internal
 471 Medicine and the American Board of Pediatrics at the beginning
 472 of the state fiscal year preceding the date on which the
 473 allocation fraction is calculated. The numerical value of this
 474 factor is the fraction that the hospital represents of the total
 475 number of programs, where the total is computed for all
 476 statutory teaching hospitals.

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477 (b) The number of full-time equivalent trainees in the
 478 hospital, which comprises two components:

479 1. The number of trainees enrolled in nationally
 480 accredited graduate medical education programs, as defined in
 481 paragraph (a). Full-time equivalents are computed using the
 482 fraction of the year during which each trainee is primarily
 483 assigned to the given institution, over the state fiscal year
 484 preceding the date on which the allocation fraction is
 485 calculated. The numerical value of this factor is the fraction
 486 that the hospital represents of the total number of full-time
 487 equivalent trainees enrolled in accredited graduate programs,
 488 where the total is computed for all statutory teaching
 489 hospitals.

490 2. The number of medical students enrolled in accredited
 491 colleges of medicine and engaged in clinical activities,
 492 including required clinical clerkships and clinical electives.
 493 Full-time equivalents are computed using the fraction of the
 494 year during which each trainee is primarily assigned to the
 495 given institution, over the course of the state fiscal year
 496 preceding the date on which the allocation fraction is
 497 calculated. The numerical value of this factor is the fraction
 498 that the given hospital represents of the total number of full-
 499 time equivalent students enrolled in accredited colleges of
 500 medicine, where the total is computed for all statutory teaching
 501 hospitals.

502

503 The primary factor for full-time equivalent trainees is computed
 504 as the sum of these two components, divided by two.

505 (c) A service index that comprises three components:
 506 1. The Agency for Health Care Administration Service
 507 Index, computed by applying the standard Service Inventory
 508 Scores established by the agency to services offered by the
 509 given hospital, as reported on Worksheet A-2 for the last fiscal
 510 year reported to the agency before the date on which the
 511 allocation fraction is calculated. The numerical value of this
 512 factor is the fraction that the given hospital represents of the
 513 total index values, where the total is computed for all
 514 statutory teaching hospitals.

515 2. A volume-weighted service index, computed by applying
 516 the standard Service Inventory Scores established by the agency
 517 to the volume of each service, expressed in terms of the
 518 standard units of measure reported on Worksheet A-2 for the last
 519 fiscal year reported to the agency before the date on which the
 520 allocation factor is calculated. The numerical value of this
 521 factor is the fraction that the given hospital represents of the
 522 total volume-weighted service index values, where the total is
 523 computed for all statutory teaching hospitals.

524 3. Total Medicaid payments to each hospital for direct
 525 inpatient and outpatient services during the fiscal year
 526 preceding the date on which the allocation factor is calculated.
 527 This includes payments made to each hospital for such services
 528 by Medicaid prepaid health plans, whether the plan was
 529 administered by the hospital or not. The numerical value of this
 530 factor is the fraction that each hospital represents of the
 531 total of such Medicaid payments, where the total is computed for
 532 all statutory teaching hospitals.

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533

534 The primary factor for the service index is computed as the sum
535 of these three components, divided by three.

536 (2) By October 1 of each year, the agency shall use the
537 following formula to calculate the maximum additional
538 disproportionate share payment for statutory teaching hospitals:

539
$$TAP = THAF \times A$$

540 Where:

541 TAP = total additional payment.

542 THAF = teaching hospital allocation factor.

543 A = amount appropriated for a teaching hospital
544 disproportionate share program.

545 Section 7. Section 409.9117, Florida Statutes, is amended
546 to read:

547 409.9117 Primary care disproportionate share program.—For
548 the 2012-2013 ~~2011-2012~~ state fiscal year, the agency shall not
549 distribute moneys under the primary care disproportionate share
550 program.

551 (1) If federal funds are available for disproportionate
552 share programs in addition to those otherwise provided by law, a
553 primary care disproportionate share program shall be
554 established.

555 (2) The following formula shall be used by the agency to
556 calculate the total amount earned for hospitals that participate
557 in the primary care disproportionate share program:

558
$$TAE = HDSP/THDSP$$

559 Where:

560 TAE = total amount earned by a hospital participating in

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561 the primary care disproportionate share program.

562 HDSP = the prior state fiscal year primary care
563 disproportionate share payment to the individual hospital.

564 THDSP = the prior state fiscal year total primary care
565 disproportionate share payments to all hospitals.

566 (3) The total additional payment for hospitals that
567 participate in the primary care disproportionate share program
568 shall be calculated by the agency as follows:

$$TAP = TAE \times TA$$

570 Where:

571 TAP = total additional payment for a primary care hospital.

572 TAE = total amount earned by a primary care hospital.

573 TA = total appropriation for the primary care
574 disproportionate share program.

575 (4) In establishing and funding this program, the agency
576 shall use the following criteria in addition to those specified
577 in s. 409.911, and payments may not be made to a hospital unless
578 the hospital agrees to:

579 (a) Cooperate with a Medicaid prepaid health plan, if one
580 exists in the community.

581 (b) Ensure the availability of primary and specialty care
582 physicians to Medicaid recipients who are not enrolled in a
583 prepaid capitated arrangement and who are in need of access to
584 such physicians.

585 (c) Coordinate and provide primary care services free of
586 charge, except copayments, to all persons with incomes up to 100
587 percent of the federal poverty level who are not otherwise
588 covered by Medicaid or another program administered by a

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589 governmental entity, and to provide such services based on a
 590 sliding fee scale to all persons with incomes up to 200 percent
 591 of the federal poverty level who are not otherwise covered by
 592 Medicaid or another program administered by a governmental
 593 entity, except that eligibility may be limited to persons who
 594 reside within a more limited area, as agreed to by the agency
 595 and the hospital.

596 (d) Contract with any federally qualified health center,
 597 if one exists within the agreed geopolitical boundaries,
 598 concerning the provision of primary care services, in order to
 599 guarantee delivery of services in a nonduplicative fashion, and
 600 to provide for referral arrangements, privileges, and
 601 admissions, as appropriate. The hospital shall agree to provide
 602 primary care services within 24 hours at an onsite or offsite
 603 facility to which all Medicaid recipients and persons eligible
 604 under this paragraph who do not require emergency room services
 605 are referred during normal daylight hours.

606 (e) Cooperate with the agency, the county, and other
 607 entities to ensure the provision of certain public health
 608 services, case management, referral and acceptance of patients,
 609 and sharing of epidemiological data, as the agency and the
 610 hospital find mutually necessary and desirable to promote and
 611 protect the public health within the agreed geopolitical
 612 boundaries.

613 (f) In cooperation with the county in which the hospital
 614 resides, develop a low-cost, outpatient, prepaid health care
 615 program to persons who are not eligible for the Medicaid
 616 program, and who reside within the area.

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617 (g) Provide inpatient services to residents within the
 618 area who are not eligible for Medicaid or Medicare, and who do
 619 not have private health insurance, regardless of ability to pay,
 620 on the basis of available space, except that hospitals may not
 621 be prevented from establishing bill collection programs based on
 622 ability to pay.

623 (h) Work with the Florida Healthy Kids Corporation, the
 624 Florida Health Care Purchasing Cooperative, and business health
 625 coalitions, as appropriate, to develop a feasibility study and
 626 plan to provide a low-cost comprehensive health insurance plan
 627 to persons who reside within the area and who do not have access
 628 to such a plan.

629 (i) Work with public health officials and other experts to
 630 provide community health education and prevention activities
 631 designed to promote healthy lifestyles and appropriate use of
 632 health services.

633 (j) Work with the local health council to develop a plan
 634 for promoting access to affordable health care services for all
 635 persons who reside within the area, including, but not limited
 636 to, public health services, primary care services, inpatient
 637 services, and affordable health insurance generally.

638
 639 Any hospital that fails to comply with any of the provisions of
 640 this subsection, or any other contractual condition, may not
 641 receive payments under this section until full compliance is
 642 achieved.

643 Section 8. Subsection (2) of section 409.979, Florida
 644 Statutes, is amended to read:

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645 409.979 Eligibility.—

646 (2) Medicaid recipients who, on the date long-term care
 647 managed care plans become available in their region, reside in a
 648 nursing home facility or are enrolled in one of the following
 649 long-term care Medicaid waiver programs are eligible to
 650 participate in the long-term care managed care program for up to
 651 12 months without being reevaluated for their need for nursing
 652 facility care as defined in s. 409.985(3):

653 (a) The Assisted Living for the Frail Elderly Waiver.

654 (b) The Aged and Disabled Adult Waiver.

655 ~~(c) The Adult Day Health Care Waiver.~~

656 (c)~~(d)~~ The Consumer-Directed Care Plus Program as
 657 described in s. 409.221.

658 (d)~~(e)~~ The Program of All-inclusive Care for the Elderly.

659 (e)~~(f)~~ The long-term care community-based diversion pilot
 660 project as described in s. 430.705.

661 (f)~~(g)~~ The Channeling Services Waiver for Frail Elders.

662 Section 9. Subsection (15) of section 430.04, Florida
 663 Statutes, is amended to read:

664 430.04 Duties and responsibilities of the Department of
 665 Elderly Affairs.—The Department of Elderly Affairs shall:

666 (15) Administer all Medicaid waivers and programs relating
 667 to elders and their appropriations. The waivers include, but are
 668 not limited to:

669 (a) The Assisted Living for the Frail Elderly Waiver.

670 (b) The Aged and Disabled Adult Waiver.

671 ~~(c) The Adult Day Health Care Waiver.~~

672 (c)~~(d)~~ The Consumer-Directed Care Plus Program as defined

673 in s. 409.221.

674 (d)~~(e)~~ The Program of All-inclusive Care for the Elderly.

675 (e)~~(f)~~ The Long-Term Care Community-Based Diversion Pilot
 676 Project as described in s. 430.705.

677 (f)~~(g)~~ The Channeling Services Waiver for Frail Elders.

678

679 The department shall develop a transition plan for recipients
 680 receiving services in long-term care Medicaid waivers for elders
 681 or disabled adults on the date eligible plans become available
 682 in each recipient's region defined in s. 409.981(2) to enroll
 683 those recipients in eligible plans. This subsection expires
 684 October 1, 2014.

685 Section 10. Section 31 of chapter 2009-223, Laws of
 686 Florida, as amended by section 44 of chapter 2010-151, Laws of
 687 Florida, is redesignated as section 409.9132, Florida Statutes,
 688 and amended to read:

689 409.9132 ~~Section 31.~~ Pilot project to monitor home health
 690 services.—The Agency for Health Care Administration may expand
 691 the shall develop and implement a home health agency monitoring
 692 pilot project in Miami-Dade County to include Broward, Escambia,
 693 Martin, and Palm Beach Counties, effective July 1, 2012 ~~by~~
 694 ~~January 1, 2010.~~ The agency shall contract with a vendor to
 695 verify the utilization and delivery of home health services and
 696 provide an electronic billing interface for home health
 697 services. The contract must require the creation of a program to
 698 submit claims electronically for the delivery of home health
 699 services. The program must verify telephonically visits for the
 700 delivery of home health services using voice biometrics. The

701 agency may seek amendments to the Medicaid state plan and
 702 waivers of federal laws, as necessary, to implement or expand
 703 the pilot project. Notwithstanding s. 287.057(3)(f), ~~Florida~~
 704 ~~Statutes~~, the agency must award the contract through the
 705 competitive solicitation process and may use the current
 706 contract to expand the home health agency monitoring pilot
 707 project to include additional counties as authorized under this
 708 section. ~~The agency shall submit a report to the Governor, the~~
 709 ~~President of the Senate, and the Speaker of the House of~~
 710 ~~Representatives evaluating the pilot project by February 1,~~
 711 ~~2011.~~

712 Section 11. Section 32 of chapter 2009-223, Laws of
 713 Florida, is redesignated as section 409.9133, Florida Statutes,
 714 and amended to read:

715 409.9133 ~~Section 32.~~ Pilot project for home health care
 716 management.—The Agency for Health Care Administration may expand
 717 the ~~shall implement a~~ comprehensive care management pilot
 718 project for home health services to include private duty nursing
 719 and personal care services effective July 1, 2012 ~~by January 1,~~
 720 ~~2010~~, which includes face-to-face assessments by a nurse
 721 licensed pursuant to chapter 464, Florida Statutes, consultation
 722 with physicians ordering services to substantiate the medical
 723 necessity for services, and on-site or desk reviews of
 724 recipients' medical records, in Miami-Dade, Broward, Orange, and
 725 Palm Beach Counties ~~County~~. The agency may enter into a contract
 726 with a qualified organization to implement or expand the pilot
 727 project. The agency may use the current contract to expand the
 728 comprehensive care management pilot project to include the

729 additional services and counties as authorized under this
 730 section. The agency may seek amendments to the Medicaid state
 731 plan and waivers of federal laws, as necessary, to implement or
 732 expand the pilot project.

733 Section 12. Notwithstanding s. 430.707, Florida Statutes,
 734 and subject to federal approval of the application to be a site
 735 for the Program of All-inclusive Care for the Elderly (PACE),
 736 the Agency for Health Care Administration shall contract with
 737 one not-for-profit organization with more than 30 years'
 738 experience as a licensed hospice provider and currently licensed
 739 as a hospice provider to serve individuals and families in
 740 Duval, Clay, and Alachua Counties. This not-for-profit
 741 organization shall provide PACE services to frail elders who
 742 reside in Duval, Clay, and Alachua Counties. The organization
 743 shall be exempt from the requirements of chapter 641, Florida
 744 Statutes. The agency, in consultation with the Department of
 745 Elderly Affairs and subject to an appropriation, shall approve
 746 up to 150 initial enrollees in the Program of All-inclusive Care
 747 for the Elderly established by this organization to serve frail
 748 elders who reside in Duval, Clay, and Alachua Counties.

749 Section 13. Notwithstanding s. 430.707, Florida Statutes,
 750 and subject to federal approval of the application to be a site
 751 for the Program of All-inclusive Care for the Elderly (PACE),
 752 the Agency for Health Care Administration shall contract with
 753 one private health care organization, the sole member of which
 754 is a private, not-for-profit corporation that owns and manages
 755 health care organizations licensed in Manatee, Sarasota, and
 756 DeSoto Counties which provide comprehensive services, including

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757 hospice and palliative care, to frail elders who reside in these
 758 counties. The organization shall be exempt from the requirements
 759 of chapter 641, Florida Statutes. The agency, in consultation
 760 with the Department of Elderly Affairs and subject to an
 761 appropriation, shall approve up to 150 initial enrollees in the
 762 Program of All-inclusive Care for the Elderly established by
 763 this organization to serve frail elders who reside in Manatee,
 764 Sarasota, and DeSoto Counties.


765 Section 14. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5303 PCB HCAS 12-03 Department of Children and Family Services

SPONSOR(S): Health Care Appropriations Subcommittee, Hudson

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Care Appropriations Subcommittee	9 Y, 5 N	Fontaine	Pridgeon
1) Appropriations Committee		Fontaine <i>WFA</i>	Leznoff 

SUMMARY ANALYSIS

The bill amends Florida Statutes to implement budgetary changes contained in the proposed General Appropriations Act (GAA) for Fiscal Year 2012-13. The bill:

Amends Section 409.1451, Florida Statutes, by changing the maximum age of eligibility from not yet 23 years old to not yet 21 years old for independent living transition services and for the Road-to-Independence award for former foster children. Independent living transition services and the Road-to-Independence award provide services and a monthly stipend to assist former foster children in obtaining life skills and education or vocational training.

The House proposed GAA for Fiscal Year 2012-13 reduces \$9,214,663 from recurring General Revenue funds and \$2,465,646 from recurring Tobacco Settlement Trust Funds by changing the maximum age of eligibility from not yet 23 years old to not yet 21 years old for independent living transition services.

The effective date of the bill is July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 409.1451, Florida Statutes, establishes a framework through which independent living transition services are provided to youth in foster care and young adults who were formerly in foster care. These services are designed to assist youth in obtaining life skills training considered necessary to become self-sufficient, live independently, and maintain employment. The framework recognizes educational or vocational skills as a component of achieving independent living and creates the Road-to-Independence Program for young adults formerly in foster care. This program provides a financial award to young adults, having reached 18 years of age but not yet 23 years of age, and who are attending a postsecondary education institution. This program represents the majority of expenditure for independent living transition services.

For Fiscal Year 2011-12, the Legislature appropriated \$29.5 million within the Department of Children and Family Services for independent living transition services. This appropriation includes \$8.2 million of federal funds from the Chafee Foster Care Independence Program and Education and Training Voucher funds, and \$21.3 million in state funds. Of this appropriation, \$11.7 million is expected to be allocated for independent living transition services and Road-to-Independence awards for young adults ages 21 and 22; financial awards provided through the Road-to-Independence Program represent \$9.4 million, or 81 percent, of this allocation. Section 409.1451(5)(b)1, F.S., provides the award amount be based on the young adult's living and educational needs, but no more than the amount that could be earned by working 40 hours per week at a job paying the federal minimum wage. During FY 2011-12, the department estimates the current Road-to-Independence Program will serve 2,610 young adults, ages 18 through 22, at an average, monthly award amount of \$1,109.

This bill modifies eligibility criteria to receive independent living transition services and Road-to-Independence awards by changing the maximum eligible age from not yet 23 years old to not yet 21 years old. This modification is expected to decrease the number of Road-to-Independence awards provided to this age group by 657, for a total of 1,953 for ages 18 to not yet 21 during FY 2012-13. This modification will decrease funds required to support independent living transition services by \$11.7 million, and is reflected in the House proposed GAA for FY 2012-13.

B. SECTION DIRECTORY:

Section 1. This section amends Section 409.1451, Florida Statutes, relating to eligibility criteria for independent living transition services.

Section 2. This section provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to impact state government revenues.

2. Expenditures:

This bill has a recurring fiscal impact to state government by decreasing expenditure of state funds in the total amount of \$11,680,309 (\$9,214,663 from the General Revenue Fund and \$2,465,646 from the Tobacco Settlement Trust Fund).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to impact local government revenues.

2. Expenditures:

This bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to impact the private sector.

D. FISCAL COMMENTS:

None.

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

HB 5303

2012

1 A bill to be entitled
 2 An act relating to the Department of Children and
 3 Family Services; amending s. 409.1451, F.S.; revising
 4 the age limit requirements for young adults eligible
 5 for independent living services; providing an
 6 effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (b) of subsection (2) and subsection
 11 (5) of section 409.1451, Florida Statutes, are amended to read:
 12 409.1451 Independent living transition services.—

13 (2) ELIGIBILITY.—

14 (b) The department shall serve young adults who have
 15 reached 18 years of age but are not yet 21 ~~23~~ years of age and
 16 who were in foster care when they turned 18 years of age or,
 17 after reaching 16 years of age, were adopted from foster care or
 18 placed with a court-approved dependency guardian and have spent
 19 a minimum of 6 months in foster care within the 12 months
 20 immediately preceding such placement or adoption, by providing
 21 services pursuant to subsection (5). Young adults to be served
 22 must meet the eligibility requirements set forth for specific
 23 services in this section.

24 (5) SERVICES FOR YOUNG ADULTS FORMERLY IN FOSTER CARE.—

25 Based on the availability of funds, the department shall provide
 26 or arrange for the following services to young adults formerly
 27 in foster care who meet the prescribed conditions and are
 28 determined eligible by the department. The department, or a

29 community-based care lead agency when the agency is under
 30 contract with the department to provide the services described
 31 under this subsection, shall develop a plan to implement those
 32 services. A plan shall be developed for each community-based
 33 care service area in the state. Each plan that is developed by a
 34 community-based care lead agency shall be submitted to the
 35 department. Each plan shall include the number of young adults
 36 to be served each month of the fiscal year and specify the
 37 number of young adults who will reach 18 years of age who will
 38 be eligible for the plan and the number of young adults who will
 39 reach 21 ~~23~~ years of age and will be ineligible for the plan or
 40 who are otherwise ineligible during each month of the fiscal
 41 year; staffing requirements and all related costs to administer
 42 the services and program; expenditures to or on behalf of the
 43 eligible recipients; costs of services provided to young adults
 44 through an approved plan for housing, transportation, and
 45 employment; reconciliation of these expenses and any additional
 46 related costs with the funds allocated for these services; and
 47 an explanation of and a plan to resolve any shortages or
 48 surpluses in order to end the fiscal year with a balanced
 49 budget. The categories of services available to assist a young
 50 adult formerly in foster care to achieve independence are:

51 (a) Aftercare support services.—

52 1. Aftercare support services are available to assist
 53 young adults who were formerly in foster care in their efforts
 54 to continue to develop the skills and abilities necessary for
 55 independent living. The aftercare support services available
 56 include, but are not limited to, the following:

- 57 | a. Mentoring and tutoring.
- 58 | b. Mental health services and substance abuse counseling.
- 59 | c. Life skills classes, including credit management and
- 60 | preventive health activities.
- 61 | d. Parenting classes.
- 62 | e. Job and career skills training.
- 63 | f. Counselor consultations.
- 64 | g. Temporary financial assistance.
- 65 | h. Financial literacy skills training.

66 |

67 | The specific services to be provided under this subparagraph

68 | shall be determined by an aftercare services assessment and may

69 | be provided by the department or through referrals in the

70 | community.

71 | 2. Temporary assistance provided to prevent homelessness

72 | shall be provided as expeditiously as possible and within the

73 | limitations defined by the department.

74 | 3. A young adult who has reached 18 years of age but is

75 | not yet 21 ~~23~~ years of age who leaves foster care at 18 years of

76 | age but who requests services prior to reaching 21 ~~23~~ years of

77 | age is eligible for such services.

78 | (b) Road-to-Independence Program.—

79 | 1. The Road-to-Independence Program is intended to help

80 | eligible students who are former foster children in this state

81 | to receive the educational and vocational training needed to

82 | achieve independence. The amount of the award shall be based on

83 | the living and educational needs of the young adult and may be

84 | up to, but may not exceed, the amount of earnings that the

85 student would have been eligible to earn working a 40-hour-a-
 86 week federal minimum wage job.

87 2. A young adult who has earned a standard high school
 88 diploma or its equivalent as described in s. 1003.43 or s.
 89 1003.435, has earned a special diploma or special certificate of
 90 completion as described in s. 1003.438, or has reached 18 years
 91 of age but is not yet 21 years of age is eligible for the
 92 initial award, ~~and a young adult under 23 years of age is~~
 93 ~~eligible~~ for renewal awards, if he or she:

94 a. Was a dependent child, under chapter 39, and was living
 95 in licensed foster care or in subsidized independent living at
 96 the time of his or her 18th birthday or is currently living in
 97 licensed foster care or subsidized independent living, or, after
 98 reaching the age of 16, was adopted from foster care or placed
 99 with a court-approved dependency guardian and has spent a
 100 minimum of 6 months in foster care immediately preceding such
 101 placement or adoption;

102 b. Spent at least 6 months living in foster care before
 103 reaching his or her 18th birthday;

104 c. Is a resident of this state as defined in s. 1009.40;
 105 and

106 d. Meets one of the following qualifications:

107 (I) Has earned a standard high school diploma or its
 108 equivalent as described in s. 1003.43 or s. 1003.435, or has
 109 earned a special diploma or special certificate of completion as
 110 described in s. 1003.438, and has been admitted for full-time
 111 enrollment in an eligible postsecondary education institution as
 112 defined in s. 1009.533;

113 (II) Is enrolled full time in an accredited high school;
 114 or

115 (III) Is enrolled full time in an accredited adult
 116 education program designed to provide the student with a high
 117 school diploma or its equivalent.

118 3. A young adult applying for the Road-to-Independence
 119 Program must apply for any other grants and scholarships for
 120 which he or she may qualify. The department shall assist the
 121 young adult in the application process and may use the federal
 122 financial aid grant process to determine the funding needs of
 123 the young adult.

124 4. An award shall be available to a young adult who is
 125 considered a full-time student or its equivalent by the
 126 educational institution in which he or she is enrolled, unless
 127 that young adult has a recognized disability preventing full-
 128 time attendance. The amount of the award, whether it is being
 129 used by a young adult working toward completion of a high school
 130 diploma or its equivalent or working toward completion of a
 131 postsecondary education program, shall be determined based on an
 132 assessment of the funding needs of the young adult. This
 133 assessment must consider the young adult's living and
 134 educational costs and other grants, scholarships, waivers,
 135 earnings, and other income to be received by the young adult. An
 136 award shall be available only to the extent that other grants
 137 and scholarships are not sufficient to meet the living and
 138 educational needs of the young adult, but an award may not be
 139 less than \$25 in order to maintain Medicaid eligibility for the
 140 young adult as provided in s. 409.903.

141 5. The amount of the award may be disregarded for purposes
 142 of determining the eligibility for, or the amount of, any other
 143 federal or federally supported assistance.

144 6.a. The department must advertise the criteria,
 145 application procedures, and availability of the program to:

146 (I) Children and young adults in, leaving, or formerly in
 147 foster care.

148 (II) Case managers.

149 (III) Guidance and family services counselors.

150 (IV) Principals or other relevant school administrators.

151 (V) Guardians ad litem.

152 (VI) Foster parents.

153 b. The department shall issue awards from the program for
 154 each young adult who meets all the requirements of the program
 155 to the extent funding is available.

156 c. An award shall be issued at the time the eligible
 157 student reaches 18 years of age.

158 d. A young adult who is eligible for the Road-to-
 159 Independence Program, transitional support services, or
 160 aftercare services and who so desires shall be allowed to reside
 161 with the licensed foster family or group care provider with whom
 162 he or she was residing at the time of attaining his or her 18th
 163 birthday or to reside in another licensed foster home or with a
 164 group care provider arranged by the department.

165 e. If the award recipient transfers from one eligible
 166 institution to another and continues to meet eligibility
 167 requirements, the award must be transferred with the recipient.

168 f. Funds awarded to any eligible young adult under this

169 program are in addition to any other services or funds provided
 170 to the young adult by the department through transitional
 171 support services or aftercare services.

172 g. The department shall provide information concerning
 173 young adults receiving funding through the Road-to-Independence
 174 Program to the Department of Education for inclusion in the
 175 student financial assistance database, as provided in s.
 176 1009.94.

177 h. Funds are intended to help eligible young adults who
 178 are former foster children in this state to receive the
 179 educational and vocational training needed to become independent
 180 and self-supporting. The funds shall be terminated when the
 181 young adult has attained one of four postsecondary goals under
 182 subsection (3) or reaches 21 ~~23~~ years of age, whichever occurs
 183 earlier. In order to initiate postsecondary education, to allow
 184 for a change in career goal, or to obtain additional skills in
 185 the same educational or vocational area, a young adult may earn
 186 no more than two diplomas, certificates, or credentials. A young
 187 adult attaining an associate of arts or associate of science
 188 degree shall be permitted to work toward completion of a
 189 bachelor of arts or a bachelor of science degree or an
 190 equivalent undergraduate degree. Road-to-Independence Program
 191 funds may not be used for education or training after a young
 192 adult has attained a bachelor of arts or a bachelor of science
 193 degree or an equivalent undergraduate degree.

194 i. The department shall evaluate and renew each award
 195 annually during the 90-day period before the young adult's
 196 birthday. In order to be eligible for a renewal award for the

197 subsequent year, the young adult must:

198 (I) Complete the number of hours, or the equivalent
 199 considered full time by the educational institution, unless that
 200 young adult has a recognized disability preventing full-time
 201 attendance, in the last academic year in which the young adult
 202 earned an award, except for a young adult who meets the
 203 requirements of s. 1009.41.

204 (II) Maintain appropriate progress as required by the
 205 educational institution, except that, if the young adult's
 206 progress is insufficient to renew the award at any time during
 207 the eligibility period, the young adult may restore eligibility
 208 by improving his or her progress to the required level.

209 j. Funds may be terminated during the interim between an
 210 award and the evaluation for a renewal award if the department
 211 determines that the award recipient is no longer enrolled in an
 212 educational institution as defined in sub-subparagraph 2.d., or
 213 is no longer a state resident. The department shall notify a
 214 recipient who is terminated and inform the recipient of his or
 215 her right to appeal.

216 k. An award recipient who does not qualify for a renewal
 217 award or who chooses not to renew the award may subsequently
 218 apply for reinstatement. An application for reinstatement must
 219 be made before the young adult reaches 21 ~~23~~ years of age, and a
 220 student may not apply for reinstatement more than once. In order
 221 to be eligible for reinstatement, the young adult must meet the
 222 eligibility criteria and the criteria for award renewal for the
 223 program.

224 (c) Transitional support services.—

225 1. In addition to any services provided through aftercare
226 support or the Road-to-Independence Program, a young adult
227 formerly in foster care may receive other appropriate short-term
228 funding and services, which may include financial, housing,
229 counseling, employment, education, mental health, disability,
230 and other services, if the young adult demonstrates that the
231 services are critical to the young adult's own efforts to
232 achieve self-sufficiency and to develop a personal support
233 system. The department or community-based care provider shall
234 work with the young adult in developing a joint transition plan
235 that is consistent with a needs assessment identifying the
236 specific need for transitional services to support the young
237 adult's own efforts. The young adult must have specific tasks to
238 complete or maintain included in the plan and be accountable for
239 the completion of or making progress towards the completion of
240 these tasks. If the young adult and the department or community-
241 based care provider cannot come to agreement regarding any part
242 of the plan, the young adult may access a grievance process to
243 its full extent in an effort to resolve the disagreement.

244 2. A young adult formerly in foster care is eligible to
245 apply for transitional support services if he or she has reached
246 18 years of age but is not yet 21 ~~23~~ years of age, was a
247 dependent child pursuant to chapter 39, was living in licensed
248 foster care or in subsidized independent living at the time of
249 his or her 18th birthday, and had spent at least 6 months living
250 in foster care before that date.

251 3. If at any time the services are no longer critical to
252 the young adult's own efforts to achieve self-sufficiency and to

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253 | develop a personal support system, they shall be terminated.

254 | (d) Payment of aftercare, Road-to-Independence Program, or
255 | transitional support funds.-

256 | 1. Payment of aftercare, Road-to-Independence Program, or
257 | transitional support funds shall be made directly to the
258 | recipient unless the recipient requests in writing to the
259 | community-based care lead agency, or the department, that the
260 | payments or a portion of the payments be made directly on the
261 | recipient's behalf in order to secure services such as housing,
262 | counseling, education, or employment training as part of the
263 | young adult's own efforts to achieve self-sufficiency.

264 | 2. After the completion of aftercare support services that
265 | satisfy the requirements of sub-subparagraph (a)1.h., payment of
266 | awards under the Road-to-Independence Program shall be made by
267 | direct deposit to the recipient, unless the recipient requests
268 | in writing to the community-based care lead agency or the
269 | department that:

270 | a. The payments be made directly to the recipient by check
271 | or warrant;

272 | b. The payments or a portion of the payments be made
273 | directly on the recipient's behalf to institutions the recipient
274 | is attending to maintain eligibility under this section; or

275 | c. The payments be made on a two-party check to a business
276 | or landlord for a legitimate expense, whether reimbursed or not.
277 | A legitimate expense for the purposes of this sub-subparagraph
278 | shall include automobile repair or maintenance expenses;
279 | educational, job, or training expenses; and costs incurred,
280 | except legal costs, fines, or penalties, when applying for or

281 | executing a rental agreement for the purposes of securing a home
 282 | or residence.

283 | 3. The community-based care lead agency may purchase
 284 | housing, transportation, or employment services to ensure the
 285 | availability and affordability of specific transitional services
 286 | thereby allowing an eligible young adult to utilize these
 287 | services in lieu of receiving a direct payment. Prior to
 288 | purchasing such services, the community-based care lead agency
 289 | must have a plan approved by the department describing the
 290 | services to be purchased, the rationale for purchasing the
 291 | services, and a specific range of expenses for each service that
 292 | is less than the cost of purchasing the service by an individual
 293 | young adult. The plan must include a description of the
 294 | transition of a young adult using these services into
 295 | independence and a timeframe for achievement of independence. An
 296 | eligible young adult who prefers a direct payment shall receive
 297 | such payment. The plan must be reviewed annually and evaluated
 298 | for cost-efficiency and for effectiveness in assisting young
 299 | adults in achieving independence, preventing homelessness among
 300 | young adults, and enabling young adults to earn a livable wage
 301 | in a permanent employment situation.

302 | 4. The young adult who resides with a foster family may
 303 | not be included as a child in calculating any licensing
 304 | restriction on the number of children in the foster home.

305 | (e) Appeals process.—

306 | 1. The Department of Children and Family Services shall
 307 | adopt by rule a procedure by which a young adult may appeal an
 308 | eligibility determination or the department's failure to provide

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309 aftercare, Road-to-Independence Program, or transitional support
 310 services, or the termination of such services, if such funds are
 311 available.

312 2. The procedure developed by the department must be
 313 readily available to young adults, must provide timely
 314 decisions, and must provide for an appeal to the Secretary of
 315 Children and Family Services. The decision of the secretary
 316 constitutes final agency action and is reviewable by the court
 317 as provided in s. 120.68.

318 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5401 PCB JUAS 12-01 Juvenile Detention

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	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 2012-13 General Appropriations Act.

The term "respite" is defined in chapter 985.03(46) as "a placement that is available for the care, custody, and placement of a youth charged with domestic violence as an alternative to secure detention or for placement of a youth when a shelter bed for a child in need of services or a family in need of services is unavailable."

Currently, respite care is lawfully authorized as an alternative to secure detention for preadjudicated youth who have been charged with domestic violence who do not otherwise meet detention criteria. Counties are statutorily required to pay for the costs of secure detention but not the costs of respite care.

This bill would modify the definition of the term "detention care" to include alternatives to secure detention, including but not limited to respite beds for youth charged with domestic violence. The counties would be required to pay the costs of respite care.

Respite beds have a lower per diem cost than secure detention beds. If respite beds are used instead of secure detention beds, counties will realize a cost savings as a result of this bill. The Shared County/Juvenile Detention Trust Fund will realize a savings of \$3.2 million and 77 FTE from using respite beds. \$1.2 million of the savings will be reinvested into the Shared County/Juvenile Detention Trust Fund to provide funding for 43 respite beds across the state. The trust fund will have a net savings of \$2 million in the House proposed FY 2012-13 GAA.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Currently, respite care is lawfully authorized as an alternative to secure detention for preadjudicated youth who have been charged with domestic violence. The term "respite" is defined in chapter 985.03(46) as "a placement that is available for the care, custody, and placement of a youth charged with domestic violence as an alternative to secure detention or for placement of a youth when a shelter bed for a child in need of services or a family in need of services is unavailable." Section 985.255(2), Florida Statutes, states the court may hold youth in secure detention if a youth charged with domestic violence does not meet detention criteria and the court makes specific written findings that respite care for the child is not available or it is necessary to place the child in secure detention in order to protect the victim from injury.¹ The youth may not be held in secure detention pursuant to this provision for more than 48 hours unless ordered by the court. After 48 hours, the court is required to hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. The department does not currently contract for any respite beds for the purposes described in this section.

Pursuant to section 985.686, counties are responsible for paying the costs of preadjudatory secure detention pursuant but are not required to pay the costs of respite care. In Fiscal Year 2010-11, 2,614 low-risk youth who did not meet secure detention criteria were placed in secure detention for domestic violence charges because there were no respite beds available². Because these youth were preadjudicated, the counties were responsible for paying their detention costs. According to the Department of Juvenile Justice, the average length of stay for the 2,614 youth was 6 days.³ From July 1, 2011 through December 31, 2011, there were 1,043 youth placed in secure detention for domestic violence charges because there were no respite beds available⁴.

Effect of Proposed Bill

HB 5401 proposes to expand the definition of "detention care" to include "alternatives to secure detention, including but not limited to respite beds for youth charged with domestic violence charges." This would require the counties to pay the costs of respite beds.. If respite beds are used in lieu of secure detention, the counties will realize a savings⁵.

B. SECTION DIRECTORY:

Section 1: Amends section 985.686, F.S., relating to shared county and state responsibility for juvenile detention.

Section 2: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹ Section 985.255(2), F.S.

² Department of Juvenile Justice, "Alternatives to Detention (Respite Beds)"

³ The department defines the average length of stay as the total number of detained days for the domestic violence-related stays. Domestic violence-related stays is defined as detention stays that appear to have only been necessary due to the domestic violence criteria being met, according to the department. The department did not include youth who met other detention immediate qualifier criteria.

⁴ *Id.*

⁵ *Id.*

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "fiscal comments" section.

2. Expenditures:

See "fiscal comments" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Juvenile Justice may contract with private providers for respite care beds to provide care for youth charged with domestic violence.

D. FISCAL COMMENTS:

The estimated daily cost of a respite bed is \$100⁶ compared to the estimated daily cost of secure detention, \$275⁷. It is estimated that 43 respite beds⁸ will be needed for the youth in Florida who are charged with domestic violence but do not meet secure detention criteria. The Shared County/Juvenile Detention Trust Fund will realize a savings of \$3.2 million and 77 FTE from using respite beds. \$1.2 million of the savings will be reinvested into the Shared County/Juvenile Detention Trust Fund to provide funding for 43 respite beds across the state. The trust fund will have a net savings of \$2 million.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 5401 will provide the counties with a less expensive alternative to detention for youth charged with domestic violence and do not meet the criteria for secure detention. The bill does not require the county detention centers to use respite beds, it allows them to use respite beds if they are available. Counties will realize a savings in detention costs from the changes this bill proposes.

This bill does not appear to require counties or municipalities to 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:

⁶ Governor's FY 2012-13 Budget Recommendations, Department of Juvenile Justice, Governor's Office of Policy and Budget Analyst Workpapers, Prepared by Jason Welty, December 2011

⁷ 2010-11 Detention Cost Sharing Final Expenditures Reversions, Department of Juvenile Justice

⁸ Governor's FY 2012-13 Budget Recommendations, Department of Juvenile Justice, Governor's Office of Policy and Budget Analyst Workpapers, Prepared by Jason Welty, December 2011

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 5401

2012

1 A bill to be entitled
2 An act relating to juvenile detention; amending s.
3 985.686, F.S.; providing that detention care, for
4 purposes of provisions relating to shared county and
5 state responsibility for juvenile detention costs,
6 includes alternatives to secured detention; providing
7 an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Paragraph (a) of subsection (2) of section
12 985.686, Florida Statutes, is amended to read:

13 985.686 Shared county and state responsibility for
14 juvenile detention.—

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

16 (a) "Detention care" means secure detention and
17 alternatives to secure detention, including, but not limited to,
18 respite beds for youth charged with domestic violence charges.


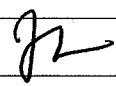
19 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5403 PCB JUAS 12-02 State Court Revenues

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	Toms	Jones Darity
1) Appropriations Committee		Toms 	Leznoff 

SUMMARY ANALYSIS

The bill conforms to the House of Representatives proposed Fiscal Year 2012-13 General Appropriations Act. HB 5403 proposes to redirect revenues associated with mortgage foreclosure filing fees and mortgage foreclosure counterclaims filing fees from the State Courts Revenue Trust Fund into the General Revenue Fund. This will redirect revenues generated from mortgage foreclosure filing fees and mortgage foreclosure counterclaims filing fees from the State Courts Revenue Trust Fund (SCRTF) to the General Revenue Fund.

The House of Representative proposed FY 2012-13 GAA fund-shifts \$224.3 million from the State Courts Revenue Trust Fund to the General Revenue Fund. The redirection of revenues will offset deficits in the State Courts Revenue Trust Fund and provide stable funds to support and operate the State Courts System.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The 2009 Florida Legislature passed Senate Bill 14-A (Ch. 2009-7, L.O.F.) creating the State Courts Revenue Trust Fund during a special session called to address current year budget shortfalls. The bill was passed with Senate Bill 12-A (Ch. 2009-6, L.O.F.) which redirected fines, fees and revenues into the State Courts Revenue Trust Fund. The two bills significantly altered how the State Court System is funded. In Fiscal Year 2008-09, 90 percent of the State Court System's budget was funded with General Revenue and the remaining 10 percent was funded with trust funds; currently, only 10 percent of the State Court System's budget is funded with General Revenue and 90 percent is funded with trust funds.

The SCRTF funds 83 percent of the total State Court System's budget. The trust fund receives revenues from probate fees¹, circuit filing fees², mortgage foreclosure filing fees³, mortgage foreclosure counterclaim filing fees⁴, appellate fees⁵ and traffic fines⁶. The largest revenue source for the trust fund comes from mortgage foreclosure filing fees. In FY 2009-10, foreclosure filing fees made up 80% of the entire trust fund and in FY 2010-11, foreclosure filing fees made up 67%⁷ of the total trust fund.

Since the creation of the State Courts Revenue Trust Fund, there has been a steep decline in mortgage foreclosure filing fee revenue. The February 2010 Revenue Estimating Conference projected revenue of \$379.8⁸ million for FY 2010-11. The February 2011 Revenue Estimating Conference projected revenue of \$216.7⁹ million for the same fiscal year. In one year, the projected revenue dropped \$163.1 million. An appropriation of \$38.9 million in General Revenue was necessary in the 2011-12 GAA to cover the State Court's System budget deficit for FY 2010-11¹⁰.

Similar trends continue for Fiscal Year 2011-12. The February 2011 Revenue Estimating Conference projected revenue of \$415.7¹¹ million for FY 2011-12. The December 2011 Revenue Estimating Conference projected revenue of \$260.3¹² million for the same fiscal year. In ten months, the projected revenue dropped \$155.4 million. The House proposed 2012-13 GAA appropriates \$121.7 million in General Revenue to fulfill the State Court System's current year budget deficit.

The December 2011 Revenue Estimating Conference has made an official estimate of \$298.7¹³ million for Fiscal Year 2012-13. Currently the base budget for the SCRTF is \$359.9 million. If trends continue, the Legislature will need to continue to fund the SCRTF shortfall with General Revenue in order to maintain current funding levels.

The table below further illustrates the continuing decline in revenue for the State Courts Revenue Trust Fund as projected by the Revenue Estimating Conferences. The table also shows the appropriated budget for each fiscal year.

¹Section 28.2401(1), F.S.

²Section 28.241(1)(a)1.a., F.S. and section 28.241(1)(a)1.b., F.S.

³Section 28.241(1)(a)2.d., F.S.

⁴Section 28.241(1)(c)2, F.S.

⁵Section 25.241, F.S. and 35.22, F.S.

⁶Section 318.14, F.S., 318.18(19)(a), F.S., and 318.21(20), F.S.

⁷Office of Economic and Demographic Research, Article V Revenues breakdown spreadsheet, on file with the Justice Appropriations Subcommittee Staff

⁸Estimating Conference, Article V Fees & Transfers, Executive Summary, February 2010

⁹Estimating Conference, Article V Fees & Transfers, Executive Summary, February 2011

¹⁰Ch. 2011-69, L.O.F.

¹¹Estimating Conference, Article V Fees & Transfers, Executive Summary, February 2011

¹²Estimating Conference, Article V Fees & Transfers, Executive Summary, December 2011

¹³Estimating Conference, Article V Fees & Transfers, Executive Summary, December 2011

State Courts Revenue Trust Fund Projected Revenues

Fiscal Year	REC Feb 2010	REC Feb 2011	REC Dec 2011	Budget
2010-11	\$379.8	\$216.7	N/A	\$370.4
2011-12	\$291.8	\$415.7	\$260.3	\$361.2
2012-13	\$229.3	\$309.4	\$298.7	\$359.9 ¹⁴

Source: Revenue Estimating Conference, Article V Fees & Transfers, Executive Summaries - Feb 2010, Feb 2011, Dec 2011

Effect of Proposed Bill

HB 5403 proposes to redirect revenues associated with mortgage foreclosure filing fees and mortgage foreclosure counterclaims filing fees from the State Courts Revenue Trust Fund into the General Revenue Fund. Due to the instability of revenue from mortgage foreclosure filing fees, the current revenue stream is not sufficient to fund the State Court System at current levels. Fund shifting the revenues and providing the State Court System with General Revenue will stabilize the Court System's budget.

As a result of this statute change, revenues will be deposited into the General Revenue Fund from foreclosure filing fees, totaling \$224.3 million¹⁵. Trust fund authority would be reduced from the State Court's budget and General Revenue would be appropriated. The SCRTF would continue to be funded with probate fees, circuit fees, appellate fees and traffic fines. This change in statute and budget should mitigate the need for the legislature to cover a budget deficit with General Revenue and stabilize the operations of the courts due to increased funding predictability.

B. SECTION DIRECTORY:

Section 1: Amends section 28.241 related to filing fees for trial and appellate proceedings.

Section 2: Provides an effective date of June 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "fiscal comments" section.

2. Expenditures:

See "fiscal comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

¹⁴ Base Budget

¹⁵ Office of Economic and Demographic Research, Article V Revenue Estimates breakdown spreadsheet, on file with the Justice Appropriations Subcommittee Staff

None. The filing fees are not being increased or decreased, simply redirected.

D. FISCAL COMMENTS:

A fund shift of \$224.3 million will be redirected from the State Courts Revenue Trust Fund to the General Revenue Fund to fund the State Court System. The mortgage foreclosure filing fees will be redirected into the General Revenue Fund. In order to fund the deficit caused by the revenue shortfall, an additional \$63.8 million in General Revenue is needed.

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

1 A bill to be entitled
 2 An act relating to state court revenues; amending s.
 3 28.241, F.S.; redirecting revenue from filing fees for
 4 civil actions in circuit court relating to real
 5 property or mortgage foreclosure from the State Courts
 6 Revenue Trust Fund to the General Revenue Fund;
 7 conforms provisions; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraphs (a) and (c) of subsection (1) of
 12 section 28.241, Florida Statutes, are amended to read:

13 28.241 Filing fees for trial and appellate proceedings.—

14 (1)(a)1.a. Except as provided in sub-subparagraph b. and
 15 subparagraph 2., the party instituting any civil action, suit,
 16 or proceeding in the circuit court shall pay to the clerk of
 17 that court a filing fee of up to \$395 in all cases in which
 18 there are not more than five defendants and an additional filing
 19 fee of up to \$2.50 for each defendant in excess of five. Of the
 20 first \$280 in filing fees, \$80 must be remitted by the clerk to
 21 the Department of Revenue for deposit into the General Revenue
 22 Fund, \$195 must be remitted to the Department of Revenue for
 23 deposit into the State Courts Revenue Trust Fund, \$3.50 must be
 24 remitted to the Department of Revenue for deposit into the
 25 Clerks of the Court Trust Fund within the Justice Administrative
 26 Commission and used to fund the Florida Clerks of Court
 27 Operations Corporation created in s. 28.35, and \$1.50 must ~~shall~~
 28 be remitted to the Department of Revenue for deposit into the

29 Administrative Trust Fund within the Department of Financial
 30 Services to fund clerk budget reviews conducted by the
 31 Department of Financial Services. One third of any filing fees
 32 collected by the clerk of the circuit court in excess of \$100
 33 must ~~shall~~ be remitted to the Department of Revenue for deposit
 34 into the Clerks of the Court Trust Fund within the Justice
 35 Administrative Commission.

36 b. The party instituting any civil action, suit, or
 37 proceeding in the circuit court under chapter 39, chapter 61,
 38 chapter 741, chapter 742, chapter 747, chapter 752, or chapter
 39 753 shall pay to the clerk of that court a filing fee of up to
 40 \$295 in all cases in which there are not more than five
 41 defendants and an additional filing fee of up to \$2.50 for each
 42 defendant in excess of five. Of the first \$180 in filing fees,
 43 \$80 must be remitted by the clerk to the Department of Revenue
 44 for deposit into the General Revenue Fund, \$95 must be remitted
 45 to the Department of Revenue for deposit into the State Courts
 46 Revenue Trust Fund, \$3.50 must be remitted to the Department of
 47 Revenue for deposit into the Clerks of the Court Trust Fund
 48 within the Justice Administrative Commission and used to fund
 49 the Florida Clerks of Court Operations Corporation created in s.
 50 28.35, and \$1.50 must ~~shall~~ be remitted to the Department of
 51 Revenue for deposit into the Administrative Trust Fund within
 52 the Department of Financial Services to fund clerk budget
 53 reviews conducted by the Department of Financial Services.

54 c. An additional filing fee of \$4 shall be paid to the
 55 clerk. The clerk shall remit \$3.50 to the Department of Revenue
 56 for deposit into the Court Education Trust Fund and shall remit

57 | 50 cents to the Department of Revenue for deposit into the
 58 | Clerks of the Court Trust Fund within the Justice Administrative
 59 | Commission to fund clerk education. An additional filing fee of
 60 | up to \$18 shall be paid by the party seeking each severance that
 61 | is granted. The clerk may impose an additional filing fee of up
 62 | to \$85 for all proceedings of garnishment, attachment, replevin,
 63 | and distress. Postal charges incurred by the clerk of the
 64 | circuit court in making service by certified or registered mail
 65 | on defendants or other parties shall be paid by the party at
 66 | whose instance service is made. ~~No~~ Additional fees, charges, or
 67 | costs may not ~~shall~~ be added to the filing fees imposed under
 68 | this section, except as authorized in this section or by general
 69 | law.

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

74 | b. A party shall estimate in writing the amount in
 75 | controversy of the claim upon filing the action. For purposes of
 76 | this subparagraph, the value of a mortgage foreclosure action is
 77 | based upon the principal due on the note secured by the
 78 | mortgage, plus interest owed on the note and any moneys advanced
 79 | by the lender for property taxes, insurance, and other advances
 80 | secured by the mortgage, at the time of filing the foreclosure.
 81 | The value shall also include the value of any tax certificates
 82 | related to the property. In stating the value of a mortgage
 83 | foreclosure claim, a party shall declare in writing the total
 84 | value of the claim, as well as the individual elements of the

85 value as prescribed in this sub-subparagraph.

86 c. In its order providing for the final disposition of the
 87 matter, the court shall identify the actual value of the claim.
 88 The clerk shall adjust the filing fee if there is a difference
 89 between the estimated amount in controversy and the actual value
 90 of the claim and collect any additional filing fee owed or
 91 provide a refund of excess filing fee paid.

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

93 (I) Three hundred and ninety-five dollars in all cases in
 94 which the value of the claim is \$50,000 or less and in which
 95 there are not more than five defendants. The party shall pay an
 96 additional filing fee of up to \$2.50 for each defendant in
 97 excess of five. Of the first \$280 in filing fees, \$275 ~~\$80~~ must
 98 be remitted by the clerk to the Department of Revenue for
 99 deposit into the General Revenue Fund, ~~\$195 must be remitted to~~
 100 ~~the Department of Revenue for deposit into the State Courts~~
 101 ~~Revenue Trust Fund~~, \$3.50 must be remitted to the Department of
 102 Revenue for deposit into the Clerks of the Court Trust Fund
 103 within the Justice Administrative Commission and used to fund
 104 the Florida Clerks of Court Operations Corporation created in s.
 105 28.35, and \$1.50 must ~~shall~~ be remitted to the Department of
 106 Revenue for deposit into the Administrative Trust Fund within
 107 the Department of Financial Services to fund clerk budget
 108 reviews conducted by the Department of Financial Services;

109 (II) Nine hundred dollars in all cases in which the value
 110 of the claim is more than \$50,000 but less than \$250,000 and in
 111 which there are not more than five defendants. The party shall
 112 pay an additional filing fee of up to \$2.50 for each defendant

113 | in excess of five. Of the first \$785 in filing fees, \$780 ~~\$80~~
 114 | must be remitted by the clerk to the Department of Revenue for
 115 | deposit into the General Revenue Fund, ~~\$700 must be remitted to~~
 116 | ~~the Department of Revenue for deposit into the State Courts~~
 117 | ~~Revenue Trust Fund~~, \$3.50 must be remitted to the Department of
 118 | Revenue for deposit into the Clerks of the Court Trust Fund
 119 | within the Justice Administrative Commission and used to fund
 120 | the Florida Clerks of Court Operations Corporation described in
 121 | s. 28.35, and \$1.50 must ~~shall~~ be remitted to the Department of
 122 | Revenue for deposit into the Administrative Trust Fund within
 123 | the Department of Financial Services to fund clerk budget
 124 | reviews conducted by the Department of Financial Services; or
 125 | (III) One thousand nine hundred dollars in all cases in
 126 | which the value of the claim is \$250,000 or more and in which
 127 | there are not more than five defendants. The party shall pay an
 128 | additional filing fee of up to \$2.50 for each defendant in
 129 | excess of five. Of the first \$1,785 in filing fees, \$1,780 ~~\$80~~
 130 | must be remitted by the clerk to the Department of Revenue for
 131 | deposit into the General Revenue Fund, ~~\$1,700 must be remitted~~
 132 | ~~to the Department of Revenue for deposit into the State Courts~~
 133 | ~~Revenue Trust Fund~~, \$3.50 must be remitted to the Department of
 134 | Revenue for deposit into the Clerks of the Court Trust Fund
 135 | within the Justice Administrative Commission to fund the Florida
 136 | Clerks of Court Operations Corporation created in s. 28.35, and
 137 | \$1.50 must ~~shall~~ be remitted to the Department of Revenue for
 138 | deposit into the Administrative Trust Fund within the Department
 139 | of Financial Services to fund clerk budget reviews conducted by
 140 | the Department of Financial Services.

141 e. An additional filing fee of \$4 shall be paid to the
 142 clerk. The clerk shall remit \$3.50 to the Department of Revenue
 143 for deposit into the Court Education Trust Fund and shall remit
 144 50 cents to the Department of Revenue for deposit into the
 145 Clerks of the Court Trust Fund within the Justice Administrative
 146 Commission to fund clerk education. An additional filing fee of
 147 up to \$18 shall be paid by the party seeking each severance that
 148 is granted. The clerk may impose an additional filing fee of up
 149 to \$85 for all proceedings of garnishment, attachment, replevin,
 150 and distress. Postal charges incurred by the clerk of the
 151 circuit court in making service by certified or registered mail
 152 on defendants or other parties shall be paid by the party at
 153 whose instance service is made. ~~No~~ Additional fees, charges, or
 154 costs may not ~~shall~~ be added to the filing fees imposed under
 155 this section, except as authorized in this section or by general
 156 law.

157 (c)1. A party in addition to a party described in sub-
 158 subparagraph (a)1.a. who files a pleading in an original civil
 159 action in circuit court for affirmative relief by cross-claim,
 160 counterclaim, counterpetition, or third-party complaint shall
 161 pay the clerk of court a fee of \$395. A party in addition to a
 162 party described in sub-subparagraph (a)1.b. who files a pleading
 163 in an original civil action in circuit court for affirmative
 164 relief by cross-claim, counterclaim, counterpetition, or third-
 165 party complaint shall pay the clerk of court a fee of \$295. The
 166 clerk shall remit the fee to the Department of Revenue for
 167 deposit into the General Revenue Fund.

168 2. A party in addition to a party described in

169 | subparagraph (a)2. who files a pleading in an original civil
 170 | action in circuit court for affirmative relief by cross-claim,
 171 | counterclaim, counterpetition, or third-party complaint shall
 172 | pay the clerk of court a graduated fee of:

173 | a. Three hundred and ninety-five dollars in all cases in
 174 | which the value of the pleading is \$50,000 or less;

175 | b. Nine hundred dollars in all cases in which the value of
 176 | the pleading is more than \$50,000 but less than \$250,000; or

177 | c. One thousand nine hundred dollars in all cases in which
 178 | the value of the pleading is \$250,000 or more.

179 |

180 | The clerk shall remit the fees collected under this subparagraph
 181 | to the Department of Revenue for deposit into the General
 182 | Revenue Fund, ~~except that the clerk shall remit \$100 of the fee~~
 183 | ~~collected under sub-subparagraph a., \$605 of the fee collected~~
 184 | ~~under sub-subparagraph b., and \$1,605 of the fee collected under~~
 185 | ~~sub-subparagraph c. to the Department of Revenue for deposit~~
 186 | ~~into the State Courts Revenue Trust Fund.~~


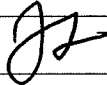
187 | Section 2. This act shall take effect June 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5405 PCB JUAS 12-03 Clerks of the 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	9 Y, 3 N	Toms	Jones Darity
1) Appropriations Committee		Toms 	Leznoff 

SUMMARY ANALYSIS

The bill makes conforming changes to the proposed House of Representatives Fiscal Year 2012-13 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 2009-006, 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 \$446.7 million in reduced trust fund appropriations as reflected in the proposed House of Representatives FY 2012-13 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 \$33 million loss according to the January 2012 General 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 2010 Legislature transferred \$18.6 million from the State Courts Revenue Trust Fund to the Clerks of Court Trust Fund to pay a portion of the eight percent general revenue charge for Fiscal year 2009-10. The 2011 Legislature appropriated of \$44.2 million in nonrecurring general revenue in the 2011-12 GAA to cover the Clerks of Court Trust Fund deficit. In current year, the clerks of court are projecting a deficit of \$58.5 million.

Since the inception of the clerks being in the GAA \$62.8 million of state funds have been appropriated to offset the assessment of the GR service charge and the clerk's deficit. The House proposed 2012-13 GAA appropriates \$58.5 million in General Revenue to fund the clerk's current year deficit and GR service charge.

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.”¹

In 1998, voters approved an additional revision to Article V, referenced as Revision 7, which allocates more costs to the state.² 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;

¹ 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).

² *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.³

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.⁴

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.⁵ 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.⁶

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.⁷ 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

³ Section 28.35(3)(a), F.S.

⁴ Section 28.35(3)(b), F.S.

⁵ Section 28.36(3), F.S. (2008).

⁶ Section 28.36(4), F.S. (2008).

⁷ 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.⁸

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)⁹ 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.¹⁰

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).¹¹ 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.¹²

Florida Clerks of Court Operations Corporation

⁸ See s. 28.35(1)(f), F.S. (2008).

⁹ 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.

¹⁰ See s. 28.36(6), F.S. (2008).

¹¹ Section 28.37(2), F.S.

¹² *Id.*

The Corporation is now considered a political subdivision of the state and is exempt from corporate income tax.¹³ 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.¹⁴ 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.¹⁵

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.¹⁶

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.¹⁷

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:¹⁸

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.¹⁹

¹³ Section 28.35(1)(c), F.S.

¹⁴ Section 28.35(1)(a), F.S.

¹⁵ Section 28.35(2), F.S.

¹⁶ Section 28.35(4), F.S.

¹⁷ Section 28.36(1), F.S.

¹⁸ 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.

¹⁹ 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.²⁰ 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.²¹ The Legislature may reject or modify the proposed unit costs, and appropriates the total amount of the clerk budgets in the General Appropriations Act.²²

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 Act²³.

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.
- Provides that one-third of filing fees collected each month be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund, unless the remaining two-thirds are less than one-twelfth of the clerk's total budget.
- 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.

²⁰ Section 28.36(6), F.S.

²¹ Section 28.36(8), F.S.

²² Section 28.36(9), F.S.

²³ Section 28.36(10), F.S.

- 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.
- Provides that the clerks' budget not exceed 1 percent of the prior year's budget and provides for exceptions.
- Defines workload measures and workload performance standards.
- 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 Chief Financial Officer 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.

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 filing fees for trial and appellate proceedings.

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.

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, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See “fiscal comments” section.

2. Expenditures:

See “fiscal comments” section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See “fiscal comments” section.

2. Expenditures:

See “fiscal comments” section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The 2010 Legislature transferred \$18.6 million from the State Courts Revenue Trust Fund to the Clerks of Court Trust Fund to pay a portion of the eight percent general revenue charge for Fiscal year 2009-10. The 2011 Legislature appropriated of \$44.2 million in nonrecurring general revenue in the 2011-12 GAA to cover the Clerks of Court Trust Fund deficit. In current year, the clerks of court are projecting a deficit of \$58.5 million.

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 \$446.7 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 December 2011 Article V Revenue Estimating Conference projected the trust fund will generate

approximately \$422 million in revenue for Fiscal Year 2011-2012 and \$423.6 for Fiscal Year 2012-13. The loss of the general revenue service charge is estimated to be \$33 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. However, it should be noted the clerks are expecting a decline in collections.

Fiscal Year	GR service charge assessed	GR service charged paid by clerks	Clerks Operating Deficit	Amount of deficit paid with state funds and funding source	
2009-10	\$ 26.80	\$ 8.20	\$ -	\$ 18.60	State Courts Revenue TF
2010-11	\$ 35.90	\$ -	\$ 8.30	\$ 44.20	General Revenue
2011-12	\$ 32.90	\$ -	\$ 25.60	\$ 58.50	Proposed House GAA 2012-2013; Funds with General Revenue

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

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1 A bill to be entitled
2 An act relating to clerks of the court; transferring
3 the Clerks of the Court Trust Fund within the Justice
4 Administrative Commission together with all balances
5 in the fund to the Department of Revenue; amending s.
6 11.90, F.S.; providing additional powers and duties
7 for the Legislative Budget Commission; amending s.
8 28.241, F.S.; revising the distribution of filing
9 fees; amending ss. 28.2455 and 28.246, F.S.;
10 conforming provisions to changes made by the act;
11 amending s. 28.35, F.S.; revising provisions relating
12 to the Florida Clerks of Court Operations Corporation;
13 deleting provisions relating to administrative housing
14 and budgeting of the corporation under the Justice
15 Administrative Commission; deleting provisions
16 relating to the corporation's employees as state
17 employees; deleting provisions relating to ex officio
18 members of the executive council; deleting an
19 exemption from the Administrative Procedures Act;
20 specifying that the corporation is subject to
21 specified procurement provisions; revising duties of
22 the corporation; requiring establishment of a process
23 for the review of proposed court-related budgets
24 submitted by clerks of the court for completeness and
25 compliance with specified provisions; providing for
26 review and certification of proposed budgets submitted
27 by clerks of the court; requiring annual submission of
28 its proposed budget and specified information to the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 Legislative Budget Commission; specifying functions
 30 that clerks may and may not fund from filing fees,
 31 service charges, court costs, and fines; deleting
 32 provisions relating to preparation of a legislative
 33 budget request; providing for funding pursuant to a
 34 contract with the Chief Financial Officer; revising
 35 provisions relating to audits; amending s. 28.36,
 36 F.S.; conforming provisions to changes made by the
 37 act; providing for proposed budgets from clerks;
 38 requiring reporting of anticipated deficits; requiring
 39 increasing all fees and service charges and any other
 40 court-related clerk fees and charges in certain
 41 circumstances; authorizing the retention of the
 42 additional revenues from such increases in certain
 43 circumstances; providing for corrective measures if
 44 the Chief Financial Officer finds the court-related
 45 budget proposed by a clerk includes functions not
 46 included in the standard list of court-related
 47 functions; authorizing the Legislative Budget
 48 Commission to approve increases to the maximum annual
 49 budgets approved for individual clerks of the court
 50 for court-related functions in certain circumstances;
 51 providing a limit on the total amount of such
 52 increases for each county fiscal year; authorizing the
 53 corporation to submit proposed legislation for
 54 approval of clerk budget request amounts exceeding
 55 specified restrictions; deleting provisions relating
 56 to legislative budget requests and release of funds;

57 | creating s. 28.365, F.S.; providing that clerks of the
 58 | court are subject to specified procurement
 59 | requirements and limitations; amending s. 28.37, F.S.;
 60 | providing, beginning July 1, 2012, for periodic
 61 | remission of a specified amount of all fines, fees,
 62 | service charges, and court costs collected by the
 63 | clerks of the court to the Department of Revenue for
 64 | deposit into the Clerks of the Court Trust Fund;
 65 | providing an exception; providing, beginning January
 66 | 1, 2013, for remission of all fines, fees, service
 67 | charges, and court costs and certain other funds
 68 | collected by the clerks of the court to the Department
 69 | of Revenue for deposit into the General Revenue Fund
 70 | in excess of the amount needed to meet the approved
 71 | budget amounts; requiring the Department of Revenue to
 72 | collect any funds that the Florida Clerks of Court
 73 | Operations Corporation determines upon investigation
 74 | were due but not remitted; amending ss. 28.43, 34.041,
 75 | 43.16, 110.205, and 142.01, F.S.; conforming
 76 | provisions to changes made by the act; amending s.
 77 | 213.131, F.S.; conforming provisions to changes made
 78 | by the act; providing that funds received by the
 79 | Department of Revenue from the clerks of the court
 80 | shall be credited to the Clerks of the Court Trust
 81 | Fund as provided in a specified act; amending s.
 82 | 216.011, F.S.; providing that the Florida Clerks of
 83 | Court Operations Corporation is not included in the
 84 | definition of the term "state agency" for specified

85 | purposes; specifying the approved budget for the
 86 | clerks of the circuit court for a specified period;
 87 | providing for determination of budget amounts for
 88 | individual clerks; providing an effective date.

89 |

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

91 |

92 | Section 1. The Clerks of the Court Trust Fund within the
 93 | Justice Administrative Commission, FLAIR number 21-2-588, is
 94 | transferred together with all balances in the fund to the
 95 | Department of Revenue.

96 | Section 2. Subsection (6) of section 11.90, Florida
 97 | Statutes, is amended to read:

98 | 11.90 Legislative Budget Commission.—

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

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

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

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

107 | (d) Review and approve, disapprove, or amend the total
 108 | combined budgets of the clerks of the court or the budget of any
 109 | individual clerk of the court.

110 | ~~(e) In addition to the powers and duties specified in this~~
 111 | ~~subsection, the commission shall~~ Exercise all other powers and
 112 | perform any other duties prescribed by the Legislature.

113 Section 3. Paragraph (a) of subsection (1) of section
 114 28.241, Florida Statutes, is amended to read:
 115 28.241 Filing fees for trial and appellate proceedings.—
 116 (1)(a)1.a. Except as provided in sub-subparagraph b. and
 117 subparagraph 2., the party instituting any civil action, suit,
 118 or proceeding in the circuit court shall pay to the clerk of
 119 that court a filing fee of up to \$395 in all cases in which
 120 there are not more than five defendants and an additional filing
 121 fee of up to \$2.50 for each defendant in excess of five. Of the
 122 first \$280 in filing fees, \$80 must be remitted by the clerk to
 123 the Department of Revenue for deposit into the General Revenue
 124 Fund, \$195 must be remitted to the Department of Revenue for
 125 deposit into the State Courts Revenue Trust Fund, and \$5 ~~\$3.50~~
 126 must be remitted to the Department of Revenue for deposit into
 127 the Administrative Clerks of the Court ~~Trust Fund~~ within the
 128 Department of Financial Services ~~Justice Administrative~~
 129 ~~Commission~~ and used to fund the contract with the Florida Clerks
 130 of Court Operations Corporation created in s. 28.35. One-third
 131 of the filing fees collected each month, unless the remaining
 132 two-thirds of the filing fees collected is less than one-twelfth
 133 of the clerk's total budget, shall be remitted to the Department
 134 of Revenue for deposit into the department's Clerks of the Court
 135 Trust Fund. If the filing fees collected are insufficient to
 136 remit one-third to the department, the clerk shall submit that
 137 portion of one-third of the filing fees collected that is in
 138 excess of one-twelfth of the clerk's total budget to the
 139 Department of Revenue for deposit into the department's Clerks
 140 of the Court Trust Fund, ~~and \$1.50 shall be remitted to the~~

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141 ~~Department of Revenue for deposit into the Administrative Trust~~
 142 ~~Fund within the Department of Financial Services to fund clerk~~
 143 ~~budget reviews conducted by the Department of Financial~~
 144 ~~Services. One third of any filing fees collected by the clerk of~~
 145 ~~the circuit court in excess of \$100 shall be remitted to the~~
 146 ~~Department of Revenue for deposit into the Clerks of the Court~~
 147 ~~Trust Fund within the Justice Administrative Commission.~~

148 b. The party instituting any civil action, suit, or
 149 proceeding in the circuit court under chapter 39, chapter 61,
 150 chapter 741, chapter 742, chapter 747, chapter 752, or chapter
 151 753 shall pay to the clerk of that court a filing fee of up to
 152 \$295 in all cases in which there are not more than five
 153 defendants and an additional filing fee of up to \$2.50 for each
 154 defendant in excess of five. Of the first \$180 in filing fees,
 155 \$80 must be remitted by the clerk to the Department of Revenue
 156 for deposit into the General Revenue Fund, \$95 must be remitted
 157 to the Department of Revenue for deposit into the State Courts
 158 Revenue Trust Fund, and \$5 ~~\$3.50~~ must be remitted to the
 159 Department of Revenue for deposit into the Administrative Clerks
 160 ~~of the Court~~ Trust Fund within the Department of Financial
 161 Services ~~Justice Administrative Commission~~ and used to fund the
 162 contract with the Florida Clerks of Court Operations Corporation
 163 created in s. 28.35, ~~and \$1.50 shall be remitted to the~~
 164 ~~Department of Revenue for deposit into the Administrative Trust~~
 165 ~~Fund within the Department of Financial Services to fund clerk~~
 166 ~~budget reviews conducted by the Department of Financial~~
 167 ~~Services.~~

168 c. An additional filing fee of \$4 shall be paid to the

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169 clerk. The clerk shall remit \$3.50 to the Department of Revenue
 170 for deposit into the Court Education Trust Fund and shall remit
 171 50 cents to the Department of Revenue for deposit into the
 172 department's Clerks of the Court Trust Fund ~~within the Justice~~
 173 ~~Administrative Commission~~ to fund clerk education. An additional
 174 filing fee of up to \$18 shall be paid by the party seeking each
 175 severance that is granted. The clerk may impose an additional
 176 filing fee of up to \$85 for all proceedings of garnishment,
 177 attachment, replevin, and distress. Postal charges incurred by
 178 the clerk of the circuit court in making service by certified or
 179 registered mail on defendants or other parties shall be paid by
 180 the party at whose instance service is made. No additional fees,
 181 charges, or costs shall be added to the filing fees imposed
 182 under this section, except as authorized in this section or by
 183 general law.

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

188 b. A party shall estimate in writing the amount in
 189 controversy of the claim upon filing the action. For purposes of
 190 this subparagraph, the value of a mortgage foreclosure action is
 191 based upon the principal due on the note secured by the
 192 mortgage, plus interest owed on the note and any moneys advanced
 193 by the lender for property taxes, insurance, and other advances
 194 secured by the mortgage, at the time of filing the foreclosure.
 195 The value shall also include the value of any tax certificates
 196 related to the property. In stating the value of a mortgage

197 foreclosure claim, a party shall declare in writing the total
 198 value of the claim, as well as the individual elements of the
 199 value as prescribed in this sub-subparagraph.

200 c. In its order providing for the final disposition of the
 201 matter, the court shall identify the actual value of the claim.
 202 The clerk shall adjust the filing fee if there is a difference
 203 between the estimated amount in controversy and the actual value
 204 of the claim and collect any additional filing fee owed or
 205 provide a refund of excess filing fee paid.

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

207 (I) Three hundred and ninety-five dollars in all cases in
 208 which the value of the claim is \$50,000 or less and in which
 209 there are not more than five defendants. The party shall pay an
 210 additional filing fee of up to \$2.50 for each defendant in
 211 excess of five. Of the first \$280 in filing fees, \$80 must be
 212 remitted by the clerk to the Department of Revenue for deposit
 213 into the General Revenue Fund, \$195 must be remitted to the
 214 Department of Revenue for deposit into the State Courts Revenue
 215 Trust Fund, and \$5 ~~\$3.50~~ must be remitted to the Department of
 216 Revenue for deposit into the Administrative Clerks of the Court
 217 Trust Fund within the Department of Financial Services Justice
 218 ~~Administrative Commission~~ and used to fund the contract with the
 219 Florida Clerks of Court Operations Corporation created in s.
 220 28.35, ~~and \$1.50 shall be remitted to the Department of Revenue~~
 221 ~~for deposit into the Administrative Trust Fund within the~~
 222 ~~Department of Financial Services to fund clerk budget reviews~~
 223 ~~conducted by the Department of Financial Services;~~

224 (II) Nine hundred dollars in all cases in which the value

225 of the claim is more than \$50,000 but less than \$250,000 and in
 226 which there are not more than five defendants. The party shall
 227 pay an additional filing fee of up to \$2.50 for each defendant
 228 in excess of five. Of the first \$785 in filing fees, \$80 must be
 229 remitted by the clerk to the Department of Revenue for deposit
 230 into the General Revenue Fund, \$700 must be remitted to the
 231 Department of Revenue for deposit into the State Courts Revenue
 232 Trust Fund, and \$5 ~~\$3.50~~ must be remitted to the Department of
 233 Revenue for deposit into the Administrative Clerks of the Court
 234 Trust Fund within the Department of Financial Services Justice
 235 ~~Administrative Commission~~ and used to fund the contract with the
 236 Florida Clerks of Court Operations Corporation created ~~described~~
 237 in s. 28.35, ~~and \$1.50 shall be remitted to the Department of~~
 238 ~~Revenue for deposit into the Administrative Trust Fund within~~
 239 ~~the Department of Financial Services to fund clerk budget~~
 240 ~~reviews conducted by the Department of Financial Services; or~~
 241 (III) One thousand nine hundred dollars in all cases in
 242 which the value of the claim is \$250,000 or more and in which
 243 there are not more than five defendants. The party shall pay an
 244 additional filing fee of up to \$2.50 for each defendant in
 245 excess of five. Of the first \$1,785 in filing fees, \$80 must be
 246 remitted by the clerk to the Department of Revenue for deposit
 247 into the General Revenue Fund, \$1,700 must be remitted to the
 248 Department of Revenue for deposit into the State Courts Revenue
 249 Trust Fund, and \$5 ~~\$3.50~~ must be remitted to the Department of
 250 Revenue for deposit into the Administrative Clerks of the Court
 251 Trust Fund within the Department of Financial Services Justice
 252 ~~Administrative Commission~~ to fund the contract with the Florida

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253 Clerks of Court Operations Corporation created in s. 28.35, ~~and~~
 254 ~~\$1.50 shall be remitted to the Department of Revenue for deposit~~
 255 ~~into the Administrative Trust Fund within the Department of~~
 256 ~~Financial Services to fund clerk budget reviews conducted by the~~
 257 ~~Department of Financial Services.~~

258 e. An additional filing fee of \$4 shall be paid to the
 259 clerk. The clerk shall remit \$3.50 to the Department of Revenue
 260 for deposit into the Court Education Trust Fund and shall remit
 261 50 cents to the Department of Revenue for deposit into the
 262 department's Clerks of the Court Trust Fund ~~within the Justice~~
 263 ~~Administrative Commission~~ to fund clerk education. An additional
 264 filing fee of up to \$18 shall be paid by the party seeking each
 265 severance that is granted. The clerk may impose an additional
 266 filing fee of up to \$85 for all proceedings of garnishment,
 267 attachment, replevin, and distress. Postal charges incurred by
 268 the clerk of the circuit court in making service by certified or
 269 registered mail on defendants or other parties shall be paid by
 270 the party at whose instance service is made. No additional fees,
 271 charges, or costs shall be added to the filing fees imposed
 272 under this section, except as authorized in this section or by
 273 general law.

274 Section 4. Section 28.2455, Florida Statutes, is amended
 275 to read:

276 28.2455 Transfer of trust funds in excess of amount needed
 277 for clerk budgets.—By June 20th of each year, the Florida Clerks
 278 of Court Operations Corporation shall identify the amount of
 279 funds in the Clerks of the Court Trust Fund in excess of the
 280 amount needed to fund the approved clerks ~~clerk~~ of the court

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281 budgets for the current state fiscal year. The Department of
 282 Revenue ~~Justice Administrative Commission~~ shall transfer the
 283 amount identified by the corporation from the Clerks of the
 284 Court Trust Fund to the General Revenue Fund by June 25th of
 285 each year.

286 Section 5. Paragraph (b) of subsection (5) of section
 287 28.246, Florida Statutes, is amended to read:

288 28.246 Payment of court-related fees, charges, and costs;
 289 partial payments; distribution of funds.—

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

293 (b) That portion of fees, service charges, court costs,
 294 and fines which are required to be retained by the clerk of the
 295 court or deposited into the Clerks of the Court Trust Fund
 296 within the Department of Revenue ~~Justice Administrative~~
 297 ~~Commission~~.

298
 299 To offset processing costs, clerks may impose either a per-month
 300 service charge pursuant to s. 28.24(26)(b) or a one-time
 301 administrative processing service charge at the inception of the
 302 payment plan pursuant to s. 28.24(26)(c).

303 Section 6. Section 28.35, Florida Statutes, is amended to
 304 read:

305 28.35 Florida Clerks of Court Operations Corporation.—

306 (1)(a) The Florida Clerks of Court Operations Corporation
 307 is created as a public corporation organized to perform the
 308 functions specified in this section and s. 28.36 ~~and shall be~~

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309 ~~administratively housed within the Justice Administrative~~
 310 ~~Commission. The corporation shall be a budget entity within the~~
 311 ~~Justice Administrative Commission, and its employees shall be~~
 312 ~~considered state employees. The corporation is not subject to~~
 313 ~~control, supervision, or direction by the Justice Administrative~~
 314 ~~Commission in the performance of its duties, but the employees~~
 315 ~~of the corporation shall be governed by the classification plan~~
 316 ~~and salary and benefits plan of the Justice Administrative~~
 317 ~~Commission. The classification plan must have a separate chapter~~
 318 ~~for the corporation.~~ All clerks of the circuit court shall be
 319 members of the corporation and hold their position and authority
 320 in an ex officio capacity. The functions assigned to the
 321 corporation shall be performed by an executive council pursuant
 322 to the plan of operation approved by the members.

323 (b) The executive council shall be composed of eight
 324 clerks of the court elected by the clerks of the courts for a
 325 term of 2 years, with two clerks from counties with a population
 326 of fewer than 100,000, two clerks from counties with a
 327 population of at least 100,000 but fewer than 500,000, two
 328 clerks from counties with a population of at least 500,000 but
 329 fewer than 1 million, and two clerks from counties with a
 330 population of more than 1 million. ~~The executive council shall~~
 331 ~~also include, as ex officio members, a designee of the President~~
 332 ~~of the Senate and a designee of the Speaker of the House of~~
 333 ~~Representatives. The Chief Justice of the Supreme Court shall~~
 334 ~~designate one additional member to represent the state courts~~
 335 ~~system.~~

336 (c) The corporation shall be considered a political

337 subdivision of the state and shall be exempt from the corporate
 338 income tax. The corporation is ~~not~~ subject to the procurement
 339 provisions of chapter 287 120.

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

343 (2) The duties of the corporation shall include the
 344 following:

345 (a) Adopting a plan of operation.

346 (b) Conducting the election of an executive council
 347 ~~directors~~ as required in paragraph (1)(b) ~~(1)(a)~~.

348 (c) Recommending to the Legislature changes in the various
 349 court-related fines, fees, service charges, and court costs
 350 established by law to ensure reasonable and adequate funding of
 351 the clerks of the court in the performance of their court-
 352 related functions.

353 (d) Developing and certifying a uniform system of workload
 354 ~~performance~~ measures and applicable workload performance
 355 standards for the functions specified in paragraph (3)(a) and
 356 ~~the service unit costs required in s. 28.36 and measures for~~
 357 clerk workload performance in meeting the workload performance
 358 standards. These workload measures and workload performance
 359 standards shall be designed to facilitate an objective
 360 determination of the performance of each clerk in accordance
 361 with minimum standards for fiscal management, operational
 362 efficiency, and effective collection of fines, fees, service
 363 charges, and court costs. The corporation shall develop the
 364 workload ~~performance~~ measures and workload performance standards

365 | in consultation with the Legislature ~~and the Supreme Court. The~~
 366 | ~~Legislature may modify the clerk performance measures and~~
 367 | ~~performance standards in legislation implementing the General~~
 368 | ~~Appropriations Act or other law.~~ When the corporation finds a
 369 | clerk has not met the workload performance standards, the
 370 | corporation shall identify the nature of each deficiency and any
 371 | corrective action recommended and taken by the affected clerk of
 372 | the court. The corporation shall notify the Legislature and the
 373 | Supreme Court of any clerk not meeting workload performance
 374 | standards and provide a copy of any corrective action plans. For
 375 | the purposes of this section, the term:

376 | 1. "Workload measures" means the measurement of the
 377 | activities and frequency of the work required for the clerk to
 378 | adequately perform the court-related duties of the office.

379 | 2. "Workload performance standards" means the standards
 380 | developed to measure the timeliness and effectiveness of the
 381 | activities that are accomplished by the clerk in the performance
 382 | of the court-related duties of the office.

383 | (e) Pursuant to contract with the Chief Financial Officer,
 384 | establishing a process for the review of proposed court-related
 385 | budgets submitted by clerks of the court for completeness and
 386 | compliance with this section and ss. 28.36 and 28.37. Such
 387 | process shall be designed and be sufficiently detailed to permit
 388 | independent verification and validation of the budget
 389 | certification. The contract shall specify the process to be used
 390 | in determining compliance by the corporation with this section
 391 | and ss. 28.36 and 28.37 and shall require the corporation to
 392 | determine the minimum amount of revenue necessary for each clerk

393 of the court to efficiently perform the list of court-related
 394 functions specified in paragraph (3)(a) in its budget review and
 395 approval process.

396 (f)(e) Reviewing and certifying proposed budgets submitted
 397 by clerks of the court using the process approved by the Chief
 398 Financial Officer pursuant to paragraph (e) for the purpose of
 399 making the certification in paragraph (e). As part of this
 400 process, the corporation shall:

401 1. Calculate the minimum amount of revenue necessary for
 402 each clerk of the court to efficiently perform the list of
 403 court-related functions specified in paragraph (3)(a). The
 404 Florida Clerks of Court Operations Corporation shall apply the
 405 workload measures appropriate for determining the individual
 406 level of review required to fund the clerk's budget.

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

411 3. Conduct an annual base budget review and an annual
 412 budget exercise examining the total budget of each clerk of the
 413 court. The review shall examine revenues from all sources,
 414 expenses of court-related functions, and expenses of non-court-
 415 related functions as necessary to determine that court-related
 416 revenues are not being used for non-court-related purposes.
 417 Funds paid by a clerk to join or be a member of any group or
 418 organization shall be separately listed and the benefits
 419 received from any such group or organization described in
 420 detail. The review and exercise shall identify potential

421 targeted budget reductions in the percentage amount provided in
 422 Schedule VIII-B of the state's previous year's legislative
 423 budget instructions, as referenced in s. 216.023(3), or an
 424 equivalent schedule or instruction as may be adopted by the
 425 Legislature.

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

429 5. Identify those clerks projected to have court-related
 430 revenues insufficient to fund their anticipated court-related
 431 expenditures pursuant to s. 28.36.

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

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

436 (i) By August 1 of each year, submitting to the
 437 Legislative Budget Commission, as provided in s. 11.90, its
 438 proposed budget and the information described in paragraph (f),
 439 as well as the approved budgets for each clerk of the court and
 440 the corporation. By October 1 of each year, the Legislative
 441 Budget Commission shall consider the submitted budgets and shall
 442 approve, disapprove, or amend the corporation's budget and shall
 443 approve, disapprove, or amend and approve the total of the
 444 clerks' combined budgets or any individual clerk's budget. If
 445 the Legislative Budget Commission fails to approve or amend the
 446 corporation's budget or the clerks' combined budgets by October
 447 1, the clerk shall continue to perform the court-related
 448 functions based upon the clerk's approved budget for the

449 previous county fiscal year.

450 (3) (a) The list of court-related functions that clerks may
 451 fund from filing fees, service charges, court costs, and fines
 452 is perform~~are~~ limited to those functions expressly authorized
 453 by law or court rule. Those functions include the following:
 454 case maintenance; records management; court preparation and
 455 attendance; processing the assignment, reopening, and
 456 reassignment of cases; processing of appeals; collection and
 457 distribution of fines, fees, service charges, and court costs;
 458 processing of bond forfeiture payments; payment of jurors and
 459 witnesses; payment of expenses for meals or lodging provided to
 460 jurors; data collection and reporting; processing of jurors;
 461 determinations of indigent status; and reasonable administrative
 462 support costs to enable the clerk of the court to carry out
 463 these court-related functions.

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

- 467 1. Those functions not specified within paragraph (a).
- 468 2. Functions assigned by administrative orders which are
 469 not required for the clerk to perform the functions in paragraph
 470 (a).
- 471 3. Enhanced levels of service which are not required for
 472 the clerk to perform the functions in paragraph (a).
- 473 4. Functions identified as local requirements in law or
 474 local optional programs.

475 (4) The corporation shall ~~prepare a legislative budget~~
 476 ~~request for the resources necessary to perform its duties,~~

477 ~~submit the request pursuant to chapter 216, and be funded~~
 478 pursuant to a contract with the Chief Financial Officer. Funds
 479 shall be provided to the Chief Financial Officer for such
 480 purpose as appropriated by general law. Such funds shall be
 481 available to the corporation for the performance of the duties
 482 and responsibilities as set forth in this section ~~as a budget~~
 483 ~~entity in the General Appropriations Act.~~ The corporation may
 484 hire staff and pay other expenses from such funds ~~state~~
 485 ~~appropriations~~ as necessary to perform the official duties and
 486 responsibilities of the corporation as described in this section
 487 ~~by law.~~

488 (5) Certified public accountants conducting audits of
 489 counties pursuant to s. 218.39 shall report, as part of the
 490 audit, whether or not the clerks of the courts have complied
 491 with the requirements of this section and s. 28.36. ~~In addition,~~
 492 ~~each clerk of court shall forward a copy of the portion of the~~
 493 ~~financial audit relating to the court-related duties of the~~
 494 ~~clerk of court to the Supreme Court.~~ The Auditor General shall
 495 develop a compliance supplement for the audit of compliance with
 496 the budgets and applicable workload performance standards
 497 certified by the corporation.

498 Section 7. Section 28.36, Florida Statutes, is amended to
 499 read:

500 28.36 Budget procedure.—There is established a budget
 501 procedure ~~for preparing budget requests for funding~~ for the
 502 court-related functions of the clerks of the court.

503 (1) Only those functions on the standard list developed
 504 pursuant to s. 28.35(3)(a) may be funded from fees, service

505 charges, court costs, and fines retained by the clerks of the
 506 court. For the county fiscal year beginning October 1, 2012, and
 507 for each county fiscal year thereafter, each clerk of the court
 508 shall prepare a budget request for court-related expenditures
 509 ~~that the last quarter of the county fiscal year and the first~~
 510 ~~three quarters of the next county fiscal year. The proposed~~
 511 ~~budget~~ shall be prepared, summarized, and submitted by the clerk
 512 in each county to the Florida Clerks of Court Operations
 513 Corporation in the manner and form prescribed by the corporation
 514 to meet the requirements of law. ~~Each clerk shall forward a copy~~
 515 ~~of his or her budget request to the Supreme Court.~~ The budget
 516 requests must be provided to the corporation by June ~~October~~ 1
 517 of the each year before the year of the budget.

518 ~~(2) Each clerk shall include in his or her budget request~~
 519 ~~a projection of the amount of court-related fees, service~~
 520 ~~charges, and any other court-related clerk fees which will be~~
 521 ~~collected during the proposed budget period. If the corporation~~
 522 ~~determines that the proposed budget is limited to the standard~~
 523 ~~list of court-related functions in s. 28.35(3)(a) and the~~
 524 ~~projected court-related revenues are less than the proposed~~
 525 ~~budget, the clerk shall increase all fees, service charges, and~~
 526 ~~any other court-related clerk fees and charges to the maximum~~
 527 ~~amounts specified by law or the amount necessary to resolve the~~
 528 ~~deficit, whichever is less.~~

529 (2)(3) Each proposed budget shall further conform to the
 530 following requirements ~~clerk shall include in his or her budget~~
 531 ~~request the number of personnel and the proposed budget for each~~
 532 ~~of the following core services:~~

533 (a) On or before June 1 of each fiscal year, the proposed
 534 budget shall be prepared, summarized, and submitted by the clerk
 535 in each county to the corporation in the manner and form
 536 prescribed by the corporation. The proposed budget must provide
 537 detailed information on the anticipated revenues available and
 538 expenditures necessary for the performance of the standard list
 539 of court-related functions of the clerk's office developed
 540 pursuant to s. 28.35(3)(a) for the county fiscal year beginning
 541 the next October 1.

542 (b) The proposed budget must be balanced, such that the
 543 total of the estimated revenues available must equal or exceed
 544 the total of the anticipated expenditures. Such revenues include
 545 cash balances brought forward from the previous fiscal period;
 546 revenue projected to be received from fees, services charges,
 547 court costs, and fines for court-related functions during the
 548 fiscal period covered by the budget; and supplemental revenue
 549 that may be requested pursuant to subsection (4). The
 550 anticipated expenditures must be itemized as required by the
 551 corporation, pursuant to contract with the Chief Financial
 552 Officer.

553 (c) The proposed budget may include a contingency reserve
 554 not to exceed 10 percent of the total budget, provided that, in
 555 the aggregate, the proposed budget does not exceed the limits
 556 prescribed in paragraph (4)(b).

- 557 ~~(a) Circuit criminal.~~
- 558 ~~(b) County criminal.~~
- 559 ~~(c) Juvenile delinquency.~~
- 560 ~~(d) Criminal traffic.~~

- 561 ~~(e) Circuit civil.~~
- 562 ~~(f) County civil.~~
- 563 ~~(g) Civil traffic.~~
- 564 ~~(h) Probate.~~
- 565 ~~(i) Family.~~
- 566 ~~(j) Juvenile dependency.~~

567

568 ~~Central administrative costs shall be allocated among the core-~~
 569 ~~services categories.~~

570 (3)(4) If a clerk of the court estimates that available
 571 fund plus projected revenues from fines, fees, service charges,
 572 and costs for court-related services are insufficient to meet
 573 the anticipated expenditures for the standard list of court-
 574 related functions in s. 28.35(3)(a) performed by his or her
 575 office, the clerk must report the revenue deficit to the
 576 corporation in the manner and form prescribed by the corporation
 577 pursuant to contract with the Chief Financial Officer. The
 578 corporation shall verify that the proposed budget is limited to
 579 the standard list of court-related functions in s. 28.35(3)(a).

580 (a) If the corporation verifies that the proposed budget
 581 is limited to the standard list of court-related functions in s.
 582 28.35(3)(a) and a revenue deficit is projected, a clerk seeking
 583 to retain revenues pursuant to this subsection shall increase
 584 all fees and service charges and any other court-related clerk
 585 fees and charges to the maximum amounts specified by law or the
 586 amount necessary to resolve the deficit, whichever is less. If,
 587 after increasing fees, service charges, and other court-related
 588 clerk fees and charges to the maximum amounts specified by law,

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589 a revenue deficit is still projected, the corporation shall,
590 pursuant to the terms of the contract with the Chief Financial
591 Officer, certify a revenue deficit and notify the Department of
592 Revenue that the clerk is authorized to retain revenues, in an
593 amount necessary to fully fund the projected revenue deficit,
594 which he or she would otherwise be required to remit to the
595 Department of Revenue for deposit into the department's Clerks
596 of the Court Trust Fund pursuant to s. 28.37. If a revenue
597 deficit is projected for that clerk after retaining all of the
598 projected collections from the court-related fines, fees,
599 service charges, and costs, the Department of Revenue shall
600 certify the amount of the revenue deficit to the Executive
601 Office of the Governor and request release authority for funds
602 appropriated for this purpose from the department's Clerks of
603 the Court Trust Fund. Notwithstanding the provisions of s.
604 216.192 relating to the release of funds, the Executive Office
605 of the Governor may approve the release of funds appropriated to
606 resolve projected revenue deficits in accordance with the
607 notice, review, and objection procedures set forth in s. 216.177
608 and shall provide notice to the Chief Financial Officer. The
609 Department of Revenue shall request monthly distributions from
610 the Chief Financial Officer in equal amounts to each clerk
611 certified to have a revenue deficit, in accordance with the
612 releases approved by the Governor.

613 (b) If the Chief Financial Officer finds the court-related
614 budget proposed by a clerk includes functions not included in
615 the standard list of court-related functions in s. 28.35(3)(a),
616 the Chief Financial Officer shall notify the clerk of the amount

617 of the proposed budget not eligible to be funded from fines,
 618 fees, service charges, and costs for court-related functions and
 619 shall identify appropriate corrective measures to ensure budget
 620 integrity. The clerk shall immediately discontinue all
 621 ineligible expenditures of court-related funds for non-court-
 622 related functions, reimburse the Clerks of the Court Trust Fund
 623 for any previously ineligible expenditures made for non-court-
 624 related functions, and implement any corrective actions
 625 identified by the Chief Financial Officer ~~The budget request~~
 626 ~~must identify the service units to be provided within each core~~
 627 ~~service. The service units shall be developed by the~~
 628 ~~corporation, in consultation with the Supreme Court, the Chief~~
 629 ~~Financial Officer, and the appropriations committees of the~~
 630 ~~Senate and the House of Representatives.~~

631 (4) (a)-(5) The Legislative Budget Commission may approve
 632 increases to the maximum annual budgets approved for individual
 633 clerks of the court pursuant to this section for court-related
 634 functions, if:

635 1. The additional funding is necessary to pay the cost of
 636 performing new or additional functions required by changes in
 637 law or court rule. Before the Legislative Budget Commission may
 638 approve an increase in the maximum annual budget of any clerk
 639 under this subparagraph, the corporation must provide the
 640 Legislative Budget Commission with a statement of the impact of
 641 the proposed budget changes on state revenues and evidence that
 642 the respective clerk of the court is meeting or exceeding the
 643 established performance standards for measures on the fiscal
 644 management, operational efficiency, and effective collection of

645 finest, fees, services charges, and court costs; or

646 2. The additional funding is necessary to pay the cost of
 647 supporting increases in the number of judges or magistrates
 648 authorized by the Legislature. Before the Legislative Budget
 649 Commission may approve an increase in the maximum annual budget
 650 of any clerk under this subparagraph, the corporation must
 651 provide the Legislative Budget Commission with a statement of
 652 the impact of the proposed budget changes on state revenues;
 653 evidence that the respective clerk of the court is meeting or
 654 exceeding the established performance standards for measures on
 655 the fiscal management, operational efficiency, and effective
 656 collection of fines, fees, service charges, and court costs; and
 657 a proposed staffing model, including the cost and number of
 658 staff necessary to support each new judge or magistrate.

659 (b) The total amount of increases approved by the
 660 Legislative Budget Commission for each county fiscal year may
 661 not exceed an amount equal to 1 percent of the maximum annual
 662 budgets approved pursuant to this section for all clerks, in the
 663 aggregate, for the same county fiscal year ~~The budget request~~
 664 ~~must propose a unit cost for each service unit. The corporation~~
 665 ~~shall provide a copy of each clerk's budget request to the~~
 666 ~~Supreme Court.~~

667 (5)-(6) The corporation may submit proposed legislation to
 668 the Governor, the President of the Senate, and the Speaker of
 669 the House of Representatives no later than November 1 in any
 670 year for approval of clerk budget request amounts exceeding the
 671 restrictions in this section for the next October 1. If proposed
 672 legislation is recommended, the corporation shall also submit

673 supporting documentation with sufficient detail to identify the
 674 specific proposed expenditures that would cause the limitations
 675 to be exceeded for each affected clerk and the estimated fiscal
 676 impact on state revenues shall review each individual clerk's
 677 ~~prior year expenditures, projected revenue, proposed unit costs,~~
 678 ~~and the proposed budget for each of the core services~~
 679 ~~categories. The corporation shall compare each clerk's prior~~
 680 ~~year expenditures and unit costs for core services with a peer~~
 681 ~~group of clerks' offices having a population of a similar size~~
 682 ~~and a similar number of case filings. If the corporation finds~~
 683 ~~that the expenditures, unit costs, or proposed budget of a clerk~~
 684 ~~is significantly higher than those of clerks in that clerk's~~
 685 ~~peer group, the corporation shall require the clerk to submit~~
 686 ~~documentation justifying the difference in each core services~~
 687 ~~category. Justification for higher expenditures may include, but~~
 688 ~~is not limited to, collective bargaining agreements, county~~
 689 ~~civil service agreements, and the number and distribution of~~
 690 ~~courthouses served by the clerk. If the expenditures and unit~~
 691 ~~costs are not justified, the corporation shall recommend a~~
 692 ~~reduction in the funding for that core services category in the~~
 693 ~~budget request to an amount similar to the peer group of clerks~~
 694 ~~or to an amount that the corporation determines is justified.~~

695 ~~(7) The corporation shall complete its review and~~
 696 ~~adjustments to the clerks' budget requests and make its~~
 697 ~~recommendations to the Legislature and the Supreme Court by~~
 698 ~~December 1 each year.~~

699 ~~(8) The Chief Financial Officer shall review the proposed~~
 700 ~~unit costs associated with each clerk of court's budget request~~

701 ~~and make recommendations to the Legislature. The Chief Financial~~
 702 ~~Officer may conduct any audit of the corporation or a clerk of~~
 703 ~~court as authorized by law. The Chief Justice of the Supreme~~
 704 ~~Court may request an audit of the corporation or any clerk of~~
 705 ~~court by the Chief Financial Officer.~~

706 ~~(9) The Legislature shall appropriate the total amount for~~
 707 ~~the budgets of the clerks in the General Appropriations Act. The~~
 708 ~~Legislature may reject or modify any or all of the unit costs~~
 709 ~~recommended by the corporation. If the Legislature does not~~
 710 ~~specify the unit costs in the General Appropriations Act or~~
 711 ~~other law, the unit costs recommended by the corporation shall~~
 712 ~~be the official unit costs for that budget period.~~

713 ~~(10)(a) Beginning in the 2010-2011 fiscal year, the~~
 714 ~~corporation shall release appropriations to each clerk~~
 715 ~~quarterly. If funds in the Clerks of Court Trust Fund are~~
 716 ~~insufficient to provide a release in a quarter in a single~~
 717 ~~release, the corporation may release partial amounts for that~~
 718 ~~quarter so long as the total of those partial amounts does not~~
 719 ~~exceed that quarter's release. If funds in the Clerks of Court~~
 720 ~~Trust Fund are insufficient for the first quarter release, the~~
 721 ~~corporation may make a request to the Governor for a trust fund~~
 722 ~~loan pursuant to chapter 215. The amount of the first three~~
 723 ~~releases shall be based on one quarter of the estimated budget~~
 724 ~~for each clerk as identified in the General Appropriations Act.~~

725 ~~(b) The corporation shall estimate the fourth quarter's~~
 726 ~~number of units to be performed by each clerk. The amount of the~~
 727 ~~fourth quarter release shall be based on the approved unit cost~~
 728 ~~times the estimated number of units of the fourth quarter with~~

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729 ~~the following adjustment: the fourth quarter release shall be~~
730 ~~adjusted based on the first three quarter's actual number of~~
731 ~~service units provided as reported to the corporation by each~~
732 ~~clerk. If the clerk has performed fewer service units in the~~
733 ~~first three quarters of the year compared to three quarters of~~
734 ~~the estimated number of service units in the General~~
735 ~~Appropriations Act, the corporation shall decrease the fourth-~~
736 ~~quarter release. The amount of the decrease shall equal the~~
737 ~~amount of the difference between the estimated number of service~~
738 ~~units for the first three quarters and the actual number of~~
739 ~~service units provided in the first three quarters times the~~
740 ~~approved unit cost.~~

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

744 ~~(d) If the clerk performs fewer units in the fourth~~
745 ~~quarter than estimated by the corporation, the corporation shall~~
746 ~~decrease the first quarter release for the clerk in the next~~
747 ~~fiscal year by the amount of the difference between the~~
748 ~~estimated number of service units for the fourth quarter and the~~
749 ~~actual number of service units performed in that quarter times~~
750 ~~the approved unit cost.~~

751 ~~(e) The total of all releases to the clerks of court may~~
752 ~~not exceed the amount appropriated in the General Appropriations~~
753 ~~Act. If, during the year, the corporation determines that the~~
754 ~~projected releases of appropriations for service units will~~
755 ~~exceed the estimate used in the General Appropriations Act and~~
756 ~~result in statewide expenditures greater than the amount~~

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757 ~~appropriated by law, the corporation shall reduce all service~~
 758 ~~unit costs of all clerks by the amount necessary to ensure that~~
 759 ~~service units are funded within the total amount appropriated to~~
 760 ~~the clerks of court. If such action is necessary, the~~
 761 ~~corporation shall notify the Legislative Budget Commission. If~~
 762 ~~the Legislative Budget Commission objects to the adjustments,~~
 763 ~~the Legislative Budget Commission shall adjust all service unit~~
 764 ~~costs by the amount necessary to ensure that projected units of~~
 765 ~~service are funded within the total amount appropriated to the~~
 766 ~~clerks of court at its next scheduled meeting.~~

767 ~~(11) The corporation may submit proposed legislation to~~
 768 ~~the Governor, the President of the Senate, and the Speaker of~~
 769 ~~the House of Representatives relating to the preparation of~~
 770 ~~budget requests of the clerks of court.~~

771 Section 8. Section 28.365, Florida Statutes, is created to
 772 read:

773 28.365 Procurement.—The clerks of the court are subject to
 774 the procurement requirements and limitations of chapter 287 for
 775 expenditures made pursuant to the budget provided for in ss.
 776 28.35 and 28.36.

777 Section 9. Section 28.37, Florida Statutes, is amended to
 778 read:

779 28.37 Fines, fees, service charges, and costs remitted to
 780 the state.—

781 (1) Pursuant to s. 14(b), Art. V of the State
 782 Constitution, selected salaries, costs, and expenses of the
 783 state courts system and court-related functions shall be funded
 784 from a portion of the revenues derived from statutory fines,

785 fees, service charges, and costs collected by the clerks of the
 786 court.

787 (2) Beginning July 1, 2012, except as otherwise provided
 788 in ss. 28.241 and 34.041, one-third of all fines, fees, service
 789 charges, and court costs collected by the clerks of the court
 790 each month shall be remitted to the Department of Revenue for
 791 deposit into the Clerks of the Court Trust Fund, unless the
 792 remaining two-thirds of such fines, fees, service charges, and
 793 court costs collected is less than one-twelfth of the clerks'
 794 total budget. If the collections are insufficient to remit one-
 795 third to the department, the clerks shall submit that portion of
 796 one-third of the collections that is in excess of one-twelfth of
 797 the clerks' total budget for the performance of court-related
 798 functions to the Department of Revenue for deposit into the
 799 department's Clerks of the Court Trust Fund. Such collections do
 800 not include funding received for the operation of the Title IV-D
 801 child support collections and disbursement program. The clerk of
 802 the court shall remit the revenues collected during the previous
 803 month due to the state on or before the 10th day of each month.
 804 The Department of Revenue shall make a monthly transfer to the
 805 General Revenue Fund of the funds in the department's Clerks of
 806 the Court Trust Fund that are not needed to resolve clerk of the
 807 court revenue deficits, as specified in s. 28.36.

808 (3) Beginning January 1, 2013, and each January 1
 809 thereafter for the previous county fiscal year, the clerk of the
 810 court shall remit to the Department of Revenue for deposit in
 811 the General Revenue Fund the cumulative excess of all fines,
 812 fees, service charges, and court costs retained by the clerks of

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813 the court, plus any funds received by the clerks of the court
 814 from the department's Clerks of the Court Trust Fund under s.
 815 28.36(4)(a), that exceed the amount needed to meet the approved
 816 budget amounts established under s. 28.36.

817 (4) The Department of Revenue shall collect any funds that
 818 the Florida Clerks of Court Operations Corporation determines
 819 upon investigation were due on January 1 but not remitted to the
 820 department.

821 (5)~~(2)~~ Except as otherwise provided in ss. 28.241 and
 822 34.041, all court-related fines, fees, service charges, and
 823 costs are considered state funds and shall be remitted by the
 824 clerk to the Department of Revenue for deposit into the Clerks
 825 of the Court Trust Fund within the Department of Revenue ~~Justice~~
 826 ~~Administrative Commission~~. However, 10 percent of all court-
 827 related fines collected by the clerk shall be deposited into the
 828 clerk's Public Records Modernization Trust Fund to be used
 829 exclusively for additional clerk court-related operational needs
 830 and program enhancements.

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

833 28.43 Adoption of rules relating to ss. 28.35, 28.36, and
 834 28.37.—

835 (1) The Department of Revenue may adopt rules necessary to
 836 carry out its responsibilities in ss. 28.35, 28.36, and 28.37.
 837 The rules shall include forms and procedures for transferring
 838 funds from the clerks of the court to the Clerks of the Court
 839 Trust Fund within the Department of Revenue ~~Justice~~
 840 ~~Administrative Commission~~.

841 Section 11. Paragraph (b) of subsection (1) of section
 842 34.041, Florida Statutes, is amended, and paragraph (a) of that
 843 subsection is published, to read:

844 34.041 Filing fees.—

845 (1)(a) Upon the institution of any civil action, suit, or
 846 proceeding in county court, the party shall pay the following
 847 filing fee, not to exceed:

- 848 1. For all claims less than \$100 \$50.
- 849 2. For all claims of \$100 or more but not more than \$500
 850 \$75.
- 851 3. For all claims of more than \$500 but not more than
 852 \$2,500 \$170.
- 853 4. For all claims of more than \$2,500 \$295.
- 854 5. In addition, for all proceedings of garnishment,
 855 attachment, replevin, and distress \$85.
- 856 6. Notwithstanding subparagraphs 3. and 5., for all claims
 857 of not more than \$1,000 filed simultaneously with an action for
 858 replevin of property that is the subject of the claim \$125.
- 859 7. For removal of tenant action \$180.

860
 861 The filing fee in subparagraph 6. is the total fee due under
 862 this paragraph for that type of filing, and no other filing fee
 863 under this paragraph may be assessed against such a filing.

864 (b) The first \$80 of the filing fee collected under
 865 subparagraph (a)4. shall be remitted to the Department of
 866 Revenue for deposit into the General Revenue Fund. The next \$15
 867 of the filing fee collected under subparagraph (a)4., and the
 868 first \$10 of the filing fee collected under subparagraph (a)7.,

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869 shall be deposited in the State Courts Revenue Trust Fund. One-
 870 third of any filing fees collected by the clerk each month under
 871 this section in excess of the first \$95 collected under
 872 subparagraph (a)4. shall be remitted to the Department of
 873 Revenue for deposit into the department's Clerks of the Court
 874 Trust Fund, unless the remaining two-thirds of the filing fees
 875 collected is less than one-twelfth of the clerk's total budget.
 876 If the filing fees collected are insufficient to remit one-third
 877 to the department, the clerk shall submit that portion of one-
 878 third of the fees collected that is in excess of one-twelfth of
 879 the clerk's total budget for the performance of court-related
 880 functions to the Department of Revenue for deposit into the
 881 department's Clerks of the Court Trust Fund. An additional
 882 filing fee of \$4 shall be paid to the clerk. The clerk shall
 883 transfer \$3.50 to the Department of Revenue for deposit into the
 884 Court Education Trust Fund and shall transfer 50 cents to the
 885 Department of Revenue for deposit into the department's Clerks
 886 of the Court Trust Fund ~~within the Justice Administrative~~
 887 ~~Commission~~ to fund clerk education. Postal charges incurred by
 888 the clerk of the county court in making service by mail on
 889 defendants or other parties shall be paid by the party at whose
 890 instance service is made. Except as provided in this section
 891 ~~herein~~, filing fees and service charges for performing duties of
 892 the clerk relating to the county court shall be as provided in
 893 ss. 28.24 and 28.241. Except as otherwise provided in this
 894 section herein, all filing fees shall be retained as fee income
 895 of the office of the clerk of the circuit court ~~remitted to the~~
 896 ~~Department of Revenue for deposit into the Clerks of the Court~~

897 ~~Trust Fund within the Justice Administrative Commission.~~ Filing
 898 fees imposed by this section may not be added to any penalty
 899 imposed by chapter 316 or chapter 318.

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

902 43.16 Justice Administrative Commission; membership,
 903 powers and duties.—

904 (5) The duties of the commission shall include, but are
 905 not ~~be~~ limited to, the following:

906 (a) The maintenance of a central state office for
 907 administrative services and assistance when possible to and on
 908 behalf of the state attorneys and public defenders of Florida,
 909 the capital collateral regional counsel of Florida, the criminal
 910 conflict and civil regional counsel, and the Guardian Ad Litem
 911 Program, ~~and the Florida Clerks of Court Operations Corporation.~~

912 (b) Each state attorney, public defender, and criminal
 913 conflict and civil regional counsel and, ~~the~~ Guardian Ad Litem
 914 Program, ~~and the Florida Clerks of Court Operations Corporation~~
 915 shall continue to prepare necessary budgets, vouchers that
 916 represent valid claims for reimbursement by the state for
 917 authorized expenses, and other things incidental to the proper
 918 administrative operation of the office, such as revenue
 919 transmittals to the Chief Financial Officer and automated
 920 systems plans, but will forward such items ~~same~~ to the
 921 commission for recording and submission to the proper state
 922 officer. However, when requested by a state attorney, a public
 923 defender, a criminal conflict and civil regional counsel, or the
 924 Guardian Ad Litem Program, the commission will either assist in

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925 the preparation of budget requests, voucher schedules, and other
 926 forms and reports or accomplish the entire project involved.

927 Section 13. Paragraph (x) of subsection (2) of section
 928 110.205, Florida Statutes, is amended to read:

929 110.205 Career service; exemptions.—

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

932 (x) All officers and employees of the Justice
 933 Administrative Commission, Office of the State Attorney, Office
 934 of the Public Defender, regional offices of capital collateral
 935 counsel, offices of criminal conflict and civil regional
 936 counsel, and Statewide Guardian Ad Litem Office, including the
 937 circuit guardian ad litem programs ~~and the Florida Clerks of~~
 938 ~~Court Operations Corporation.~~

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

941 142.01 Fine and forfeiture fund; disposition of revenue;
 942 clerk of the circuit court.—

943 ~~(2) All revenues received by the clerk in the fine and~~
 944 ~~forfeiture fund from court related fees, fines, costs, and~~
 945 ~~service charges are considered state funds and shall be remitted~~
 946 ~~monthly to the Department of Revenue for deposit into the Clerks~~
 947 ~~of the Court Trust Fund within the Justice Administrative~~
 948 ~~Commission.~~

949 (2) ~~(3)~~ Notwithstanding ~~the provisions of~~ this section, all
 950 fines and forfeitures arising from operation of the provisions
 951 of s. 318.1215 shall be disbursed in accordance with that
 952 section.

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953 Section 15. Section 213.131, Florida Statutes, is amended
 954 to read:

955 213.131 Clerks of the Court Trust Fund within the
 956 Department of Revenue ~~Justice Administrative Commission~~.—The
 957 Clerks of the Court Trust Fund is created within the Department
 958 of Revenue ~~Justice Administrative Commission~~. Funds received by
 959 the department from the clerks of the court shall be credited to
 960 the trust fund as provided in chapter 2001-122, Laws of Florida,
 961 to be used for the purposes set forth in that act.

962 Section 16. Paragraph (qq) of subsection (1) of section
 963 216.011, Florida Statutes, is amended to read:

964 216.011 Definitions.—

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

968 (qq) "State agency" or "agency" means any official,
 969 officer, commission, board, authority, council, committee, or
 970 department of the executive branch of state government. For
 971 purposes of this chapter and chapter 215, "state agency" or
 972 "agency" includes, but is not limited to, state attorneys,
 973 public defenders, criminal conflict and civil regional counsel,
 974 capital collateral regional counsel, ~~the Florida Clerks of Court~~
 975 ~~Operations Corporation~~, the Justice Administrative Commission,
 976 the Florida Housing Finance Corporation, and the Florida Public
 977 Service Commission. Solely for the purposes of implementing s.
 978 19(h), Art. III of the State Constitution, the terms "state
 979 agency" or "agency" include the judicial branch.

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980 Section 17. For the period of July 1, 2012, through
981 September 30, 2012, the approved budget for the clerks of the
982 circuit court shall be \$111,673,799. The Florida Clerks of Court
983 Operations Corporation shall determine budget amounts for the
984 individual clerks.

985 Section 18. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5501 PCB GOAS 12-01 One-Stop Business Registration Portal
SPONSOR(S): Government Operations Appropriations Subcommittee, Hooper
TIED BILLS: HB 5503 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee	12 Y, 0 N	Lloyd	Topp
1) Appropriations Committee		Lloyd 	Leznoff 

SUMMARY ANALYSIS

HB 5501 directs the Department of Revenue (DOR) to establish and implement, by January 1, 2013, a One-Stop Business Registration Portal, through an Internet website, that provides individuals and businesses with a single point-of-entry into state government for completing and submitting of documents required for transacting business in Florida.

Specifically, the One-Stop Business Registration Portal must provide businesses and individuals a single point-of-entry for:

- Completing and submitting applications for various licenses, registrations or permits that must be issued by state agencies or departments to do business in Florida.
- Filing of documents that must be submitted to state agencies or departments to transact business in Florida.
- Remitting of payments for the various fees that must be paid to state agencies or departments to obtain licensure, registration or a permit.

The bill authorizes the DOR to competitively procure and contract for services to develop and maintain the One-Stop Business Registration Portal.

The Departments of Business and Professional Regulation, Economic Opportunity, Financial Services, Lottery, Management Services and State are directed to cooperate with DOR in the development and implementation of the One-Stop Business Registration Portal.

The bill conforms to the proposed House of Representatives' FY 2012-13 General Appropriations Act (GAA) as the GAA contains a \$3.0 million nonrecurring General Revenue appropriation from which DOR will contract, build and implement the One-Stop Business Registration Portal.

The bill has an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Currently, an individual desiring to start a business in the State of Florida must interact with several state agencies to register for taxes, request a license or receive certain permits. These tasks include visits to multiple state agency websites which collect duplicative information data from the potential applicant. The State of Florida does not have a single point-of-entry where businesses can accomplish these tasks.

Presently, obsolete language contained in section 288.109, F.S., directs the State Technology Office to establish and implement an Internet website for a One-Stop Permitting System, which would allow an applicant to complete and submit application forms for various permits to state agencies and counties by January 1, 2001. However, despite the current statutory language, the system was not built and the State Technology Office was later abolished.

Effect of the Bill

Section 288.109, F.S., is substantially reworded. The section is renamed as the One-Stop Business Registration Portal. The Department of Revenue, rather than the State Technology Office, is to establish and implement an Internet website for the One-Stop Business Registration Portal by January 1, 2013. The Internet website will provide individuals and businesses with a single point-of-entry for:

- (a) Completing and submitting applications for various licenses, registrations, or permits that must be issued by a state agency or department in order for the applicant to transact business in the state.
- (b) Filing various documents that must be filed with state agencies or departments in order for the filer to transact business in the state.
- (c) Remitting payment for various fees that must be paid to state agencies or departments.

The DOR is to establish the website and implement it in the timeliest manner practicable. The DOR is to design and construct the Internet website and may competitively procure and contract for services to develop the site.

The Department of Business and Professional Regulation, the Department of Economic Opportunity, the Department of Financial Services, the Department of the Lottery, the Department of Management Services, and the Department of State shall cooperate with the DOR in the development and implementation of the portal.

The DOR must submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the implementation of the One-Stop Business Registration Portal, beginning January 1, 2013. The report must include a complete and detailed description of the DOR's activities and accomplishments related to implementation of the One-Stop Business Registration Portal during the previous calendar year and a plan for expansion of the portal. The report may also include recommendations for improving the effectiveness of the portal.

The Department of Revenue may adopt rules necessary to carry out Section 288.109, F.S.

Under the provisions of the bill, the DOR may provide information collected from applicants under section 288.109, F.S., to agencies or local governments participating in the One-Stop Business Registration Portal while conducting official duties. Information collected from an individual or business by a state department or agency or local government that is not otherwise confidential does not become confidential solely because the information is collected through the One-Stop Business Registration Portal.

The bill also repeals obsolete statutes (sections 288.1092, 288.1093, and 288.1095, F.S.), that relate to the former State Technology Office and One-Stop Permitting.

B. SECTION DIRECTORY:

Section 1. Substantially rewrites Section 288.109, F.S., which was designed to govern one-stop permitting in 1998 to address the current requirements for the One Stop Business Registration Portal.

Section 2. Repeals Sections 288.1092, 288.1093, and 288.1095, F.S., which relate to the former State Technology Office and One-Stop Permitting.

Section 3. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The proposed House FY 2012-13 General Appropriation Act will contain an appropriation of \$3.0 million to implement the One-Stop Business Registration Portal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals and new businesses starting in Florida should have a positive impact as a result of the passage of this bill and the implementation of the One-Stop Business Registration Portal.

D. FISCAL COMMENTS:

The DOR has developed a tentative implementation plan for the One Stop Business Registration Portal, which includes up to four potential phases over the next three fiscal years. The total estimated cost of the multi-year project is \$7.0 to \$9.0 million. The implementation of phase 1, which provides the One Stop Business Registration Portal for new businesses includes an appropriation of \$3.0 million in the proposed House of Representatives' GAA.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require 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 state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOR is authorized to adopt rules to implement the One-Stop Business Registration Portal.

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 One-Stop Business Registration Portal; amending s. 288.109, F.S.; directing the Department of Revenue to establish the One-Stop Business Registration Portal through which individuals and businesses may submit applications for various licenses, registrations, or permits, file various documents, or remit payment for various fees to a state department or agency; authorizing the department to contract for the development and maintenance of the portal's Internet website; requiring certain state departments to cooperate with the department in the development and implementation of the portal; requiring the department to submit an annual report to the Governor and the Legislature on the portal's implementation and expansion; authorizing the department to provide certain information relative to the One-Stop Business Registration Portal to certain state departments and agencies and local governments; authorizing the department to adopt rules; deleting provisions relating to the One-Stop Permitting System of the former State Technology Office, including provisions authorizing individuals and businesses to apply for certain state, regional, and local development permits through an Internet site developed by the office; repealing ss. 288.1092, 288.1093, and 288.1095, F.S., relating to the One-Stop Permitting System Grant Program and the award of grants to

29 counties that participate in the One-Stop Permitting
 30 System, the Quick Permitting County Designation
 31 Program and the designation of a county as a Quick
 32 Permitting County, and the distribution of literature
 33 explaining the One-Stop Permitting System and the
 34 Quick Permitting County designations; providing an
 35 effective date.

36
 37 Be It Enacted by the Legislature of the State of Florida:

38
 39 Section 1. Section 288.109, Florida Statutes, is amended
 40 to read:

41 (Substantial rewording of section. See
 42 s. 288.109, F.S., for present text.)

43 288.109 One-Stop Business Registration Portal.—

44 (1) By January 1, 2013, the Department of Revenue shall
 45 establish and implement the One-Stop Business Registration
 46 Portal that, through an Internet website, provides individuals
 47 and businesses with a single point of entry for:

48 (a) Completing and submitting applications for various
 49 licenses, registrations, or permits that must be issued by a
 50 state department or agency in order for the applicants to
 51 transact business in the state.

52 (b) Filing various documents that must be filed with a
 53 state department or agency in order for the filers to transact
 54 business in the state.

55 (c) Remitting payment for various fees that must be paid
 56 to a state department or agency, including, but not limited to,

57 | application fees, license fees, registration fees, permit fees,
 58 | and filing fees.

59 | (2) The Department of Revenue, after establishment of the
 60 | Internet website for the One-Stop Business Registration Portal,
 61 | shall implement, in the most timely manner practicable, the
 62 | capabilities described in subsection (1).

63 | (3) The Department of Revenue may competitively procure
 64 | and contract for services to develop and maintain the Internet
 65 | website for the One-Stop Business Registration Portal.

66 | (4) The following departments shall cooperate with the
 67 | Department of Revenue in the development and implementation of
 68 | the One-Stop Business Registration Portal:

69 | (a) The Department of Business and Professional
 70 | Regulation.

71 | (b) The Department of Economic Opportunity.

72 | (c) The Department of Financial Services.

73 | (d) The Department of the Lottery.

74 | (e) The Department of Management Services.

75 | (f) The Department of State.

76 | (5) By January 1 of each year, beginning in 2013, the
 77 | Department of Revenue shall submit a report to the Governor, the
 78 | President of the Senate, and the Speaker of the House of
 79 | Representatives on the implementation of the One-Stop Business
 80 | Registration Portal. The report must include a complete and
 81 | detailed description of the department's activities and
 82 | accomplishments related to implementation of the One-Stop
 83 | Business Registration Portal during the previous calendar year.
 84 | The report must also include a plan for expansion of the One-

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85 Stop Business Registration Portal to allow individuals and
 86 businesses to submit applications through the portal for various
 87 licenses, registrations, or permits issued by local governments.
 88 The report may also include recommendations for improving the
 89 effectiveness of the One-Stop Business Registration Portal and
 90 increasing participation by state departments and agencies and
 91 local governments.

92 (6) The Department of Revenue may provide information
 93 relative to this section to each state department or agency and
 94 local government that, in the conduct of its official duties,
 95 participates in the One-Stop Business Registration Portal.
 96 However, to the extent that such information is not otherwise
 97 confidential, information collected from an individual or
 98 business by a state department or agency or local government
 99 does not become confidential solely because the information is
 100 collected through the One-Stop Business Registration Portal.



101 (7) The Department of Revenue may adopt rules to
 102 administer this section.

103 Section 2. Sections 288.1092, 288.1093, and 288.1095,
 104 Florida Statutes, are repealed.

105 Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5503 PCB GOAS 12-02 One-Stop Business Registration Clearing Trust Fund
SPONSOR(S): Government Operations Appropriations Subcommittee, Hooper
TIED BILLS: HB 5501 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee	13 Y, 0 N	Lloyd	Topp
1) Appropriations Committee		Lloyd 	Leznoff 

SUMMARY ANALYSIS

HB 5503 creates the One-Stop Business Registration Portal Clearing Trust Fund within the Department of Revenue (DOR). The trust fund is established for use as a depository for receipts generated through the utilization of the One-Stop Business Registration Portal to be established in section 288.109, F.S., per HB 5501. The DOR will distribute the moneys collected in the trust fund to the appropriate agencies and accounts in the month following receipt.

Section 19(f), Article III of the Florida Constitution requires that every trust fund be created by a three-fifth vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. In addition, the Florida Constitution provides that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This trust fund will terminate on July 1, 2016, pursuant to section 19(f)(2), Article III of the Florida Constitution, unless terminated sooner or re-created by the Legislature.

This bill has no fiscal impact.

This bill is effective July 1, 2012, if HB 5501 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill creates the One-Stop Business Registration Portal Clearing Trust Fund within the Department of Revenue for use as a depository for fees paid through the One-Stop Business Registration Portal, to be established in section 288.109, F.S., (per HB 5501) and for subsequent transfer or distribution of those fees to the appropriate agencies and accounts.

Section 19(f), Article III of the Florida Constitution requires that every trust fund be created by a three-fifth vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. In addition, the Florida Constitution provides that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This trust fund will terminate on July 1, 2016, pursuant to section 19(f)(2), Article III of the Florida Constitution, unless terminated sooner or re-created by the Legislature.

The creation of this trust fund is directly linked to HB 5501, which creates the One Stop Business Registration Portal.

B. SECTION DIRECTORY:

Section 1. Creates the One Stop Business Registration Portal Clearing Trust Fund in the Department of Revenue.

Section 2. Provides an effective date of July 1, 2012, if HB 5501 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill has no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

Section 19(f), Article III of the Florida Constitution requires that every trust fund be created by a three-fifth vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. In addition, the Florida Constitution provides that all newly created trust funds terminate not more than four years after the initial creation unless re-created. This trust fund will terminate on July 1, 2016, pursuant to section 19(f)(2), Article III of the Florida Constitution, unless terminated sooner or re-created by the Legislature.

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 trust funds; creating s. 215.1995,
3 F.S.; creating the One-Stop Business Registration
4 Portal Clearing Trust Fund within the Department of
5 Revenue; providing for the purpose of the trust fund
6 and sources of funds; providing a requirement with
7 respect to transfer and distribution of funds;
8 providing for future review and termination or re-
9 creation of the trust fund; providing a contingent
10 effective date.

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

13
14 Section 1. Section 215.1995, Florida Statutes, is created
15 to read:

16 215.1995 One-Stop Business Registration Portal Clearing
17 Trust Fund.-

18 (1) The One-Stop Business Registration Portal Clearing
19 Trust Fund is created within the Department of Revenue.

20 (2) The trust fund is established for use as a depository
21 for receipts generated through utilization of the One-Stop
22 Business Registration Portal established by s. 288.109, and for
23 subsequent transfer or distribution of such funds to appropriate
24 agencies and accounts.

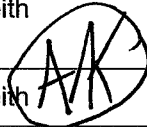

25 (3) The Department of Revenue shall transfer or distribute
26 the moneys in the trust fund to the appropriate agencies and
27 accounts in the month following receipt.

28 | (4) In accordance with s. 19(f)(2), Art. III of the trust
 29 | fund shall, unless terminated sooner, be terminated on July 1,
 30 | 2016. Before its scheduled termination, the trust fund shall be
 31 | reviewed as provided in s. 215.3206(1) and (2).

32 | Section 2. This act shall take effect July 1, 2012, if HB
 33 | 5501 or similar legislation is adopted in the same legislative
 34 | session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5505 PCB GOAS 12-03 Department of Financial 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	13 Y, 0 N	Keith	Topp
1) Appropriations Committee		Keith 	Leznoff 

SUMMARY ANALYSIS

The Department of Financial Services (DFS) manages and oversees several major functions of state government including the Treasury, State Fire Marshal, Insurance Fraud, State Accounting and Auditing, Workers' Compensation, Risk Management, Funeral & Cemetery Regulation as well as providing the licensing oversight functions of the Insurance Industry. Specifically, HB 5505 amends the statutes related to Workers' Compensation to achieve efficiencies and cost savings measures linked to the proposed House of Representatives' General Appropriations Act for Fiscal Year 2012-13.

The bill amends the statute to allow for the electronic submission of workers' compensation exemption applications, with streamlined reporting requirements (e.g., elimination of notarization requirement and, for construction industry exemptions, the filing of copies of stock certificates). Under Florida law, corporate officers can elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered "employees" for premium calculation purposes, and are not eligible to receive workers' compensation benefits.

Under the bill, the DFS will require applicants for workers' compensation exemptions to report their date of birth, Florida driver's license number or Florida identification card number. Applicants for a construction industry exemption will also provide a statement of ownership interest. Within 60 days of expiration of a construction industry exemption, the DFS is required to send notice to the exemption holder, either at the address on the exemption certificate or to the e-mail on file with DFS. The bill also provides that all certificates of election to be exempt issued on or after January 1, 2013 are valid for 2 years from the effective date stated on the certificate.

The bill repeals s. 440.59, F.S., which requires the DFS to prepare an annual report on the administration of the workers' compensation laws for the preceding calendar year. The statute currently requires DFS to submit the annual report by September 15 of each year to the Legislature and the Governor. DFS indicates that information contained in the Workers' Compensation Annual Report will continue to be available on the department's website.

The provisions of this bill will allow for a reduction of 9.00 FTE positions and an annual cost savings of \$348,289 from the Workers' Compensation Administration Trust Fund. The cost savings have been included in the proposed House of Representatives' General Appropriations Act for FY 2012-13. The cost of providing and implementing the electronic web-based application for exemption to workers' compensation will be covered from within existing DFS budget authority.

Except as otherwise expressly provided, the bill takes effect July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Workers' Compensation Exemptions¹

Section 440.05, F.S., "Election of exemption; revocation of election; notice, certification," permits corporate officers to elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered employees for premium calculation purposes, and are not eligible to receive workers' compensation benefits if they suffer a workplace injury. The term "corporate officers" is defined in s. 440. 02(9), F.S., to include members of limited liability companies (LLCs) in the construction industry who own at least 10% of the LLC.

Construction Industry and Non-Construction Exemptions

The Division of Workers' Compensation (DWC) processes applications for construction industry exemptions (which are valid for 2 years) and non-construction industry exemptions (which have no expiration date). In the construction industry, corporate officers and members of limited liability companies (LLCs) with a minimum 10% ownership interest in the corporation or LLC, respectively, may elect to be exempt. There is no ownership requirement associated with non-construction industry exemptions. However, as non-construction LLC members are not considered corporate officers, they are not eligible for an exemption. The total number of exemption applications has been in decline for the past four years. In FY 2010-11, 62,293 construction industry exemption applications were processed, representing a 9% decrease from the previous year. Non-Construction industry exemption applications also fell in FY 2010-11 to 11,448, representing a 9.6% decrease from the previous year. As of June 30, 2011, there were 1,123,275 active exemptions.²

Applications for Exemption³

Currently, applicants for exemption complete a "Notice of Election to be Exempt" form (DWC-250). The application must be notarized, and submitted to the Division of Workers' Compensation. Construction industry applications must also be accompanied by a \$50 application fee and proof of requisite ownership (a copy of the stock certificate or documentation of 10% ownership of the LLC). A construction industry exemption is valid for 2 years, while there is no time limit on non-construction exemptions.

Workers' Compensation Annual Report

Section 440.59, F.S., requires the DFS to prepare an annual report of the administration of ch. 440, F.S., for the preceding calendar year. The report is to include a detailed statement of the receipts of and expenditures from the Workers' Compensation Administration Trust Fund and a statement of the causes of the accidents leading to the injuries for which the awards were made. On or before September 15 of each year, the DFS is required to submit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Democratic and Republican Leaders of the Senate and the House of Representatives, and the chairs of the legislative committees having jurisdiction over workers' compensation.

¹For an overview of the exemption process and eligibility requirements, see the Department of Financial Services website: <http://www.myfloridacfo.com/wc/employer/exemption.html> (last accessed November 9, 2011).

²Information can be found here; www.myfloridacfo.com/wc/pdf/DWC-Annual-Report-2011.pdf

³The application fee for a construction industry exemption is \$50. There is no application fee for a non-construction industry exemption application. Pursuant to s. 440.05(8)(b), F.S., monies collected by the Division of Workers' Compensation are used to fund the division's investigative efforts, most of which relate to the construction industry.

The 2011 Annual Report of the Florida Division of Workers' Compensations contains narrative, as well as charts and graphs depicting the activities of the division. In addition, the report includes information regarding claims, such as the nature of the injury, cause of the injury, body location of workplace injuries, and medical data.

DFS indicates that a total of 2,223 work hours by the Division of Workers' Compensation employees is devoted each year to producing the annual report.

Effects of the Bill

Paperless Exemption Application Process

The bill allows for the electronic submission of workers' compensation exemption applications, with streamlined reporting requirements (e.g., elimination of notarization requirement and, for construction industry exemptions, the filing of copies of stock certificates). Additional data elements to be reported by all applicants electronically are date of birth, Florida driver's license number or Florida identification card number. Construction industry applicants will also provide a statement of ownership interest. Within 60 days of expiration of a construction industry exemption, the Department of Financial Services (DFS) is required to send notice to the exemption holder, either at the address on the exemption certificate or to the e-mail on file with DFS.

The bill provides that all certificates of exemption issued by the Division of Workers' Compensation on or after January 1, 2013 are valid for 2 years.

Repeal of the Workers' Compensation Annual Report

The bill repeals section 440.59, F.S., which requires the DFS to prepare an annual report on the administration of the workers' compensation laws of the prior year.

The Division of Workers' Compensation maintains a website that provides much of the information currently contained in the annual report. In addition, the division's website contains forms, publications, and other information to assist injured workers, employers, insurance carriers, health care providers, and other interested parties

The bill will allow for the reduction of 1.00 FTE position and a cost savings annually of \$46,473 from the Workers' Compensation Administration Trust Fund. DFS indicates that a total of 2,223 work hours by DFS employees is devoted each year to producing the annual report. Based on the number of hours devoted to producing the workers' compensation annual report the enactment of this bill would allow for a reduction of 1.00 FTE (Insurance Analyst II) and a cost saving annually of \$46,473.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.02, F.S., to eliminate the requirement of filing "written" notice of election to be exempt.

Section 2. Amends s. 440.05, F.S., providing for the electronic submission of workers' compensation exemption applications.

Section 3. Amends s. 440.05(6), F.S., providing a 2-year expiration period for all certificates of election to be exempt issued on or after January 1, 2013.

Section 4. Repeals s. 440.59, F.S., which requires DFS to prepare an annual report on the administration of the Workers' Compensation laws.

Section 5: Except as otherwise expressly provided, the bill takes effect July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

No Impact.

2. Expenditures:

The DFS indicates that providing for an electronic application process for workers' compensation exemptions in addition to repealing annual report requirements in section 440.59, F.S., will eliminate the need for 9.00 FTE staff (8.00 FTE who review and process the exemptions; 1.00 FTE who prepares the annual report). The potential reduction in staff represents a total annual cost savings of \$348,289 from the Workers' Compensation Administration Trust Fund, which has been incorporated into the proposed House of Representatives' General Appropriations Act for FY 2012-13. The cost savings of \$348,289 will be from two appropriation categories: \$333,998 from Salaries and Benefits and \$14,291 from Expenses.

The cost of providing and implementing the electronic web-based application for exemption to workers' compensation will be covered from within existing DFS budget authority.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The changes will streamline the exemption process and make it easier for applicants to complete and submit an exemption. The elimination of the requirement to notarize the exemption application will reduce a regulatory step for applicants and eliminate the cost associated with using a notary.

With an established expiration period for all exemptions, persons with non-construction industry exemptions will have to apply for an exemption every 2 years. Presently, non-construction industry exemptions do not have an expiration date. The bill, however, will not result in new fees, as there continues to be no application fee for non-construction industry exemptions.

D. FISCAL COMMENTS:

The streamlining of the exemption reporting process with an electronic submission process (which allows for a reduction of 8.00 positions and an annual cost savings of \$301,816) is part of the DFS' Legislative Budget Request and Schedule VIII-B-2 submission for FY 2012-2013. DFS indicates that costs associated with modifying its exemption technology to provide for electronic submissions will be minimal and completed within current budget authority.

DFS indicates that a total of 2,223 work hours by the Division of Workers' Compensation (DWC) employees is devoted each year to producing the annual report. Based on the number of hours devoted to producing the workers' compensation annual report the enactment of this bill would allow for a reduction of 1.00 FTE (Insurance Analyst II) and a cost saving annually of \$46,473 from the Workers' Compensation Administration Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require 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:

The Division of Workers' Compensation would have to amend Rule 69L-6.012 "Notice of Election to be Exempt" to reflect the new statutory requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Division of Workers' Compensation presently provides walk-in assistance in all Compliance District Offices and will continue to provide assistance. Computers will be available in the District Offices for exemption applicants who may not have access to a computer.

Non-construction industry exemptions do not have an expiration date. The bill provides for a 2-year expiration date for all exemptions. While this will require non-construction industry exemption holders to re-apply for exemption every 2 years, it will assist in ensuring that the information on which each exemption is based remains timely during the exemption period. For example, currently a corporate officer with a construction industry exemption who leaves the corporation remains in possession of a "certificate of election to be exempt" that does not have an expiration date.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the Department of Financial
 3 Services; amending s. 440.02, F.S.; redefining the
 4 term "employee" for purposes of workers' compensation;
 5 amending s. 440.05, F.S.; revising requirements for
 6 submitting a notice of election of exemption; revising
 7 duties of the Department of Financial Services
 8 relating to the expiration of certificates of
 9 exemption; expanding applicability of requirements
 10 relating to certificates of exemption; repealing s.
 11 440.59, F.S., relating to the duty of the Department
 12 of Financial Services to make an annual report on the
 13 administration of ch. 440, F.S., the Workers'
 14 Compensation Law, to specified officials; providing
 15 effective dates.

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

18
 19 Section 1. Paragraph (b) of subsection (15) of section
 20 440.02, Florida Statutes, is amended to read:

21 440.02 Definitions.—When used in this chapter, unless the
 22 context clearly requires otherwise, the following terms shall
 23 have the following meanings:

24 (15)

25 (b) "Employee" includes any person who is an officer of a
 26 corporation and who performs services for remuneration for such
 27 corporation within this state, whether or not such services are
 28 continuous.

29 1. Any officer of a corporation may elect to be exempt
 30 from this chapter by filing ~~written~~ notice of the election with
 31 the department as provided in s. 440.05.

32 2. As to officers of a corporation who are engaged in the
 33 construction industry, no more than three officers of a
 34 corporation or of any group of affiliated corporations may elect
 35 to be exempt from this chapter by filing ~~written~~ notice of the
 36 election with the department as provided in s. 440.05. Officers
 37 must be shareholders, each owning at least 10 percent of the
 38 stock of such corporation and listed as an officer of such
 39 corporation with the Division of Corporations of the Department
 40 of State, in order to elect exemptions under this chapter. For
 41 purposes of this subparagraph, the term "affiliated" means and
 42 includes one or more corporations or entities, any one of which
 43 is a corporation engaged in the construction industry, under the
 44 same or substantially the same control of a group of business
 45 entities which are connected or associated so that one entity
 46 controls or has the power to control each of the other business
 47 entities. The term "affiliated" includes, but is not limited to,
 48 the officers, directors, executives, shareholders active in
 49 management, employees, and agents of the affiliated corporation.
 50 The ownership by one business entity of a controlling interest
 51 in another business entity or a pooling of equipment or income
 52 among business entities shall be prima facie evidence that one
 53 business is affiliated with the other.

54 3. An officer of a corporation who elects to be exempt
 55 from this chapter by filing a ~~written~~ notice of the election
 56 with the department as provided in s. 440.05 is not an employee.

57
 58 Services are presumed to have been rendered to the corporation
 59 if the officer is compensated by other than dividends upon
 60 shares of stock of the corporation which the officer owns.

61 Section 2. Subsections (3) and (6) of section 440.05,
 62 Florida Statutes, are amended to read:

63 440.05 Election of exemption; revocation of election;
 64 notice; certification.-

65 (3) Each officer of a corporation who is engaged in the
 66 construction industry and who elects an exemption from this
 67 chapter or who, after electing such exemption, revokes that
 68 exemption, must electronically submit ~~mail~~ a ~~written~~ notice to
 69 such effect to the department on a form prescribed by the
 70 department. ~~The notice of election to be exempt from the~~
 71 ~~provisions of this chapter must be notarized and under oath.~~ The
 72 notice of election to be exempt which is electronically
 73 submitted to the department by the officer of a corporation who
 74 is allowed to claim an exemption as provided by this chapter
 75 must list the name, federal tax identification number, date of
 76 birth, Florida driver license number or Florida identification
 77 card ~~social security~~ number, all certified or registered
 78 licenses issued pursuant to chapter 489 held by the person
 79 seeking the exemption, ~~a copy of relevant documentation as to~~
 80 ~~employment status filed with the Internal Revenue Service as~~
 81 ~~specified by the department, a copy of the relevant occupational~~
 82 ~~license in the primary jurisdiction of the business, and the~~
 83 registration number of the corporation filed with the Division
 84 of Corporations of the Department of State, and the percentage

85 | of ownership ~~along with a copy of the stock certificate~~
 86 | evidencing the required ownership under this chapter. The notice
 87 | of election to be exempt must identify each corporation that
 88 | employs the person electing the exemption and must list the
 89 | social security number or federal tax identification number of
 90 | each such employer and the additional documentation required by
 91 | this section. In addition, the notice of election to be exempt
 92 | must provide that the officer electing an exemption is not
 93 | entitled to benefits under this chapter, must provide that the
 94 | election does not exceed exemption limits for officers provided
 95 | in s. 440.02, and must certify that any employees of the
 96 | corporation whose officer elects an exemption are covered by
 97 | workers' compensation insurance. Upon receipt of the notice of
 98 | the election to be exempt, receipt of all application fees, and
 99 | a determination by the department that the notice meets the
 100 | requirements of this subsection, the department shall issue a
 101 | certification of the election to the officer, unless the
 102 | department determines that the information contained in the
 103 | notice is invalid. The department shall revoke a certificate of
 104 | election to be exempt from coverage upon a determination by the
 105 | department that the person does not meet the requirements for
 106 | exemption or that the information contained in the notice of
 107 | election to be exempt is invalid. The certificate of election
 108 | must list the name of the corporation listed in the request for
 109 | exemption. A new certificate of election must be obtained each
 110 | time the person is employed by a new or different corporation
 111 | that is not listed on the certificate of election. A copy of the
 112 | certificate of election must be sent to each workers'

113 compensation carrier identified in the request for exemption.
 114 Upon filing a notice of revocation of election, an officer who
 115 is a subcontractor or an officer of a corporate subcontractor
 116 must notify her or his contractor. Upon revocation of a
 117 certificate of election of exemption by the department, the
 118 department shall notify the workers' compensation carriers
 119 identified in the request for exemption.

120 (6) A construction industry certificate of election to be
 121 exempt which is issued in accordance with this section shall be
 122 valid for 2 years after the effective date stated thereon. Both
 123 the effective date and the expiration date must be listed on the
 124 face of the certificate by the department. The construction
 125 industry certificate must expire at midnight, 2 years from its
 126 issue date, as noted on the face of the exemption certificate. A
 127 construction industry certificate of election to be exempt may
 128 be revoked before its expiration by the officer for whom it was
 129 issued or by the department for the reasons stated in this
 130 section. At least 60 days before ~~prior to~~ the expiration date of
 131 a construction industry certificate of exemption ~~issued after~~
 132 ~~December 1, 1998~~, the department shall send notice of the
 133 expiration date ~~and an application for renewal~~ to the
 134 certificateholder at the address on the certificate or to the e-
 135 mail address on file with the department.

136 Section 3. Effective January 1, 2013, subsection (6) of
 137 section 440.05, Florida Statutes, as amended by this act, is
 138 amended to read:

139 440.05 Election of exemption; revocation of election;
 140 notice; certification.-


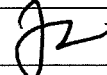
141 (6) A ~~construction industry~~ certificate of election to be
 142 exempt which is issued on or after January 1, 2013, in
 143 accordance with this section shall be valid for 2 years after
 144 the effective date stated thereon. Both the effective date and
 145 the expiration date must be listed on the face of the
 146 certificate by the department. The ~~construction industry~~
 147 certificate must expire at midnight, 2 years from its issue
 148 date, as noted on the face of the exemption certificate. A
 149 ~~construction industry~~ certificate of election to be exempt may
 150 be revoked before its expiration by the officer for whom it was
 151 issued or by the department for the reasons stated in this
 152 section. At least 60 days before the expiration date of a
 153 ~~construction industry~~ certificate of exemption, the department
 154 shall send notice of the expiration date to the
 155 certificateholder at the address on the certificate or to the e-
 156 mail address on file with the department.

157 Section 4. Section 440.59, Florida Statutes, is repealed.

158 Section 5. Except as otherwise expressly provided in this
 159 act, this act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5507 PCB GOAS 12-05 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, 0 N	Lloyd	Topp
1) Appropriations Committee		Lloyd 	Leznoff 

SUMMARY ANALYSIS

The Department of Management Services (DMS) is the administrative arm of Florida's state government. HB 5507 amends statutes relating to the department to conform to the proposed House of Representatives' General Appropriations Act (GAA) for FY 2012-13 by:

- Revising provisions relating to the reimbursement of DMS 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 DMS online procurement system and electronic information services (commonly known as MyFloridaMarketPlace) from the DMS to the Department of Financial Services to support statewide purchasing operations associated with the online procurement system and electronic information services.
- Repealing the statute which establishes the executive aircraft pool within the DMS. In addition, the bill terminates the Bureau of Aircraft Trust Fund and transfers the cash balance to the General Revenue Fund. Eliminates the need for providing an annual report on executive aircraft usage.
- Amends the statute to continue the \$3 surcharge on certain criminal offenses and noncriminal moving traffic violations by extending the sunset date of the provision. The surcharge annually provides \$5.2 million to support the Statewide Law Enforcement Radio System.
- Requires contractors of private correctional facilities to directly reimburse the DMS for contract monitoring and administrative costs rather than the current practice of reimbursing the Department of Corrections for contract monitoring. The direct reimbursement to DMS for administrative costs will allow for a General Revenue savings of \$1.2 million.

To conform to the proposed House GAA, this bill ensures that the department is fully reimbursed the actual cost for coordinating the annual Florida State Employees' Charitable Campaign; authorizes the transfers of funds to the Department of Financial Services for statewide purchasing operations; eliminates the requirement that DMS provide on-demand executive aircraft travel (appropriations eliminated in FY 2011-12); amends the statute to continue the \$3 surcharge on certain criminal and non-criminal moving traffic violations to insure that \$5.2 million is collected to support the Statewide Law Enforcement Radio System; and requires contractors of private correctional facilities to reimburse DMS directly for administrative and contract monitoring which provides an annual General Revenue savings of \$1.2 million.

This bill takes effect on July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida State Employees' Charitable Campaign

Background:

Pursuant to s. 110.181, F.S., the DMS 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 one of the two recently completed fiscal years due to the reimbursement limit of 1 percent of gross pledges.¹

Effect of Bill:

This bill amends s. 110.181, F.S., to require the fiscal agent to reimburse the DMS 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 DMS 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, DMS 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 DMS Support Program – i.e., The Office of Supplier Diversity, Fleet Management, and Purchasing Oversight.

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.

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

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 unless provided for in the General Appropriations Act, the amount of the transfer shall 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 \$500,000. The proposed House Appropriations Act for FY 2012-13, transfers \$350,000 from DMS to the Department of Financial Services for statewide purchasing functions.

Executive Aircraft Pool

Background:

The DMS 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 \$1.5 million in annual appropriations to support the executive aircraft program and 11.00 staff positions were eliminated in the FY 2011-12 General Appropriations Act.

The Bureau of Aircraft Trust Fund, FLAIR number 72-2-066, was previously 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. The trust fund has a remaining cash balance of \$35,651. However, in the current fiscal year, there are no appropriations for expenditures from the trust fund.

Effect of Bill:

This bill repeals s. 287.161, F.S., which establishes the executive aircraft pool within the DMS. Additionally, the bill terminates the Bureau of Aircraft Trust Fund and transfers the remaining cash balance to the General Revenue Fund.

Statewide Law Enforcement Radio System (SLERS) Funding

Background:

A surcharge of \$3 is imposed on criminal offenses listed in s. 318.17, F.S., and for noncriminal moving traffic violations under chapter 316., F.S. These funds are deposited in the SLERS trust fund and are used to support the statewide communications systems for law enforcement and emergency personnel. This surcharge is scheduled to sunset on July 1, 2012.

Effect of the Bill:

The bill amends current law to continue the surcharge through July 1, 2021. The surcharge will continue to provide approximately \$5.2 million in annual revenue to support the Statewide Law Enforcement Radio System. The surcharge revenues account for approximately 23% of the overall cost of providing the Statewide Law Enforcement Radio System.

Private Prison Monitoring

Background:

Chapter 957, F.S., charges the Department of Management Services, Bureau of Private Prison Monitoring (Bureau) with issuing contracts, establishing operating standards, and monitoring compliance of the state's private prisons. The Bureau is responsible for entering into contracts for the design, construction, and operation of privately operated correctional facilities. The Bureau may not enter into a contract unless it determines that the contract or series of contracts in total for the facility will result in cost savings to the state of at least seven percent under the Department of Corrections costs. Once the savings is determined, the Bureau enters into a contract with a private vendor to operate the facility for an agreed daily per diem. The per diem includes the cost of all facility operations and the cost of the contract monitors employed by DMS. The Bureau currently oversees the operational contracts for seven facilities: Bay, Blackwater River, Gadsden, Graceville, Lake City, Moore Haven, and South Bay correctional facilities.

The Bureau currently has 14 authorized positions. Seven of those positions are associated with the administration of the contracts. The other seven positions monitor the contracts from each private institution. Section 957.04(1)(g), F.S., requires a full-time contract monitor that is appointed and supervised by DMS, and the contractor is required to reimburse DMS for the salary and expenses of the contract monitor. However current law does not require the contractor to reimburse DMS for the seven positions associated with the administration of the contracts. Also, currently the private prison contractors reimburse the Department of Corrections rather than the DMS the cost of the contract monitors.

Effects of Bill:

This bill amends s. 957.04(1)(g), F.S., to require private prison contractors to reimburse DMS for their proportional share of the costs associated with the administration of the contracts in addition to the reimbursement for the contract monitor. The bill clarifies that one full-time monitor is required at each private correctional facility. In addition, the bill specifies that the reimbursements are in addition to all contracted per diems and may not result in increased per diems or decreased services.

B. SECTION DIRECTORY:

Section 1. Amends s. 110.181, F.S., revising provisions relating to the reimbursement of the DMS 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 DMS online procurement system and electronic information services (commonly known as MyFloridaMarketPlace) from DMS to the Department of Financial Services to support statewide purchasing operations. In addition, provides that the transfer of cash to the Department of Financial Services may not exceed \$500,000.

Section 3. 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 4. Repeals s. 287.161, F.S., which establishes the executive aircraft pool within the DMS.

Section 5. Terminating the Bureau of Aircraft Trust Fund within the DMS; providing for the disposition of balances in and revenues of the trust fund; and prescribing procedures for terminating the trust fund.

Section 6. Amends 318.18 & 318.21, F.S., continues \$3 surcharge on certain criminal penalties and traffic violations with a revised sunset date of July 1, 2021.

Section 7. Amends 957.04, F.S., requires contractors of private correctional facilities to directly reimburse the DMS for contract monitoring and administrative oversight.

Section 8. Providing an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments" section.

2. Expenditures:

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 DMS 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 \$500,000, per year, may be transferred from the Purchasing Oversight account in the DMS 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 department's online procurement systems and electronic information services (commonly known as MyFloridaMarketPlace). The Proposed House of Representatives' General Appropriations Act for FY 2012-13, provides \$350,000 to Department of Financial Services for statewide purchasing functions.

Statewide Law Enforcement Radio System Funding

The \$3 surcharge imposed on criminal offenses listed in s. 318.17, F.S., and for all noncriminal moving traffic violations under chapter 316, F.S., currently provides \$5,250,000 in annual revenues for the support of the Statewide Law Enforcement Radio System. The surcharge revenues account for approximately 23% of the overall cost of providing the Statewide Law Enforcement Radio System. The proposed House of Representatives' General Appropriations Act for FY 2012-13, includes the \$5.2 million revenue stream from the \$3 surcharge for appropriations related to operating the Statewide Law Enforcement Radio System.

Private Prison Monitoring

The DMS will be reimbursed by the private prison contractors for all 14 of the positions in the Bureau of Private Prison Monitoring, including the administrative contract oversight, which will provide a General Revenue savings of \$1.2 million in the proposed House of Representatives' General Appropriations Act for FY 2012-13. The proposed appropriations act also includes a newly create budget entity for private prison monitoring so as to easily distinguish the cost of the Bureau of Private Prison Monitoring. The appropriations of the new budget entity for FY 2012-13 total, \$2.1 million.

The bill requires private prison contractors to reimburse DMS for their proportional share of the costs associated with the administration of the contracts in addition to the reimbursement for the contract monitors. Presently, the private prison contractors are reimbursing the Department of Corrections for the monitoring oversight costs. In addition, the bill requires the three private prison contractors currently operating institutions in this state to proportionally share the cost between them. The bill specifies that the reimbursements are in addition to all contracted per diems and may not result in increased per diems or decreased services.

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
 3 Services; amending s. 110.181, F.S.; revising
 4 provisions relating to reimbursement of the department
 5 for actual costs of coordinating the Florida State
 6 Employees' Charitable Campaign; amending s. 287.042,
 7 F.S.; providing for the transfer of funds generated by
 8 fees collected for the use of the department's
 9 electronic information services from the department to
 10 the Department of Financial Services to support
 11 statewide purchasing operations; establishing the
 12 amount of transfer; amending s. 287.16, F.S.;
 13 eliminating a duty of the department to provide an
 14 annual report concerning utilization of aircraft in
 15 the executive aircraft pool; repealing s. 287.161,
 16 F.S., which establishes the executive aircraft pool
 17 within the department and provides procedures and
 18 requirements with respect thereto; terminating the
 19 Bureau of Aircraft Trust Fund within the department;
 20 providing for the disposition of balances in and
 21 revenues of the trust fund; prescribing procedures for
 22 the termination of the trust fund; amending ss. 318.18
 23 and 318.21, F.S.; revising the expiration date of
 24 provisions governing the remission of surcharges for
 25 specified criminal offenses and noncriminal moving
 26 traffic violations to the Department of Revenue to
 27 fund the state agency law enforcement radio system and
 28 to provide technical assistance with respect to

29 statewide systems of regional law enforcement
 30 communications; amending s. 957.04, F.S.; requiring
 31 contractors of private correctional facilities to
 32 directly reimburse the Department of Management
 33 Services for administration costs; providing an
 34 effective date.

35

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

37

38 Section 1. Paragraph (b) of subsection (2) of section
 39 110.181, Florida Statutes, is amended to read:

40 110.181 Florida State Employees' Charitable Campaign.—

41 (2) SELECTION OF FISCAL AGENTS; COST.—

42 (b) The fiscal agent shall withhold the reasonable costs
 43 for conducting the campaign and for accounting and distribution
 44 to the participating organizations and shall reimburse the
 45 department the actual cost, ~~not to exceed 1 percent of gross~~
 46 ~~pledges,~~ for coordinating the campaign in accordance with the
 47 rules of the department. In any fiscal year in which the
 48 Legislature specifically appropriates to the department its
 49 total costs for coordinating the campaign from the General
 50 Revenue Fund, the fiscal agent is not required to reimburse such
 51 costs to the department under this subsection. Otherwise,
 52 reimbursement will be the difference between actual costs and
 53 the amount appropriated.

54 Section 2. Paragraph (h) of subsection (1) of section
 55 287.042, Florida Statutes, is amended to read:

56 287.042 Powers, duties, and functions.—The department

57 shall have the following powers, duties, and functions:

58 (1)

59 (h)1. The department may collect fees for the use of its
 60 electronic information services. The fees may be imposed on an
 61 individual transaction basis or as a fixed subscription for a
 62 designated period of time. At a minimum, the fees shall be
 63 determined in an amount sufficient to cover the department's
 64 projected costs of the services, including overhead in
 65 accordance with the policies of the department ~~of Management~~
 66 ~~Services~~ for computing its administrative assessment. All fees
 67 collected under this paragraph shall be deposited in the
 68 Operating Trust Fund for disbursement as provided by law.

69 2. The department shall transfer funds generated by fees
 70 collected for the use of the department's electronic information
 71 services from the Purchasing Oversight Account in the Operating
 72 Trust Fund to the Administrative Trust Fund in the Department of
 73 Financial Services to support statewide purchasing operations.
 74 Unless provided for in the General Appropriations Act, the
 75 amount of transfer shall be established each year in the
 76 department's nonoperating budget based upon the estimated cost
 77 of statewide purchasing operations provided by the Department of
 78 Financial Services and may not exceed \$500,000.

79 Section 3. Subsection (10) of section 287.16, Florida
 80 Statutes, is amended, and subsections (11) and (12) of that
 81 section are renumbered as subsections (10) and (11),
 82 respectively, to read:

83 287.16 Powers and duties of department.—The Department of
 84 Management Services shall have the following powers, duties, and

85 responsibilities:

86 ~~(10) To provide the Legislature annual reports at the end~~
 87 ~~of each calendar year concerning the utilization of all aircraft~~
 88 ~~in the executive pool.~~

89 Section 4. Section 287.161, Florida Statutes, is repealed.

90 Section 5. (1) The Bureau of Aircraft Trust Fund within
 91 the Department of Management Services, FLAIR number 72-2-066, is
 92 terminated.

93 (2) All current balances remaining in, and all revenues
 94 of, the Bureau of Aircraft Trust Fund on the date of termination
 95 shall be transferred to the General Revenue Fund.

96 (3) The Department of Management Services shall pay any
 97 outstanding debts and obligations of the terminated fund as soon
 98 as practicable, and the Chief Financial Officer shall close out
 99 and remove the terminated fund from various state accounting
 100 systems using generally accepted accounting principles
 101 concerning warrants outstanding, assets, and liabilities.

102 Section 6. Subsection (17) of section 318.18, Florida
 103 Statutes, is amended to read:

104 318.18 Amount of penalties.—The penalties required for a
 105 noncriminal disposition pursuant to s. 318.14 or a criminal
 106 offense listed in s. 318.17 are as follows:

107 (17) In addition to any penalties imposed, a surcharge of
 108 \$3 must be paid for all criminal offenses listed in s. 318.17
 109 and for all noncriminal moving traffic violations under chapter
 110 316. Revenue from the surcharge shall be remitted to the
 111 Department of Revenue and deposited quarterly into the State
 112 Agency Law Enforcement Radio System Trust Fund of the Department

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113 of Management Services for the state agency law enforcement
 114 radio system, as described in s. 282.709, and to provide
 115 technical assistance to state agencies and local law enforcement
 116 agencies with their statewide systems of regional law
 117 enforcement communications, as described in s. 282.7101. This
 118 subsection expires July 1, 2021 ~~2012~~. The Department of
 119 Management Services may retain funds sufficient to recover the
 120 costs and expenses incurred for managing, administering, and
 121 overseeing the Statewide Law Enforcement Radio System, and
 122 providing technical assistance to state agencies and local law
 123 enforcement agencies with their statewide systems of regional
 124 law enforcement communications. The Department of Management
 125 Services working in conjunction with the Joint Task Force on
 126 State Agency Law Enforcement Communications shall determine and
 127 direct the purposes for which these funds are used to enhance
 128 and improve the radio system.

129 Section 7. Subsection (17) of section 318.21, Florida
 130 Statutes, is amended to read:

131 318.21 Disposition of civil penalties by county courts.—
 132 All civil penalties received by a county court pursuant to the
 133 provisions of this chapter shall be distributed and paid monthly
 134 as follows:

135 (17) Notwithstanding subsections (1) and (2), the proceeds
 136 from the surcharge imposed under s. 318.18(17) shall be
 137 distributed as provided in that subsection. This subsection
 138 expires July 1, 2021 ~~2012~~.

139 Section 8. Paragraph (g) of subsection (1) of section
 140 957.04, Florida Statutes, is amended to read:

141 957.04 Contract requirements.-

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

145 (g) Require the contractor to reimburse the Department of
 146 Management Services for costs associated with contract
 147 monitoring and the administrative oversight of the contract.

148 Such reimbursements are in addition to all contracted per diems
 149 and may not result in increased per diems or decreased services
 150 selection and appointment of a full-time contract monitor.


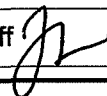
151 1. A full-time ~~The~~ contract monitor shall be appointed for
 152 each correctional facility and supervised by the Department of
 153 Management Services. The contractor is required to reimburse the
 154 Department of Management Services for the salary and expenses of
 155 the contract monitor. It is the obligation of the contractor to
 156 provide suitable office space for the contract monitor at the
 157 correctional facility. The contract monitor shall have unlimited
 158 access to the correctional facility.

159 2. The contractor is required to reimburse the Department
 160 of Management Services for their proportional share of the
 161 appropriations for the Bureau of Private Prison Monitoring as
 162 provided in the General Appropriations Act.

163 Section 9. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5509 PCB GOAS 12-06 State Data Center System
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, 0 N	Lloyd	Topp
1) Appropriations Committee		Lloyd 	Leznoff 

SUMMARY ANALYSIS

HB 5509 amends various provisions of law related to the consolidation of agency data centers to conform to the proposed House of Representatives' General Appropriations Act (GAA) for Fiscal Year 2012-13.

Currently, section 282.201, F.S., establishes a state data center system and requires all agency data centers and computing facilities to be consolidated into a primary data center by 2019. In 2011, the Legislature codified in statute the data center consolidation schedule recommended by the Agency for Enterprise Information Technology (AEIT). The consolidation schedule identified the agencies required to consolidate, the primary data center each agency would consolidate into and the fiscal year the agencies would consolidate.

Additionally, the Legislature established in law the requirement for agencies, primary data centers, and the AEIT to submit consolidation transition plans and identified the components required to be included in these plans.

Specifically, the bill:

- Amends the schedule for agency data center consolidations and exempts certain agencies from consolidating to a primary data center.
- Deletes the requirement that agencies must submit information relating to their data centers and computing facilities to the AEIT.
- Deletes the requirement for the AEIT to submit a comprehensive transition plan.
- Amends certain duties and responsibilities of a primary data center, to include the Northwest Regional Data Center.

The bill amends the agency data center consolidation schedule for Fiscal Year 2012-2013, which conforms to the proposed FY 2012-13 House GAA, by making a number of statewide adjustments to appropriations in the various agencies impacted by data center consolidation. These statewide adjustments increased General Revenue by \$1.9 million and decreased trust funds by \$607,577; for a net increase of \$1.33 million.

The bill has an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Data Center Consolidations

Current Situation

The Legislature established the state data center system and required all agency data centers and computing facilities to be consolidated into a primary data center by 2019.¹ By December 1 of each year, beginning in 2009, the Legislature directed the Agency for Enterprise Information Technology (AEIT) to identify at least two agency data centers or computing facilities for consolidation into a primary data center.²

The Legislature initiated the first phase of data center consolidation 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.

The AEIT submitted its recommendation as required by law on September 30, 2009,³ for the next phase of data center 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 provided recommendations for the consolidation of all remaining agency data centers and computing facilities.

¹ 2008-116, Laws of Florida.

² 2008-116, Laws of Florida.

³ *Recommendation of Non-primary Data Centers for Consolidation into Primary Data Centers*. Agency for Enterprise Information Technology, September 30, 2009.

In 2011, the Legislature codified in statute the recommendations included in AEIT's December 23, 2010, report identifying the agencies required to consolidate into a primary data center within that fiscal year.⁴

Proposed Change

The bill amends the agency data center consolidation schedule as follows:

To the NSRC

- Department of Health's Test and Development Lab and all remaining data center resources located at the Capital Circle Office Complex by December 31, 2012.
- Department of Veterans' Affairs by July 1, 2013.
- Department of Legal Affairs by December 31, 2013.
- Department of Agriculture and Consumer Services' Agriculture Management Information Center in the Mayo Building and the Division of Licensing by March 31, 2014.

To the SSRC

- Fish and Wildlife Conservation Commission, except of the commission's Fish and Wildlife Research Institute in St. Petersburg, by July 1, 2013.
- Department of Economic Opportunity by October 31, 2013.
- Executive Office of the Governor, to include the Division of Emergency Management except for the Emergency Operation Center's management system in Tallahassee and the Camp Blanding Emergency Operations Center in Starke, by December 31, 2013.
- Department of Elderly Affairs by March 31, 2014.

To the NWRDC

- Department of Revenue's Carlton Building and Imaging Center locations by September 30, 2012.

The bill exempts the following from data center consolidation:

- Florida Department of Law Enforcement
- Department of Lottery's Gaming System
- Systems Design and Development in the Office of Policy and Budget
- State Board of Administration

The bill amends the date that the Department of Financial Services must consolidate from Fiscal Year 2013-2014 to Fiscal Year 2015-2016.

And finally, the bill requires that each agency identified for consolidation into a primary data center must submit with its respective legislative budget request the specific recurring and nonrecurring budget adjustments of resources by appropriation category into the appropriate data processing category pursuant to the legislative budget request instructions in s. 216.023.

Transition Plans

Current Situation

The Fiscal Years 2009-2010 and 2010-2011 General Appropriations Acts' directed the submission of transition plans for both the agencies identified for consolidation and the primary data centers identified to receive the consolidations; based on requirements established by the AEIT. For the agency transition plans, proviso in Fiscal Year 2010-2011 General Appropriations Act required 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.

⁴ 2011-50, Laws of Florida.

Additionally, the Fiscal Years 2009-2010 and 2010-2011 General Appropriations Acts' 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 were required to describe and make recommendations relating to issues which need to be resolved to accomplish the transfer.

In 2011 the Legislature codified in statute⁵ the requirement for the development and submission of:

- *Agency transition plans.* Requires plans to be submitted to the AEIT by September 1 of the fiscal year before the fiscal year of 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, Executive Office of the Governor, and the chairs of the legislative appropriations committees by September 30 of the fiscal year before the fiscal year of 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 by October 15 of the fiscal year before the scheduled consolidations to the Governor and the chairs of the legislative appropriations committees. The comprehensive transition plan must be developed in consultation with the agencies submitting the agency transition plans and the affected primary data center. The required components of the comprehensive transition plan are also identified.

Proposed Change

The bill amends the required transition plans as follows:

- *Agency transition plans.* Requires plans to be submitted to the appropriate primary data center by July 1 of the fiscal year before the agency's scheduled consolidation and amends the required components of the plan.
- *Primary data center transitions plans.* Requires plans to be submitted to the AEIT, the Executive Office of the Governor, and the chairs of the legislative appropriations committees by September 1 of the fiscal year before the scheduled consolidation.
- *Comprehensive transition plan.* Eliminates the requirement for AEIT to submit a comprehensive plan.

And finally, the bill eliminates the requirement that agencies submit certain agency data center information to the AEIT as the information is a component of the agency's transition plan.

Primary Data Centers

Current Situation

In 2009 the Legislature established a primary data center as a part of the state data center system.⁶ As required by s. 282.203, F.S., a primary data center was required to perform several duties, to include providing transparent financial statements to customer entities, the center's board of trustees, and the AEIT.

Additionally, a primary data center was authorized to enter into a memorandum of understanding with the agency where the center was administratively located for the provision of administrative services.

Proposed Change

The bill amends the duties of a primary data center to include:

- Requiring a primary data center to provide to each agency head by September 1 the projected costs to provide data center services for the next fiscal year.

⁵ 2011-50, Laws of Florida.

⁶ 2008-116, Laws of Florida.

- Providing a plan for consideration by the Legislative Budget Commission if the governing body of a data center approves the use of a billing rate schedule after the start of the fiscal year that increases any state agency's cost for that fiscal year.
- Requiring that any administrative overhead costs charged by the agency providing administrative services to the SSRC and NSRC must be appropriated by a specific appropriation in the General Appropriations Act.

B. SECTION DIRECTORY:

Section 1. Amends s. 282.201, F.S., relating to the state data center system and the schedule for consolidating agency data centers into a primary data center.

Section 2. Amends s. 282.203, F.S., relating to the duties and responsibilities of a primary data center and its board of trustees. Requires Northwood Share Resource Center and the Southwood Shared Resource Center to provide a plan for consideration by the Legislative Budget Commission, if the center's governing body approves a billing rate structure for its state agency customers after the start of a fiscal year that increases any of these customers' costs. In addition, the statute is amended to provide that any administrative overhead costs paid by a primary data center require a specific appropriation in the General Appropriations Act.

Section 3. Amends s. 1004.649, F.S., relating to the Northwest Regional Data Center to require the center to provide a plan for consideration by the Legislative Budget Commission, if the center's governing body approves a billing rate structure for its state agency customers after the start of a fiscal year that increases any of these customers' costs.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill amends the agency data center consolidation schedule for Fiscal Year 2012-2013, which conforms to the proposed FY 2012-13 House GAA, by making a number of statewide adjustments to appropriations in the various agencies impacted by data center consolidation. These statewide adjustments increased General Revenue by \$1.9 million and decreased trust funds by \$607,577; for a net increase of \$1.33 million.

Adjustments by department/agency for proposed FY 2012-13 Data Center Consolidation

DEPARTMENT	GENERAL REVENUE	ALL TRUST FUNDS	
AGENCY/HEALTH CARE ADMIN		\$50,116	
AGENCY/PERSONS WITH DISABL	(\$74,309)	(\$467,907)	
BUSINESS/PROFESSIONAL REG		(\$408,956)	
CHILDREN & FAMILY SERVICES	(\$7,096)	\$2,372,391	
CITRUS, DEPT OF		(\$34,686)	
CORRECTIONS, DEPT OF	\$1,762,545		
ECONOMIC OPPORTUNITY		\$855,948	
EDUCATION, DEPT OF	(\$96,316)	(\$114,018)	
ELDER AFFAIRS, DEPT OF	\$0	\$0	
ENVIR PROTECTION, DEPT OF		\$179,204	
FINANCIAL SERVICES		(\$2,024)	
FISH/WILDLIFE CONSERV COMM		(\$9,612)	
GOVERNOR, EXECUTIVE OFFICE	(\$72,923)	(\$38,867)	
HEALTH, DEPT OF		\$34,367	
HIWAY SAFETY/MTR VEH, DEPT		(\$1,003,575)	
JUSTICE ADMINISTRATION	(\$2,699)		
JUVENILE JUSTICE, DEPT OF	(\$175,011)		
MANAGEMENT SRVCS, DEPT OF	(\$4,239)	(\$1,196,196)	
MILITARY AFFAIRS, DEPT OF	(\$578)		
PUBLIC SERVICE COMMISSION		(\$15,953)	
REVENUE, DEPARTMENT OF	\$369,899	(\$96,010)	
STATE, DEPT OF	\$230,327		
TRANSPORTATION, DEPT OF		(\$711,799)	
UNIVERSITIES, DIVISION OF	(\$52)		
VETERANS' AFFAIRS, DEPT OF	\$9,984		
Grand Total	\$1,939,532	(\$607,577)	NET: \$1,331,955

The increase for the Department of Corrections is based on annualizing prior year's indirect costs and incorporating projected data center costs for Fiscal Year 2012-2013.

The bill requires the AEIT to develop standards for hardware and operations software for the primary data centers. Such standardization could result in future savings.

Additionally, the bill requires a primary data center to submit a plan for consideration by the Legislative Budget Commission if the center's board of trustees approves a change to the billing rate schedule after the start of Fiscal Year 2012-2013 that increases any state agency's costs for the fiscal year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

STORAGE NAME: h5509.APC.DOCX

DATE: 1/30/2012

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

29 resources with its legislative budget request;
 30 removing a requirement that the Agency for Enterprise
 31 Information Technology develop comprehensive
 32 transition plans; revising restrictions on agencies
 33 relating to technology facilities and services;
 34 amending s. 282.203, F.S.; revising duties of primary
 35 data centers and boards of trustees of such centers;
 36 requiring the centers to provide agencies with
 37 projected costs for inclusion in the agencies' budget
 38 requests; requiring boards to provide a plan for
 39 consideration by the Legislative Budget Commission
 40 under certain conditions; providing that certain
 41 administrative overhead costs require a specific
 42 appropriation in the General Appropriation Act;
 43 amending s. 1004.649, F.S.; revising responsibilities
 44 of the Northwest Regional Data Center; revising the
 45 date by which the center must provide agencies with
 46 projected costs; requiring the center to submit a plan
 47 to the Legislative Budget Commission when a billing
 48 rate schedule is revised after the beginning of the
 49 fiscal year and increases an agency's costs; providing
 50 an effective date.

51

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

53

54 Section 1. Subsection (1), paragraphs (d) and (e) of
 55 subsection (2), subsections (3) and (4), and paragraph (a) of

56 subsection (5) of section 282.201, Florida Statutes, are amended
 57 to read:

58 282.201 State data center system; agency duties and
 59 limitations.—A state data center system that includes all
 60 primary data centers, other nonprimary data centers, and
 61 computing facilities, and that provides an enterprise
 62 information technology service as defined in s. 282.0041, is
 63 established.

64 (1) INTENT.—The Legislature finds that the most efficient
 65 and effective means of providing quality utility data processing
 66 services to state agencies requires that computing resources be
 67 concentrated in quality facilities that provide the proper
 68 security, infrastructure, and staff resources to ensure that the
 69 state's data is maintained reliably and safely, and is
 70 recoverable in the event of a disaster. Efficiencies resulting
 71 from such consolidation include the increased ability to
 72 leverage technological expertise and hardware and software
 73 capabilities; increased savings through consolidated purchasing
 74 decisions; and the enhanced ability to deploy technology
 75 improvements and implement new policies consistently throughout
 76 the consolidated organization. Unless otherwise exempt by law,
 77 ~~Therefore~~ it is the intent of the Legislature that all agency
 78 data centers and computing facilities be consolidated into a
 79 primary data center ~~centers to the maximum extent possible by~~
 80 2019.

81 (2) AGENCY FOR ENTERPRISE INFORMATION TECHNOLOGY DUTIES.—
 82 The Agency for Enterprise Information Technology shall:

83 (d) By October 1 of each year ~~beginning in 2011,~~ provide

84 recommendations to the Governor and Legislature relating to
 85 changes to the schedule for the consolidations of state agency
 86 data centers as provided in subsection (4).

87 1. The recommendations must be based on the goal of
 88 maximizing current and future cost savings by:

89 a. Consolidating purchase decisions.†

90 b. Leveraging expertise and other resources to gain
 91 economies of scale.†

92 c. Implementing state information technology policies more
 93 effectively.†and

94 d. Maintaining or improving the level of service provision
 95 to customer entities.

96 2. The agency shall establish workgroups as necessary to
 97 ensure participation by affected agencies in the development of
 98 recommendations related to consolidations.

99 (e) Develop and establish rules relating to the operation
 100 of the state data center system which comply with applicable
 101 federal regulations, including 2 C.F.R. part 225 and 45 C.F.R.
 102 ~~The agency shall publish notice of rule development in the~~
 103 ~~Florida Administrative Weekly by October 1, 2011.~~ The rules must
 104 address:

105 1. Ensuring that financial information is captured and
 106 reported consistently and accurately.

107 2. Identifying standards for hardware, including standards
 108 for a shared, virtualized server environment, and operations
 109 system software and other operational software, including
 110 security and network infrastructure, for the primary data
 111 centers; requiring compliance with such standards in order to

112 enable the efficient consolidation of the agency data centers or
 113 computing facilities; and providing an exemption process from
 114 compliance with such standards, which must be consistent with
 115 paragraph (5)(b).

116 3. Requiring annual full cost recovery on an equitable
 117 rational basis. The cost-recovery methodology must ensure that
 118 no service is subsidizing another service and may include
 119 adjusting the subsequent year's rates as a means to recover
 120 deficits or refund surpluses from a prior year.

121 4. Requiring that any special assessment imposed to fund
 122 expansion is based on a methodology that apportions the
 123 assessment according to the proportional benefit to each
 124 customer entity.

125 5. Requiring that rebates be given when revenues have
 126 exceeded costs, that rebates be applied to offset charges to
 127 those customer entities that have subsidized the costs of other
 128 customer entities, and that such rebates may be in the form of
 129 credits against future billings.

130 6. Requiring that all service-level agreements have a
 131 contract term of up to 3 years, but may include an option to
 132 renew for up to 3 additional years contingent on approval by the
 133 board, and require at least a 180-day notice of termination.

134 (3) STATE AGENCY DUTIES.—

135 (a) For the purpose of completing the ~~its~~ work activities
 136 ~~as~~ described in subsections ~~subsection~~ (1) and (2), each state
 137 agency shall provide to the Agency for Enterprise Information
 138 Technology all requested information relating to its data
 139 centers and computing facilities and any other information.

140 relevant to the agency's ability to effectively transition its
 141 computer services into a primary data center. The agency shall
 142 also participate as required in workgroups relating to specific
 143 consolidation planning and implementation tasks as assigned by
 144 the Agency for Enterprise Information Technology and determined
 145 necessary to accomplish consolidation goals.

146 ~~(b) Each state agency shall submit to the Agency for~~
 147 ~~Enterprise Information Technology information relating to its~~
 148 ~~data centers and computing facilities as required in~~
 149 ~~instructions issued by July 1 of each year by the Agency for~~
 150 ~~Enterprise Information Technology. The information required may~~
 151 ~~include:~~

- 152 ~~1. Amount of floor space used and available.~~
- 153 ~~2. Numbers and capacities of mainframes and servers.~~
- 154 ~~3. Storage and network capacity.~~
- 155 ~~4. Amount of power used and the available capacity.~~
- 156 ~~5. Estimated expenditures by service area, including~~
 157 ~~hardware and software, numbers of full-time equivalent~~
 158 ~~positions, personnel turnover, and position reclassifications.~~
- 159 ~~6. A list of contracts in effect for the fiscal year,~~
 160 ~~including, but not limited to, contracts for hardware, software~~
 161 ~~and maintenance, including the expiration date, the contract~~
 162 ~~parties, and the cost of the contract.~~
- 163 ~~7. Service-level agreements by customer entity.~~

164 (b)(e) Each state agency customer of a primary data center
 165 shall notify the data center, by May 31 and November 30 of each
 166 year, of any significant changes in anticipated utilization of
 167 data center services pursuant to requirements established by the

168 boards of trustees of each primary data center.

169 (4) SCHEDULE FOR CONSOLIDATIONS OF AGENCY DATA CENTERS.—

170 (a) Consolidations of agency data centers shall be made by
 171 the date and to the specified primary data center as provided in
 172 this section and in accordance with budget adjustments contained
 173 in the General Appropriations Act.

174 (b) By December 31, 2011, the following shall be
 175 consolidated into the Northwest Regional Data Center:

176 1. The Department of Education's Knott Data Center in the
 177 Turlington Building.

178 2. The Department of Education's Division of Vocational
 179 Rehabilitation.

180 3. The Department of Education's Division of Blind
 181 Services, except for the division's disaster recovery site in
 182 Daytona Beach.

183 4. The FCAT Explorer.

184 5. FACTS.org.

185 (c) During the 2011-2012 fiscal year, the following shall
 186 be consolidated into the Southwood Shared Resource Center:

187 1. By September 30, 2011, the Department of Corrections.

188 2. By March 31, 2012, the Department of Transportation's
 189 Burns Building.

190 3. By March 31, 2012, the Department of Transportation's
 191 Survey & Mapping Office.

192 (d) During the 2011-2012 fiscal year, the following shall
 193 be consolidated into the Northwood Shared Resource Center:

194 1. By July 1, 2011, the Department of Transportation's
 195 Office of Motor Carrier Compliance.

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196 2. By March 31, 2012, the Department of Highway Safety and
 197 Motor Vehicles.

198 (e) By September 30, 2012, the Department of Revenue's
 199 Carlton Building and Imaging Center locations shall be
 200 consolidated into the Northwest Regional Data Center. ~~During the~~
 201 ~~2012-2013 fiscal year, the following shall be consolidated into~~
 202 ~~the Southwood Shared Resource Center:~~

203 1. ~~By September 30, 2012, the Division of Emergency~~
 204 ~~Management and the Department of Community Affairs, except for~~
 205 ~~the Emergency Operation Center's management system in~~
 206 ~~Tallahassee and the Camp Blanding Emergency Operations Center in~~
 207 ~~Starke.~~

208 2. ~~By September 30, 2012, the Department of Revenue's~~
 209 ~~Carlton Building and Imaging Center locations.~~

210 3. ~~By December 31, 2012, the Department of Health's Test~~
 211 ~~and Development Lab and all remaining data center resources~~
 212 ~~located at the Capital Circle Office Complex.~~

213 (f) During the 2012-2013 fiscal year, the following shall
 214 be consolidated into the Northwood Shared Resource Center:

215 1. By July 1, 2012, the Agency for Health Care
 216 Administration.

217 2. By December 31, 2012, the Department of Environmental
 218 Protection's Palmetto Commons.

219 3. By December 31, 2012, the Department of Health's Test
 220 and Development Lab and all remaining data center resources
 221 located at the Capital Circle Office Complex ~~March 30, 2013, the~~
 222 ~~Department of Law Enforcement's headquarters location.~~

223 (g) During the 2013-2014 fiscal year, the following

224 ~~agencies~~ shall be consolidated into the Southwood Shared
 225 Resource Center ~~work with the Agency for Enterprise Information~~
 226 ~~Technology to begin preliminary planning for consolidation into~~
 227 ~~a primary data center:~~

228 ~~1. The Department of the Lottery's headquarters location.~~

229 ~~2. The Department of Legal Affairs.~~

230 ~~1.3.~~ By July 1, 2013, the Fish and Wildlife Conservation
 231 Commission, except for the commission's Fish and Wildlife
 232 Research Institute in St. Petersburg.

233 2. By October 31, 2013, the Department of Economic
 234 Opportunity.

235 3.4. By December 31, 2013, the Executive Office of the
 236 Governor, to include the Division of Emergency Management except
 237 for the Emergency Operation Center's management system in
 238 Tallahassee and the Camp Blanding Emergency Operations Center in
 239 Starke.

240 ~~5. The Department of Veterans' Affairs.~~

241 ~~4.6.~~ By March 31, 2014, the Department of Elderly Affairs.

242 ~~7. The Department of Financial Services' Hartman, Larson,~~
 243 ~~and Fletcher Building Data Centers.~~

244 ~~8. The Department of Agriculture and Consumer Services'~~
 245 ~~Agriculture Management Information Center in the Mayo Building~~
 246 ~~and Division of Licensing.~~

247 (h) During the 2013-2014 fiscal year, the following shall
 248 be consolidated into the Northwood Shared Resource Center:

249 1. By July 1, 2013, the Department of Veterans' Affairs.

250 2. By December 31, 2013, the Department of Legal Affairs.

251 3. By March 31, 2014, the Department of Agriculture and

252 Consumer Services' Agriculture Management Information Center in
 253 the Mayo Building and the Division of Licensing.

254 (i)~~(h)~~ During the 2014-2015 fiscal year, the following
 255 agencies shall work with the Agency for Enterprise Information
 256 Technology to begin preliminary planning for consolidation into
 257 a primary data center:

- 258 1. The Department of Health's Jacksonville Lab Data
 259 Center.
- 260 2. The Department of Transportation's district offices,
 261 toll offices, and the District Materials Office.
- 262 3. The Department of Military Affairs' Camp Blanding Joint
 263 Training Center in Starke.
- 264 4. The Department of Community Affairs' Camp Blanding
 265 Emergency Operations Center in Starke.
- 266 5. The Department of Education's Division of Blind
 267 Services disaster recovery site in Daytona Beach.
- 268 6. The Department of Education's disaster recovery site at
 269 Santa Fe College.
- 270 7. The Department of the Lottery's Disaster Recovery
 271 Backup Data Center in Orlando.
- 272 8. The Fish and Wildlife Conservation Commission's Fish
 273 and Wildlife Research Institute in St. Petersburg.
- 274 9. The Department of Children and Family Services'
 275 Suncoast Data Center in Tampa.
- 276 10. The Department of Children and Family Services'
 277 Florida State Hospital in Chattahoochee.

278 (j)~~(i)~~ During the 2015-2016 fiscal year, all computing
 279 resources remaining within an agency ~~nonprimary~~ data center or

280 | computing facility, to include the Department of Financial
 281 | Services' Hartman, Larson, and Fletcher Buildings data centers,
 282 | shall be transferred to a primary data center for consolidation
 283 | unless otherwise required to remain in the agency for specified
 284 | financial, technical, or business reasons that must be justified
 285 | in writing and approved by the Agency for Enterprise Information
 286 | Technology. Such data centers, computing facilities, and
 287 | resources must be identified by the Agency for Enterprise
 288 | Information Technology by October 1, 2014.

289 | (k) The Department of Law Enforcement, the Department of
 290 | the Lottery's Gaming System, Systems Design and Development in
 291 | the Office of Policy and Budget, and the State Board of
 292 | Administration are exempt from data center consolidation under
 293 | this section.

294 | (l)~~(j)~~ Any agency that is consolidating agency data
 295 | centers into a primary data center must execute a new or update
 296 | an existing service-level agreement within 60 days after the
 297 | specified consolidation date, as required by s. 282.203, in
 298 | order to specify the services and levels of service it is to
 299 | receive from the primary data center as a result of the
 300 | consolidation. If an agency and primary data center are ~~is~~
 301 | unable to execute a service-level agreement by that date, the
 302 | agency and the primary data center shall submit a report to the
 303 | Executive Office of the Governor and to the chairs of the
 304 | legislative appropriations committees within 5 working days
 305 | after that date which explains the specific issues preventing
 306 | execution and describing the ~~its~~ plan and schedule for resolving
 307 | those issues.

308 (m)~~(k)~~ Beginning September 1, 2011, and every 6 months
 309 thereafter until data center consolidations are complete, the
 310 Agency for Enterprise Information Technology shall provide a
 311 status report on the implementation of the consolidations that
 312 must be completed during the fiscal year. The report shall be
 313 submitted to the Executive Office of the Governor and the chairs
 314 of the legislative appropriations committees. The report must,
 315 at a minimum, describe:

316 1. Whether the consolidation is on schedule, including
 317 progress on achieving the milestones necessary for successful
 318 and timely consolidation of scheduled agency data centers and
 319 computing facilities. ~~and~~

320 2. The risks that may affect the progress or outcome of
 321 the consolidation and how these risks are being addressed,
 322 mitigated, or managed.

323 (n)~~(l)~~ Each agency identified in this subsection for
 324 consolidation into a primary data center shall submit a
 325 transition plan to the appropriate primary data center ~~Agency~~
 326 ~~for Enterprise Information Technology~~ by July ~~September~~ 1 of the
 327 fiscal year before the fiscal year in which the scheduled
 328 consolidation will occur. Transition plans shall be developed in
 329 consultation with the appropriate primary data centers and the
 330 Agency for Enterprise Information Technology, and must include:

331 1. An inventory of the agency data center's resources
 332 being consolidated, including all hardware and its associated
 333 life cycle replacement schedule, software, staff, ~~and~~ contracted
 334 services, and ~~the~~ facility resources performing data center
 335 management and operations, security, backup and recovery,

336 disaster recovery, system administration, database
 337 administration, system programming, job control, production
 338 control, print, storage, technical support, help desk, and
 339 managed services, but excluding application development, and the
 340 agency's costs supporting these resources.

341 2. A list of contracts in effect, including, but not
 342 limited to, contracts for hardware, software, and maintenance,
 343 which identifies the expiration date, the contract parties, and
 344 the cost of each contract.

345 3.2. A detailed description of the level of services
 346 needed to meet the technical and operational requirements of the
 347 platforms being consolidated. ~~and an estimate of the primary~~
 348 ~~data center's cost for the provision of such services;~~

349 4.3. A description of resources for computing services
 350 proposed to remain in the department.

351 5.4. A timetable with significant milestones for the
 352 completion of the consolidation. ~~and~~

353 ~~5. The specific recurring and nonrecurring budget~~
 354 ~~adjustments of budget resources by appropriation category into~~
 355 ~~the appropriate data processing category pursuant to the~~
 356 ~~legislative budget instructions in s. 216.023 necessary to~~
 357 ~~support agency costs for the transfer.~~

358 (o) (m) Each primary data center shall develop a transition
 359 plan for absorbing the transfer of agency data center resources
 360 based upon the timetables for transition as provided in this
 361 subsection. The plan shall be submitted to the Agency for
 362 Enterprise Information Technology, the Executive Office of the
 363 Governor, and the chairs of the legislative appropriations

364 committees by September ~~1 30~~ of the fiscal year before the
 365 fiscal year in which the scheduled consolidations will occur.
 366 Each plan must include:

- 367 1. ~~An estimate of~~ The projected cost to provide data
 368 center services for each agency scheduled for consolidation. ~~†~~
- 369 2. A staffing plan that identifies the projected staffing
 370 needs and requirements based on the estimated workload
 371 identified in the agency transition plan. ~~†~~
- 372 3. The fiscal year adjustments to budget categories in
 373 order to absorb the transfer of agency data center resources
 374 pursuant to the legislative budget request instructions provided
 375 in s. 216.023. ~~†~~
- 376 4. An analysis of the cost effects resulting from the
 377 planned consolidations on existing agency customers. ~~†~~ ~~and~~
- 378 5. A description of any issues that must be resolved in
 379 order to accomplish as efficiently and effectively as possible
 380 all consolidations required during the fiscal year.

381 (p) Each agency identified in this subsection for
 382 consolidation into a primary data center shall submit with its
 383 respective legislative budget request the specific recurring and
 384 nonrecurring budget adjustments of resources by appropriation
 385 category into the appropriate data processing category pursuant
 386 to the legislative budget request instructions in s. 216.023.

387 ~~(n) The Agency for Enterprise Information Technology shall~~
 388 ~~develop a comprehensive transition plan, which shall be~~
 389 ~~submitted by October 15th of the fiscal year before the fiscal~~
 390 ~~year in which the scheduled consolidations will occur to each~~
 391 ~~primary data center, to the Executive Office of the Governor,~~

392 ~~and the chairs of the legislative appropriations committees. The~~
 393 ~~transition plan shall be developed in consultation with agencies~~
 394 ~~submitting agency transition plans and with the affected primary~~
 395 ~~data centers. The comprehensive transition plan must include:~~

396 ~~1. Recommendations for accomplishing the proposed~~
 397 ~~transitions as efficiently and effectively as possible with~~
 398 ~~minimal disruption to customer agency business processes;~~

399 ~~2. Strategies to minimize risks associated with any of the~~
 400 ~~proposed consolidations;~~

401 ~~3. A compilation of the agency transition plans submitted~~
 402 ~~by agencies scheduled for consolidation for the following fiscal~~
 403 ~~year; and~~

404 ~~4. Revisions to any budget adjustments provided in the~~
 405 ~~agency or primary data center transition plans.~~

406 ~~(e) Any agency data center scheduled for consolidation~~
 407 ~~after the 2011-2012 fiscal year may consolidate into a primary~~
 408 ~~data center before its scheduled date contingent upon the~~
 409 ~~approval of the Agency for Enterprise Information Technology.~~

410 (5) AGENCY LIMITATIONS.—

411 (a) Unless authorized by the Legislature or as provided in
 412 paragraphs (b) and (c), a state agency may not:

413 1. Create a new computing facility or data center, or
 414 expand the capability to support additional computer equipment
 415 in an existing computing facility or nonprimary data center;

416 2. Spend funds before the agency's scheduled consolidation
 417 into a primary data center to purchase or modify hardware or
 418 operations software that does not comply with hardware and
 419 software standards established by the Agency for Enterprise

420 Information Technology pursuant to paragraph (2)(e) for the
 421 efficient consolidation of the agency data centers or computing
 422 facilities;

423 3. Transfer existing computer services to any data center
 424 other than a primary data center;

425 4. Terminate services with a primary data center or
 426 transfer services between primary data centers without giving
 427 written notice of intent to terminate or transfer services 180
 428 days before such termination or transfer; or

429 5. Initiate a new computer service ~~if it does not~~
 430 ~~currently have an internal data center~~ except with a primary
 431 data center.

432 Section 2. Subsection (1) and paragraphs (e) and (1) of
 433 subsection (3) of section 282.203, Florida Statutes, are amended
 434 to read:

435 282.203 Primary data centers.-

436 (1) DATA CENTER DUTIES.-Each primary data center shall:

437 (a) Serve customer entities as an information-system
 438 utility.

439 (b) Cooperate with customer entities to offer, develop,
 440 and support the services and applications as defined and
 441 provided by the center's board of trustees and customer
 442 entities.

443 (c) Comply with rules adopted by the Agency for Enterprise
 444 Information Technology, pursuant to this section, and coordinate
 445 with the agency in the consolidation of data centers.

446 (d) Provide to each agency head by September 1 of the
 447 fiscal year before the fiscal year in which the agency's

448 consolidation is scheduled to occur the projected costs to
 449 provide data center services. Each agency head shall use the
 450 projected cost for inclusion in his or her respective
 451 legislative budget request for budget adjustments necessary to
 452 fund the agency's data center services.

453 (e)~~(d)~~ Provide transparent financial statements in a
 454 format approved by the center's board of trustees to customer
 455 entities,~~the center's board of trustees,~~ and the Agency for
 456 Enterprise Information Technology. The financial statements
 457 shall be provided as follows:

458 1. Annually, by July 30 for the current fiscal year and by
 459 December 1 for the subsequent fiscal year, the data center must
 460 provide the total annual budgeted costs by major expenditure
 461 category, including, but not limited to, salaries, expense,
 462 operating capital outlay, contracted services, or other
 463 personnel services, which directly relate to the provision of
 464 each service and which separately indicate the administrative
 465 overhead allocated to each service.

466 2. Annually, by July 30 for the current fiscal year and by
 467 December 1 for the subsequent fiscal year, the data center must
 468 provide total projected billings for each customer entity which
 469 are required to recover the costs of the data center.

470 3. Annually, by January 31, the data center must provide
 471 updates of the financial statements required under subparagraphs
 472 1. and 2. for the current fiscal year.

473 ~~4. By February 15, for proposed legislative budget~~
 474 ~~increases, the data center must provide updates of the financial~~
 475 ~~statements required under subparagraphs 1. and 2. for the~~

476 ~~subsequent fiscal year.~~

477

478 The financial information required under subparagraphs 1., 2.,
479 and 3. must be based on current law and current appropriations.

480 (f)~~(e)~~ Annually, by October 1, submit to the board of
481 trustees cost-reduction proposals, including strategies and
482 timetables for lowering customer entities' costs without
483 reducing the level of services.

484 (g)~~(f)~~ Maintain the performance of the facility, which
485 includes ensuring proper data backup, data backup recovery, an
486 effective disaster recovery plan, and appropriate security,
487 power, cooling and fire suppression, and capacity.

488 (h)~~(g)~~ Develop a business continuity plan and conduct a
489 live exercise of the plan at least annually. The plan must be
490 approved by the board and the Agency for Enterprise Information
491 Technology.

492 (i)~~(h)~~ Enter into a service-level agreement with each
493 customer entity to provide services as defined and approved by
494 the board. A service-level agreement may not have a term
495 exceeding 3 years but may include an option to renew for up to 3
496 years contingent on approval by the board.

497 1. A service-level agreement, at a minimum, must:

498 a. Identify the parties and their roles, duties, and
499 responsibilities under the agreement.†

500 b. Identify the legal authority under which the service-
501 level agreement was negotiated and entered into by the parties.†

502 c. State the duration of the contractual term and specify
503 the conditions for contract renewal.†

504 d. Prohibit the transfer of computing services between
 505 primary data center facilities without at least 180 days' notice
 506 of service cancellation.+

507 e. Identify the scope of work.+

508 f. Identify the products or services to be delivered with
 509 sufficient specificity to permit an external financial or
 510 performance audit.+

511 g. Establish the services to be provided, the business
 512 standards that must be met for each service, the cost of each
 513 service, and the process by which the business standards for
 514 each service are to be objectively measured and reported.+

515 h. Identify applicable funds and funding streams for the
 516 services or products under contract.+

517 i. Provide a timely billing methodology for recovering the
 518 cost of services provided to the customer entity.+

519 j. Provide a procedure for modifying the service-level
 520 agreement to address changes in projected costs of service.+

521 k. Provide that a service-level agreement may be
 522 terminated by either party for cause only after giving the other
 523 party and the Agency for Enterprise Information Technology
 524 notice in writing of the cause for termination and an
 525 opportunity for the other party to resolve the identified cause
 526 within a reasonable period.+ ~~and~~

527 1. Provide for mediation of disputes by the Division of
 528 Administrative Hearings pursuant to s. 120.573.

529 2. A service-level agreement may include:

530 a. A dispute resolution mechanism, including alternatives
 531 to administrative or judicial proceedings;

532 b. The setting of a surety or performance bond for
 533 service-level agreements entered into with agency primary data
 534 centers established by law; or

535 c. Additional terms and conditions as determined advisable
 536 by the parties if such additional terms and conditions do not
 537 conflict with the requirements of this section or rules adopted
 538 by the Agency for Enterprise Information Technology.

539 3. The failure to execute a service-level agreement within
 540 60 days after service commencement shall, in the case of an
 541 existing customer entity, result in a continuation of the terms
 542 of the service-level agreement from the prior fiscal year,
 543 including any amendments that were formally proposed to the
 544 customer entity by the primary data center within the 3 months
 545 before service commencement, and a revised cost-of-service
 546 estimate. If a new customer entity fails to execute an agreement
 547 within 60 days after service commencement, the data center may
 548 cease services.

549 ~~(j)~~~~(i)~~ Plan, design, establish pilot projects for, and
 550 conduct experiments with information technology resources, and
 551 implement enhancements in services if such implementation is
 552 cost-effective and approved by the board.

553 ~~(k)~~~~(j)~~ Enter into a memorandum of understanding with the
 554 agency where the data center is administratively located if the
 555 data center requires the agency to provide any administrative
 556 services to the data center and the cost of such services. Any
 557 administrative overhead costs charged shall require a specific
 558 appropriation in the General Appropriation Act.

559 ~~(l)~~~~(k)~~ Be the custodian of resources and equipment that

560 are located, operated, supported, and managed by the center for
 561 the purposes of chapter 273.

562 (m)~~(l)~~ Assume administrative access rights to the
 563 resources and equipment, such as servers, network components,
 564 and other devices that are consolidated into the primary data
 565 center.

566 1. Upon the date of each consolidation specified in s.
 567 282.201, the General Appropriations Act, or the Laws of Florida,
 568 each agency shall relinquish all administrative access rights to
 569 such resources and equipment.

570 2. Each primary data center shall provide its customer
 571 agencies with the appropriate level of access to applications,
 572 servers, network components, and other devices necessary for
 573 agencies to perform their core business activities and
 574 functions.

575 (3) BOARD DUTIES.—Each board of trustees of a primary data
 576 center shall:

577 (e) Ensure the sufficiency and transparency of the primary
 578 data center financial information by:

579 1. Establishing policies that ensure that cost-recovery
 580 methodologies, billings, receivables, expenditure, budgeting,
 581 and accounting data are captured and reported timely,
 582 consistently, accurately, and transparently and, upon adoption
 583 of rules by the Agency for Enterprise Information Technology,
 584 are in compliance with such rules.

585 2. Requiring execution of service-level agreements by the
 586 data center and each customer entity for services provided by
 587 the data center to the customer entity.

588 3. Requiring cost recovery for the full cost of services,
 589 including direct and indirect costs. The cost-recovery
 590 methodology must ensure that no service is subsidizing another
 591 service without an affirmative vote of approval by the customer
 592 entity providing the subsidy.

593 4. Establishing special assessments to fund expansions
 594 based on a methodology that apportions the assessment according
 595 to the proportional benefit to each customer entity.

596 5. Providing rebates to customer entities when revenues
 597 exceed costs and offsetting charges to those who have subsidized
 598 other customer entity costs based on actual prior year final
 599 expenditures. Rebates may be credited against future billings.

600 6. Approving all expenditures committing over \$50,000 in a
 601 fiscal year.

602 7. Projecting costs and revenues at the beginning of the
 603 third quarter of each fiscal year through the end of the fiscal
 604 year. If in any given fiscal year the primary data center is
 605 projected to earn revenues that are below costs for that fiscal
 606 year after first reducing operating costs where possible, the
 607 board shall implement any combination of the following remedies
 608 to cover the shortfall:

609 a. The board may direct the primary data center to adjust
 610 current year chargeback rates through the end of the fiscal year
 611 to cover the shortfall. The rate adjustments shall be
 612 implemented using actual usage rate and billing data from the
 613 first three quarters of the fiscal year and the same principles
 614 used to set rates for the fiscal year.

615 b. The board may direct the primary data center to levy

616 one-time charges on all customer entities to cover the
 617 shortfall. The one-time charges shall be implemented using
 618 actual usage rate and billing data from the first three quarters
 619 of the fiscal year and the same principles used to set rates for
 620 the fiscal year.

621 c. The customer entities represented by each board member
 622 may provide payments to cover the shortfall in proportion to the
 623 amounts each entity paid in the prior fiscal year.

624 8. Providing a plan for consideration by the Legislative
 625 Budget Commission if the board approves the use of a billing
 626 rate schedule after the start of the fiscal year that increases
 627 any agency's costs for that fiscal year.

628 (1) Contract with other primary data centers for the
 629 provision of administrative services or with the agency within
 630 which the primary data center is housed, whichever is most cost-
 631 effective. Any administrative overhead costs requires a specific
 632 appropriation in the General Appropriations Act.

633 Section 3. Subsection (1) of section 1004.649, Florida
 634 Statutes, is amended to read:

635 1004.649 Northwest Regional Data Center.—

636 (1) For the purpose of serving its state agency customers,
 637 the Northwest Regional Data Center at Florida State University
 638 is designated as a primary data center and shall ~~comply with the~~
 639 ~~following:~~

640 (a) Operate ~~Operates~~ under a governance structure that
 641 represents its customers proportionally.

642 (b) Maintain ~~Maintains~~ an appropriate cost-allocation
 643 methodology that accurately bills state agency customers based

644 solely on the actual direct and indirect costs of the services
 645 provided to state agency customers, and prohibits the
 646 subsidization of nonstate agency customers' costs by state
 647 agency customers.

648 (c) Enter ~~Enters~~ into a service-level agreement with each
 649 state agency customer to provide services as defined and
 650 approved by the governing board of the center. At a minimum,
 651 such service-level agreements must:

- 652 1. Identify the parties and their roles, duties, and
 653 responsibilities under the agreement;
- 654 2. State the duration of the agreement term and specify
 655 the conditions for renewal;
- 656 3. Identify the scope of work;
- 657 4. Establish the services to be provided, the business
 658 standards that must be met for each service, the cost of each
 659 service, and the process by which the business standards for
 660 each service are to be objectively measured and reported;
- 661 5. Provide a timely billing methodology for recovering the
 662 cost of services provided; and
- 663 6. Provide a procedure for modifying the service-level
 664 agreement to address any changes in projected costs of service.

665 (d) Provide ~~Provides~~ to the Board of Governors the total
 666 annual budget by major expenditure category, including, but not
 667 limited to, salaries, expenses, operating capital outlay,
 668 contracted services, or other personnel services by July 30 each
 669 fiscal year.

670 (e) Provide ~~Provides~~ to each state agency customer its
 671 projected annual cost for providing the agreed-upon data center

HB 5509

2012

672 services by September ~~August~~ 1 each fiscal year.

673 (f) Provide a plan for consideration by the Legislative
 674 Budget Commission if the governing body of the center approves
 675 the use of a billing rate schedule after the start of the fiscal
 676 year that increases any state agency customer's costs for that
 677 fiscal year.

678 Section 4. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 5509 (2012)

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: Appropriations Committee
2 Representative Hooper offered the following:

3
4 **Amendment**

5 Remove lines 192-197 and insert:

6 (d) By July 1, 2012, the Department of Transportation's
7 Office of Motor Carrier Compliance ~~During the 2011-2012 fiscal~~
8 ~~year, the following~~ shall be consolidated into the Northwood
9 Shared Resource Center:

10 ~~1. By July 1, 2011, the Department of Transportation's~~
11 ~~Office of Motor Carrier Compliance.~~

12 ~~2. By March 31, 2012, the Department of Highway Safety and~~
13 ~~Motor Vehicles.~~

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 5509 (2012)

Amendment No. 2

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: Appropriations Committee
2 Representative Hooper offered the following:

3
4 **Amendment**

5 Remove lines 213-222 and insert:

6 (f) During the 2012-2013 fiscal year, the following shall
7 be consolidated into the Northwood Shared Resource Center:

8 1. By July 1, 2012, the Agency for Health Care
9 Administration.

10 2. By August 31, 2012, the Department of Highway Safety
11 and Motor Vehicles.

12 3. ~~2-~~ By December 31, 2012, the Department of
13 Environmental Protection's Palmetto Commons.

14 4. ~~3-~~ By December 31, 2012, the Department of Health's
15 Test and Development Lab and all remaining data center resources
16 located at the Capital Circle Office Complex March 30, 2013, the
17 Department of Law Enforcement's headquarters location.
18

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 5509 (2012)

Amendment No. 3

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: Appropriations Committee
2 Representative Hooper offered the following:

3
4 **Amendment**

5 Remove lines 270-276 and insert:

6 ~~7. The Department of the Lottery's Disaster Recovery~~
7 ~~Backup Data Center in Orlando.~~

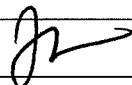
8 7. ~~8.~~ The Fish and Wildlife Conservation Commission's Fish
9 and Wildlife Research Institute in St. Petersburg.

10 8. ~~9.~~ The Department of Children and Family Services'
11 Suncoast Data Center in Tampa.

12 9. ~~10.~~ The Department of Children and Family Services'

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5511 PCB GOAS 12-07 Department of Business and Professional Regulation
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, 0 N	Topp	Topp
1) Appropriations Committee		Topp BDT	Leznoff 

SUMMARY ANALYSIS

Chapter 2010-161, Laws of Florida, transferred the Drugs, Devices and Cosmetics Regulatory Program (DDC) and the administration of chapter 499, Florida Statutes, from the Department of Health (DOH) to the Department of Business and Professional Regulation (DBPR), effective October 1, 2011.

HB 5511 amends current law to transfer the funding of the DDC between trust funds within DBPR and update chapter 20, F.S., to include the DDC within the DBPR organizational structure.

Specifically, the bill:

- Terminates the Drugs, Devices and Cosmetics Trust Fund and transfers funding of the DDC to the Professional Regulation Trust Fund.
- Designates the DDC as a division in the department's organizational structure in section 20.165, F.S.
- Updates references in chapter 499, F.S., to replace DOH with DBPR.

The bill conforms to the proposed House of Representatives General Appropriations Act for FY 2012-13 as \$2.7 million in trust fund appropriations for the DDC have been transferred from the Drugs, Devices and Cosmetics Trust Fund to the Professional Regulation Trust Fund.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 2010-161, Laws of Florida, transferred the Drugs, Devices and Cosmetics Regulatory Program and the administration of chapter 499, Florida Statutes, from the Department of Health to the Department of Business and Professional Regulation, effective October 1, 2011.

The Legislature during the 2011 Session created the Drugs, Devices and Cosmetics Trust Fund¹ within the DBPR and provided nine months of funding for the DDC in the FY 2011-12 General Appropriations Act. However, DBPR now indicates that organizationally the DDC should be placed within the Professional Regulation Trust Fund with similar regulated professions (such as architecture, veterinarians, accountants, realtors, engineers and geologists).²

Proposed Changes

The bill proposes to transfer funding for the DDC from the Drugs, Devices and Cosmetics Trust Fund to the Professional Regulation Trust Fund and designates the DDC as a division within DBPR's organizational structure in section 20.165, F.S. The bill terminates the Drugs, Devices, and Cosmetics Trust Fund.

In addition, the definition of the department and numerous references in chapter 499, F.S., are updated to delete the DOH and surgeon general with the secretary and DBPR.

B. SECTION DIRECTORY:

Section 1. Amends paragraph (d) of subsection 20.165(2)(d), F.S., to create the Division of Drugs, Devices, and Cosmetics within DBPR.

Section 2. Amends subsection 455.116(8), F.S., by eliminating the Drugs, Devices, and Cosmetics Trust Fund.

Section 3. Amends subsection 499.003(15), F.S., changing the definition of "Department" from DOH, to DBPR. Amends paragraph (a) of subsection 499.003(54), F.S., changing the reference from the "Surgeon General" of DOH, to the "Secretary of Business and Professional Regulation."

Section 4. Amends subsection 499.01211(2), F.S., changing the references from the "Surgeon General" of DOH, to the "Secretary of Business and Professional Regulation."

Section 5. Amends section 499.024, F.S., changing the reference from the "Surgeon General" of DOH, to the Department (i.e., DBPR),

Section 6. Amends subsection 499.065(2), F.S., changing the reference from the "Surgeon General" of DOH, to the "Secretary of Business and Professional Regulation."

Section 7. Amends subsection 499.601(2), F.S., changing the reference from DOH to the "Department" (i.e., DBPR).

¹ Chapter 2011-30, Laws of Florida

² Department of Business and Professional Regulation, Bill Analysis, dated January 18, 2012, on file with the Government Operations Appropriations Subcommittee.

Section 8. Amends subsection 499.61(2), F.S., changing the definition of "Department" from DOH, to DBPR.

Section 9. Repeals section 499.0031, F.S., eliminating the Drugs, Device, and Cosmetics Trust Fund.

Section 10. Terminates the Drugs, Devices, and Cosmetics Trust Fund; transfers current balance and remaining revenues of Drugs, Devices, and Cosmetics Trust Fund to the Professional Regulation Trust Fund; requires DBPR to pay outstanding debts of Drugs, Devices, and Cosmetics Trust fund as soon as practicable. This section is effective November 1, 2012.

Section 11. Amends paragraphs (d), (e), and (l) of subsection 499.01(2), F.S., to replace references to the Drugs, Devices, and Cosmetics Trust Fund with references to the Professional Regulation Trust Fund.

Section 12. Amends subsection 499.028(13), F.S., to replace references to the Drugs, Devices, and Cosmetics Trust Fund with references to the Professional Regulation Trust Fund.

Section 13. Amends subsection 499.04, F.S., to replace references to the Drugs, Devices, and Cosmetics Trust Fund with references to the Professional Regulation Trust Fund.

Section 14. Amends subsection 499.057, F.S., to replace references to the Drugs, Devices, and Cosmetics Trust Fund with references to the Professional Regulation Trust Fund. Also provides that unless otherwise provided in the General Appropriations Act all salaries and expenses of the DDC shall be paid from the Professional Regulation Trust Fund.

Section 15. Amends subsection 499.062, F.S., to replace references to the Drugs, Devices, and Cosmetics Trust Fund with references to the Professional Regulation Trust Fund.

Section 16. Amends subsection 499.066, F.S., to replace references to the Drugs, Devices, and Cosmetics Trust Fund with references to the Professional Regulation Trust Fund.

Section 17. Amends subsection 499.62 (7), F.S., to replace references to the Drugs, Devices, and Cosmetics Trust Fund with references to the Professional Regulation Trust Fund.

Section 18. Amends subsection 499.72, F.S., to replace references to the Drugs, Devices, and Cosmetics Trust Fund with references to the Professional Regulation Trust Fund.

Section 19. Amends subsection 499.79, F.S., to replace references to the Drugs, Devices, and Cosmetics Trust Fund with references to the Professional Regulation Trust Fund. Clarifies that moneys of the DDC shall be used by the DBPR in the administration of chapter 499, F.S.

Section 20. Provides an effective date July 1, 2012, except as otherwise expressly provided in the bill.

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:

None.

D. FISCAL COMMENTS:

The bill conforms to the proposed House of Representatives General Appropriations Act for FY 2012-13 as \$2.7 million in trust fund appropriations for the DDC have been transferred from the Drugs, Devices and Cosmetics Trust Fund to the Professional Regulation Trust Fund. The bill directs all revenues of the DDC to be deposited into the Professional Regulation Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No specific rule making authority is provided in the bill. However, DBPR will update several rules upon passage of this bill due to the transfer of funding of the DDC to the Professional Regulation Trust Fund. In addition, rules will continue to require updates related to the transfer of DDC from DOH to DBPR.

Specifically, rules that will require updates:

Rule Chapter 64F-12 to be amended to delete references to DOH forms. Rules 64F-12.012, 12.013, 12.015, 12.016, 12.020, 12.022 and 12.026, refer to DOH forms while the bill changes the references in chapter 499, F.S., from DOH to DBPR.³

Rule 64F-12.024 refers to administrative fees and fines being paid into the DDC trust fund, which the bill eliminates effective November 1, 2012.⁴

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³ Department of Business and Professional Regulation, Bill Analysis, dated January 18, 2012, on file with the Government Operations Appropriations Subcommittee, page 5.

⁴ Department of Business and Professional Regulation, Bill Analysis, dated January 18, 2012, on file with the Government Operations Appropriations Subcommittee, page 5.

1 A bill to be entitled
 2 An act relating to the Department of Business and
 3 Professional Regulation; amending s. 20.165, F.S.;
 4 creating the Division of Drugs, Devices, and Cosmetics
 5 within the Department of Business and Professional
 6 Regulation; amending s. 455.116, F.S.; deleting the
 7 Florida Drug, Device, and Cosmetic Trust Fund from the
 8 list of trust funds placed in the department, to
 9 conform; amending ss. 499.003, 499.01211, 499.024,
 10 499.065, 499.601, and 499.61, F.S.; conforming
 11 provisions to the transfer by s. 27, ch. 2010-161,
 12 Laws of Florida, of regulatory authority for chapter
 13 499, F.S., from the Department of Health to the
 14 Department of Business and Professional Regulation;
 15 repealing s. 499.0031, F.S., relating to the Florida
 16 Drug, Device, and Cosmetic Trust Fund; terminating the
 17 Florida Drug, Device, and Cosmetic Trust Fund;
 18 providing for the disposition of balances in and
 19 revenues of such trust fund; prescribing procedures
 20 for the termination of such trust fund; amending ss.
 21 499.01, 499.028, 499.04, 499.057, 499.062, 499.066,
 22 499.62, 499.72, and 499.79, F.S.; conforming
 23 provisions; providing effective dates.

24
 25 Be It Enacted by the Legislature of the State of Florida:
 26

27 Section 1. Paragraphs (d) through (k) of subsection (2) of
 28 section 20.165, Florida Statutes, are redesignated as paragraphs

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29 (e) through (l), respectively, and a new paragraph (d) is added
 30 to that subsection to read:

31 20.165 Department of Business and Professional
 32 Regulation.—There is created a Department of Business and
 33 Professional Regulation.

34 (2) The following divisions of the Department of Business
 35 and Professional Regulation are established:

36 (d) Division of Drugs, Devices, and Cosmetics.

37 Section 2. Effective November 1, 2012, subsection (8) of
 38 section 455.116, Florida Statutes, is amended to read:

39 455.116 Regulation trust funds.—The following trust funds
 40 shall be placed in the department:

41 ~~(8) Florida Drug, Device, and Cosmetic Trust Fund.~~

42 Section 3. Subsection (15) and paragraph (a) of subsection
 43 (54) of section 499.003, Florida Statutes, are amended to read:

44 499.003 Definitions of terms used in this part.—As used in
 45 this part, the term:

46 (15) "Department" means the Department of Business and
 47 Professional Regulation ~~Health~~.

48 (54) "Wholesale distribution" means distribution of
 49 prescription drugs to persons other than a consumer or patient,
 50 but does not include:

51 (a) Any of the following activities, which is not a
 52 violation of s. 499.005(21) if such activity is conducted in
 53 accordance with s. 499.01(2)(g):

54 1. The purchase or other acquisition by a hospital or
 55 other health care entity that is a member of a group purchasing
 56 organization of a prescription drug for its own use from the

57 group purchasing organization or from other hospitals or health
 58 care entities that are members of that organization.

59 2. The sale, purchase, or trade of a prescription drug or
 60 an offer to sell, purchase, or trade a prescription drug by a
 61 charitable organization described in s. 501(c)(3) of the
 62 Internal Revenue Code of 1986, as amended and revised, to a
 63 nonprofit affiliate of the organization to the extent otherwise
 64 permitted by law.

65 3. The sale, purchase, or trade of a prescription drug or
 66 an offer to sell, purchase, or trade a prescription drug among
 67 hospitals or other health care entities that are under common
 68 control. For purposes of this subparagraph, "common control"
 69 means the power to direct or cause the direction of the
 70 management and policies of a person or an organization, whether
 71 by ownership of stock, by voting rights, by contract, or
 72 otherwise.

73 4. The sale, purchase, trade, or other transfer of a
 74 prescription drug from or for any federal, state, or local
 75 government agency or any entity eligible to purchase
 76 prescription drugs at public health services prices pursuant to
 77 Pub. L. No. 102-585, s. 602 to a contract provider or its
 78 subcontractor for eligible patients of the agency or entity
 79 under the following conditions:

80 a. The agency or entity must obtain written authorization
 81 for the sale, purchase, trade, or other transfer of a
 82 prescription drug under this subparagraph from the Secretary of
 83 Business and Professional Regulation ~~State Surgeon General~~ or
 84 his or her designee.

85 b. The contract provider or subcontractor must be
 86 authorized by law to administer or dispense prescription drugs.

87 c. In the case of a subcontractor, the agency or entity
 88 must be a party to and execute the subcontract.

89 d. A contract provider or subcontractor must maintain
 90 separate and apart from other prescription drug inventory any
 91 prescription drugs of the agency or entity in its possession.

92 e. The contract provider and subcontractor must maintain
 93 and produce immediately for inspection all records of movement
 94 or transfer of all the prescription drugs belonging to the
 95 agency or entity, including, but not limited to, the records of
 96 receipt and disposition of prescription drugs. Each contractor
 97 and subcontractor dispensing or administering these drugs must
 98 maintain and produce records documenting the dispensing or
 99 administration. Records that are required to be maintained
 100 include, but are not limited to, a perpetual inventory itemizing
 101 drugs received and drugs dispensed by prescription number or
 102 administered by patient identifier, which must be submitted to
 103 the agency or entity quarterly.

104 f. The contract provider or subcontractor may administer
 105 or dispense the prescription drugs only to the eligible patients
 106 of the agency or entity or must return the prescription drugs
 107 for or to the agency or entity. The contract provider or
 108 subcontractor must require proof from each person seeking to
 109 fill a prescription or obtain treatment that the person is an
 110 eligible patient of the agency or entity and must, at a minimum,
 111 maintain a copy of this proof as part of the records of the
 112 contractor or subcontractor required under sub-subparagraph e.

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113 g. In addition to the departmental inspection authority
 114 set forth in s. 499.051, the establishment of the contract
 115 provider and subcontractor and all records pertaining to
 116 prescription drugs subject to this subparagraph shall be subject
 117 to inspection by the agency or entity. All records relating to
 118 prescription drugs of a manufacturer under this subparagraph
 119 shall be subject to audit by the manufacturer of those drugs,
 120 without identifying individual patient information.

121 Section 4. Subsection (2) of section 499.01211, Florida
 122 Statutes, is amended to read:

123 499.01211 Drug Wholesale Distributor Advisory Council.—

124 (2) The Secretary of Business and Professional Regulation
 125 ~~State Surgeon General~~, or his or her designee, and the Secretary
 126 of Health Care Administration, or her or his designee, shall be
 127 members of the council. The Secretary of Business and
 128 Professional Regulation ~~State Surgeon General~~ shall appoint nine
 129 additional members to the council who shall be appointed to a
 130 term of 4 years each, as follows:

131 (a) Three different persons each of whom is employed by a
 132 different prescription drug wholesale distributor licensed under
 133 this part which operates nationally and is a primary wholesale
 134 distributor, as defined in s. 499.003(47).

135 (b) One person employed by a prescription drug wholesale
 136 distributor licensed under this part which is a secondary
 137 wholesale distributor, as defined in s. 499.003(52).

138 (c) One person employed by a retail pharmacy chain located
 139 in this state.

140 (d) One person who is a member of the Board of Pharmacy

141 and is a pharmacist licensed under chapter 465.

142 (e) One person who is a physician licensed pursuant to
 143 chapter 458 or chapter 459.

144 (f) One person who is an employee of a hospital licensed
 145 pursuant to chapter 395 and is a pharmacist licensed pursuant to
 146 chapter 465.

147 (g) One person who is an employee of a pharmaceutical
 148 manufacturer.

149 Section 5. Section 499.024, Florida Statutes, is amended
 150 to read:

151 499.024 Drug product classification.—The department ~~State~~
 152 ~~Surgeon General~~ shall adopt rules to classify drug products
 153 intended for use by humans which the United States Food and Drug
 154 Administration has not classified in the federal act or the Code
 155 of Federal Regulations.

156 (1) Drug products must be classified as proprietary,
 157 prescription, or investigational drugs.

158 (2) If a product is distributed without required labeling,
 159 it is misbranded while held for sale.

160 (3) Any product that falls under the definition of drug in
 161 s. 499.003(19) may be classified under the authority of this
 162 section. This section does not subject portable emergency oxygen
 163 inhalators to classification; however, this section does not
 164 exempt any person from ss. 499.01 and 499.015.

165 (4) Any product classified under the authority of this
 166 section reverts to the federal classification, if different,
 167 upon the federal regulation or act becoming effective.

168 (5) The department may by rule reclassify drugs subject to

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169 | this part when such classification action is necessary to
 170 | protect the public health.

171 | (6) The department may adopt rules that exempt from any
 172 | labeling or packaging requirements of this part drugs classified
 173 | under this section if those requirements are not necessary to
 174 | protect the public health.

175 | Section 6. Subsection (2) of section 499.065, Florida
 176 | Statutes, is amended to read:

177 | 499.065 Inspections; imminent danger.—

178 | (2) To protect the public from prescription drugs that are
 179 | adulterated or otherwise unfit for human or animal consumption,
 180 | the department may examine, sample, seize, and stop the sale or
 181 | use of prescription drugs to determine the condition of those
 182 | drugs. The department may immediately seize and remove any
 183 | prescription drugs if the Secretary of Business and Professional
 184 | Regulation ~~State Surgeon General~~ or his or her designee
 185 | determines that the prescription drugs represent a threat to the
 186 | public health. The owner of any property seized under this
 187 | section may, within 10 days after the seizure, apply to a court
 188 | of competent jurisdiction for whatever relief is appropriate. At
 189 | any time after 10 days, the department may destroy the drugs as
 190 | contraband.

191 | Section 7. Subsection (2) of section 499.601, Florida
 192 | Statutes, is amended to read:

193 | 499.601 Legislative intent; construction.—

194 | (2) The provisions of this part are cumulative and shall
 195 | not be construed as repealing or affecting any powers, duties,
 196 | or authority of the department ~~of Health~~ under any other law of

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197 | this state; except that, with respect to the regulation of ether
 198 | as herein provided, in instances in which the provisions of this
 199 | part may conflict with any other such law, the provisions of
 200 | this part shall control.

201 | Section 8. Subsection (2) of section 499.61, Florida
 202 | Statutes, is amended to read:

203 | 499.61 Definitions.—As used in this part:

204 | (2) "Department" means the Department of Business and
 205 | Professional Regulation ~~Health~~.

206 | Section 9. Effective November 1, 2012, section 499.0031,
 207 | Florida Statutes, is repealed.

208 | Section 10. (1) The Florida Drug, Device, and Cosmetic
 209 | Trust Fund within the Department of Business and Professional
 210 | Regulation, FLAIR number 20-2-173005, is terminated.

211 | (2) The current balance remaining in, and all revenues of,
 212 | the Florida Drug, Device, and Cosmetic Trust Fund shall be
 213 | transferred to the Professional Regulation Trust Fund.

214 | (3) The Department of Business and Professional Regulation
 215 | shall pay any outstanding debts or obligations of the Florida
 216 | Drug, Device, and Cosmetic Trust Fund as soon as practicable,
 217 | and the Chief Financial Officer shall close out and remove the
 218 | terminated fund from the various state accounting systems using
 219 | generally accepted accounting principles concerning warrants
 220 | outstanding, assets, and liabilities.

221 | (4) This section shall take effect November 1, 2012.

222 | Section 11. Paragraphs (d), (e), and (1) of subsection (2)
 223 | of section 499.01, Florida Statutes, are amended to read:

224 | 499.01 Permits.—

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225 (2) The following permits are established:

226 (d) Prescription drug wholesale distributor permit.—A
 227 prescription drug wholesale distributor is a wholesale
 228 distributor that may engage in the wholesale distribution of
 229 prescription drugs. A prescription drug wholesale distributor
 230 that applies to the department for a new permit or the renewal
 231 of a permit must submit a bond of \$100,000, or other equivalent
 232 means of security acceptable to the department, such as an
 233 irrevocable letter of credit or a deposit in a trust account or
 234 financial institution, payable to the Professional Regulation
 235 ~~Florida Drug, Device, and Cosmetic~~ Trust Fund. The purpose of
 236 the bond is to secure payment of any administrative penalties
 237 imposed by the department and any fees and costs incurred by the
 238 department regarding that permit which are authorized under
 239 state law and which the permittee fails to pay 30 days after the
 240 fine or costs become final. The department may make a claim
 241 against such bond or security until 1 year after the permittee's
 242 license ceases to be valid or until 60 days after any
 243 administrative or legal proceeding authorized in this part which
 244 involves the permittee is concluded, including any appeal,
 245 whichever occurs later. The department may adopt rules for
 246 issuing a prescription drug wholesale distributor-broker permit
 247 to a person who engages in the wholesale distribution of
 248 prescription drugs and does not take physical possession of any
 249 prescription drugs.

250 (e) Out-of-state prescription drug wholesale distributor
 251 permit.—An out-of-state prescription drug wholesale distributor
 252 is a wholesale distributor located outside this state which

253 engages in the wholesale distribution of prescription drugs into
 254 this state and which must be permitted by the department and
 255 comply with all the provisions required of a wholesale
 256 distributor under this part. An out-of-state prescription drug
 257 wholesale distributor that applies to the department for a new
 258 permit or the renewal of a permit must submit a bond of
 259 \$100,000, or other equivalent means of security acceptable to
 260 the department, such as an irrevocable letter of credit or a
 261 deposit in a trust account or financial institution, payable to
 262 the Professional Regulation Florida Drug, Device, and Cosmetic
 263 Trust Fund. The purpose of the bond is to secure payment of any
 264 administrative penalties imposed by the department and any fees
 265 and costs incurred by the department regarding that permit which
 266 are authorized under state law and which the permittee fails to
 267 pay 30 days after the fine or costs become final. The department
 268 may make a claim against such bond or security until 1 year
 269 after the permittee's license ceases to be valid or until 60
 270 days after any administrative or legal proceeding authorized in
 271 this part which involves the permittee is concluded, including
 272 any appeal, whichever occurs later.

273 1. The out-of-state prescription drug wholesale
 274 distributor must maintain at all times a license or permit to
 275 engage in the wholesale distribution of prescription drugs in
 276 compliance with laws of the state in which it is a resident.

277 2. An out-of-state prescription drug wholesale distributor
 278 permit is not required for an intracompany sale or transfer of a
 279 prescription drug from an out-of-state establishment that is
 280 duly licensed as a prescription drug wholesale distributor, in

281 its state of residence, to a licensed prescription drug
 282 wholesale distributor in this state, if both wholesale
 283 distributors conduct wholesale distributions of prescription
 284 drugs under the same business name. The recordkeeping
 285 requirements of ss. 499.0121(6) and 499.01212 must be followed
 286 for this transaction.

287 (1) Limited prescription drug veterinary wholesale
 288 distributor permit.—Unless engaging in the activities of and
 289 permitted as a prescription drug manufacturer, nonresident
 290 prescription drug manufacturer, prescription drug wholesale
 291 distributor, or out-of-state prescription drug wholesale
 292 distributor, a limited prescription drug veterinary wholesale
 293 distributor permit is required for any person that engages in
 294 the distribution in or into this state of veterinary
 295 prescription drugs and prescription drugs subject to, defined
 296 by, or described by s. 503(b) of the Federal Food, Drug, and
 297 Cosmetic Act under the following conditions:

298 1. The person is engaged in the business of wholesaling
 299 prescription and veterinary prescription drugs to persons:

300 a. Licensed as veterinarians practicing on a full-time
 301 basis;

302 b. Regularly and lawfully engaged in instruction in
 303 veterinary medicine;

304 c. Regularly and lawfully engaged in law enforcement
 305 activities;

306 d. For use in research not involving clinical use; or

307 e. For use in chemical analysis or physical testing or for
 308 purposes of instruction in law enforcement activities, research,

309 or testing.

310 2. No more than 30 percent of total annual prescription
 311 drug sales may be prescription drugs approved for human use
 312 which are subject to, defined by, or described by s. 503(b) of
 313 the Federal Food, Drug, and Cosmetic Act.

314 3. The person does not distribute in any jurisdiction
 315 prescription drugs subject to, defined by, or described by s.
 316 503(b) of the Federal Food, Drug, and Cosmetic Act to any person
 317 who is authorized to sell, distribute, purchase, trade, or use
 318 these drugs on or for humans.

319 4. A limited prescription drug veterinary wholesale
 320 distributor that applies to the department for a new permit or
 321 the renewal of a permit must submit a bond of \$20,000, or other
 322 equivalent means of security acceptable to the department, such
 323 as an irrevocable letter of credit or a deposit in a trust
 324 account or financial institution, payable to the Professional
 325 Regulation ~~Florida Drug, Device, and Cosmetic~~ Trust Fund. The
 326 purpose of the bond is to secure payment of any administrative
 327 penalties imposed by the department and any fees and costs
 328 incurred by the department regarding that permit which are
 329 authorized under state law and which the permittee fails to pay
 330 30 days after the fine or costs become final. The department may
 331 make a claim against such bond or security until 1 year after
 332 the permittee's license ceases to be valid or until 60 days
 333 after any administrative or legal proceeding authorized in this
 334 part which involves the permittee is concluded, including any
 335 appeal, whichever occurs later.

336 5. A limited prescription drug veterinary wholesale

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337 distributor must maintain at all times a license or permit to
 338 engage in the wholesale distribution of prescription drugs in
 339 compliance with laws of the state in which it is a resident.

340 6. A limited prescription drug veterinary wholesale
 341 distributor must comply with the requirements for wholesale
 342 distributors under ss. 499.0121 and 499.01212, except that a
 343 limited prescription drug veterinary wholesale distributor is
 344 not required to provide a pedigree paper as required by s.
 345 499.01212 upon the wholesale distribution of a prescription drug
 346 to a veterinarian.

347 7. A limited prescription drug veterinary wholesale
 348 distributor may not return to inventory for subsequent wholesale
 349 distribution any prescription drug subject to, defined by, or
 350 described by s. 503(b) of the Federal Food, Drug, and Cosmetic
 351 Act which has been returned by a veterinarian.

352 8. A limited prescription drug veterinary wholesale
 353 distributor permit is not required for an intracompany sale or
 354 transfer of a prescription drug from an out-of-state
 355 establishment that is duly licensed to engage in the wholesale
 356 distribution of prescription drugs in its state of residence to
 357 a licensed limited prescription drug veterinary wholesale
 358 distributor in this state if both wholesale distributors conduct
 359 wholesale distributions of prescription drugs under the same
 360 business name. The recordkeeping requirements of ss. 499.0121(6)
 361 and 499.01212 must be followed for this transaction.

362 Section 12. Subsection (13) of section 499.028, Florida
 363 Statutes, is amended to read:

364 499.028 Drug samples or complimentary drugs; starter

365 packs; permits to distribute.-

366 (13) The department may, pursuant to chapter 120, impose
 367 an administrative fine, not to exceed \$5,000 per violation per
 368 day, for the violation of this section or rules adopted under
 369 this section. Each day such violation continues constitutes a
 370 separate violation, and each such separate violation is subject
 371 to a separate fine. All amounts collected under this section
 372 shall be deposited into the Professional Regulation ~~Drug,~~
 373 ~~Device, and Cosmetic~~ Trust Fund. In determining the amount of
 374 fine to be levied for a violation, the following factors must be
 375 considered:

- 376 (a) The severity of the violation.
- 377 (b) Any actions taken by the permittee to correct the
 378 violation or to remedy complaints.
- 379 (c) Any previous violations.

380 Section 13. Section 499.04, Florida Statutes, is amended
 381 to read:

382 499.04 Fee authority.-The department may collect fees for
 383 all drug, device, and cosmetic applications, permits, product
 384 registrations, and free-sale certificates. The total amount of
 385 fees collected from all permits, applications, product
 386 registrations, and free-sale certificates must be adequate to
 387 fund the expenses incurred by the department in carrying out
 388 this part. The department shall, by rule, establish a schedule
 389 of fees that are within the ranges provided in this section and
 390 shall adjust those fees from time to time based on the costs
 391 associated with administering this part. The fees are payable to
 392 the department to be deposited into the Professional Regulation

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393 ~~Florida Drug, Device, and Cosmetic~~ Trust Fund for the sole
 394 purpose of carrying out ~~the provisions of~~ this part.

395 Section 14. Section 499.057, Florida Statutes, is amended
 396 to read:

397 499.057 Expenses and salaries.—Except as otherwise
 398 provided in the General Appropriations Act, all expenses and
 399 salaries shall be paid out of the Professional Regulation Trust
 400 Fund. ~~special fund hereby created in the office of the Chief~~
 401 ~~Financial Officer, which fund is to be known as the "Florida~~
 402 ~~Drug, Device, and Cosmetic Trust Fund."~~

403 Section 15. Paragraph (a) of subsection (2) of section
 404 499.062, Florida Statutes, is amended to read:

405 499.062 Seizure and condemnation of drugs, devices, or
 406 cosmetics.—

407 (2) Whenever a duly authorized officer or employee of the
 408 department finds cause, or has probable cause to believe that
 409 cause exists, for the seizure of any drug, device, or cosmetic,
 410 as set out in this part, he or she shall affix to the article a
 411 tag, stamp, or other appropriate marking, giving notice that the
 412 article is, or is suspected of being, subject to seizure under
 413 this part and that the article has been detained and seized by
 414 the department. Such officer or employee shall also warn all
 415 persons not to remove or dispose of the article, by sale or
 416 otherwise, until permission is given by the department or the
 417 court. Any person who violates this subsection is guilty of a
 418 felony of the second degree, punishable as provided in s.
 419 775.082, s. 775.083, or s. 775.084.

420 (a) When any article detained or seized under this

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421 subsection has been found by the department to be subject to
 422 seizure and condemnation, the department shall petition the
 423 court for an order of condemnation or sale, as the court
 424 directs. The proceeds of the sale of drugs, devices, and
 425 cosmetics, less the legal costs and charges, shall be deposited
 426 into the Professional Regulation ~~Florida Drug, Device, and~~
 427 ~~Cosmetic~~ Trust Fund.

428 Section 16. Subsections (3) and (4) of section 499.066,
 429 Florida Statutes, are amended to read:

430 499.066 Penalties; remedies.—In addition to other
 431 penalties and other enforcement provisions:

432 (3) The department may impose an administrative fine, not
 433 to exceed \$5,000 per violation per day, for the violation of any
 434 provision of this part or rules adopted under this part. Each
 435 day a violation continues constitutes a separate violation, and
 436 each separate violation is subject to a separate fine. All
 437 amounts collected pursuant to this section shall be deposited
 438 into the Professional Regulation ~~Florida Drug, Device, and~~
 439 ~~Cosmetic~~ Trust Fund and are appropriated for the use of the
 440 department in administering this part. In determining the amount
 441 of the fine to be levied for a violation, the department shall
 442 consider:

- 443 (a) The severity of the violation;
- 444 (b) Any actions taken by the person to correct the
 445 violation or to remedy complaints; and
- 446 (c) Any previous violations.

447 (4) The department shall deposit any rewards, fines, or
 448 collections that are due the department and which derive from

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449 joint enforcement activities with other state and federal
 450 agencies which relate to this part, chapter 893, or the federal
 451 act, into the Professional Regulation ~~Florida Drug, Device, and~~
 452 ~~Cosmetic~~ Trust Fund. The proceeds of those rewards, fines, and
 453 collections are appropriated for the use of the department in
 454 administering this part.

455 Section 17. Subsection (7) of section 499.62, Florida
 456 Statutes, is amended to read:

457 499.62 License or permit required of manufacturer,
 458 distributor, dealer, or purchaser of ether.—

459 (7) A licensed or permitted facility shall renew its
 460 license or permit prior to its expiration date. If a renewal
 461 application and fee are not filed by the expiration date of any
 462 year, the permit may be reinstated only upon payment of a
 463 delinquent fee of \$50, plus the required renewal fee, within 30
 464 days after the date of expiration. If any person who is subject
 465 to the requirements of this part fails to comply with the
 466 renewal, the department shall have the authority to seize all
 467 ether products and dispose of them as of November 1 of the year
 468 the license or permit expires. Any funds collected from the
 469 disposal shall be placed in the Professional Regulation ~~Florida~~
 470 ~~Drug, Device, and Cosmetic~~ Trust Fund.

471 Section 18. Subsection (2) of section 499.72, Florida
 472 Statutes, is amended to read:

473 499.72 Administrative fines.—

474 (2) All such fines, monetary penalties, and costs received
 475 by the department in connection with this part shall be
 476 deposited in the Professional Regulation ~~Florida Drug, Device,~~

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477 | ~~and Cosmetic~~ Trust Fund.

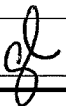
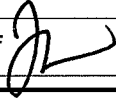
478 | Section 19. Section 499.79, Florida Statutes, is amended
479 | to read:

480 | 499.79 Deposit of fees.—All fees collected for licenses
481 | and permits required by this part shall be deposited in the
482 | Professional Regulation ~~Florida Drug, Device, and Cosmetic~~ Trust
483 | Fund ~~created by s. 499.057~~, and all moneys collected under ~~the~~
484 | ~~provisions of~~ this part and deposited in the ~~such~~ trust fund
485 | shall be used by ~~are hereby appropriated for the use of~~ the
486 | department in the administration of this part.

487 | Section 20. Except as otherwise expressly provided in this
488 | act, this act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5601 PCB ANRAS 12-01 License to Carry a Concealed Weapon or Firearm
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	13 Y, 0 N	Lolley	Massengale
1) Appropriations Committee		Lolley 	Leznoff 

SUMMARY ANALYSIS

To obtain a concealed weapons or firearms license, a person must complete an application with the Division of Licensing of the Department of Agriculture and Consumer Services, meet specific criteria, and submit a nonrefundable license fee not to exceed \$85 if he or she has not previously been issued a statewide license, or a nonrefundable license fee not to exceed \$70 for renewal of a statewide license. Costs for processing a required set of fingerprints are borne by the applicant and are in addition to the application fee.

Currently, the fees charged by the Department of Agriculture and Consumer Services are \$75 for a new license and \$65 for a renewal license. A \$42 background check is included in the total fee that new applicants and renewal applicants pay. All fees received are deposited in the Division of Licensing Trust Fund and as appropriated are used to administer the provisions of s. 790.06, F.S.

The bill amends s. 790.06, F.S., to reduce the maximum fee allowable for new a license from \$85 to \$70, and a renewal license from \$70 to \$60. Because the actual fees charged are \$75 and \$65, respectively, the result is a \$5 reduction for both.

Qualified individuals applying for an initial license or a renewal license to carry a concealed weapon or firearm will see a reduction in the cost of the license, which may stimulate an increase in the demand for a license, and thus, could result in an increase in commercial firearm sales.

Although the fee reduction has a significant fiscal impact on state government revenues, the estimated cash balance of \$22.7 million for next fiscal year in the Division of Licensing Trust Fund is well able to absorb the reduction for many years when the reduction would be more than offset by very strong revenues deferred from prior years' new and renewal licenses, as well as future years' revenue.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 790.06(5), F.S., specifies that the applicant for a license to carry a concealed weapon or firearm must submit to the department:

- A complete application described in s. 790.06(4), F.S.;
- A nonrefundable license fee not to exceed \$85, if he or she has not previously been issued a statewide license or a nonrefundable license fee not to exceed \$70 for renewal of a statewide license.
- A full set of fingerprints of the applicant administered by a law enforcement agency or the Division of Licensing of the Department of Agriculture and Consumer Services.
- A photocopy of a certificate or an affidavit or document showing that the applicant passed an approved firearm competency course or class; and
- A full frontal view color photograph of the applicant taken within the preceding 30 days.

Currently, the fees charged by the Department of Agriculture and Consumer Services are \$75 for a new license and \$65 for a renewal license. A \$42 background check is included in the total fee that new applicants and renewal applicants pay. All fees received are deposited in the Division of Licensing Trust Fund and as appropriated are used to administer the provisions of s. 790.06, F.S.

Section 493.6117, F.S. specifies that the unencumbered balance in the trust fund at the beginning of the year shall not exceed \$100,000, and any excess shall be transferred to the General Revenue Fund unallocated. Notwithstanding the provision in s. 493.6117, F.S., however, ss. 790.06(13), and 215.32(2)(b)4., F.S., state that all moneys collected [in the Division of Licensing Trust Fund] shall not revert to the General Revenue Fund.

The actual cash balance for last fiscal year ending June 30, 2011, was \$14.7 million. The cash balance for the current fiscal year is estimated to be \$20.4 million, and next fiscal year is estimated to be \$22.7 million. The cash balance includes deferred revenue because a license is valid for a period of 7 years from the date of issuance, that is, 86 percent of each dollar collected is not applied to cover expenditures until the subsequent 6 years of the license.

In 2008, the Legislature extended the license renewal period from 5 years to 7 years.¹

Effect of Proposed Changes

The bill amends s. 790.06, F.S., to reduce the maximum fee allowable for new a license from \$85 to \$70, and a renewal license from \$70 to \$60. Because the actual fees charged are \$75 and \$65, respectively, the result is a \$5 reduction for both.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.06, F.S., relating to licensure fees for carrying a concealed weapon or firearm.

Section 2. Provides an effective date of July 1, 2012.

¹ s. 1, ch. 08-105 L.O.F.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2012-13	FY 2013-14	FY 2014-15
Division of Licensing Trust Fund	(\$949,970)	(\$663,005)	(\$684,400)
General Revenue Fund 4% Service Charge	(\$37,999)	(\$26,520)	(\$27,376)

The above revenue reductions in the Division of Licensing Trust Fund are based on projections of new applicants and existing licensees estimated to renew.

2. Expenditures:

According to the Department of Agriculture and Consumer Services, the \$5 reduction would have no impact on day-to-day operations; however, printed license application forms, pamphlets, website information, and downloadable forms would have to be revised to reflect the change.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not applicable.

2. Expenditures:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Qualified individuals applying for an initial license or a renewal license to carry a concealed weapon or firearm will see a reduction in the cost of the license.

The reduced fee to apply and receive a concealed weapon or firearm license may stimulate an increase in the demand for a license, which could result in an increase in commercial firearm sales.

D. FISCAL COMMENTS:

Concealed weapon renewal volume and the associated revenue are forecast to increase substantially for Fiscal Year 2015-16 through Fiscal Year 2017-18, as the first wave of 7-year licensees from 2008 and after renew their licenses. As a result of the \$5 decrease in fees, the reduction in estimated annual revenues would be \$1.2 million, \$1.4 million and \$1.3 million for Fiscal Years 2015-16, 2016-17, and 2017-18, respectively.

According to the Department of Agriculture and Consumer Services, the deferred revenue from a \$5 fee reduction would not be realized until subsequent years when the reduction would be more than offset by very strong revenues deferred from prior years' new and renewal licenses, as well as future year's revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The department has sufficient direction in the bill and rulemaking authority to implement the change in statute.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to a license to carry a concealed
 3 weapon or firearm; amending s. 790.06, F.S.; reducing
 4 specified nonrefundable license fees; providing an
 5 effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Paragraph (b) of subsection (5) of section
 10 790.06, Florida Statutes, is amended to read:

11 790.06 License to carry concealed weapon or firearm.—

12 (5) The applicant shall submit to the Department of
 13 Agriculture and Consumer Services:

14 (b) A nonrefundable license fee not to exceed \$70 ~~\$85~~, if
 15 he or she has not previously been issued a statewide license, or
 16 a nonrefundable license fee not to exceed \$60 ~~\$70~~ for renewal of
 17 a statewide license. Costs for processing the set of
 18 fingerprints as required in paragraph (c) shall be borne by the
 19 applicant. However, an individual holding an active
 20 certification from the Criminal Justice Standards and Training
 21 Commission as a "law enforcement officer," "correctional
 22 officer," or "correctional probation officer" as defined in s.
 23 943.10(1), (2), (3), (6), (7), (8), or (9) is exempt from the
 24 licensing requirements of this section. If any individual
 25 holding an active certification from the Criminal Justice
 26 Standards and Training Commission as a "law enforcement
 27 officer," a "correctional officer," or a "correctional probation
 28 officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or

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29 (9) wishes to receive a concealed weapons or firearms license,
 30 such person is exempt from the background investigation and all
 31 background investigation fees, but shall pay the current license
 32 fees regularly required to be paid by nonexempt applicants.
 33 Further, a law enforcement officer, a correctional officer, or a
 34 correctional probation officer as defined in s. 943.10(1), (2),
 35 or (3) is exempt from the required fees and background
 36 investigation for a period of 1 year subsequent to the date of
 37 retirement of said officer as a law enforcement officer, a
 38 correctional officer, or a correctional probation officer.

39 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5701 PCB FTC 12-04 Corporate Income Tax
SPONSOR(S): Finance & Tax Committee, Precourt
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee	23 Y, 0 N	Aldridge	Langston
1) Appropriations Committee		Voyles <i>SV</i>	Leznoff <i>JK</i>

SUMMARY ANALYSIS

Florida imposes a 5.5% tax on the net income of corporations doing business in Florida.¹ If a taxpayer reasonably estimates his or her corporate income tax will be more than \$2,500 for a taxable year, then that taxpayer is required to make a declaration of that estimated amount.² Following the declaration, the taxpayer is required to make payments of the estimated tax, in varying numbers of installments, depending on when the declaration is due. The payments are due before the first day of specified months, including the 7th month of the taxable year, which for calendar-year corporations is also the first month of the state's fiscal year.

If the day on which an estimated payment is due is a Saturday, Sunday, or legal holiday, current administrative practice is to allow such payment to be made on the next following day that is not a Saturday, Sunday, or legal holiday. Therefore, if estimated payments due before July 1 fall on a Saturday, Sunday, or legal holiday, the payment will not be due until the following Monday, which would be into the next state fiscal year.

June 30, 2013 is a Sunday. Therefore, estimated payments that are otherwise due no later than that date, would not be due under current law and practice until Monday, July 1, 2013, which is the first day of the 2013-14 state fiscal year.

The bill requires a one-time "speed-up" of estimated corporate income tax payments so that any estimated tax payment that would otherwise be due no later than Sunday, June 30, 2013, shall be paid on or before June 28, 2013.

Staff estimates the impact on General Revenue to be a positive \$100 million in FY 2012-13 and a negative \$100 million in FY 2013-14.

This bill takes effect upon becoming law.

¹ Section 220.11, F.S.

² Section 220.24, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida imposes a 5.5% tax on the net income of corporations doing business in Florida.³ Every taxpayer that is liable for corporate income tax under ch. 220 or that is required to make a federal income return is required to submit a return to the state of Florida for each taxable year.⁴ If a taxpayer reasonably estimates his or her corporate income tax will be more than \$2,500 for a taxable year, then the taxpayer is required to make a declaration of that estimated amount.⁵ Following the declaration, the taxpayer is required to make payments of the estimated tax, in varying numbers of installments, depending on when the declaration is due.⁶ Although the statutes do not specify specific calendar day due dates⁷ for the estimated payments—stating the taxpayers must pay *before* a given date⁸—the estimated payment “due date” for each installment is, practically speaking, the day immediately preceding the deadline. At least some of these estimated tax payment due dates fall on a Saturday, Sunday, or legal holiday.⁹ Current administrative practice is to allow such payment to be made on the next following day that is not a Saturday, Sunday, or legal holiday.¹⁰

Current Situation

The June 30, 2013, estimated payment “due date” falls on a Sunday. Accordingly, an estimated \$100 million that would normally have been due to be received in FY 2012-2013 if the due date were not a weekend day, will instead be due to be received in FY 2013-14.

Effect of Proposed Changes

The bill amends s. 220.33, F.S., to provide that notwithstanding any administrative rule or determination of the department that allows estimated payments otherwise due on a Saturday, Sunday or legal holiday to be paid on the next succeeding day that is not a Saturday, Sunday or legal holiday, any estimated tax payment required under s. 220.33, F.S., that would otherwise be due no later than Sunday, June 30, 2013, shall be paid on or before June 28, 2013.

B. SECTION DIRECTORY:

³ Section 220.11, F.S.

⁴ Section 220.22, F.S. The Department may prescribe rules and regulations concerning taxpayers making returns and notices. Section 220.21, F.S. Statutes provide that all returns other than those required for a Domestic International Sales Corporation and partnership information are due “on or before the 1st day of the 4th month following the close of the taxable year or the 15th day following the due date, without extension, for the filing of the related federal return for the taxable year.” Additionally, the Department has provided that if the “due date prescribed by law falls on a Saturday, Sunday, or legal holiday, a return will be considered timely if” it is either postmarked or received “on the next succeeding day that is not a Saturday, Sunday, or legal holiday.” Rule 12C-1.0222, F.A.C. “For this purpose, a legal holiday will mean a holiday that is observed by federal or state agencies as this term is defined in Chapter 683, F.S., and Section 7503 of the Internal Revenue Code of 1986, as amended.” *Id.*

⁵ Section 220.24, F.S.

⁶ A taxpayer is required to file the declaration before the 1st day of the 5th month of each taxable year, unless “the minimum tax requirement of s. 220.24(1) is first met.” Section 220.241, F.S. (detailing the various declaration due dates if the minimum tax requirement is met).

⁷ E.g., “June 30” or “December 31.”

⁸ See Section 220.33, F.S. If the taxpayer is required to file the declaration before 1st day of the 5th month, then the estimated tax shall be paid in four equal installments in the following order: 1) before the 1st day of the 5th month; 2) before 1st day of the 7th month; 3) before the 1st day of the 10th month; and 4) before the 1st day of the next taxable year. *Id.*

⁹ *Id.*

¹⁰ C.f., Rule 12C-1.0222, F.A.C. (providing that if a return is due on a Saturday, Sunday, or legal holiday, then the return will be considered timely if it is electronically filed or postmarked on the “next day succeeding the day that is not a Saturday, Sunday, or legal holiday”). See also [Form F1120N](#), which are the instructions for Form F1120, the Florida corporate income tax return. Form F1120N contains a schedule of due dates for declaration of estimated tax, including dates upon which installments are due based upon the taxable year of the taxpayer. This form indicates that the payment due date in question is July 1, 2013.

Section 1: Amends s. 220.33, F.S., to require estimated payments otherwise due no later than June 30, 2013 shall be paid on or before June 28, 2013. Provides for repeal of this provision July 1, 2014.

Section 2: Provides emergency rulemaking authority to the Department to implement the act.

Section 3: Provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Staff estimates the impact on General Revenue to be a positive \$100 million in FY 2012-13 and a negative \$100 million in FY 2013-14.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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 corporate income tax; amending s.
 3 220.33, F.S.; changing the filing date for estimated
 4 tax under certain circumstances; providing for future
 5 repeal; providing for emergency rules; providing an
 6 effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (7) of section 220.33, Florida
 11 Statutes, is renumbered as subsection (8), and a new subsection
 12 (7) is added to that section to read:

13 220.33 Payments of estimated tax.—A taxpayer required to
 14 file a declaration of estimated tax pursuant to s. 220.24 shall
 15 pay such estimated tax as follows:

16 (7) Notwithstanding any administrative rule or
 17 determination of the department that allows estimated payments
 18 otherwise due on a Saturday, Sunday, or legal holiday, to be
 19 paid on the next succeeding day that is not a Saturday, Sunday,
 20 or legal holiday, any estimated tax payment required under this
 21 section that would otherwise be due no later than Sunday, June
 22 30, 2013, shall be paid on or before June 28, 2013. This
 23 subsection is repealed July 1, 2014.

24 Section 2. (1) The executive director of the Department
 25 of Revenue is authorized, and all conditions are deemed met, to
 26 adopt emergency rules under ss. 120.536(1) and 120.54(4),
 27 Florida Statutes, for the purpose of implementing this act.

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28 (2) Notwithstanding any other provision of law, the
29 emergency rules shall remain in effect for 6 months after
30 adoption and may be renewed during the pendency of procedures to
31 adopt permanent rules addressing the subject of the emergency
32 rules.

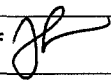
33 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5703 PCB FTC 12-05 Tax on Communications and Utility Services

SPONSOR(S): Finance & Tax Committee, Precourt

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee	22 Y, 1 N	Flieger	Langston
1) Appropriations Committee		Voyles SV	Leznoff 

SUMMARY ANALYSIS

The bill will shift state revenue collections to the Public Education Capital Outlay and Debt Service Trust Fund (PECO) and away from the General Revenue fund and local governments.

The bill amends ss. 202.12 and 203.01, F.S., to reduce the state communications services tax rate to 6.2 percent from 6.65 percent and increase the "additional" gross receipts tax rate on communication services from 0.15 percent to 0.6 percent. The combined tax rate on communications services will not change.

The PECO Trust Fund is used to fund education capital outlay. The PECO Estimating Conference met on January 13, 2012 and forecasted that by the end of FY 2011-12, undisbursed, previously approved appropriations would exceed available cash in the PECO Trust Fund by \$275.5 million. For FY 2012-13, the conference reduced the forecast of the maximum amount available for appropriation to zero. This estimate assumed \$250 million in previously authorized bonds would not be issued, and receipts into the PECO Trust Fund that were not needed to pay debt would be used to pay for previously appropriated projects, including those for which bonds had been scheduled but not issued. As a result, the amount of undisbursed, pre-existing appropriations that exceeded cash dropped to \$178.8 million by the end of FY 2012-13. This bill will generate enough revenue to provide the bonding capacity to issue the outstanding \$250 million in PECO bonds which eliminates the current projected deficit and provides capacity for new bonds.

This bill has not yet been evaluated by the Revenue Estimating Committee. Staff estimates that in Fiscal Year 2012-13 General Revenue will be reduced by -\$44.3 million (-\$53.1 million recurring) and revenues shared with local governments will be reduced by -\$5.6 million (-\$6.8 million recurring). Revenues to the Public Education Capital Outlay and Debt Service Trust Fund (PECO) in Fiscal Year 2012-13 will be increased by \$49.9 million (\$59.9 million recurring). The increased revenues to the PECO fund will increase the maximum available appropriations from the fund to approximately \$382 million in Fiscal Year 2012-13, compared to zero under current official forecasts.

The bill is effective on July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The sale of communications services which originate and terminate in Florida, or originate or terminate in Florida and are billed to a Florida address, are subject to the state communications services tax at a rate of 6.65 percent, except for direct-to-home satellite service, which is taxed at a rate of 10.8 percent. Residential telephone service, which does not include mobile telephone service, is exempt from this tax.

The revenue collected pursuant to this tax (except for 37 percent of the direct-to-home satellite tax revenue) is distributed by the same formula as the state sales tax, as provided by s. 212.20(6), F.S. Approximately 10.8 percent is distributed to local governments through county and municipal revenue sharing, the Local Government Half-cent Sales Tax Clearing Trust Fund and the distribution to counties of \$29,915,500 that was formerly funded from pari-mutuel tax revenues. Smaller amounts are distributed to qualified counties for emergency distributions, selected sports facilities, and to the Public Employee Relations Trust Fund. The remainder of taxes remitted goes into the General Revenue Fund.

The tax on gross receipts for communications services is levied under ch. 203, F.S., at a base rate of 2.37 percent plus an additional 0.15 percent (for a total of 2.52 percent) on the sale of communications services. The tax is administered and collected pursuant to the provisions of ch. 202, F.S., but the exemption for communications services sold to residential households does not apply to the gross receipts tax levied at the base rate. All revenue received pursuant to this tax goes to the Public Education Capital Outlay and Debt Service ("PECO") Trust Fund. The use of such funds is limited to paying the principal or interest on bonds to finance capital projects for institutions of higher learning, community colleges, vocational technical schools, or public schools, deposit into any reserve funds related to the issuance of such bonds, or direct payment of the cost of any public educational facility capital project.

Section 215.61, F.S., limits the amount of PECO bonds that may be issued to 90 percent of the amount which the State Board of Education determines can be serviced by gross receipts tax revenues, based on the average annual amount of revenue collected in the most recent 24 months before the date of issuance of the bonds.

In 2010 the legislature reduced the communications services tax rate to 6.65 percent from 6.8 percent and created the 0.15 additional gross receipts tax on communications services to divert money from the communications services tax distribution to the PECO Trust Fund¹.

The PECO Estimating Conference met on January 13, 2012 and forecasted that by the end of FY 2011-12, undispersed, previously approved appropriations would exceed available cash in the PECO Trust Fund by \$275.5 million. For FY 2012-13, the conference reduced the forecast of the maximum amount available for appropriation to zero. This estimate assumed \$250 million in previously authorized bonds would not be issued, and receipts into the PECO Trust Fund that were not needed to pay debt would be used to pay for previously appropriated projects, including those for which bonds had been scheduled but not issued. As a result, the amount of undispersed, pre-existing appropriations that exceeded cash dropped to \$178.8 million by the end of FY 2012-13.

Effect of Proposed Changes

¹ 2010-149, L.O.F.

The bill reduces the state communications services tax rate to 6.2 percent from 6.65 percent and increases the additional gross receipts tax rate on communication services from 0.15 percent to 0.6 percent. The combined tax rate on communications services will not change.

This bill generates enough revenue to provide the bonding capacity to issue the outstanding \$250 million in PECO bonds which eliminates the current projected deficit and provides capacity for new bonds.

B. SECTION DIRECTORY:

Section 1 amends s. 202.12, F.S., reducing the communication services tax.

Section 2 amends s. 202.12001, F.S., conforming a cross reference.

Section 3 amends s. 203.001, F.S., conforming a cross reference.

Section 4 amends 203.01, F.S., increasing the additional gross receipts tax on communication services.

Section 5 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill has not yet been evaluated by the Revenue Estimating Committee. Staff estimates that in Fiscal Year 2012-13 General Revenue will be reduced by -\$44.3 million (-\$53.1 million recurring). Revenues to the Public Education Capital Outlay and Debt Service Trust Fund (PECO) in Fiscal Year 2012-13 will be increased by \$49.9 million (\$59.9 million recurring).

2. Expenditures:

The increased tax revenues to the PECO fund will increase bonding capacity, resulting in an increase in the maximum available appropriations from the fund to approximately \$382 million in Fiscal Year 2012-13, compared to zero under current official forecasts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill has not yet been evaluated by the Revenue Estimating Committee. Staff estimates the bill will reduce state revenues shared with local governments in Fiscal Year 2012-13 by -\$5.6 million (\$6.8 million recurring).

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 require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or 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

1 A bill to be entitled
 2 An act relating to the tax on communications and
 3 utility services; amending s. 202.12, F.S.; changing
 4 the rate at which the sales price of certain
 5 communications services are taxed; amending ss.
 6 202.12001 and 203.001, F.S.; conforming cross-
 7 references; amending s. 203.01, F.S.; changing the
 8 rate of the additional tax on certain communications
 9 services; providing an effective date.

10

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

12

13 Section 1. Paragraph (a) of subsection (1) of section
 14 202.12, Florida Statutes, is amended to read:

15 202.12 Sales of communications services.—The Legislature
 16 finds that every person who engages in the business of selling
 17 communications services at retail in this state is exercising a
 18 taxable privilege. It is the intent of the Legislature that the
 19 tax imposed by chapter 203 be administered as provided in this
 20 chapter.

21 (1) For the exercise of such privilege, a tax is levied on
 22 each taxable transaction, and the tax is due and payable as
 23 follows:

24 (a) Except as otherwise provided in this subsection, at a
 25 rate of 6.2 ~~6.65~~ percent applied to the sales price of the
 26 communications service which:

- 27 1. Originates and terminates in this state, or
- 28 2. Originates or terminates in this state and is charged

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29 to a service address in this state,
 30
 31 when sold at retail, computed on each taxable sale for the
 32 purpose of remitting the tax due. The gross receipts tax imposed
 33 by chapter 203 shall be collected on the same taxable
 34 transactions and remitted with the tax imposed by this
 35 paragraph. If no tax is imposed by this paragraph by reason of
 36 s. 202.125(1), the tax imposed by chapter 203 shall nevertheless
 37 be collected and remitted in the manner and at the time
 38 prescribed for tax collections and remittances under this
 39 chapter.

40 Section 2. Section 202.12001, Florida Statutes, is amended
 41 to read:

42 202.12001 Combined rate for tax collected pursuant to ss.
 43 202.12(1)(a) and 203.01(1)(b). ~~A In complying with ss. 1-3, ch.~~
 44 ~~2010-149, Laws of Florida,~~ the dealer of communication services
 45 may collect a combined rate of 6.8 percent comprised of 6.2 ~~6.65~~
 46 percent and 0.6 ~~0.15~~ percent required by ss. 202.12(1)(a) and
 47 203.01(1)(b)3., respectively, as long as the provider properly
 48 reflects the tax collected with respect to the two provisions as
 49 required in the return to the Department of Revenue.

50 Section 3. Section 203.001, Florida Statutes, is amended
 51 to read:

52 203.001 Combined rate for tax collected pursuant to ss.
 53 202.12(1)(a) and 203.01(1)(b). ~~A In complying with ss. 1-3, ch.~~
 54 ~~2010-149, Laws of Florida,~~ the dealer of communication services
 55 may collect a combined rate of 6.8 percent comprised of 6.2 ~~6.65~~
 56 percent and 0.6 ~~0.15~~ percent required by ss. 202.12(1)(a) and

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57 203.01(1)(b)3., respectively, as long as the provider properly
 58 reflects the tax collected with respect to the two provisions as
 59 required in the return to the Department of Revenue.

60 Section 4. Paragraph (b) of subsection (1) of section
 61 203.01, Florida Statutes, is amended to read:

62 203.01 Tax on gross receipts for utility and
 63 communications services.—

64 (1)

65 (b)1. The rate applied to utility services shall be 2.5
 66 percent.


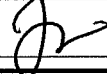
67 2. The rate applied to communications services shall be
 68 2.37 percent.

69 3. There shall be an additional rate of 0.6 ~~0.15~~ percent
 70 applied to communication services subject to the tax levied
 71 pursuant to s. 202.12(1)(a), (c), and (d). The exemption
 72 provided in s. 202.125(1) applies to the tax levied pursuant to
 73 this subparagraph.

74 Section 5. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7053 PCB HCAS 12-01 Florida Drug, Device, and Cosmetic Trust Fund
SPONSOR(S): Health Care Appropriations Subcommittee, Hudson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Care Appropriations Subcommittee	13 Y, 0 N	Clark	Pridgeon
1) Appropriations Committee		Clark 	Leznoff 

SUMMARY ANALYSIS

This bill provides for the termination of the Florida Drug, Device and Cosmetic Trust Fund within the Department of Health. There are no anticipated future receipts, and any remaining cash balance will be transferred to the Florida Drug, Device and Cosmetic Trust Fund within the Department of Business and Professional Regulation.

The bill has no fiscal impact.

The bill has an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Drug, Device and Cosmetic Trust Fund, FLAIR number 64-2-173, was originally established within the Department of Health to provide for the deposit of revenues and the recording of expenditures related to the regulation and administration of the Florida Drug, Device and Cosmetic Act authorized in chapter 499, Florida Statutes. Revenues deposited into the trust fund consisted of application fees, permit fees, product registration fees, and administrative fines.¹

Section 27 of chapter 2010-161, Laws of Florida, transferred the administration of chapter 499, Florida Statutes from the Department of Health to the Department of Business and Professional Regulation, effective October 1, 2011. During the 2011 legislative session, the Florida Drug, Device and Cosmetic Program was transferred in the General Appropriations Act from the Department of Health to the Department of Business and Professional Regulation.

The Department of Health no longer has administrative responsibility for the Florida Drug, Device and Cosmetic Trust Fund. There are no anticipated future receipts for the Florida Drug, Device and Cosmetic Trust Fund within the Department of Health.

Effect of Proposed Changes

This bill terminates the Florida Drug, Device and Cosmetic Trust Fund within the Department of Health. The current remaining balance and any proceeds thereof will be transferred to the Florida Drug, Device and Cosmetic Trust Fund within the Department of Business and Professional Regulation, FLAIR number 79-2-173.

B. SECTION DIRECTORY:

- Section 1. Terminates the Florida Drug, Device and Cosmetic Trust Fund within the Department of Health.
- Section 2. Amends section 20.435, Florida Statutes.
- Section 3. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None
- 2. Expenditures:
None

¹ Ch. 82-225, Laws of Fla.
STORAGE NAME: h7053.APC.DOCX
DATE: 1/25/2012

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

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 trust funds; terminating the
Florida Drug, Device, and Cosmetic Trust Fund within
the Department of Health; providing for the
disposition of balances in and revenues of the trust
fund; prescribing procedures for terminating the trust
fund; amending s. 20.435, F.S., relating to Department
of Health trust funds, to conform; providing an
effective date.

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

Section 1. (1) The Florida Drug, Device, and Cosmetic
Trust Fund within the Department of Health, FLAIR number 64-2-
173, is terminated.

(2) All current balances remaining in, and all revenues
of, the trust fund shall be transferred to the Florida Drug,
Device, and Cosmetic Trust Fund within the Department of
Business and Professional Regulation, FLAIR number 79-2-173.

(3) The Department of Health shall pay any outstanding
debts or obligations of the terminated fund as soon as
practicable, and the Chief Financial Officer shall close out and
remove the terminated fund from the various state accounting
systems using generally accepted accounting principles
concerning warrants outstanding, assets, and liabilities.

Section 2. Subsection (13) of section 20.435, Florida
Statutes, is amended, and subsections (14) through (21) of that

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28 section are renumbered as subsections (13) through (20),
 29 respectively, to read:

30 20.435 Department of Health; trust funds.—The following
 31 trust funds shall be administered by the Department of Health:

32 ~~(13) Florida Drug, Device, and Cosmetic Trust Fund.~~

33 ~~(a) Funds to be credited to and uses of the trust fund~~
 34 ~~shall be administered in accordance with the provisions of~~
 35 ~~chapter 499.~~

36 ~~(b) Notwithstanding the provisions of s. 216.301 and~~
 37 ~~pursuant to s. 216.351, any balance in the trust fund at the end~~
 38 ~~of any fiscal year shall remain in the trust fund at the end of~~
 39 ~~the year and shall be available for carrying out the purposes of~~
 40 ~~the trust fund.~~

41 Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES TRUST FUND RE-CREATION STAFF ANALYSIS

BILL #: HB 7061 PCB JUAS 12-04 Capital Collateral Regional Counsel Trust Fund/Justice Administrative Commission
SPONSOR(S): Justice Appropriations Subcommittee, Glorioso
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2026

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

I. SUMMARY

The Capital Collateral Regional Counsel Trust Fund, FLAIR number 21-2-073, is administered by the Justice Administrative Commission. This fund was created effective July 1, 2009, by chapter 2009-62, Laws of Florida. This legislation re-creates the Capital Collateral Regional Counsel Trust Fund without modification, effective July 1, 2012, provided that it is enacted by three-fifths of the membership of both houses of the Legislature. This bill also repeals the provision for the scheduled termination of the trust fund.

II. SUBSTANTIVE ANALYSIS

A. PRESENT SITUATION:

1. MAJOR STATUTES THAT CONTROL THE TRUST FUND:

Section 19(f), Article III of the State Constitution requires that every trust fund be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating that trust fund. The Constitution also provides that all newly created trust funds terminate not more than four years after the initial creation unless re-created. The Capital Collateral Regional Counsel Trust Fund was created in the Justice Administrative Commission effective July 1, 2009, by chapter 2009-62, Laws of Florida, in section 27.715, Florida Statutes and is scheduled to terminate on July 1, 2013.

2. BRIEF DESCRIPTION OF THE FUND'S USES OR PURPOSES:

This trust fund is used for the operational expenditures related to the Capital Collateral Regional Counsel.

3. MAJOR SOURCES OF REVENUE FOR THE FUND:

Moneys in the trust fund consist of federal reimbursements for representation of indigent persons in federal court by attorneys of the Capital Collateral Regional Counsel. The Capital Collateral Regional Counsel is required to seek such reimbursements pursuant to s. 27.702(3)(a), F.S.

4. TOTAL PROJECTED RECEIPTS INTO THE FUND AND CURRENT YEAR APPROPRIATIONS FROM THE FUND:

The total projected receipts into this fund for the current year are \$361,796 and current year appropriations from the fund are \$400,000.

B. EFFECT OF PROPOSED CHANGES:

This legislation re-creates the Capital Collateral Regional Counsel Trust Fund without modification, effective July 1, 2012. This bill also repeals the provision for the scheduled termination of the trust fund.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

This legislation has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

IV. COMMENTS

V. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to trust funds; re-creating the
 Capital Collateral Regional Counsel Trust Fund within
 the Justice Administrative Commission without
 modification; amending s. 27.715, F.S.; abrogating
 provisions relating to the termination of the trust
 fund to conform; providing an effective date.

WHEREAS, the Legislature wishes to extend the life of the
 Capital Collateral Regional Counsel Trust Fund within the
 Justice Administrative Commission, which is otherwise scheduled
 to be terminated pursuant to constitutional mandate, and

WHEREAS, the Legislature has reviewed the trust fund before
 its scheduled termination date and has found that it continues
 to meet an important public purpose, and

WHEREAS, the Legislature has found that existing public
 policy concerning the trust fund sets adequate parameters for
 its use, NOW, THEREFORE,

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

Section 1. The Capital Collateral Regional Counsel Trust
 Fund within the Justice Administrative Commission, FLAIR number
 21-2-073, which is to be terminated pursuant to Section 19(f),
 Article III of the State Constitution on July 1, 2013, is re-
 created.

Section 2. Section 27.715, Florida Statutes, is amended to
 read:

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29 27.715 Capital Collateral Regional Counsel Trust Fund.—

30 ~~(1)~~ The Capital Collateral Regional Counsel Trust Fund is
 31 created within the Justice Administrative Commission. Moneys
 32 credited to the trust fund shall be used for the purpose of
 33 funding the activities of the capital collateral regional
 34 counsel.

35 ~~(2) In accordance with s. 19(f)(2), Art. III of the State~~
 36 ~~Constitution, the Capital Collateral Regional Counsel Trust Fund~~
 37 ~~shall, unless terminated sooner, be terminated on July 1, 2013.~~
 38 ~~Before its scheduled termination, the trust fund shall be~~
 39 ~~reviewed as provided in s. 215.3206(1) and (2).~~

40 Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7067 PCB TEDAS 12-01 Trust Funds/Termination/DOT
SPONSOR(S): Transportation & Economic Development Appropriations Subcommittee, Horner
TIED BILLS: **IDEN./SIM. BILLS:** SB 2028

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Miller	Davis
1) Appropriations Committee		Miller <i>BJM</i>	Leznoff <i>[Signature]</i>

SUMMARY ANALYSIS

This bill provides for the termination of the Everglades Parkway Construction Trust Fund, the Jacksonville Transportation Authority Project Construction Trust Fund, and the Federal Law Enforcement Trust Fund within the Department of Transportation.

The Everglades Parkway Construction Trust Fund was originally used to hold bond proceeds and interest earned on investments of the bond proceeds from revenue bond issues for the Everglades Parkway. There is currently no remaining cash balance or anticipated future receipts for this fund.

The Jacksonville Transportation Authority Project Construction Trust Fund was originally used to hold bond proceeds and interest earned on investments of the bond proceeds from revenue bond issues for the Jacksonville Transportation Authority. There is currently no remaining cash balance or anticipated future receipts for this fund.

The Federal Law Enforcement Trust Fund was originally used to hold revenues received as a result of federal criminal, administrative, or civil forfeiture proceedings, or civil forfeiture proceedings and revenues received from federal asset-sharing programs. There is currently a residual cash balance of approximately \$540,000, but no recurring appropriations nor anticipated future receipts for this fund.

The bill has no fiscal impact.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Legislative review of trust funds is required at least once every four years pursuant to section 215.3208, Florida Statutes. The schedule for review is included in the legislative budget instructions developed pursuant to the requirements of section 216.023, Florida Statutes. A trust fund analysis indicated the need to terminate three trust funds within the Department of Transportation.

The Everglades Parkway Construction Trust Fund, FLAIR number 55-2-199, was originally used to hold bond proceeds and interest earned on investments of the bond proceeds from revenue bond issues for the Everglades Parkway.¹ There is currently no remaining cash balance or anticipated future receipts for this fund; the fund is inactive.

The Jacksonville Transportation Authority Project Construction Trust Fund, FLAIR number 55-2-413, was originally used to hold bond proceeds and interest earned on investments of the bond proceeds from revenue bond issues for the Jacksonville Transportation Authority.² There is currently no remaining cash balance or anticipated future receipts for this fund; the fund is inactive.

The Federal Law Enforcement Trust Fund, FLAIR number 55-2-719, was originally used to hold revenues received as a result of federal criminal, administrative, or civil forfeiture proceedings, or civil forfeiture proceedings and revenues received from federal asset-sharing programs.³ During the 2011 legislative session, the Office of Motor Carrier Compliance was transferred from the Department of Transportation to the Department of Highway Safety and Motor Vehicles, as well as appropriations funding the office.⁴ The Department of Transportation no longer has any law enforcement responsibilities. There is currently a residual cash balance of approximately \$540,000, but no recurring appropriations nor anticipated future receipts for this fund.

The Department of Transportation has concurred with the termination of these trust funds.

Effect of Proposed Changes

This bill terminates the Everglades Parkway Construction Trust Fund and the Jacksonville Transportation Authority Project Construction Trust Fund within the Department of Transportation. The current remaining balance and any proceeds thereof will be transferred to the State Transportation Trust Fund within the Department of Transportation.

This bill also terminates the Federal Law Enforcement Trust Fund within the Department of Transportation. The current remaining balance and any proceeds thereof will be transferred to the Federal Law Enforcement Trust Fund within the Department of Highway Safety and Motor Vehicles.

B. SECTION DIRECTORY:

Section 1. Terminates the Everglades Parkway Construction Trust Fund and the Jacksonville Transportation Authority Project Construction Trust Fund within the Department of Transportation.

¹ Ch. 97-125, §2, Laws of Fla.

² §349.061, Fla. Stat. (2011).

³ §339.082, Fla. Stat. (2011).

⁴ Ch. 2011-66, Laws of Fla.

- Section 2. Terminates the Federal Law Enforcement Trust Fund within the Department of Transportation.
- Section 3. Repeals section 339.082, Florida Statutes.
- Section 4. Repeals paragraph (k) of subsection (6) of section 932.7055, Florida Statutes.
- Section 5. Provides an effective date of July 1, 2012.

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:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to trust funds; terminating specified
 3 trust funds within the Department of Transportation;
 4 providing for the disposition of balances in and
 5 revenues of such trust funds; prescribing procedures
 6 for the termination of such trust funds; repealing s.
 7 339.082, F.S., which creates the Federal Law
 8 Enforcement Trust Fund within the department and
 9 prescribes sources of funds; repealing s.
 10 932.7055(6)(k), F.S., relating to the deposit of
 11 proceeds accrued pursuant to the Florida Contraband
 12 Forfeiture Act, to conform; providing an effective
 13 date.

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

16
 17 Section 1. (1) The following trust funds within the
 18 Department of Transportation are terminated:

19 (a) The Everglades Parkway Construction Trust Fund, FLAIR
 20 number 55-2-199.

21 (b) The Jacksonville Transportation Authority Project
 22 Construction Trust Fund, FLAIR number 55-2-413.

23 (2) All current balances remaining in, and all revenues
 24 of, the trust funds terminated by subsection (1) shall be
 25 transferred to the State Transportation Trust Fund.

26 (3) For each trust fund terminated by this section, the
 27 Department of Transportation shall pay any outstanding debts and
 28 obligations of the terminated fund as soon as practicable, and

29 the Chief Financial Officer shall close out and remove the
 30 terminated funds from the various state accounting systems using
 31 generally accepted accounting principles concerning warrants
 32 outstanding, assets, and liabilities.

33 Section 2. (1) The Federal Law Enforcement Trust Fund
 34 within the Department of Transportation, FLAIR number 55-2-719,
 35 is terminated.

36 (2) All current balances remaining in, and all revenues
 37 of, the trust fund shall be transferred to the Federal Law
 38 Enforcement Trust Fund in the Department of Highway of Safety
 39 and Motor Vehicles.

40 (3) The Department of Transportation shall pay any
 41 outstanding debts and obligations of the terminated trust fund
 42 as soon as practicable, and the Chief Financial Officer shall
 43 close out and remove the terminated trust fund from the various
 44 state accounting systems using generally accepted accounting
 45 principles concerning warrants outstanding, assets, and
 46 liabilities.

47 Section 3. Section 339.082, Florida Statutes, is repealed.

48 Section 4. Paragraph (k) of subsection (6) of section
 49 932.7055, Florida Statutes, is repealed.



50 Section 5. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7083 PCB JUAS 12-05 Correctional Privatization

SPONSOR(S): Justice Appropriations Subcommittee, McBurney

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee	10 Y, 5 N	McAuliffe	Jones Darity
1) Appropriations Committee		McAuliffe 	Leznoff 

SUMMARY ANALYSIS

The Fiscal Year 2011-2012 General Appropriations Act contained proviso to privatize all Department of Corrections (DOC) facilities in South Florida. The proviso required the DOC to issue a request for proposals (RFP) for the operation of those facilities and bring the successful bid before the Legislative Budget Commission for approval of the contract. The proviso was subsequently challenged in court.

On September 30, 2011, the circuit court ruled that the proviso relating to privatization to be unconstitutional in violation of Article III, Sections 6 and 12 of the Florida Constitution. The court held that the proviso changed the statutory process for privatizing prison facilities set forth in s. 944.105, F.S. and other sections of statute. The order enjoined the department "from taking further steps to contract under the proviso or otherwise implement the privatization of the state correctional facilities in the 18 counties pursuant to proviso or otherwise." On October 31, 2011, the Attorney General filed a Notice of Appeal. The bill:

- Requires the Department of Management Services to competitively procure by single or multiple solicitations for the operation of correctional facilities and assigned correctional units in Manatee, Hardee, Indian River, Okeechobee, Highlands, St. Lucie, DeSoto, Sarasota, Charlotte, Glades, Martin, Palm Beach, Hendry, Lee, Collier, Broward, Miami-Dade and Monroe Counties, and provides that the contract must require a seven percent savings compared to Fiscal Year 2011-2012 costs. The procurement may not include inmate health services, the South Florida Reception Center (SFRC) and the SFRC South Unit. The procurement does include all other SFRC satellite facilities.
- Requires the Department of Management Services to issue the competitive solicitation no later than 60 days after the effective date of this act, and that proposals must be submitted no later than 60 days after the issuance of the solicitation.
- Includes numerous performance measures which must be included in the solicitation documents.
- Requires DOC to develop and remit a transition plan and recommended revisions to its operating budget to the Legislative Budget Commission. DOC also must submit a cost-benefit analysis which delineates their current costs of providing the services and the savings that would be generated by the transition plan yielding a minimum annual savings of seven percent.
- Requires that any contract between DMS and a contractor for the operation of prisons in South Florida must specifically provide that the contract is contingent upon approval of the Legislative Budget Commission.
- Requires the Auditor General to review DOC's 2011-2012 fiscal year expenditures and certify the savings prior to DMS issuing an intent to award. The contract may commence only after the Auditor General certification and the contract has been approved by the Legislative Budget Commission.
- Provides that current DOC employees affected by the privatization must be given first preference for employment by the selected contractor, and DOC must make reasonable efforts to find suitable job placements for those employees that wish to continue to be employed by the state.

This bill provides any contract awarded must include pricing that achieves no less than a seven percent savings for all operations and maintenance of each correctional facility and assigned correctional units, excluding inmate health services, from the 2011-2012 fiscal year expenditures for such facility or facilities. The total cost savings from privatization cannot be determined definitively until the Auditor General certifies that the bid demonstrates at least a seven percent savings compared to DOC's Fiscal Year 2011-2012 expenditures. See "FISCAL COMMENTS."

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

STORAGE NAME: h7083.APC.DOCX

DATE: 1/30/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

South Florida Region

DOC currently operates 11 major institutions as well as six work camps, one reentry center, and three road prisons in South Florida, formerly referred to as Region IV. The DOC has approximately 3,800 employees in this region, with total operating costs of \$418.7 million for Fiscal Year 2010-2011. Each major institution in this region is listed below, together with the type of inmates housed in each, the general custody level served, and the 2010-2011 reported average inmate population for each facility. Correctional Institutions (includes annexes):

- Broward Correctional Institution (female; close custody; 701 inmates)
- Charlotte Correctional Institution (male; close custody; 838 inmates)
- Dade Correctional Institution (male; close custody; 1,526 inmates)
- Desoto Correctional Institution (male; close custody; 1,844 inmates)
- Everglades Correctional Institution (male; close custody; 1,593 inmates)
- Hardee Correctional Institution (male; close custody; 1,889 inmates)
- Homestead Correctional Institution (female; close custody; 672 inmates)
- Indian River Correctional Institution (male youth; close custody; 489 inmates)
- Martin Correctional Institution (male; close custody; 1,496 inmates)
- Okeechobee Correctional Institution (male; close custody; 1,619 inmates)
- South Florida Reception Center (male; close custody; 2,235)

The DOC plans on closing Broward and Indian River Correctional Institutions as part of the department's prison consolidation plan.

Department of Management Services

Chapter 957, F.S., charges the Department of Management Services, Bureau of Private Prison Monitoring (Bureau) with issuing contracts, establishing operating standards, and monitoring compliance of the state's private prisons. The Bureau is responsible for entering into contracts for the design, construction, and operation of privately operated correctional facilities. The Bureau may not enter into a contract unless it determines that the contract or series of contracts in total for the facility will result in cost savings to the state of at least seven percent under the DOC's costs. Once the savings is determined, the Bureau enters into a contract with a private vendor to operate the facility for an agreed daily per diem. The per diem includes the cost of all facility operations and the cost of the contract manager employed by DMS. The Bureau currently oversees the operational contracts for seven facilities: Bay, Blackwater River, Gadsden, Graceville, Lake City, Moore Haven, and South Bay correctional facilities.

Section 957.04(1) and (2), F.S., provides that all contracts entered into for the operation of private correctional facilities must maximize the cost savings of such facilities and also must:

- Be negotiated with the firm found most qualified.
- Indemnify the state and the department, including their officials and agents, against any and all liability, including, but not limited to, civil rights liability.
- Require that the contractor seek, obtain, and maintain accreditation by the American Correctional Association for the facility under that contract.
- Require that the proposed facilities and the management plans for the inmates meet applicable American Correctional Association standards and the requirements of all applicable court orders and state law.
- Establish operations standards for correctional facilities subject to the contract.

- Require the contractor to be responsible for a range of dental, medical, and psychological services; diet; education; and work programs at least equal to those provided by the department in comparable facilities.
- Require the selection and appointment of a full-time contract monitor. The contract monitor must be appointed and supervised by the Department of Management Services. The contractor is required to reimburse the Department of Management Services for the salary and expenses of the contract monitor.
- Be for a period of three years and may be renewed for successive two-year periods thereafter. However, the state is not obligated for any payments to the contractor beyond current annual appropriations.

Section 957.05, F.S., provides that each contractor operating private correctional facilities is liable in tort with respect to the care and custody of inmates under its supervision and for any breach of contract, and sovereign immunity may not be raised by a contractor.

The section also provides that employees of such contractors must meet or exceed the requirements for DOC employees or the training requirement of the American Correctional Association. Correctional officers employed by DOC are all certified by the Criminal Justice Standards and Training Commission.

OPPAGA Private Prison Review

Florida's seven existing private prisons contracts and former contracts were procured for their ability to achieve and maintain costs at least seven percent below DOC's average per diem cost. Florida law requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to evaluate private vendors' performance in operating the state's privately operated prisons. For those vendors contracted by DMS, s. 957.11, F.S., directs OPPAGA to evaluate the performance of the private contractor at the end of the contract, and make recommendations to the Legislature on whether to continue the contract.

In a study conducted by OPPAGA in 2010¹ on the performance of the contracts for Bay, Moore Haven, Graceville, and Gadsden private prisons, each with contract terms expiring on June 30, 2010, OPPAGA noted the following cost savings:

- Bay Correctional Institution – 7.5 percent
- Moore Haven Correctional Institution – 12.8 percent
- Graceville Correctional Institution – 22.1 percent
- Gadsden Correctional Institution – 28.3 percent

In the OPPAGA study conducted in 2009² on contract performance for South Bay and Lake City private prisons, the following cost savings were reported:

- South Bay Correctional Institution – 14 percent
- Lake City Correctional Institution – 11 percent

In each of the OPPAGA studies on the private prisons, contract performance was determined to be satisfactory. Both reports noted three areas that contributed to the cost savings achieved by the private prisons: reduced retirement benefits paid to private correctional officers, lower administrative costs, and lower costs for inmate rehabilitative programs such as adult education, vocational training and substance abuse treatment.

2011-2012 Privatization of Region IV

¹ Office of Program Policy Analysis and Government Accountability Research Memorandum: Private Prisons Exceed Savings Requirements, April 20, 2010.

² Office of Program Policy Analysis and Government Accountability Research Memorandum: Private Prisons Exceed Savings Requirements; Need to Improve Prison Security and Inmate Family Contact Practices, April 17, 2009.

The Fiscal Year 2011-2012 General Appropriations Act contained proviso to privatize all Department of Corrections (DOC) facilities in South Florida. The proviso required:

- Adherence to all applicable federal, state and local laws and DOC rules;
- DOC to continue to classify inmates;
- Each facility's average daily population and medical and psychological grade population percentages will remain the same as 2009-10;
- A contract commencement date of January 1, 2012;
- The contract to specify performance measures and levels of expected performance by the contractor;
- DOC to remit a transition plan and recommended revisions to its operating budget to the Legislative Budget Commission by December 1, 2011;
- DOC to submit a cost-benefit analysis showing a savings of at least seven percent.

The proviso provided that upon approval by the Legislative Budget Commission DOC could award the contract.

On July 13, 2011 a complaint for declaratory judgment and injunctive relief was filed in the Second Judicial Circuit.³ The complaint alleged that the proviso relating to privatization violated Article III, Section 12 of the Florida Constitution which provides that "[l]aws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject." According to the complaint, "[c]ontrary to Florida Constitutional prohibitions against the enactment and change of substantive law by way of an appropriations act, the subject proviso language attempts to enact or alter substantive law and legal standards that control or should control the privatization of any state correctional facility."

On September 30, 2011, the court issued a final declaratory and injunctive judgment which declared the proviso relating to privatization to be unconstitutional in violation of Article III, Sections 6⁴ and 12 of the Florida Constitution. The court held that the proviso changed the statutory process for privatizing prison facilities set forth in s. 944.105, F.S. and other sections of statute. The order enjoined the department "from taking further steps to contract under the proviso or otherwise implement the privatization of the state correctional facilities in the 18 counties pursuant to proviso or otherwise." On October 31, 2011, the Attorney General filed a Notice of Appeal.

Effect of the Bill

The bill provides that the Department of Management Services (DMS) in consultation with the Department of Corrections must competitively procure by single or multiple solicitations, the management and operation, exclusive of inmate health services⁵, of the correctional facilities and assigned correctional units, including annexes, work camps, road prisons and work release centers currently operated by the Department of Corrections in Manatee, Hardee, Indian River, Okeechobee, Highlands, St. Lucie, DeSoto, Sarasota, Charlotte, Glades, Martin, Palm Beach, Hendry, Lee, Collier, Broward, Miami-Dade and Monroe Counties excluding any correctional facility or assigned correctional unit that has been closed or scheduled for closure before June 30, 2012. The procurement will exclude the South Florida Reception Center (SFRC) and the SFRC South Unit; however, the procurement will include all satellite facilities associated with the SFRC. The DOC will continue to operate the SFRC and the SFRC South Unit.

The bill requires DMS to issue competitive procurement or competitive procurements no later than 60 days after the effective date of this act which is July 1, 2012. DMS must require that any proposal submitted in response to a such procurements must be submitted no later than 60 days after the issuance of the competitive procurement.

³ James Baiardi, John McKenna, Shanea Maycock and Florida Police Benevolent Association, Inc. v. Edwin Buss, In His Capacity as The Secretary of the Department of Corrections. Case No: 2011-CA-1838

⁴ Article III, Section 6 provides in part that "[e]very law shall embrace but one subject and matter properly connected therewith".

⁵ DOC has issued a request for proposals to privatize inmate medical services statewide including Region IV.

The bill provides that, notwithstanding s. 957.07, F.S.,⁶ any contract awarded must include pricing that achieves no less than a seven percent savings for all operations and maintenance of each correctional facility and assigned correctional units, excluding inmate health services, from the 2011-2012 fiscal year expenditures for such facility or facilities. Prior to issuing an intent to award, the Auditor General must certify that the successful bidder or bidders have achieved at least seven percent savings from DOC's 2011-2012 fiscal year expenditures. The bill provides a contract may not be awarded without the Auditor General's certification. The total costs to be incurred by the state in the second or subsequent years of the contract resulting from the procurements may increase by not more than the percentage increase in the per diem of state operated facilities; however, any such increase is contingent upon appropriation by the Legislature.

At a minimum, the contract must require adherence to all applicable federal, state and local laws, as well as all rules adopted by DOC. The contract must also specifically provide that the contract is contingent upon approval of the Legislative Budget Commission.

The bill provides the privatized facilities must continue to operate at capacities set forth in s. 944.023, F.S.⁷ Funds received for these institutions from canteens, subsistence payments, and any other participation accounts will continue to be remitted to the General Revenue Fund. All activities regarding the classification of inmates will remain under the Department of Correction's supervision and direction as required by current law. Each facility's medical and psychological grade population percentages must remain substantially unchanged from those calculated for Fiscal Year 2011-2012.

The bill includes numerous performance measures which must be included in the procurement documents, and requires the contractor to provide the department with information concerning each performance measure for each separate correctional facility and assigned correctional unit for each month, calendar quarter, and year during the term of the contract, in the format specified by the department.

If after engaging in the competitive solicitation process, DMS determines that the process has yielded responses that meet all the requirements of the bill, DMS may execute the contract, which is contingent upon approval of the Legislative Budget Commission. The contract may commence only after the Auditor General has certified the savings and the contract has been reviewed and approved by the Legislative Budget Commission.

The bill also provides DOC must develop and remit a transition plan and recommended revisions to its operating budget to the Legislative Budget Commission. The department also must submit a cost-benefit analysis which delineates the department's current costs of providing the services and the savings that would be generated by the transition plan yielding a minimum annual savings of seven percent. Additional budget amendments may be submitted during the 2012-2013 fiscal year as necessary for the proper alignment of budget and positions.

The bill provides that current employees of the DOC affected by the privatization must be given first preference for employment by the selected contractor, and DOC must make reasonable efforts to find suitable job placements for those employees that wish to continue to be employed by the state.

B. SECTION DIRECTORY:

Section 1. Provides for the privatization of prisons in certain South Florida Counties.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁶ Section 957.07, F.S., provides that contracts for the private operation of a prison must save at least seven percent over the public provision of a similar facility, and such savings must be certified by the Auditor General. The bill requires the Auditor General to certify the savings related to actual 2011-2012 expenditures, which would not apply to the requirements of s. 957.07, F.S.

⁷ Section 944.023, F.S., provides detailed design capacity factors that DOC must comply with.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will create opportunities for private prison providers to expand their current business in Florida.

D. FISCAL COMMENTS:

Operating costs in Fiscal Year 2010-2011 for DOC, currently the most up-to-date figures available for DOC's expenditures, in the affected South Florida Counties was \$418.7 million. However, that number has not been adjusted for prison closures, inmate health services procurement, state employee retirement contributions, and reductions to DOC's budget that have occurred since 2010.

Savings from privatization of the South Florida region can only be determined using the true costs of DOC to operate those facilities. In order to have operational costs that reflect the costs for DOC, the regions proportional share of the state employee retirement contribution, and the 2011-2012 reductions to DOC's budget would have to be determined. In the 2010-2011 fiscal year, DOC closed three prisons (Glades, Hendry and Brevard) in the region, and plans to close more this fiscal year (Broward and Indian River). Further, DOC is currently in the process of accepting bids from vendors to provide inmate health services in the South Florida Region (in addition to the rest of the state prison system). Until that procurement is concluded, the vendors bidding on the operation of the facilities in that region must provide a bid that does not include providing inmate health services. Therefore, the operating budget for the region will have to be adjusted to back out the costs of providing inmate health services.

This bill provides any contract awarded must include pricing that achieves no less than a seven percent savings for all operations and maintenance of each correctional facility and assigned correctional units, excluding inmate health services, from the 2011-2012 fiscal year expenditures for such facility or facilities.

The following is an estimation of the Fiscal Year 2011-2012 costs of DOC to operate the South Florida region:

2010-2011 DOC South Florida Operation Costs \$ 418,713,514		
Deductions		Comments
Health Services Costs	(89,712,272)	Actual Health Services costs for the region
Retirement Contribution	(11,679,672)	Actual 3% Retirement Contribution from the region
Classification in Region 4	(3,515,561)	Actual DOC costs for classification for the region
South Florida Reception Center	(40,083,073)	Actual operating costs for SFRC. The bill provides DOC will continue to operate.
Brevard	(12,948,955)	Actual facility operating costs for closed or closing facilities
Hendry	(7,672,730)	
Glades	(23,437,641)	
Indian River	(8,027,931)	
Broward	(2,523,371)	
Proportional Share of 11-12 DOC Reductions	(12,541,920)	Estimation of the regions share of 2011-12 reductions, less health services. The Region represent 22% of state operation costs. This calculation is 22% of the relevent reductions. This is an estimate that will need to be refined.
Adjusted Operation Costs \$ 206,570,388		

These calculations are only an approximation of the adjusted costs for operating the South Florida region facilities for Fiscal Year 2011-2012 and will need to be refined. The effective date of this bill will allow the actual expenditures for Fiscal Year 2011-2012 to be calculated. This bill requires the Auditor General to review DOC's 2011-2012 fiscal year expenditures and certify the savings prior to DMS issuing an intent to award. Using the above approximation, seven percent saving to the state would be \$14.5 million. The total cost savings from privatization cannot be determined definitively until the Auditor General certifies that the bid is at least a seven percent savings compared to DOC's Fiscal Year 2011-2012 expenditures.

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:

The bill does not appear to create a need for rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

V. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2012, the Justice Appropriations Subcommittee adopted three amendments. The amendments provide:

1. The procurement for the operation of the South Florida institutions will exclude the South Florida Reception Center (SFRC) and the SFRC South Unit; however, the procurement will include all satellite facilities associated with the SFRC.
2. Any contract awarded must include pricing that achieves no less than a seven percent savings for all operations and maintenance of each correctional facility and assigned correctional units, excluding inmate health services, from the 2011-2012 fiscal year expenditures for such facility or facilities. Prior to issuing an intent to award, the Auditor General must certify that the successful bidder or bidders have achieved at least seven percent savings from DOC's 2011-2012 fiscal year expenditures. The amendment provides a contract may not be awarded without the Auditor General's certification.
3. Removes the requirement from the bill that each facility's average daily population must remain substantially unchanged from the average daily population calculated for Fiscal Year 2010-2011.

This analysis is drafted to the bill with amendments as passed by the Justice Appropriations Subcommittee.

1 A bill to be entitled
 2 An act relating to correctional privatization;
 3 creating s. 957.17, F.S.; requiring the Department of
 4 Management Services, in consultation with the
 5 Department of Corrections, to competitively procure
 6 management and operation of the correctional
 7 facilities and assigned correctional units for certain
 8 counties; providing exceptions; specifying time
 9 periods; requiring responsive proposals to include
 10 specified cost savings; requiring adherence to
 11 specified laws; providing for operational capacities;
 12 specifying disposition of certain funds; providing for
 13 inmate classification; providing requirements for
 14 certain population figures; providing for specific
 15 performance measures and levels of expected
 16 performance for a contractor; requiring reports by the
 17 Department of Corrections; requiring development and
 18 submission of a transition plan and recommended
 19 operating budget revisions and a cost-benefit analysis
 20 to the Legislative Budget Commission by a specified
 21 date; providing requirements for such submissions;
 22 providing an employment preference for current
 23 employees of affected facilities; requiring the
 24 Department of Corrections to make reasonable efforts
 25 to find suitable job placements for certain of those
 26 employees; providing an effective date.

27
 28 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 957.17, Florida Statutes, is created to read:

957.17 South Florida Region; privatization of correctional facilities.-

(1) (a) The Department of Management Services, in consultation with the Department of Corrections, shall competitively procure by single or multiple solicitations the management and operation, exclusive of inmate health services, of the correctional facilities and assigned correctional units, including annexes, work camps, road prisons, reentry centers, and work release centers, currently operated by the Department of Corrections in Manatee, Hardee, Indian River, Okeechobee, Highlands, St. Lucie, DeSoto, Sarasota, Charlotte, Glades, Martin, Palm Beach, Hendry, Lee, Collier, Broward, Miami-Dade, and Monroe Counties, excluding any correctional facility or assigned correctional unit that has been closed or scheduled for closure before June 30, 2012. The procurement shall exclude the South Florida Reception Center and the South Florida Reception Center South Unit. The procurement shall include all other correctional units assigned to the South Florida Reception Center.

(b) The Department of Management Services shall issue its competitive solicitation or competitive solicitations no later than 60 days after the effective date of this act. The Department of Management Services shall require that any proposal submitted in response to a competitive solicitation be

56 submitted no later than 60 days after the issuance of the
 57 competitive solicitation.

58 (2) Notwithstanding s. 957.07, any contract awarded shall
 59 include pricing that achieves no less than a 7 percent savings
 60 for all operations and maintenance of each correctional facility
 61 and assigned correctional units, excluding inmate health
 62 services, from the 2011-2012 fiscal year expenditures for such
 63 facility or facilities. Before the issuance of an intent to
 64 award, the Auditor General shall certify that the successful
 65 bidder or bidders have achieved the savings set forth in this
 66 section. A contract may not be awarded absent such
 67 certification. The total costs to be incurred by the state in
 68 the second or subsequent years of the contract resulting from
 69 the competitive procurement may increase by not more than the
 70 percentage increase in the per diem of state-operated
 71 facilities; however, any such increase is contingent upon
 72 appropriation by the Legislature.

73 (3) (a) At a minimum, except as provided in this section,
 74 the contract must require adherence to all applicable federal,
 75 state, and local laws, as well as all rules adopted by the
 76 Department of Corrections. The contract must also specifically
 77 provide that the contract is contingent upon Legislative Budget
 78 Commission approval.

79 (b) Facilities operated under contract as provided in this
 80 section shall continue to operate at capacities set forth in s.
 81 944.023.

82 (c) Funds received for facilities operated under contract
 83 as provided in this section from canteens, subsistence payments,

84 and any other participation accounts shall continue to be
 85 remitted to the General Revenue Fund.

86 (d) All activities regarding the classification of inmates
 87 shall remain under the supervision and direction of the
 88 Department of Corrections as required by current law.

89 (e) Each facility's medical and psychological grade
 90 population percentages shall remain substantially unchanged from
 91 those calculated for the 2011-2012 fiscal year.

92 (4) Any contract resulting from a competitive solicitation
 93 must include specific performance measures and levels of
 94 expected performance for the contractor in order to ensure
 95 contractor performance and accountability, and require the
 96 contractor to provide the Department of Management Services with
 97 information concerning each performance measure for each
 98 separate correctional facility and assigned correctional unit
 99 for each month, calendar quarter, and year during the term of
 100 the contract in the format specified by that department.

101 (a) The required performance measures must include, but
 102 are not limited to:

103 1. The number of batteries committed by inmates on one or
 104 more persons.

105 2. The number of reportable incidents sent to the Office
 106 of the Inspector General of the Department of Corrections for
 107 investigation.

108 3. The number and percent of random inmate drug tests that
 109 are negative.

110 4. The percent of inmate work squad slots vacant.

111 5. The number of escapes.

- 112 6. The number of inmates assessed as needing substance
- 113 abuse treatment.
- 114 7. The number of transition checklists completed.
- 115 8. The number of release plans completed, including
- 116 confirmed placement of released inmates.
- 117 9. The number of appropriately assessed inmates enrolled
- 118 in substance abuse treatment.
- 119 10. The number of inmates who successfully complete drug
- 120 abuse education or treatment programs.
- 121 11. The number of inmates enrolled in substance abuse
- 122 programs.
- 123 12. The number of appropriately assessed inmates enrolled
- 124 in literacy programs.
- 125 13. The number of inmates who successfully complete
- 126 literacy programs.
- 127 14. The number of appropriately assessed inmates enrolled
- 128 in General Education Development (GED) programs.
- 129 15. The number of inmates receiving a GED.
- 130 16. The number of appropriately assessed inmates enrolled
- 131 in special education programs.
- 132 17. The number of appropriately assessed inmates enrolled
- 133 in vocational education programs.
- 134 18. The number of inmates completing vocational education
- 135 programs.
- 136 19. The average increase in grade level achieved by
- 137 inmates participating in education programs per 3-month
- 138 instructional period.
- 139 20. The average increase in grade level achieved by

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140 inmates participating in educational programs per 3-month
 141 instructional period.

142 21. The number of inmates released who completed the
 143 required 100-hour transition course.

144 (b) For work release centers, the required performance
 145 measures must also include, but are not limited to:

146 1. The percent of employment of inmates.

147 2. The illegal substance use by inmates.

148 3. The victim restitution paid by inmates.

149 4. Compliance by inmates without contact orders.

150 (5) The Department of Corrections shall provide reports to
 151 the chairs of the legislative appropriations committees
 152 regarding the performance of each contractor which include, but
 153 are not limited to, information regarding each required
 154 performance measure in each contract resulting from the
 155 competitive solicitation for each contractor and for each
 156 correctional facility and assigned correctional unit.

157 (6) If after engaging in the competitive solicitation
 158 process the Department of Management Services determines that
 159 the process has yielded responses that meet all the requirements
 160 of this section, the department may execute the contract. The
 161 contract must specifically provide that the contract is
 162 contingent upon Legislative Budget Commission approval. The
 163 Department of Corrections shall develop and submit a transition
 164 plan and recommended revisions to its operating budget to the
 165 Legislative Budget Commission. The Department of Corrections
 166 must also submit a cost-benefit analysis that delineates its
 167 current costs of providing the services and the savings that

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168 | would be generated by the transition plan yielding a minimum
 169 | annual savings of 7 percent. Upon approval by the Legislative
 170 | Budget Commission, any contract previously executed by the
 171 | Department of Management Services pursuant to this section shall
 172 | commence as provided in the contract. Additional budget
 173 | amendments may be submitted during the 2012-2013 fiscal year as
 174 | necessary for the proper alignment of budget and positions.

175 | (7) Each current employee of the Department of Corrections
 176 | at the designated correctional facility and assigned
 177 | correctional unit who is affected by the privatization must be
 178 | given first preference for continued employment by the
 179 | contractor selected as a result of a competitive solicitation.
 180 | The Department of Corrections shall make reasonable efforts to
 181 | find suitable job placements for those employees who wish to
 182 | continue to be employed by the state.

183 | Section 2. This act shall take effect July 1, 2012.