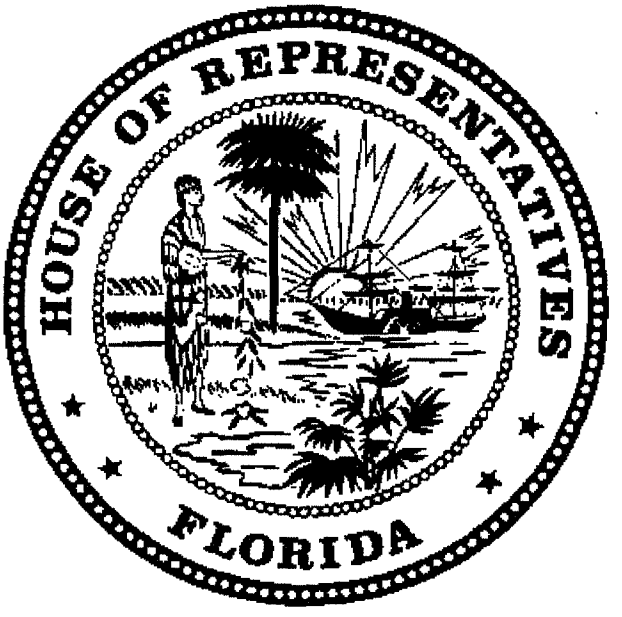


# ECONOMIC AFFAIRS COMMITTEE

# MEETING PACKET

**Thursday, December 8, 2011**
**9:00 a.m.**
**Reed Hall (102 HOB)**

**Dean Cannon**
**Speaker**

**Dorothy L. Hukill**
**Chair**

# The Florida House of Representatives

**Economic Affairs Committee**
**Dorothy L. Hukill, Chair**

## AGENDA

Tuesday, December 8, 2011
Reed Hall (102 HOB)
9:00 am

I. CALL TO ORDER AND WELCOME REMARKS

II. CONSIDERATION OF THE FOLLOWING BILL(S):

HB 97 SPACEPORT FACILITIES BY WORKMAN

HB 387 ELECTRONIC FILING OF CONSTRUCTION PLANS AND OTHER RELATED DOCUMENTS BY AHERN

HB 4033 CONTRACTING BY PLAKON

HB 4043 REAL ESTATE SCHOOLS BY HORNER

HB 4079 ALCOHOLIC BEVERAGES BY WORKMAN

HB 4085 WORKERS' COMPENSATION BY CALDWELL

HB 4087 REPEAL OF A WORKERS' COMPENSATION INDEPENDENT ACTUARIAL PEER REVIEW REQUIREMENT BY ALBRITTON

HB 7001 FORMATION OF LOCAL GOVERNMENTS BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, DIAZ

III. CONSIDERATION OF THE FOLLOWING PROPOSED COMMITTEE BILL(S):

PCB EAC 12-01 -- FINANCIAL EMERGENCIES

IV. ADJOURNMENT

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 97 Spaceport Facilities
**SPONSOR(S):** Workman and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 634

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Transportation & Highway Safety Subcommittee | 13 Y, 0 N | Kiner | Kruse |
| 2) Transportation & Economic Development Appropriations Subcommittee | 15 Y, 0 N | Proctor | Davis |
| 3) Economic Affairs Committee | | Kiner KLK | Tinker TBT |

## SUMMARY ANALYSIS

The bill amends a section of Florida law by defining the term 'launch support facilities' and deleting the term 'spaceport launch facilities'. "Launch support facilities," as defined by the bill, means facilities that are located at launch sites or launch ranges that are required to support launch activities, including launch vehicle assembly, launch vehicle operations and control, communications, and flight safety functions, as well as payload operations, control, and processing. This change is intended to provide an updated definition of spaceport infrastructure for state and federal purposes.

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

The bill has no fiscal impact.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

*Florida's Aerospace Economic Development Organization*

Florida's aerospace industry is integral to the state's long-term success in diversifying and building a knowledge-based economy that is able to support the creation of high-value-added businesses and jobs.[1] As such, the Florida Legislature found that a strong public and private commitment was required to foster the growth and development of a sustainable and world-leading aerospace industry in the state.[2] Space Florida[3] is one manifestation of this commitment, and among many other things, fosters economic development by:

- Enhancing the state's workforce, education and research capabilities, with an emphasis on mathematics, science, engineering and related fields;
- Focusing on the state's economic development efforts in order to capture a larger share of activity in aerospace research, technology, production and commercial operations, while maintaining the state's historical leadership in space launch activities;
- Preserving the unique national role served by the Cape Canaveral Air Force Station and the John F. Kennedy Space Center by reducing costs and improving the regulatory flexibility for commercial sector launches while pursuing the development of complementary sites for commercial horizontal launches; and
- Facilitating business financing, and when necessary, entering into memoranda of agreement with municipalities, counties, regional authorities, state and federal agencies and other organizations, as well as other interested persons or groups.[4]

As an independent special district and political subdivision of the state, Space Florida has all the powers, rights, privileges and authority as provided under Florida law.[5] This authority allows Space Florida to act as a special purpose government and finance vehicle to carry out the legislative intent behind its creation. In doing so, Space Florida is governed by an independent board of directors and an advisory council.[6] Securing funding for aerospace related infrastructure is one of the many duties and responsibilities of the board of directors.[7]

*Florida's Strategic Intermodal System*

Space Florida secures funding for aerospace related infrastructure in part from the Florida Department of Transportation's Strategic Intermodal System ("SIS"). The SIS is composed of the following three components:

- Statewide and regionally significant facilities and services (strategic);
- All forms of transportation for moving both people and goods, including linkages that provide for smooth and efficient transfers between modes and major facilities (intermodal); and

[1] s. 331.3011(1), F.S.
[2] s. 331.3011(2), F.S.
[3] Space Florida was created by ch. 2006-60, L.O.F.; codified in ch. 331, F.S.
[4] Id.
[5] Id.
[6] s. 331.3081(1), (2), F.S.
[7] s. 331.310(1)(d), F.S.

- Integration of individual facilities, services, forms of transportation and linkages into a single, integrated transportation network (system).[8]

Because 'space' is a recognized mode of transportation, 'spaceports' are considered transportation facilities.[9][10] This recognition makes certain spaceport infrastructure projects eligible for inclusion in the Florida Department of Transportation's (FDOT) planning and programs.[11] Annually, the Florida Legislature appropriates a portion of the State Transportation Trust Fund, specifically revenues collected from taxes on aviation fuel, to the State Aviation Program, which in part funds the SIS.[12] During the 2011 Regular Legislative Session, Space Florida was allocated $16M dollars for infrastructure spending related to the spaceport launch complex and spaceport infrastructure projects.[13]

*Inconsistent Definitions of Spaceport Infrastructure*

Space Florida and FDOT work closely on SIS funding so no issues have arisen regarding the current statutory definition. However, Space Florida is interested in avoiding future issues of interpretation and to address federal definition issues.

Currently, Florida law uses the term 'spaceport launch facilities' and defines it to mean "industrial facilities . . . [including] any launch pad, launch control center, and fixed launch support equipment."[14]

Federally, the term 'launch support facilities' means "facilities located at launch sites or launch ranges that are required to support launch activities, including launch vehicle assembly, launch vehicle operations and control, communications, flight safety functions, payload operations, control and processing."[15]

Florida's current definition of 'spaceport launch facilities' uses outdated terminology and the proposed definition is intended to parallel the more broad federal definition of 'launch support facilities.'

**Effect of Proposed Changes**

The bill amends s. 331.303, F.S., to define the term 'launch support facilities' and to delete the term 'spaceport launch facilities.'

The new definition states:

> "Launch support facilities" means facilities that are located at launch sites or launch ranges that are required to support launch activities, including launch vehicle assembly, launch vehicle operations and control, communications, and flight safety functions, as well as payload operations, control, and processing.

---

[8] *See* information on Florida Department of Transportation's Strategic Intermodal System. This information can be accessed via the following link: http://www.dot.state.fl.us/planning/sis/ (Last viewed 10/6/2011).
[9] s. 339.62(3), F.S.
[10] More specifically, 'spaceports' are considered transportation 'hubs' in the SIS Strategic Plan. *See* the Florida Department of Transportation's information on the SIS Strategic Plan, which in relevant part reads "Hubs are ports and terminals that move goods or people between Florida regions or between Florida and other markets in the United States and the rest of the world. These include airports, spaceports and interregional passenger terminals." This information can be accessed by clicking the ling titled 'Adopted SIS criteria and thresholds at http://www.dot.state.fl.us/planning/sis/strategicplan/ (Last viewed 10/10/2011).
[11] *See* Florida Department of Transportation's information on 'Space Programs.' This information can be accessed via the following link: http://www.dot.state.fl.us/aviation/space.shtm (Last viewed 10/6/2011).
[12] s. 339.61(3), F.S.
[13] Ch. 2011-69, Part 4, L.O.F., which states "[f]rom the funds in Specific Appropriation 1918B, $16,000,000 from the State Transportation Trust Fund as proposed in the Transportation Work Program is provided to Space Florida for up to 100 percent of the non-federal share of the Spaceport Launch Complex and Spaceport Infrastructure Projects."
[14] s. 331.303(17)
[15] 51 USC § 50501 (formerly cited as 15 USC § 5802(7)).

Space Florida maintains that the effect of the proposed changes will allow for the following:

- The ability to better fund infrastructure upgrades and improvements to space-related facilities by using SIS monies more appropriately for space infrastructure projects not airport related;
- The alignment of federal and state definitions so that any future federal grants may qualify for the same projects.

According to Space Florida, a clear definition of spaceport infrastructure is critical to fulfilling all of the economic development needs of Florida's aerospace industry, and thus creating jobs in a variety of high-value-added sectors.[16]

B. SECTION DIRECTORY:

Section 1: Defines "Launch support facilities;" deletes "Spaceport launch facilities."

Section 2: 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:

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

[16] *See* Space Florida's information on its 2012 Legislative Priorities. Information can be accessed at http://www.spaceflorida.gov/legislative (Last viewed 10/7/2011).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to spaceport facilities; amending s. 331.303, F.S.; defining the term "launch support facilities"; deleting the term "spaceport launch facilities"; providing an effective date.

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

Section 1. Present subsection (17) of section 331.303, Florida Statutes, is repealed, present subsections (11) through (16) are renumbered as subsections (12) through (17), respectively, and a new subsection (11) is added to that section, to read:

331.303 Definitions.—

(11) "Launch support facilities" means facilities that are located at launch sites or launch ranges that are required to support launch activities, including launch vehicle assembly, launch vehicle operations and control, communications, and flight safety functions, as well as payload operations, control, and processing.

~~(17) "Spaceport launch facilities" means industrial facilities as described in s. 380.0651(3)(c), Florida Statutes 2010, and include any launch pad, launch control center, and fixed launch-support equipment.~~

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 387 Electronic Filing of Construction Plans and Other Related Documents
**SPONSOR(S):** Ahern
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 600

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Community & Military Affairs Subcommittee | 14 Y, 0 N | Gibson | Hoagland |
| 2) Economic Affairs Committee | | Gibson BG | Tinker TBT |

## SUMMARY ANALYSIS

This bill authorizes, upon the approval of the local building code administrator or building official, the electronic submission of:

- construction plans,
- drawings,
- specifications,
- reports,
- final documents, or
- documents prepared or issued by a licensee for review by the building code administrator, the building official, or a plans examiner.

Documents submitted electronically may also be signed by the licensee and dated and sealed electronically with the licensee's seal in accordance with the "Electronic Signature Act of 1996."[1]

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

[1] *See ss.* 668.001- 668.006, F.S.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

Section 468.604(1), F.S., requires the local building code administrator or building official:

> "to administrate, supervise, direct, enforce, or perform the permitting and inspection of construction, alteration, repair, remodeling, or demolition of structures and the installation of building systems within the boundaries of their governmental jurisdiction, when permitting is required, to ensure compliance with the Florida Building Code and any applicable local technical amendment to the Florida Building Code."

Part of this responsibility includes the review of construction plans before any building, system installation, or other construction permit is issued in order to ensure that the plans comply with the Florida Building Code.[2] The plans examiner is given the responsibility, under the supervision and authority of the building code administrator or building official, of reviewing construction plans submitted in the permit application for compliance with the Florida Building Code and any local technical amendment to the Code.[3]

Currently, the manner in which construction documents are submitted varies based on the jurisdiction. However, the general practice is for design professionals to hand-deliver hard copies of construction documents to the local building code administrator or building official for review. This practice requires many local building departments to maintain considerable physical storage space for the retention of these documents.[4]

The Legislature has previously granted certain professions the statutory authority to electronically submit documents and to utilize electronic seals. Engineers,[5] architects,[6] landscape architects,[7] interior designers,[8] and land surveyors and mappers[9] have all been previously authorized to submit documents electronically and to utilize electronic seals and signatures. In addition, in 2009, the Legislature required each clerk of court to implement an electronic filing process in order to reduce costs, increase timeliness, and improve judicial case management.[10]

Part 1 of ch. 668, F.S.,[11] cited as the "Electronic Signature Act of 1996" provides guidelines for electronic signatures and gives the head of each agency the responsibility of adopting and implementing control processes and procedures to ensure integrity, security, confidentiality, and auditability of business transactions done through electronic commerce. Part II of ch. 668, F.S.,[12] contains the "Uniform Electronic Transaction Act" that was originally enacted to remove barriers to electronic commerce by validating and effectuating electronic records and signatures.[13]

---

[2] S. 468.604(1)(a), F.S.
[3] S. 468.604(3), F.S.
[4] Nov. 7, 2011, staff conversation with Doug Harvey, Executive Director, Building Officials Association of Florida.
[5] S. 471.025, F.S.
[6] S. 481.221, F.S.
[7] S. 481.321, F.S.
[8] S. 481.221, F.S.
[9] S. 472.025, F.S.
[10] S. 28.22205, F.S.
[11] Ss. 668.001-668.006, F.S.
[12] S. 668.50, F.S.
[13] *See* Fla. S. Comm. on Utilities & Communications, CS for CS for SB 1334 (2000) Final Staff Analysis (July 27, 2000), *available at* (http://archive.flsenate.gov).

Effect of Proposed Changes:

HB 387 authorizes, upon the approval of the local building code administrator or building official, the electronic submission of:

- construction plans,
- drawings,
- specifications,
- reports,
- final documents, or
- documents prepared or issued by a licensee for review by the building code administrator, the building official, or a plans examiner.

Documents submitted electronically may also be signed by the licensee and dated and sealed electronically with the licensee's seal in accordance with the "Electronic Signature Act of 1996."[14]

This bill does not require the electronic submission of construction documents or the use of electronic signatures and seals, but instead provides the building code administrator or building official the authority to allow for the electronic submission of construction documents.

Allowing for the electronic submission of construction documents is anticipated to result in a number of benefits for design professionals and local building departments including reduced costs and storage requirements as a result of being able to store files electronically, increased timeliness of processing building permits, and improved efficiency and access to construction documents especially at the construction job site for contractors and inspectors. It is also anticipated that the electronic transmission of documents will allow for instant modifications to construction plans.

This bill does not specifically address security, tracking, and storage issues related to the electronic filing of construction documents. The Building Officials Association of Florida has formed an ad hoc committee comprised of architects, engineers, and building officials to further address these types of issues related to the electronic transmittal of construction documents including the use of electronic seals and signatures. The ad hoc committee is developing a set of recommended guidelines and standards for local government building departments and design professionals to adopt when implementing the electronic transmission of construction documents and the use of electronic signatures and seals. In creating these recommended guidelines, the ad hoc committee is closely examining guidelines already in statute and the best practices and uniform standards used by various professions authorized to electronically transmit documents and use electronic signatures and seals.

This bill contains a whereas clause that provides the legislative finding that "the electronic filing of construction plans and other related documents will increase government efficiency, reduce costs, and increase timeliness of processing permits."

B. SECTION DIRECTORY:

Section 1: Subsection (4) is added to s. 468.604, F.S., to grant statutory authority for the electronic submission of construction plans and other related documents and the use of electronic signatures and seals in accordance with ss. 668.001- 668.006, F.S.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[14] *See ss.* 668.001- 668.006, F.S.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments that implement electronic transmission of construction documents may see cost savings associated with increased government efficiency in the processing and review of construction documents submitted electronically and the reduced need for increased physical storage space for hard copy documents. However, the amount of cost savings is indeterminate at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Design professionals, and perhaps their clients, may experience cost savings due to increased government efficiency in the review of construction plans, and therefore, increased timeliness in the processing of building permits. The amount of cost savings is indeterminate at this time.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require local governments to implement the electronic transmission of construction documents or the use of electronic signatures and seals, but instead allows the building code administrator or building official the authority to choose whether or not to allow for the electronic transmission of construction documents and the use of electronic signatures and seals.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to electronic filing of construction plans and other related documents; amending s. 468.604, F.S.; providing for the electronic filing of construction plans and other related documents; providing an effective date.

WHEREAS, the Legislature finds that the electronic filing of construction plans and other related documents will increase government efficiency, reduce costs, and increase timeliness of processing permits, NOW, THEREFORE,

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

Section 1. Subsection (4) is added to section 468.604, Florida Statutes, to read:

468.604 Responsibilities of building code administrators, plans examiners, and inspectors.—

(4) Upon approval by the building code administrator or building official, construction plans, drawings, specifications, reports, final documents, or documents prepared or issued by a licensee for review by the building code administrator, the building official, or a plans examiner may be transmitted electronically and may be signed by the licensee and dated and sealed electronically with the licensee's seal in accordance with ss. 668.001-668.006.

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4033 Contracting
**SPONSOR(S):** Plakon
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Business & Consumer Affairs Subcommittee | 14 Y, 0 N | Livingston | Creamer |
| 2) Economic Affairs Committee | | Livingston | Tinker |

## SUMMARY ANALYSIS

Florida Statutes mandate that the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board appoint a joint committee that will meet twice a year. However, the joint committee has not met since May 21, 2008.

The bill deletes provisions requiring the Construction Industry Licensing Board and Electrical Contractors' Licensing Board to appoint a joint committee to meet at least twice a year.

It is anticipated that the bill will not have a fiscal impact on state funds.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR) and includes the Division of Professions.

Chapter 455, F.S., specifies the general powers of the DBPR. Each profession is administered either directly by the DBPR or through a separately appointed board, council, or commission. Section 455.01, F.S., defines the term "profession" to mean:

> any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Division of Professions administers 14 professional boards and one council pursuant to s. 20.165, F.S.

The Construction Industry Licensing Board (CILB) is the regulatory body mandated with implementing part I, ch. 489, F.S.[1] The CILB regulates construction contractors who oversee the construction or demolition of a structure or other improvement to real estate. The CILB is made up of 18 members: 4 general contractors, 3 building or residential contractors (with at least 1 building contractor and 1 residential contractor), 1 sheet metal contractor, 1 pool contractor, 1 plumbing contractor, 2 building officials of a municipality or county, 1 roofing contractor, 1 air conditioning contractor, 1 mechanical contractor, 1 underground utility and excavation contractor and 2 consumer members.[2] The CILB meets, usually for three days, approximately eleven times a year.

The CILB approves or denies licensing applications and continuing education providers and courses. Licensing and renewal fess are deposited into the Professional Regulation Trust Fund to pay for CILB expenses. The CILB carries out enforcement activities, including reviewing disciplinary cases to determine whether contractors should be disciplined. It can assess fines or other penalties when it determines contractors have violated board rules or Florida statutes. The CILB also reviews and decides claims made to the Florida Homeowners' Construction Recovery Fund.

The Electrical Contractors' Licensing Board (ECLB) was created to implement the provisions of part II, ch. 489, F.S.[3] The ECLB is responsible for regulating electrical and alarm system contractors. The ECLB is made up of 11 members: 7 certified electrical contractors, 2 certified alarm system contractors I, and 2 consumer members.[4] The ECLB meets approximately six times a year for three days, plus teleconferences as necessary.

The ECLB, whose operations are funded by licensure fees, is responsible for the issuance and renewal of licenses and the prosecution of licensees for violations specified in statute. The ECLB also promulgates rules to carry out the provisions of law. The Department of Business and Professional Regulation assists the ECLB by processing licensure applications, administering examinations, and conducting investigations.

For every meeting of the two boards, each board member receives per diem and mileage allowances as provided in s. 112.061, F.S., from the place of his or her residence to the place of the meeting and return to the residence.[5]

---

[1] Fla. Stat. s. 489.107.
[2] Id.
[3] Fla. Stat. s. 489.507.
[4] Id.
[5] See, e.g., chapter 61G6-4.016, F.A.C.

Currently, Florida Statutes mandate the CILB and ECLB form a joint committee to meet at least twice a year.[6] However, the statutes do not provide what the joint committee is to meet about.

Historically, the two boards have appointed members to the joint committee to meet for specific reasons when agreed to by both boards. Since 2001, the two boards have only met two times—once in 2006 and once in 2008. The last meeting took place on May 21, 2008 in regards to solar licensing issues. Additionally, neither the CILB nor ECLB project expenses for the joint meetings in their annual budgets.

Proposed Changes

The bill deletes subsection (6) in both ss. 489.107 and 489.507, F.S. This bill deletes the requirement that the CILB and ECLB appoint a committee to meet jointly at least twice a year.

B. SECTION DIRECTORY:

Section 1. Amends section 489.107, F.S., deleting subsection (6).

Section 2. Amends section 489.507, F.S., deleting subsection (6).

Section 3. Providing 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:

[6] See Fla. Stat. s. 489.107(6) & Fla. Stat. s. 489.507(6).

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 the counties or municipalities 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:

   NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to contracting; amending ss. 489.107 and 489.507, F.S.; deleting requirements for the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board to appoint committees for joint meetings; providing an effective date.

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

Section 1. Subsection (6) of section 489.107, Florida Statutes, is amended to read:

489.107 Construction Industry Licensing Board.—

~~(6) The Construction Industry Licensing Board and the Electrical Contractors' Licensing Board shall each appoint a committee to meet jointly at least twice a year.~~

Section 2. Subsection (6) of section 489.507, Florida Statutes, is amended to read:

489.507 Electrical Contractors' Licensing Board.—

~~(6) The Electrical Contractors' Licensing Board and the Construction Industry Licensing Board shall each appoint a committee to meet jointly at least twice a year.~~

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4043 Real Estate Schools
**SPONSOR(S):** Horner
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Business & Consumer Affairs Subcommittee | 12 Y, 0 N | Morton | Creamer |
| 2) Economic Affairs Committee | | Morton | Tinker |

## SUMMARY ANALYSIS

The bill repeals the licensure requirements for chief administrators of real estate schools. The bill is anticipated to have an insignificant negative fiscal impact on state funds.

The bill will become effective upon becoming law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Institutions seeking to offer courses of study in real estate, and individuals teaching such courses, must be licensed by the Division of Real Estate within the Department of Business and Professional Regulation.

In addition, the person responsible for the administration of the overall policies and practices of the real estate school must be licensed by the division as a chief administrator. If a chief administrator also teaches courses, he or she must also be licensed as an instructor.

To be licensed as a chief administrator, the applicant must:

- be at least 18 years old;
- possess a high school diploma or its equivalent;
- possess a social security number to apply; and
- must pass a criminal background screening.

Applicants for chief administrator license must provide the division with identifying information, including a social security number, submit to a background check and pay a biennial application fee of $85. There are no pre, post or continuing education requirements for this type of license.

The DBPR reports:

> Currently a real estate school has the option of designating a "Chief Administrator," but the license is not required for the operation of a school. The Chief Administrator does not have continuing education requirements and simply pays a fee for renewal. The actual permit to operate a real estate school is issued to the permit holder of the school. Section 475.451(2)(a), Florida Statutes, defines school permit holder as the individual who is responsible for directing the overall operation of a proprietary real estate school. The language of the definition makes it clear that responsibility for the operation of the school rests with the permit holder, not the Chief Administrator.

Proposed Changes

The bill repeals the licensure requirements for chief administrators of real estate schools.

The bill provides that it will become effective upon becoming law.

B. SECTION DIRECTORY:

Section 1 amends s. 475.02, F.S., to remove a cross reference to 'chief administrator'.

Section 2 amends s. 475.451, F.S., to repeal the licensure requirements for 'chief administrators'.

Section 3 provides that the bill will become effective upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Division expects a small reduction in revenues from no longer collecting biennial application fees associated with chief administrators. There are currently 73 Chief Administrators.

| REVENUE | | | |
|---|---|---|---|
| | FY 2012-13 | FY 2013-14 | FY 2014-15 |
| License Fees: | (400) | (4,400) | (400) |
| Application Fees: | (100) | (100) | (100) |
| Taxes: | | | |
| Unlicensed Activity Fee: | (25) | (275) | (25) |
| TOTAL: | (525) | (4,775) | (525) |

2. Expenditures:

The Division expects a small reduction in expenditures from no longer processing chief administrator biennial applications.

| **Non-Operating Expenditures** | FY 2012-13 | FY 2013-14 | FY 2014-15 |
|---|---|---|---|
| Service Charge to GR (8% of revenue) | (42) | (382) | (42) |
| Indirect Costs (DBPR Administrative Overhead) | 0 | 0 | 0 |
| Other/Transfers | 0 | 0 | 0 |
| Subtotal | 0 | 0 | 0 |
| **Net Revenue Over/(Under) Expenditures** | (483) | (4,393) | (483) |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Chief administrators would no longer be required to pay an $85 licensure fee.

D. FISCAL COMMENTS:

The bill is not anticipated to have a significant fiscal impact.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to real estate schools; amending s. 475.02, F.S.; conforming a provision; amending s. 475.451, F.S.; removing provisions relating to applying for a permit to be a chief administrator of a proprietary real estate school or a state institution; providing an effective date.

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

Section 1. Subsection (3) of section 475.02, Florida Statutes, is amended to read:

475.02 Florida Real Estate Commission.—

(3) Notwithstanding s. 112.313, any member of the commission who is a licensed real estate broker or sales associate and who holds an active real estate school permit, ~~chief administrator permit,~~ school instructor permit, or any combination of such permits issued by the department, to the extent authorized pursuant to such permit, may offer, conduct, or teach any course prescribed or approved by the commission or the department.

Section 2. Subsection (2) of section 475.451, Florida Statutes, is amended to read:

475.451 Schools teaching real estate practice.—

(2) An applicant for a permit to operate a proprietary real estate school~~, to be a chief administrator of a proprietary real estate school or a state institution,~~ or to be an instructor for a proprietary real estate school or a state

institution must meet the qualifications for practice set forth in s. 475.17(1) and the following minimal requirements:

(a) "School permitholder" means the individual who is responsible for directing the overall operation of a proprietary real estate school. A school permitholder must be the holder of a license as a broker, either active or voluntarily inactive, or must have passed an instructor's examination approved by the commission. A school permitholder must also meet the requirements of a school instructor if actively engaged in teaching.

~~(b) "Chief administrative person" means the individual who is responsible for the administration of the overall policies and practices of the institution or proprietary real estate school. A chief administrative person must also meet the requirements of a school instructor if actively engaged in teaching.~~

(b) ~~(c)~~ "School instructor" means an individual who instructs persons in the classroom in noncredit college courses in a college, university, or community college or courses in a career center or proprietary real estate school.

1. Before commencing to provide such instruction, the applicant must certify the applicant's competency and obtain an instructor permit by meeting one of the following requirements:

a. Hold a bachelor's degree in a business-related subject, such as real estate, finance, accounting, business administration, or its equivalent and hold a valid broker's license in this state.

b. Hold a bachelor's degree, have extensive real estate

experience, as defined by rule, and hold a valid broker's license in this state.

c. Pass an instructor's examination approved by the commission.

2. Any requirement by the commission for a teaching demonstration or practical examination must apply to all school instructor applicants.

3. The department shall renew an instructor permit upon receipt of a renewal application and fee. The renewal application shall include proof that the permitholder has, since the issuance or renewal of the current permit, successfully completed a minimum of 7 classroom hours of instruction in real estate subjects or instructional techniques, as prescribed by the commission. The commission shall adopt rules providing for the renewal of instructor permits at least every 2 years. Any permit which is not renewed at the end of the permit period established by the department shall automatically revert to involuntarily inactive status.

The department may require an applicant to submit names of persons having knowledge concerning the applicant and the enterprise; may propound interrogatories to such persons and to the applicant concerning the character of the applicant, including the taking of fingerprints for processing through the Federal Bureau of Investigation; and shall make such investigation of the applicant or the school or institution as it may deem necessary to the granting of the permit. If an objection is filed, it shall be considered in the same manner as

objections or administrative complaints against other applicants for licensure by the department.

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4079 Alcoholic Beverages
**SPONSOR(S):** Workman
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Business & Consumer Affairs Subcommittee | 13 Y, 0 N | Morton | Creamer |
| 2) Economic Affairs Committee | | Morton | Tinker |

## SUMMARY ANALYSIS

The bill repeals a prohibition on the possession, sale, disposal or transportation of alcoholic beverage containers, currently a 3rd degree felony violation. The bill is not anticipated to have a fiscal impact on state funds.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The possession and sale of alcoholic beverages has been strictly enforced in Florida since the 1930s. As part of Florida's Beverage Law, certain acts are prohibited as 3rd degree felonies. These include:

- Possessing any cans, jugs, bottles, or other containers which are being used, or are intended to be used, or have been used to bottle alcoholic beverages.
- Selling or disposing of such containers.
- Transporting such containers.

The statute contains an exemption from the prohibitions for licensed manufacturers.

Although this law has been used in the past to combat the illegal trafficking of moonshine,[1] the statutory language is broad enough to prohibit the possession of old beer or liquor bottles.

Proposed Changes

The bill repeals the prohibition on the possession or transportation of alcoholic beverage containers.

B. SECTION DIRECTORY:

Section 1 repeals s. 562.34, F.S., relating to the seizure and forfeiture of alcoholic beverage containers.

Section 2 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:

[1] *See, e.g.,* U.S. v. McKinnon, 426 F.2d 845 (5th Cir. 1970).

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to alcoholic beverages; repealing s. 562.34, F.S., relating to seizure and forfeiture of certain alcoholic beverage containers; providing an effective date.

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

Section 1. Section 562.34, Florida Statutes, is repealed.

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4085 Workers' Compensation
**SPONSOR(S):** Caldwell
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | 15 Y, 0 N | Callaway | Cooper |
| 2) Economic Affairs Committee | | Callaway | Tinker |

## SUMMARY ANALYSIS

This bill repeals two statutes relating to workers' compensation. Section 627.092, F.S., relating to a Workers' Compensation Administrator position is repealed and s. 627.312(2), F.S., providing obsolete transition guidelines for policies of the Workers' Compensation Joint Underwriting Association is repealed.

**Workers' Compensation Administrator**

Section 627.092, F.S., creates the position of Workers' Compensation Administrator within the Office of Insurance Regulation (OIR) to monitor insurance company compliance in workers' compensation. The OIR does not currently have an employee designated as the Workers' Compensation Administrator and does not have primary responsibility for monitoring insurance company compliance with workers' compensation laws. Thus, this bill repeals s. 627.092, F.S.

**Florida Workers' Compensation Joint Underwriting Association**

The Florida Workers' Compensation Joint Underwriting Association (FWCJUA or Association) was created by statute in 1993 and began writing claims on January 1, 1994. The FWCJUA is an insurer of last resort, meaning it provides workers' compensation insurance for those employers who cannot obtain it in the voluntary market (from private insurers, self insurance funds, etc.). It operates as a self-funded residual market and is nonprofit.

From the FWCJUA's inception in 1993 through July 2003, there were three rating plans established within the Association for various classifications of risks: Subplan A, Subplan B, and Subplan C. All employers obtaining workers' compensation insurance from the FWCJUA were assigned to one of these three rating plans.

In 2003, the Legislature established a new subplan within the FWCJUA: Subplan D. This subplan provided workers' compensation coverage for generally small employers (15 or fewer employees) and charitable organizations. Unlike the other three subplans which had actuarially sound rates, rates for Subplan D were capped as a percentage over the voluntary market rates and thus were not required to be actuarially sound. Consequently, in 2004, Subplan D generated a substantial deficit. Because Subplan D (and Subplan C) issued assessable policies, employers in Subplan D were to be assessed in 2004 to defray the subplan's deficit.

In response to the deficit in Subplan D and the resulting assessment, the 2004 Legislature revamped the FWCJUA before the assessment for Subplan D was levied. The 2004 Legislature provided an appropriation to defray the FWCJUA's deficit and a funding mechanism to help defray future deficits in the FWCJUA. The legislation also created a three-tier rating system to replace the subplan rating system.

Section 627.312(2), F.S., was enacted in 2004 to guide the FWCJUA's transition from the subplan rating system to the tier rating system. This statute required FWCJUA policies with effective dates between May 28, 2004, the effective date of the 2004 law, and June 30, 2004 to be transferred from the subplan rating system to the tier rating system and rerated for premium purposes. Because the June 30, 2004 date has passed, s. 627.312(2), F.S., is obsolete. Thus, this bill repeals this law.

The bill has no fiscal impact and is effective on July 1, 2012.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Workers' Compensation Administrator**

Section 627.092, F.S., creates the position of Workers' Compensation Administrator within the Office of Insurance Regulation (OIR) to monitor insurance company compliance in workers' compensation. The OIR does not currently have an employee designated as the Workers' Compensation Administrator. Moreover, the OIR is not statutorily responsible for overall monitoring and auditing of the performance of workers' compensation insurance companies. Instead, the Bureau of Monitoring and Audit within the Division of Workers' Compensation in the Department of Financial Services has this statutory responsibility.[1] The OIR's responsibility in workers' compensation is primarily to review and approve workers' compensation rates.

This bill repeals s. 627.092, F.S., because the OIR does not have an employee designated as the Workers' Compensation Administrator and does not have primary responsibility for monitoring insurance company compliance with workers' compensation laws.

**Florida Workers' Compensation Joint Underwriting Association**

The Florida Workers' Compensation Joint Underwriting Association (FWCJUA or Association) was created by statute in 1993 and began writing claims on January 1, 1994. The FWCJUA is an insurer of last resort, meaning it provides workers' compensation insurance for those employers who cannot obtain it in the voluntary market (from private insurers, self insurance funds, etc.). It operates as a self-funded residual market and is nonprofit.

From the FWCJUA's inception in 1993 through July 2003, there were three rating plans established within the Association for various classifications of risks: Subplan A, Subplan B, and Subplan C. All employers obtaining workers' compensation insurance from the FWCJUA were assigned to one of these three rating plans. All three subplans had to maintain actuarially sound rates but the rate charged varied in each subplan in accordance with the risk characteristics of the employers obtaining workers' compensation insurance in the subplan. Employers in Subplan C received an assessable workers' compensation policy, meaning these employers could be assessed to pay any deficits incurred in Subplan C.[2] Policies in Subplans A and B were not assessable.

In 2003, the Legislature established a new subplan within the FWCJUA: Subplan D. This subplan provided workers' compensation coverage for generally small employers (15 or fewer employees) and charitable organizations. Unlike the other three subplans which had actuarially sound rates, rates for Subplan D were capped as a percentage over the voluntary market rates and thus were not required to be actuarially sound.[3] Consequently, in 2004, Subplan D generated a substantial deficit. Because Subplan D (and Subplan C) issued assessable policies, employers in Subplan D were to be assessed in 2004 to defray the subplan's deficit.

However, in response to the deficit in Subplan D and the resulting assessment, the 2004 Legislature revamped the FWCJUA before the assessment for Subplan D was levied.[4] The changes made to the FWCJUA in 2004 were done to reduce and eliminate the deficit in Subplan D and to ensure future

---

[1] s. 440.525, F.S., authorizes the Department of Financial Services to examine and investigate workers' compensation insurers.

[2] A deficit occured if the premiums taken in by the WCJUA for policies written in the subplan were not sufficient to cover the claims or reserves of the subplan. If a deficit occured, then the employers in each subplan were charged an additional amount to cover the difference between the premiums taken in and the amount the subplan had to pay out in claims or the reserves that were required to be set aside. The additional amount was pro rated among employers in the subplan based on the premium each employer paid. There was no statutory limit on the number of times employers could be assessed or on the amount of the assessment. Although the WCJUA had a deficit in Subplan C during the subplan's existence, the Association did not assess the employers in Subplan C to cover the deficit because the Association's investment income was sufficient to cover the deficit.

[3] Rates for policies in Subplan D were priced at the voluntary market rate with a surcharge not to exceed 25%, however the surcharge for those organizations exempt from federal income tax under 501(c)(3) was not to exceed 10%.

[4] Ch. 2004-266, L.O.F.

deficits in the FWCJUA would not occur. The 2004 Legislature provided an appropriation to defray the FWCJUA's deficit and a funding mechanism to help defray future deficits in the FWCJUA. Accordingly, employers in Subplan D were never assessed for the subplan's deficit.

The 2004 legislation also created a three-tier rating system to replace the subplan rating system. Statutory criteria for each tier ensured employers obtaining workers' compensation insurance in the FWCJUA were placed in tiers that better defined the employer's risk. The tier rating system also provided the WCJUA with a premium better associated with the employer's risk.[5]

Section 627.312(2), F.S., was enacted in 2004 to guide the FWCJUA's transition from the subplan rating system to the tier rating system. This statute required FWCJUA policies with effective dates between May 28, 2004, the effective date of the 2004 law, and June 30, 2004 to be transferred from the subplan rating system to the tier rating system and rerated for premium purposes. Because the June 30, 2004 date has passed, s. 627.312(2), F.S., is obsolete. Thus, this bill repeals this law.

B. SECTION DIRECTORY:

**Section 1:** Repeals s. 627.092, F.S., relating to the position of Workers' Compensation Administrator.

**Section 2:** Repeals s. 627.312(2), F.S., relating to transitional provisions for the Florida Workers' Compensation Joint Underwriting Association.

**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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[5] Initially, the premiums for two of the three tiers were capped at a percentage above the voluntary market rate but by January 1, 2007, the premiums in all tiers were required to be actuarially sound.

## 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:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to workers' compensation; repealing s. 627.092, F.S., relating to the Workers' Compensation Administrator, to abolish the position; amending s. 627.312, F.S.; deleting an obsolete transitional requirement for certain policies of the Florida Workers' Compensation Joint Underwriting Association; providing an effective date.

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

Section 1. Section 627.092, Florida Statutes, is repealed.

Section 2. Section 627.312, Florida Statutes, is amended to read:

627.312 Transitional provision ~~provisions~~. ~~Effective upon this act becoming a law:~~

~~(1)~~ Notwithstanding s. 627.311(5), no policy in subplan "D" of the Florida Workers' Compensation Joint Underwriting Association is subject to an assessment for the purpose of funding a deficit.

~~(2) Any policy issued by the Florida Workers' Compensation Joint Underwriting Association with an effective date between the date on which this act becomes a law and June 30, 2004, shall be rerated and placed in the appropriate tier provided in s. 627.311(5), as amended, effective July 1, 2004, and shall be subject to the premiums and charges provided for in that section as amended.~~

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4087 Repeal of a Workers' Compensation Independent Actuarial Peer Review Requirement
**SPONSOR(S):** Albritton
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | 14 Y, 0 N | Reilly | Cooper |
| 2) Economic Affairs Committee | | Reilly RJR | Tinker TBT |

## SUMMARY ANALYSIS

Section 627.725, F.S., requires the Financial Services Commission (FSC) to contract, at least once every other year, for an independent actuarial review and analysis of the ratemaking processes of any licensed rating organization that makes workers' compensation rate filings in Florida. The contract must provide for submission of a final report to the FSC, the President of the Senate and the Speaker of the House of Representatives. The costs of the independent actuarial review are paid from the Workers' Compensation Administrative Trust Fund. In Florida, the National Council on Compensation Insurance (NCCI) is responsible for making workers' compensation rate filings on behalf of Florida insurers. At a public hearing on the rate filing by the Office of Insurance Regulation (OIR), NCCI presents its analysis, responds to questions by OIR actuaries and other officials about the methodologies used, and stakeholders offer testimony in support of and in opposition to the filing. OIR then undertakes an extensive actuarial review of the filing, taking into consideration the issues discussed at the hearing. Ultimately, the filing is approved or denied by the OIR. Recently, the OIR approved a request for an 8.9% increase in overall workers' compensation rates effective January 1, 2012.

House Bill 4087 repeals s. 627.725, F.S. Since enactment of this section in 2003, four reports have been published. The next report is due on February 1, 2012. These reports generally have identified issues and solutions that had previously been identified and discussed by the Office of Insurance Regulation (OIR) in its actuarial review of NCCI rate filings.

The bill will eliminate the direct cost of the report, and associated administrative costs.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

### Background

Unlike other lines of insurance, workers' compensation insurers in Florida do not make rate filings. Instead, a licensed rating organization, currently the National Council on Compensation Insurance (NCCI), collects data from workers' compensation insurers. Based on actuarial analysis, NCCI then submits recommendations (for rate changes or to maintain rates) to the Office of Insurance Regulation (OIR). At a rate hearing, NCCI presents its analysis, responds to questions by OIR officials (including the Insurance Commissioner and staff actuaries) about the methodologies used, and stakeholders offer testimony in support of and in opposition to the filing. OIR then undertakes an extensive review of the filing, taking into consideration the issues discussed at the hearing. In connection with the review, the OIR can ask NCCI to submit additional information or to amend its filing. Ultimately, the OIR can approve or deny the filing. Recently, the OIR approved a request for an 8.9% increase in overall workers' compensation rates effective January 1, 2012.

Section 627.725, F.S., was enacted in 2003 as part of workers' compensation reform legislation (ch. 2003-412, L.O.F.). At that time, Florida's workers' compensation insurance rates consistently ranked as the most expensive or second most expensive in the country. The section requires the Financial Services Commission (FSC) to contract, at least once every other year, for an independent actuarial review and analysis of the ratemaking processes of any licensed rating organization that makes workers' compensation rate filings in Florida. The contract must provide for submission of a final report to the FSC, the President of the Senate and the Speaker of the House of Representatives. The costs of the independent actuarial review are paid from the Workers' Compensation Administrative Trust Fund.

Four actuarial peer review reports have been published to date. In large part, they have identified issues and solutions that had previously been identified and discussed by the OIR in reviewing NCCI's rate filings.

### Effect of the Bill

House Bill 4087 repeals s. 627.725, F.S. and is effective July 1, 2012.

B. SECTION DIRECTORY:

**Section 1.** Repeals s. 627.285, F.S., providing for an independent actuarial peer review of workers' compensation rating organizations.

**Section 2.** 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 cost of the independent actuarial report required by s. 627.725, F.S., which is repealed by this bill, was $104,535 in 2004, $76,000 in 2006, $65,000 in 2008, and $35,000 in 2010. Associated

administrative costs (e.g., time spent by OIR staff preparing requests for proposal and executing contracts) would also be eliminated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above ("Fiscal Impact on State Government: Expenditures")

## 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to repeal of a workers' compensation independent actuarial peer review requirement; repealing s. 627.285, F.S., relating to the duty of the Financial Services Commission to contract for a periodic report regarding an actuarial peer review and analysis of the ratemaking process of any licensed rating organization that makes rate filings for workers' compensation insurance; providing an effective date.

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

Section 1. Section 627.285, Florida Statutes, is repealed.

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7001 PCB CMAS 12-01 Formation of Local Governments
**SPONSOR(S):** Community & Military Affairs Subcommittee, Diaz
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 692

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Community & Military Affairs Subcommittee | 13 Y, 0 N | Nelson | Hoagland |
| 1) Economic Affairs Committee | | Nelson | Tinker |

## SUMMARY ANALYSIS

The purpose of ch. 165, F.S., the "Formation of Municipalities Act," is to provide standards, direction and procedures for the formation of municipalities in this state and the provision of municipal services so as to: allow orderly patterns of urban growth and land use; assure adequate quality and quantity of local public services; ensure financial integrity of municipalities; eliminate or reduce avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions; and promote equity in the financing of municipal services.

In order to establish a new municipality, the Legislature must pass a special act creating the city's charter, upon determination that the statutory standards for incorporation have been met. A feasibility study of a municipal incorporation must be completed and submitted to the Legislature 90 days before the first day of the regular session during which a bill proposing an incorporation would be enacted.

This bill amends ch. 165, F.S., to change the deadline for submission of a feasibility study to the first Monday after September 1. The bill also removes several obsolete definitions from the Act, adds specificity to a feasibility study requirement, and conforms a cross-reference.

There is no fiscal impact associated with this bill.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

Chapter 165, F.S., the "Formation of Local Governments Act" was created pursuant to ch. 74-192, L.O.F. The purpose of this legislation was to provide general law standards, direction and procedures for the formation and dissolution of municipalities and special districts in the state.

The Legislature subsequently enacted the "Uniform Special District Accountability Act of 1989," ch. 189, F.S., to provide general provisions for the definition, creation and operation of special districts. This legislation, ch. 89-169, L.O.F., changed the title for ch. 165, F.S., to the "Formation of Municipalities Act," and simultaneously removed provisions for special districts from this law. The chapter currently is limited to procedures for municipal incorporation.

The stated purpose of the Act is to provide standards, direction and procedures for the formation of municipalities in this state and the provision of municipal services so as to:

- allow orderly patterns of urban growth and land use;
- assure adequate quality and quantity of local public services;
- ensure financial integrity of municipalities;
- eliminate or reduce avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions; and
- promote equity in the financing of municipal services.

Under ch.165, F.S., there is only one way to establish a city government where no such government exists: the Legislature must pass a special act creating the city's charter, upon determination that the standards provided in that chapter have been met.[1] Section 165.081, F.S., provides that any special law enacted pursuant to ch. 165, F.S., is reviewable by certiori if the appeal is brought before the effective date of the incorporation.

Pursuant to s. 165.041(1)(b), F.S., a feasibility study must be completed and submitted to the Legislature 90 days before the first day of the regular session during which the bill proposing the incorporation would be enacted. The feasibility study is a survey of the proposed area to be incorporated, and is commissioned and paid for by the parties interested in the incorporation effort. The purpose of the study is to enable the Legislature to determine whether or not the area: 1) meets the statutory requirements for incorporation, and 2) is financially feasible. The feasibility study is required to contain the following elements:

- The general location of territory subject to a boundary change and a map of the area that identifies the proposed change.
- The major reasons for proposing the boundary change.
- The following characteristics of the area:

[1] An exception to this rule exists in Miami-Dade County where the county has been granted the exclusive power to create cities through the State Constitution and its home rule powers. See, s. 165.022, F.S., and s. 6(e), Art. VIII of the State Constitution. Adopted in 1957, the Miami-Dade Home Rule Charter provides for the creation of new municipalities at section 5.05.

- a list of the current land use designations applied to the subject area in the county comprehensive plan;
- a list of the current county zoning designations applied to the subject area;
- a general statement of present land use characteristics of the area; and
- a description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.

- A list of all public agencies, such as local governments, school districts and special districts, whose current boundaries fall within the boundary of the territory proposed for the change or reorganization.

- A list of current services being provided within the proposed incorporation area, including, but not limited to, water, sewer, solid waste, transportation, public works, law enforcement, fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each service.

- A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such services.

- The names and addresses of three officers or persons submitting the proposal.

- Evidence of fiscal capacity and an organizational plan that, at a minimum, includes:
  - existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate; and
  - a five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance and budgets.
- Data and analysis to support the conclusion that incorporation is necessary and financially feasible, including population projections and population density calculations and an explanation concerning methodologies used for such analysis.

- Evaluation of the alternatives available to the area to address its policy concerns.

- Evidence that the proposed municipality meets the standards for incorporation of s.165.061, F.S. These standards require that the new municipality meet the following conditions in the area proposed for incorporation:
  - It must be compact, contiguous and amenable to separate municipal government.
  - It must have a total population, as determined in the latest official state census, special census or estimate of population, of at least 1,500 persons in counties with a population of less than 75,000, and of at least 5,000 persons in counties with a population of more than 75,000.
  - It must have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.
  - It must be a minimum distance of at least two miles from the boundaries of an existing municipality within the county or have an extraordinary natural boundary that requires separate municipal government.
  - It must have a proposed municipal charter that clearly prescribes and defines the form of government and its functions and does not prohibit or restrict the levy of authorized tax.

- In accordance with s. 10, Art. I of the State Constitution,[2] the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation.

In counties that have adopted a municipal overlay for municipal incorporation pursuant to s. 163.3217, F.S., such information also is submitted to the Legislature in conjunction with any proposed municipal incorporation.

In the past, these feasibility studies have been provided to a number of state governmental entities—including the Office of the Governor, the Department of Revenue, the Office of Economic and Demographic Research, the Department of Community Affairs, and the Legislative Committee on Intergovernmental Relations—for a critical assessment to assist the Legislature in its findings. Two of the primary evaluators utilized by the Legislature—the Legislative Committee on Intergovernmental Relations and the Department of Community Affairs (DCA)—were recently abolished,[3] although many of the DCA functions have been transferred to other state agencies.

**Effect of Proposed Changes**

This bill amends ch. 165, F.S., the "Formation of Municipalities Act," to change the deadline for submission of a feasibility study to the Legislature from 90 days before the first day of regular session to the first Monday after September 1. The earlier submission date required by the bill will assure adequate time for review of these studies.

The bill also deletes the following definitions from ch. 165, F.S., which are no longer applicable, as the terms previously were removed by various amendments to the Act, or were never used in the Act:

- "unit of local government,"
- "local general purpose government,"
- "service delivery," and
- "sufficiency of petition."

The bill also deletes a cross reference to the deleted definition of "unit of local government," which is currently found at s. 257.171, F.S.

Additionally, the bill changes the requirement in a feasibility study for "the general location of territory" to "the location of territory," indicating a greater need for specificity.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 165.031, F.S., relating to definitions.

Section 2: Amends s. 165.041, F.S., relating to feasibility studies for municipal incorporation.

Section 3: Amends s. 257.171, F.S., deleting a cross-reference.

Section 4: Provides an effective date.

---

[2] ARTICLE I, SECTION 10: Prohibited laws.—No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

[3] The Legislative Committee on Intergovernmental Relations, a joint committee, was not funded in the FY 2010 – 2011 General Appropriations Act, and ceased operations on June 30, 2010. The Department of Community Affairs was abolished pursuant to ch. 2011-142, L.O.F.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the formation of local governments; amending s. 165.031, F.S.; deleting definitions; amending s. 165.041, F.S.; revising the deadline for submission of a feasibility study of a proposed incorporation of a municipality; revising a requirement for the content of the study; amending s. 257.171, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 165.031, Florida Statutes, is amended to read:

165.031 Definitions.—The following terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(1) "Unit of local government" means any local general-purpose government.~~

~~(2) "Local general-purpose government" means a county, municipality, or consolidated city-county government.~~

(1)~~(3)~~ "County" means a political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution.

(2)~~(6)~~ "Formation" means any one of the following activities:

(a) "Incorporation"—The establishment of a municipality.

(b) "Dissolution"—The dissolving of the corporate status of a municipality.

(c) "Merger"—The merging of two or more municipalities with each other and with any unincorporated areas authorized pursuant to this act to form a new municipality; the merging of one or more municipalities or special districts, in any combination thereof, with each other; or the merging of one or more counties with one or more special districts.

(3) ~~(4)~~ "Municipality" means a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution.

~~(7) "Service delivery" means any mechanism used by a unit of local government to provide governmental services.~~

(4) ~~(8)~~ "Newspaper of general circulation" means a newspaper printed in the language most commonly spoken in the area within which it circulates, which is readily available for purchase by all inhabitants in its area of circulation, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper the primary function of which is to carry legal notices, or a newspaper that is given away primarily to distribute advertising.

(5) ~~(9)~~ "Parties affected" means any person owning property or residing in a municipality proposing a formation or in the territory that is proposed for a formation or any governmental unit with jurisdiction over such area.

(6) ~~(10)~~ "Qualified voter" means any person registered to vote in accordance with law.

(7) ~~(5)~~ "Special district" means a local unit of special government, as defined in s. 189.403(1). This term includes dependent special districts, as defined in s. 189.403(2), and independent special districts, as defined in s. 189.403(3). All provisions of s. 200.001(8)(d) and (e) shall be considered provisions of this chapter.

~~(11) "Sufficiency of petition" means the verification of the signatures and addresses of all signers of a petition with the voting list maintained by the county supervisor of elections and certification that the number of valid signatures represents the required percentage of the total number of qualified voters in the area affected by a proposal pursuant to this chapter.~~

Section 2. Paragraph (b) of subsection (1) of section 165.041, Florida Statutes, is amended to read:

165.041 Incorporation; merger.—

(1)

(b) To inform the Legislature on the feasibility of a proposed incorporation of a municipality, a feasibility study shall be completed and submitted to the Legislature no later than the first Monday after September 1 of the year ~~90 days~~ before ~~the first day of~~ the regular session of the Legislature during which the municipal charter would be enacted. The feasibility study shall contain the following:

1. The ~~general~~ location of territory subject to boundary change and a map of the area which identifies the proposed change.

2. The major reasons for proposing the boundary change.

3. The following characteristics of the area:

a. A list of the current land use designations applied to the subject area in the county comprehensive plan.

b. A list of the current county zoning designations applied to the subject area.

c. A general statement of present land use characteristics of the area.

d. A description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.

4. A list of all public agencies, such as local governments, school districts, and special districts, whose current boundary falls within the boundary of the territory proposed for the change or reorganization.

5. A list of current services being provided within the proposed incorporation area, including, but not limited to, water, sewer, solid waste, transportation, public works, law enforcement, fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each current service.

6. A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such proposed services.

7. The names and addresses of three officers or persons submitting the proposal.

8. Evidence of fiscal capacity and an organizational plan as it relates to the area seeking incorporation that, at a minimum, includes:

a. Existing tax bases, including ad valorem taxable value,

utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate.

b. A 5-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.

9. Data and analysis to support the conclusions that incorporation is necessary and financially feasible, including population projections and population density calculations, and an explanation concerning methodologies used for such analysis.

10. Evaluation of the alternatives available to the area to address its policy concerns.

11. Evidence that the proposed municipality meets the requirements for incorporation pursuant to s. 165.061.

Section 3. Section 257.171, Florida Statutes, is amended to read:

257.171 Multicounty libraries.—Units of local government~~,~~ ~~as defined in s. 165.031(1),~~ may establish a multicounty library. The Division of Library and Information Services may establish operating standards and rules under which a multicounty library is eligible to receive state moneys. For a multicounty library, a local government may pay moneys in advance in lump sum from its public funds for the provision of library services only.

Section 4. This act shall take effect July 1, 2012.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB EAC 12-01 Financial Emergencies
**SPONSOR(S):** Economic Affairs Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Economic Affairs Committee | | Rojas | Tinker |

### SUMMARY ANALYSIS

The bill makes several changes in ch. 218, F.S., which in part controls determination and treatment of financial emergencies in local governments and district school boards.

The bill deletes one of the statutory triggers for financial emergency specified in s.218.503(1)(e), F.S., relating to a deficit fund balance or net assets balance, and amends s. 218.39(5), F.S., to require auditors to consider that same condition in determining whether deteriorating financial conditions exist that are required to be discussed with the entity's governing body.

The bill amends s. 218.503(3), F.S., to create a timeframe of 45 days after the date of a request for information which entities must respond to requests for information by the Executive Office of the Governor or the Commissioner of Education. If the entity does not comply with the request, the Governor, or the Commissioner of Education, or their respective designee then notifies the Legislative Auditing Committee who may take action pursuant to s. 11.40, F.S.

The bill further amends s. 218.503(3), F.S., regarding measures to resolve financial emergencies. This section authorizes financial emergency boards appointed by the Governor or Commissioner of Education to consult with other governmental entities for the consolidation of administrative direction and support services. Such services include, but are not limited to, services for:

- asset sales,
- economic and community development,
- building inspections,
- parks and recreation,
- facilities management,
- engineering and construction,
- insurance coverage,
- risk management,
- planning and zoning,
- information systems,
- fleet management, and
- purchasing.

There is no fiscal impact associated with this bill.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

***Local Government Entity and District School Board Financial Emergencies***

Part V of Ch. 218, F.S., comprises the Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergency Act (Act). The purpose of the Act is to preserve the fiscal solvency of local government entities,[1] charter schools, charter technical career centers, and district school boards that are in a state of financial emergency. Under the Act's provisions, those bodies that meet one of the statutory indicators of financial distress are required to notify the Governor or Commissioner of Education and the Legislative Auditing Committee.[2]

***Conditions Indicating Financial Distress***

Subsections (a)-(e) of s. 218.503(1), F.S., provide indicators of financial distress which include any one of the following conditions based on lack of funds:

- Failure to pay short-term loans or failure to make bond debt service or other long-term debt payments within the same fiscal year in which due.
- Failure to pay uncontested claims from creditors within 90 days after the claim is presented.
- Failure to transfer taxes withheld on the income of employees, failure to transfer employer and employee contributions for Federal social security, or failure to transfer any pension, retirement, or benefit plan of an employee at the appropriate time.
- Failure to pay wages and salaries owed to employees or retirement benefits owed to former employees for one pay period.
- An unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit, for which sufficient resources of the entity are not available to cover the deficit.[3]

The Auditor General recently recommended in a report[4] on the Local Government Financial Reporting System, that the condition specified in s.218.503(1)(e), F.S., regarding a deficit fund balance or net assets balance has not been an effective indicator of a state of financial emergency. The report recommended eliminating that provision of law and revising s. 218.39(5), F.S., to require auditors to consider that same provision in determining whether deteriorating financial conditions exist that are required to be discussed with the governing body.

***Determination of Financial Emergency***

Upon notification that one or more of these conditions is met, the Governor or Commissioner of Education, as appropriate, must determine whether state assistance is needed to resolve or prevent the

[1] s. 218.502, F.S., defines local government entity to mean "a county, municipality, or special district".
[2] s. 218.503(1)-(2), F.S. Note: a charter school must notify the charter school sponsor, the Commissioner of Education, and the Legislative Auditing Committee; a charter technical career center must notify the charter technical career center sponsor, the Commissioner of Education, and the Legislative Auditing Committee; and the district school board shall notify the Commissioner of Education and the Legislative Auditing Committee.
[3] Section 1011.051, F.S., provides additional insufficient resource conditions for school districts. If the unreserved general fund balance in a district's approved operating budget is projected to drop below 3 percent and 2 percent of projected general fund revenues, the school board superintendent is required to provide written notice to the district school board and the Commissioner of Education. Florida Auditor General Report No. 2012-023 cited three school districts in the state that met this condition in the 2009-10 fiscal year.
[4] Florida Auditor General Report No. 2011-196

financial deterioration. The entity is determined to be in a state of financial emergency if state assistance is needed. [5]

Once a determination is made, the Governor or Commissioner of Education has the power to implement certain remedial measures to resolve the financial emergency. Pursuant to s. 218.503(3), F.S., the Governor or Commissioner of Education may:

- require the local governmental entity or district school board's budget to be approved by the Governor or Commissioner of Education, respectively;
- authorize and provide for repayment of a state loan to the local governmental entity;
- prohibit issuance of bonds, notes, certificates of indebtedness, or any other form of debt while in a state of financial emergency;
- inspect and review the entity's records, information, reports, and assets;
- consult with local governmental entity and district school board officials and auditors to discuss necessary procedures to bring accounting books, systems, financial procedures, and reports into state compliance;
- provide technical assistance;
- establish a financial emergency board to oversee local government or district school board activities, appointed by the Governor or State Board of Education as appropriate; and
- require and approve a plan to be prepared by the local governmental entity or district school board that prescribes necessary actions to adjust the entity's debt.

Subsection (5) of s. 218.503, F.S., prohibits a local government entity or district school board from applying for bankruptcy under the United States Constitution without prior approval from the Governor for local governmental entities or the Commissioner of Education for district school boards.

Current law does not provide time frames within which entities must respond to requests for information by the Executive Office of the Governor or the Commissioner of Education, or provide consequences for failure to respond.

***Financial Emergency Board***

One of the measures available to the Governor or the Commissioner of Education to assist in resolving a financial emergency is the establishment of a financial emergency board.[6] This board is charged with overseeing activities of the targeted entity. The Governor or the State Board of Education shall appoint members and select a chair. Once established, the board may:

- review the entity's records, reports, and assets;
- consult with local entity officials and auditors and with state officials regarding the necessary steps to bring the entity's accounting books, systems, financial procedures, and reports into compliance with state requirements; and
- review the entity's operations, management, efficiency, productivity, and financing of functions and operations.[7]

All recommendations and reports made by the financial emergency board must be provided to the Governor for local governmental entities or to the Commissioner of Education and the State Board of Education for district school boards.[8]

---

[5] s. 218.503(3), F.S.
[6] s. 218.503 (3)(g)1., F.S.
[7] s. 218.503 (3)(g)1.a.-c., F.S.
[8] s. 218.503 (3)(g)2., F.S.

### *Financial Emergency Plan*

Another measure the Governor or Commissioner of Education may require of entities when resolving a financial emergency is the development of a plan prescribing remedial actions.[9] Subject to Governor or Commissioner approval, the adopted plan must include but is not limited to:

- provision for full payment of obligations outlined in s. 218.503(1), F.S., designated as priority items, that are currently due or will become due;
- establishment of priority budgeting or zero-based budgeting to eliminate items that are not affordable; and
- the prohibition of a level of operations which can be sustained only with nonrecurring revenues.[10]

### *Article IV, Section 7 of the Florida Constitution: Suspensions*

Article IV, section 7 of the Florida Constitution provides the following:

> *By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension.*

## Effect of Proposed Changes

The bill deletes the condition specified in s.218.503(1)(e), F.S., regarding a deficit fund balance or net assets balance and amends s. 218.39(5), F.S., to require auditors to consider that same condition in determining whether deteriorating financial conditions exist that are required to be discussed with the governing body.

The bill amends s. 218.503(3), F.S., to create a timeframe of 45 days after the date of a request for information which entities must respond to requests for information by the Executive Office of the Governor or the Commissioner of Education. If the entity does not comply with the request, the Governor, or the Commissioner of Education, or their respective designee then notifies the Legislative Auditing Committee who may take action pursuant to s. 11.40, F.S.[11]

The bill further amends s. 218.503(3), F.S., regarding measures to resolve financial emergencies. This section authorizes financial emergency boards appointed by the Governor or Commissioner of Education to consult with other governmental entities for the consolidation of administrative direction and support services. Such services include, but are not limited to, services for:

- asset sales,
- economic and community development,
- building inspections,

---

[9] s. 218.503 (3)(h), F.S.

[10] Section 1011.051(2), F.S., provides additional emergency plan provisions for school districts. If a school district's unreserved general fund is projected to drop below 2 percent of general fund revenues and the Commissioner of Education determines that the district does not have a plan that is reasonably anticipated to avoid a financial emergency, the Commissioner shall appoint a financial emergency board to assist the district.

[11] The LAC has broad investigative powers and may exercise the powers of subpoena by law vested in a standing committee of the Legislature.

- parks and recreation,
- facilities management,
- engineering and construction,
- insurance coverage,
- risk management,
- planning and zoning,
- information systems,
- fleet management, and
- purchasing.

The bill also provides that entities required by the Governor or Commissioner of Education to develop remedial financial emergency plans must include provisions, where applicable, for implementing the consolidation, sourcing, or discontinuance of administrative direction and support services as part of the entity's adopted plan. Such services include, but are not limited to, the services cited above.

Finally, the bill creates s. 218.503(6), F.S., to clarify the constitutional ability of the Governor to suspend and recommend removal of members of governing bodies who fail to resolve a state of financial emergency. This failure constitutes malfeasance, misfeasance, and neglect of duty for purposes of Article IV, s. 7 of the Florida Constitution.

B. SECTION DIRECTORY:

**Section 1** amends s. 218.39(5), F.S., to ., to require auditors to consider a deficit fund balance or net assets balance in determining whether deteriorating financial conditions exist that are required to be discussed with the governing body.

**Section 2** amends s. 218.503(3), F.S., relating to various measures necessary to resolve financial emergencies in local governments and district school boards.

**Section 3** provides that this act shall take effect 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:

   See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Financial emergency boards acting on behalf of an entity that has been declared to be in a state of financial emergency will be authorized to consult with other governmental entities for the consolidation of all administrative direction and support services.

Local government entities and district school boards in a state of financial emergency who are required to adopt financial emergency plans must include provisions, where applicable, for implementing the consolidation, sourcing or discontinuance of administrative direction and support services as part of the entity's adopted financial emergency plan.

## 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 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:

The bill creates s. 218.503(6), F.S., to clarify the constitutional ability of the Governor to suspend and recommend removal of members of governing bodies who fail to resolve a state of financial emergency. This failure constitutes malfeasance, misfeasance, and neglect of duty for purposes of Article IV, s. 7 of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to financial emergencies; amending s. 218.39, F.S.; identifying certain fund balance deficits as a potential factor of deteriorating financial condition; amending s. 218.503, F.S.; requiring response to inquiries; authorizing a financial emergency review board for a local governmental entity or district school board to consult with other governmental entities for the consolidation of all administrative direction and support services; authorizing the Governor or Commissioner of Education to require a local governmental entity or district school board to develop a plan implementing the consolidation, sourcing, or discontinuance of all administrative direction and support services; providing that the members of the governing body of a local governmental entity or the members of a district school board who fail to resolve a state of financial emergency are subject to suspension or removal from office; providing an effective date.

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

Section 1. Subsection (5) of section 218.39, Florida Statutes is amended to read:

218.39 Annual financial audit reports.—

(5) At the conclusion of the audit, the auditor shall

discuss with the chair of the governing body of the local governmental entity or the chair's designee, the elected official of each county agency or the elected official's designee, the chair of the district school board or the chair's designee, the chair of the board of the charter school or the chair's designee, or the chair of the board of the charter technical career center or the chair's designee, as appropriate, all of the auditor's comments that will be included in the audit report. If the officer is not available to discuss the auditor's comments, their discussion is presumed when the comments are delivered in writing to his or her office. The auditor shall notify each member of the governing body of a local governmental entity, district school board, charter school, or charter technical career center for which:

(a) ~~d~~Deteriorating financial conditions exist that may cause a condition described in s. 218.503(1) to occur if actions are not taken to address such condition.

(b) A fund balance deficit in total or for that portion of a fund balance not classified as restricted, committed, or nonspendable, or a total or unrestricted net assets deficit, as reported on the fund financial statements of entities required to report under governmental financial reporting standards or on the basic financial statements of entities required to report under not-for-profit financial reporting standards, for which sufficient resources of the local governmental entity, charter school, charter technical career center, or district school board, as reported on the fund financial statements, are not available to cover the deficit. Resources available to cover

reported deficits include fund balance or net assets that are not otherwise restricted by federal, state, or local laws, bond covenants, contractual agreements, or other legal constraints. Property, plant, and equipment, the disposal of which would impair the ability of a local governmental entity, charter school, charter technical career center, or district school board to carry out its functions, are not considered resources available to cover reported deficits.

Section 2. Section 218.503, Florida Statutes, is amended to read:

218.503 Determination of financial emergency.—

(1) Local governmental entities, charter schools, charter technical career centers, and district school boards shall be subject to review and oversight by the Governor, the charter school sponsor, the charter technical career center sponsor, or the Commissioner of Education, as appropriate, when any one of the following conditions occurs:

(a) Failure within the same fiscal year in which due to pay short-term loans or failure to make bond debt service or other long-term debt payments when due, as a result of a lack of funds.

(b) Failure to pay uncontested claims from creditors within 90 days after the claim is presented, as a result of a lack of funds.

(c) Failure to transfer at the appropriate time, due to lack of funds:

1. Taxes withheld on the income of employees; or

2. Employer and employee contributions for:

a. Federal social security; or

b. Any pension, retirement, or benefit plan of an employee.

(d) Failure for one pay period to pay, due to lack of funds:

1. Wages and salaries owed to employees; or

2. Retirement benefits owed to former employees.

~~(e) A fund balance deficit in total or for that portion of a fund balance not classified as restricted, committed, or nonspendable, or a total or unrestricted net assets deficit, as reported on the fund financial statements of entities required to report under governmental financial reporting standards or on the basic financial statements of entities required to report under not-for-profit financial reporting standards, for which sufficient resources of the local governmental entity, charter school, charter technical career center, or district school board, as reported on the fund financial statements, are not available to cover the deficit. Resources available to cover reported deficits include fund balance or net assets that are not otherwise restricted by federal, state, or local laws, bond covenants, contractual agreements, or other legal constraints. Property, plant, and equipment, the disposal of which would impair the ability of a local governmental entity, charter school, charter technical career center, or district school board to carry out its functions, are not considered resources available to cover reported deficits.~~

(2) A local governmental entity shall notify the Governor and the Legislative Auditing Committee; a charter school shall

notify the charter school sponsor, the Commissioner of Education, and the Legislative Auditing Committee; a charter technical career center shall notify the charter technical career center sponsor, the Commissioner of Education, and the Legislative Auditing Committee; and a district school board shall notify the Commissioner of Education and the Legislative Auditing Committee, when one or more of the conditions specified in subsection (1) have occurred or will occur if action is not taken to assist the local governmental entity, charter school, charter technical career center, or district school board. In addition, any state agency must, within 30 days after a determination that one or more of the conditions specified in subsection (1) have occurred or will occur if action is not taken to assist the local governmental entity, charter school, charter technical career center, or district school board, notify the Governor, charter school sponsor, charter technical career center sponsor, or the Commissioner of Education, as appropriate, and the Legislative Auditing Committee.

(3) Upon notification that one or more of the conditions in subsection (1) have occurred or will occur if action is not taken to assist the local governmental entity or district school board, the Governor or his or her designee shall contact the local governmental entity or the Commissioner of Education or his or her designee shall contact the district school board to determine what actions have been taken by the local governmental entity or the district school board to resolve or prevent the condition. <u>The information requested must be provided within 45 days after the date of the request. If the entity does not</u>

comply with the request, the Governor, or the Commissioner of Education, or their respective designee shall notify the Legislative Auditing Committee who may take action pursuant to s. 11.40.

The Governor or the Commissioner of Education, as appropriate, shall determine whether the local governmental entity or the district school board needs state assistance to resolve or prevent the condition. If state assistance is needed, the local governmental entity or district school board is considered to be in a state of financial emergency. The Governor or the Commissioner of Education, as appropriate, has the authority to implement measures as set forth in ss. 218.50-218.504 to assist the local governmental entity or district school board in resolving the financial emergency. Such measures may include, but are not limited to:

(a) Requiring approval of the local governmental entity's budget by the Governor or approval of the district school board's budget by the Commissioner of Education.

(b) Authorizing a state loan to a local governmental entity and providing for repayment of same.

(c) Prohibiting a local governmental entity or district school board from issuing bonds, notes, certificates of indebtedness, or any other form of debt until such time as it is no longer subject to this section.

(d) Making such inspections and reviews of records, information, reports, and assets of the local governmental entity or district school board. The appropriate local officials shall cooperate in such inspections and reviews.

(e) Consulting with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements.

(f) Providing technical assistance to the local governmental entity or the district school board.

(g)1. Establishing a financial emergency board to oversee the activities of the local governmental entity or the district school board. If a financial emergency board is established for a local governmental entity, the Governor shall appoint board members and select a chair. If a financial emergency board is established for a district school board, the State Board of Education shall appoint board members and select a chair. The financial emergency board shall adopt such rules as are necessary for conducting board business. The board may:

a. Make such reviews of records, reports, and assets of the local governmental entity or the district school board as are needed.

b. Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or the district school board into compliance with state requirements.

c. Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board.

d. Consult with other governmental entities for the consolidation of administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

2. The recommendations and reports made by the financial emergency board must be submitted to the Governor for local governmental entities or to the Commissioner of Education and the State Board of Education for district school boards for appropriate action.

(h) Requiring and approving a plan, to be prepared by officials of the local governmental entity or the district school board in consultation with the appropriate state officials, prescribing actions that will cause the local governmental entity or district school board to no longer be subject to this section. The plan must include, but need not be limited to:

1. Provision for payment in full of obligations outlined in subsection (1), designated as priority items, which ~~that~~ are currently due or will come due.

2. Establishment of priority budgeting or zero-based budgeting in order to eliminate items that are not affordable.

3. The prohibition of a level of operations which can be sustained only with nonrecurring revenues.

4. Provisions implementing the consolidation, sourcing, or discontinuance of administrative direction and support services,

including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

(4)(a) Upon notification that one or more of the conditions in subsection (1) have occurred or will occur if action is not taken to assist the charter school, the charter school sponsor or the sponsor's designee and the Commissioner of Education shall contact the charter school governing body to determine what actions have been taken by the charter school governing body to resolve or prevent the condition. The Commissioner of Education has the authority to require and approve a financial recovery plan, to be prepared by the charter school governing body, prescribing actions that will resolve or prevent the condition.

(b) Upon notification that one or more of the conditions in subsection (1) have occurred or will occur if action is not taken to assist the charter technical career center, the charter technical career center sponsor or the sponsor's designee and the Commissioner of Education shall contact the charter technical career center governing body to determine what actions have been taken by the governing body to resolve or prevent the condition. The Commissioner of Education may require and approve a financial recovery plan, to be prepared by the charter technical career center governing body, prescribing actions that will resolve or prevent the condition.

(c) The Commissioner of Education shall determine if the

charter school or charter technical career center needs a financial recovery plan to resolve the condition. If the Commissioner of Education determines that a financial recovery plan is needed, the charter school or charter technical career center is considered to be in a state of financial emergency.

The Department of Education, with the involvement of sponsors, charter schools, and charter technical career centers, shall establish guidelines for developing a financial recovery plan.

(5) A local governmental entity or district school board may not seek application of laws under the bankruptcy provisions of the United States Constitution except with the prior approval of the Governor for local governmental entities or the Commissioner of Education for district school boards.

(6) The failure of the members of the governing body of a local governmental entity or the failure of the members of a district school board to resolve a state of financial emergency constitutes malfeasance, misfeasance, and neglect of duty for purposes of s. 7, Art. IV of the State Constitution.

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