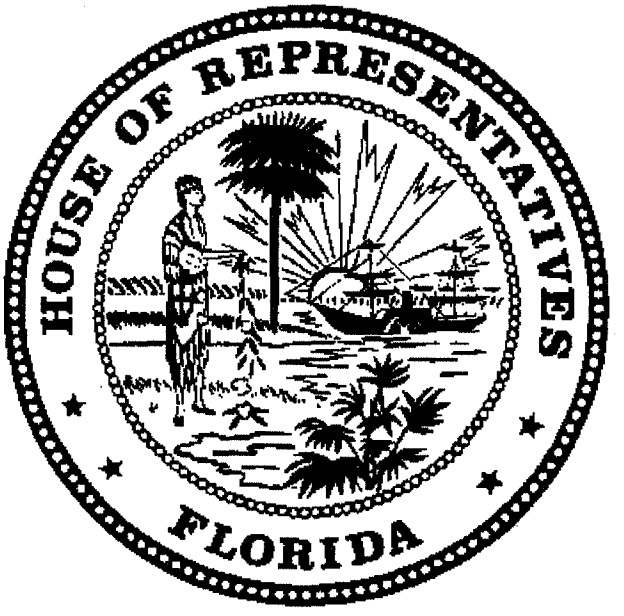

ECONOMIC AFFAIRS COMMITTEE

MEETING PACKET

Thursday, February 16, 2012
11:30 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

Thursday, February 16, 2012
Reed Hall (102 HOB)
11:30 am

I. CALL TO ORDER AND WELCOME REMARKS

II. CONSIDERATION OF THE FOLLOWING BILL(S):

CS/HB 409 ALIEN INSURERS BY INSURANCE & BANKING SUBCOMMITTEE, HOOPER

CS/CS/HB 505 MORTGAGES BY CIVIL JUSTICE SUBCOMMITTEE, INSURANCE & BANKING SUBCOMMITTEE, BERNARD

CS/HB 593 NORTH ST. LUCIE RIVER WATER CONTROL DISTRICT, ST. LUCIE COUNTY BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, MAYFIELD

CS/HB 619 FORT PIERCE FARMS WATER CONTROL DISTRICT, ST. LUCIE COUNTY BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, MAYFIELD

CS/CS/HB 1001 TIMESHARES BY JUDICIARY COMMITTEE, BUSINESS & CONSUMER AFFAIRS SUBCOMMITTEE, EISNAUGLE

HJR 1003 TANGIBLE PERSONAL PROPERTY TAX EXEMPTIONS BY EISNAUGLE

CS/HB 1005 TANGIBLE PERSONAL PROPERTY TAXATION BY FINANCE & TAX COMMITTEE, EISNAUGLE

CS/CS/HB 1011 WARRANTY ASSOCIATIONS BY GOVERNMENT OPERATIONS APPROPRIATIONS SUBCOMMITTEE, INSURANCE & BANKING SUBCOMMITTEE, ABRUZZO

CS/HB 1065 ANNUITIES BY INSURANCE & BANKING SUBCOMMITTEE, BROXSON

HB 1183 EAST COUNTY WATER CONTROL DISTRICT, LEE AND HENDRY COUNTIES BY KREEGEL

CS/HB 1277 MONEY SERVICES BUSINESSES BY INSURANCE & BANKING SUBCOMMITTEE, DAVIS

HB 1297 CITY OF DANIA BEACH, BROWARD COUNTY BY JENNE

HB 1483 ALACHUA COUNTY BY CHESTNUT

HB 7039 TRANSPORTATION FACILITY DESIGNATIONS BY TRANSPORTATION & HIGHWAY SAFETY SUBCOMMITTEE, DRAKE

CS/HB 7065 PUB. REC./PERSONAL IDENTIFYING INFORMATION/TOLL FACILITIES BY STATE AFFAIRS COMMITTEE, TRANSPORTATION & HIGHWAY SAFETY SUBCOMMITTEE, DRAKE

HB 7075 MILITARY INSTALLATIONS BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, WORKMAN

HB 7113 ADDITIONAL AD VALOREM TAX EXEMPTION FOR DEPLOYED SERVICEMEMBERS BY FINANCE & TAX COMMITTEE, PRECOURT

HB 7119 EARLY LEARNING PROGRAMS BY BUSINESS & CONSUMER AFFAIRS SUBCOMMITTEE, AHERN

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

PCB EAC 12-04 -- EXEMPTIONS FROM LOCAL BUSINESS TAXES

IV. CONSIDERATION OF THE FOLLOWING PROPOSED COMMITTEE SUBSTITUTE(S):

PCS FOR HB 7043 -- OBSOLETE OR OUTDATED PROGRAMS AND REQUIREMENTS

PCS FOR HB 1373 -- COMMEMORATION OF THE 40TH ANNIVERSARY OF THE END OF THE UNITED STATES' INVOLVEMENT IN THE VIETNAM WAR

V. ADJOURNMENT

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 409 Alien Insurers
SPONSOR(S): Insurance & Banking Subcommittee and Hooper
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1844

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Cooper	Cooper
2) Economic Affairs Committee		Cooper	Tinker TST

SUMMARY ANALYSIS

The Office of Insurance Regulation (OIR) is responsible for all activities concerning insurers and other risk bearing entities authorized under the Florida Insurance Code. Regulatory oversight includes licensure, approval of rates and policy forms, market conduct and financial exams, solvency oversight, administrative supervision, and licensure of viatical settlement and premium finance companies, as provided in the Florida Insurance Code or ch. 636, F.S. The Florida Insurance Code contains provisions designed to prevent insurers from becoming insolvent and to protect policyholders. These provisions include minimum capital and surplus requirements and financial reporting requirements. Florida law requires that insurers and other risk-bearing entities obtain a certificate of authority (COA) prior to engaging in insurance transactions unless specifically exempted.

Current law provides an exemption from the requirement to obtain a COA for any insurer domiciled outside of the U.S. and covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. A "nonresident" is defined as a person who resides in and maintains a physical place of domicile in a country other than the U.S., and which (s)he intends to maintain as her or his permanent home.

The law further specifies that the insurer or any affiliated person under common ownership or control with the insurer may not solicit, sell, or accept application for any insurance policy or contract for issue or delivery to any U.S. resident. For purposes of this exemption, a U.S. resident is a person who has:

- Had her or his principal place of domicile in the United States for 180 days or more in the 365 days prior to issuance or renewal of the policy;
- Registered to vote in any state;
- Made a statement of domicile in any state; or,
- Filed for homestead tax exemption on property in any state.

To also be eligible for the exemption, the insurer must register with the OIR and provide certain relevant information to the OIR on an annual basis. The law further requires that the exempt insurer include a disclosure on all certificates issued in Florida reflecting that the policy has not been approved by the OIR.

The bill makes three primary changes to existing law. First, it deletes the reference to affiliated persons from the restriction on insurers soliciting or selling policies, or accepting applications. Thus, an insurer who has an affiliate will not be disqualified from obtaining an exemption. Second, the bill modifies the definition of nonresident to include a trust or other entity organized and domiciled under the laws of a country other than the United States. Third, the bill creates an exemption from the COA requirements for an alien insurer issuing life insurance or annuity contracts covering only persons who are not residents of the U.S., if the insurer meets specified requirements.

The bill does not have a fiscal impact on state or local government. It may have a positive, yet indeterminate, fiscal impact on the private sector.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Office of Insurance Regulation (OIR) is responsible for all activities concerning insurers and other risk bearing entities authorized under the Florida Insurance Code.[1] Regulatory oversight includes licensure, approval of rates and policy forms, market conduct and financial exams, solvency oversight, administrative supervision, and licensure of viatical settlement and premium finance companies, as provided in the Florida Insurance Code or ch. 636, F.S.[2] The OIR's Life and Health Financial Oversight unit monitors financial conditions through the use of internal financial analysis and on-site examinations.[3] Periodic financial report submission is part of the monitoring process. The Florida Insurance Code contains provisions designed to prevent insurers from becoming insolvent and to protect policyholders. These provisions include minimum capital and surplus requirements[4] and financial reporting requirements.[5] Florida law requires that insurers and other risk-bearing entities obtain a certificate of authority (COA) prior to engaging in insurance transactions[6, 7] unless specifically exempted.[8]

Current law provides an exemption from the requirement to obtain a COA for any insurer domiciled outside of the U.S. and covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S.[9] A "nonresident" is defined as a person who resides in and maintains a physical place of domicile in a country other than the U.S., and which (s)he intends to maintain as her or his permanent home.

The law requires that the exempt insurer include a disclosure on all certificates issued in Florida reflecting that the policy has not been approved by the OIR. The insurer or any affiliated person under common ownership or control with the insurer may not solicit, sell, or accept application for any insurance policy or contract for issue or delivery to any U.S. resident. For purposes of this subsection of statute, a U.S. resident is a person who has:

- Had her or his principal place of domicile in the United States for 180 days or more in the 365 days prior to issuance or renewal of the policy;
- Registered to vote in any state;
- Made a statement of domicile in any state; or,
- Filed for homestead tax exemption on property in any state.

Other exemption eligibility provisions require the insurer to:

- Register with the OIR.
- Provide the following information to the OIR on annual basis:
  - Names of the owners, officers and directors and number of employees.
  - Lines of insurance and types of products offered.
  - A statement from the applicable regulatory body of the insurer's domicile certifying that the insurer is licensed or registered in that domicile.
  - A copy of filings required by the insurer's domicile.

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[1] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code".
[2] s. 20.121(3)(a)2., F.S.
[3] http://www.floir.com/lh/oir_LHFO_index.aspx
[4] s. 624.4095, F.S.
[5] s. 624.424, F.S.
[6] s. 624.10, F.S.
[7] s. 624.401, F.S.
[8] s. 624.402,F.S.
[9] s. 624.402(8), F.S.

The bill makes three primary changes to existing law. First, it deletes the reference to affiliated persons from the restriction on insurers soliciting or selling policies, or accepting applications. Thus, an insurer who has an affiliate will not be disqualified from obtaining an exemption. Second, the bill modifies the definition of nonresident to include a trust or other entity organized and domiciled under the laws of a country other than the United States. The bill also creates an exemption from the COA requirements for an alien insurer issuing life insurance or annuity contracts covering only persons who are not residents of the U.S., if the insurer meets the following requirements[10]:

- The insurer is an authorized insurer in its domiciliary country in the kinds of insurance proposed to be offered in this state; and:
  - Has been an insurer for at least the last 3 consecutive years; or
  - Is the wholly owned subsidiary of an authorized insurer; or is the wholly owned subsidiary of an already eligible authorized insurer as to the kind of insurance proposed to be issued in this state for a period of not less than the immediately preceding 3 years.

- Prior to the OIR granting eligibility to an alien insurer to issue policies and contracts in Florida, the insurer is required to meet the following requirements:
  - Submit a copy of its annual financial statement to the OIR in English and with all monetary values expressed in U.S. dollars.
  - Maintain a surplus of at least $15 million in eligible investments for like funds of like domestic insurers or by investments permitted by the domiciliary regulator, if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of domestic insurers under part II of ch. 625, F.S.
  - Have a good reputation for providing service and paying claims.
  - Furnish to the OIR with annual and quarterly financial statements.
  - Allow access to the insurer's books and records pertaining to its operations in Florida, at the request of the OIR.
  - Provide certain disclosures to policy or contract applicants, such as the date the insurer was organized; the identity and rating assigned by each rating organization that has rated the insurer; the insurer does not hold a COA; the OIR does not exercise regulatory oversight over the insurer; the policy or contract is not covered by a guaranty association, and the identity and address of the regulatory authority exercising oversight of the insurer.

The OIR may waive the 3-year operating requirement if the insurer has "operated successfully" for at least one year prior and has a surplus of at least $25 million. The bill also provides that these provisions do not impose upon the OIR any duty or responsibility to determine the actual financial condition or claims practices of an unauthorized insurer, and the status of eligibility, if granted, indicates only that the insurer appears to be financially sound and that the OIR has no credible evidence to the contrary. The bill provides that if the OIR has reason to believe that such an insurer is insolvent or is in unsound financial condition, or is no longer eligible to issue policies or contracts subject to the conditions of this subsection, the OIR may conduct an investigation or examination and may withdraw eligibility of the insurer.

The definition of nonresident is provided by a cross-reference to s. 624.402(8), F.S.

Eligible insurers issuing policies or contracts pursuant to this subsection are subject to part IX of ch. 626, F.S., and the OIR may take action against such insurers for violations of the Unfair Trade Practices Act. Insurers violating provisions of this new subsection are also subject to the penalties provided in ss. 624.15 and 626.910, F.S., relating to general penalties and penalties for unauthorized insurers.

All single-premium life insurance policies and single-premium annuity contracts issued to persons who are not residents of the United States and are not nonresidents illegally residing in the United States are subject to ch. 896, F.S., offenses related to financial transactions.

[10] In 2011, the Legislature repealed this exemption when it created the current law for alien insurers, ch. 2011-174, L.O.F.

The bill does not create an exception to the agent licensure requirements of ch. 626, F.S. An insurer issuing policies or contracts are required to appoint the agents the insurer uses to sell such policies or contracts as provided in ch. 626, F.S.

Policies and contracts issued pursuant to this subsection are not subject to the premium tax specified in s. 624.509, F.S., reflecting current practice for exempt entities.

B. SECTION DIRECTORY:

Section 1: Amends s. 624.402(8)(a), F.S., relating to exceptions, certificate of authority required.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Expanding the current exemption from the COA requirement for insurers domiciled outside of the U.S. and covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. may further allow for a variety of insurance offerings. Nonresidents, in their domicile outside the U.S., may be able to purchase more health, life, property and casualty, supplemental, and other types of insurance coverage for the time they are in Florida, and for their property in the state. More nonresidents may also visit Florida to avail themselves of services covered under the policy or contract. Hence, revenue from tourism may increase.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take 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:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2012, the Insurance & Banking Subcommittee adopted a strike-all amendment to HB 409.

The amendment replaced the language of the originally filed bill with the following:

- It deleted the reference to affiliated persons from the restriction on insurers soliciting or selling policies, or accepting applications.
- It modified the definition of nonresident to include a trust or other entity organized and domiciled under the laws of a country other than the United States.
- It restored (with minor revisions) the provisions relating to COA exemptions for life insurers and annuity providers that were repealed last year.
- It provided an effective date of becoming a law, instead of July 1, 2012.

The bill analysis has been updated to reflect changes made by the strike-all amendment.

A bill to be entitled

An act relating to alien insurers; amending s. 624.402, F.S.; revising a provision exempting alien insurers from being required to obtain a certificate of authority; deleting insurer's ownership of or control over affiliated persons as disqualification for exemptions; revising the definition of the term "nonresident"; exempting alien life or annuity insurers from obtaining a certificate of authority based upon certain requirements; establishing conditions; providing requirements to maintain exemptions; authorizing the Office of Insurance Regulation to conduct examinations or investigations; providing application and enforcement authority with respect to pt. IX of ch. 626, relating to unfair insurance trade practices; exempting eligible insurers from payment of premium taxes; requiring that certain applications for a life insurance policy or annuity contract contain specified statements; providing for violations and penalties; providing an effective date.

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

Section 1. Subsection (8) of section 624.402, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

624.402 Exceptions, certificate of authority required.—A certificate of authority shall not be required of an insurer

with respect to:

(8)(a) An insurer domiciled outside the United States covering only persons who, at the time of issuance ~~or renewal~~, are nonresidents of the United States if:

1. The insurer ~~or any affiliated person as defined in s. 624.04 under common ownership or control with the insurer~~ does not solicit, sell, or accept application for any insurance policy or contract to be delivered or issued for delivery to any person in any state;

2. The insurer registers with the office via a letter of notification upon commencing business from this state;

3. The insurer provides the following information, in English, to the office annually by March 1:

a. The name of the insurer; the country of domicile; the address of the insurer's principal office and office in this state; the names of the owners of the insurer and their percentage of ownership; the names of the officers and directors of the insurer; the name, e-mail, and telephone number of a contact person for the insurer; and the number of individuals who are employed by the insurer or its affiliates in this state;

b. The lines of insurance and types of products offered by the insurer;

c. A statement from the applicable regulatory body of the insurer's domicile certifying that the insurer is licensed or registered for those lines of insurance and types of products in that domicile; and

d. A copy of the filings required by the applicable regulatory body of the insurer's country of domicile in that

country's official language or in English, if available;

4. All certificates, policies, or contracts issued in this state showing coverage under the insurer's policy include the following statement in a contrasting color and at least 10-point type: "The policy providing your coverage and the insurer providing this policy have not been approved by the Florida Office of Insurance Regulation"; and

5. In the event the insurer ceases to do business from this state, the insurer will provide written notification to the office within 30 days after cessation.

(b) For purposes of this subsection, "nonresident" means either a trust or other entity organized and domiciled under the laws of a country other than the United States or a person who resides in and maintains a physical place of domicile in a country other than the United States, which he or she recognizes as and intends to maintain as his or her permanent home. A nonresident does not include an unauthorized immigrant present in the United States. Notwithstanding any other provision of law, it is conclusively presumed, for purposes of this subsection, that a person is a resident of the United States if such person has:

1. Had his or her principal place of domicile in the United States for 180 days or more in the 365 days prior to issuance or renewal of the policy;

2. Registered to vote in any state;

3. Made a statement of domicile in any state; or

4. Filed for homestead tax exemption on property in any state.

(c) Subject to the limitations provided in this subsection, services, including those listed in s. 624.10, may be provided by the insurer or an affiliated person as defined in s. 624.04 under common ownership or control with the insurer.

(d) An alien insurer transacting insurance in this state without complying with this subsection shall be in violation of this chapter and subject to the penalties provided in s. 624.15.

(9)(a) Life insurance policies or annuity contracts solicited, sold, or issued in this state by an insurer domiciled outside the United States, covering only persons who, at the time of issuance, are nonresidents of the United States, provided:

1. The insurer must currently be an authorized insurer in its country of domicile as to the kind or kinds of insurance proposed to be offered and must have been such an insurer for not fewer than the immediately preceding 3 years, or must be the wholly owned subsidiary of such authorized insurer, or must be the wholly owned subsidiary of an already eligible authorized insurer as to the kind or kinds of insurance proposed for a period of not fewer than the immediately preceding 3 years. However, the office may waive the 3-year requirement if the insurer has operated successfully for a period of at least the immediately preceding year and has capital and surplus of not less than $25 million.

2. Before the office may grant eligibility, the requesting insurer shall furnish the office with a duly authenticated copy of its current annual financial statement, in English, and with all monetary values therein expressed in United States dollars,

at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and with such additional information relative to the insurer as the office may request.

3. The insurer must have and maintain surplus as to policyholders of not less than $15 million. Any such surplus as to policyholders shall be represented by investments consisting of eligible investments for like funds of like domestic insurers under part II of chapter 625; however, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if the investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of chapter 625.

4. The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.

5. To maintain eligibility, the insurer shall furnish the office within the time period specified in s. 624.424(1)(a) a duly authenticated copy of its current annual and quarterly financial statements, in English, and with all monetary values therein expressed in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and with such additional information relative to the insurer as the office may request.

6. An insurer receiving eligibility under this subsection shall agree to make its books and records pertaining to its

operations in this state available for inspection during normal business hours at the request of the office.

7. The insurer shall notify the applicant in clear and conspicuous language:

a. The date of organization of the insurer.

b. The identity of and rating assigned by each recognized insurance company rating organization that has rated the insurer or, if applicable, that the insurer is unrated.

c. That the insurer does not hold a certificate of authority issued in this state and that the office does not exercise regulatory oversight over the insurer.

d. The identity and address of the regulatory authority exercising oversight of the insurer.

This paragraph does not impose upon the office any duty or responsibility to determine the actual financial condition or claims practices of an unauthorized insurer, and the status of eligibility, if granted by the office, indicates only that the insurer appears to be financially sound and to have satisfactory claims practices and that the office has no credible evidence to the contrary.

(b) If at any time the office has reason to believe that an insurer issuing policies or contracts pursuant to this subsection is insolvent or is in unsound financial condition, does not make reasonably prompt payment of benefits, or is no longer eligible under the conditions specified in this subsection, the office may conduct an examination or investigation in accordance with s. 624.316, s. 624.3161, or s.

624.320 and, if the findings of such examination or investigation warrant, may withdraw the eligibility of the insurer to issue policies or contracts pursuant to this subsection without having a certificate of authority issued by the office.

(c) This subsection does not provide an exception to the agent licensure requirements of chapter 626. Any insurer issuing policies or contracts pursuant to this subsection shall appoint the agents that the insurer uses to sell such policies or contracts as provided in chapter 626.

(d) An insurer issuing policies or contracts pursuant to this subsection is subject to part IX of chapter 626, and the office may take such actions against the insurer for a violation as are provided in that part.

(e) Policies and contracts issued pursuant to this subsection are not subject to the premium tax specified in s. 624.509.

(f) Applications for life insurance coverage offered under this subsection must contain, in contrasting color and not less than 12-point type, the following statement on the same page as the applicant's signature:

This policy is primarily governed by the laws of a foreign country. As a result, all of the rating and underwriting laws applicable to policies filed in this state do not apply to this coverage, which may result in your premiums being higher than would be permissible under a Florida-approved policy. Any

purchase of individual life insurance should be considered carefully, as future medical conditions may make it impossible to qualify for another individual life policy. If the insurer issuing your policy becomes insolvent, this policy is not covered by the Florida Life and Health Insurance Guaranty Association. For information concerning individual life coverage under a Florida-approved policy, consult your agent or the Florida Department of Financial Services.

(g) All life insurance policies and annuity contracts issued pursuant to this subsection must contain on the first page of the policy or contract, in contrasting color and not less than 10-point type, the following statement:

The benefits of the policy providing your coverage are governed primarily by the law of a country other than the United States.

(h) All single-premium life insurance policies and single-premium annuity contracts issued to persons who are not residents of the United States and are not nonresidents illegally residing in the United States pursuant to this subsection shall be subject to the provisions chapter 896.

(i) For purposes of this subsection, "nonresident" means a trust or other entity or person as defined in paragraph (8)(b).

(j) An alien insurer transacting insurance in this state

without complying with this subsection shall be in violation of this chapter and subject to the penalties provided in s. 624.15.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 505 Mortgages
SPONSOR(S): Civil Justice Subcommittee and Insurance & Banking Subcommittee, Bernard
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Gault	Cooper
2) Civil Justice Subcommittee	14 Y, 0 N, As CS	Cary	Bond
3) Economic Affairs Committee		Gault	Tinker

SUMMARY ANALYSIS

A mortgagor may request and receive, within 14 days, information about the loan from the mortgagee. The bill allows a record title owner of the property, or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property, to also request and receive this information.

To receive information about the mortgage, the bill requires a record title owner of the property, or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property, to provide an instrument proving title or lawful authorization. The mortgagee must then provide the total unpaid balance on a per-day basis, but may also include additional information.

The bill provides that a mortgagee may release the mortgage information notwithstanding a confidentiality statute and that the mortgagee is discharged from liability as a result of a release of information in accordance with this bill.

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

The bill becomes effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Cancellation of Mortgages

Current law specifically allows the person who takes out a mortgage (the mortgagor) to request and receive from the holder of the mortgage (the mortgagee), within 14 days of the request, an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage.[1] Generally, only the mortgagor is able to request and receive this information from the mortgagee.[2]

This bill amends s. 701.04, F.S., to extend the right to request and receive information on the unpaid balance to a record title owner of the property or any person lawfully authorized[3] to act on behalf of the mortgagor or record title owner of the property.

As with current law, the bill requires the estoppel letter requested by the mortgagor to contain the principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance. The bill differs, however, because it adds requirements specific to a request from a record title owner of the property or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property. A record title owner of the property, or any person lawfully authorized to act on behalf of the mortgagor or record title owner of the property, must provide an instrument with the request that proves the title or legal authorization. The mortgagee's returned document may contain all of the information provided to the mortgagor, but must at least contain the total unpaid balance on a per-day basis.

Privacy Laws

Under current law, if the mortgagee is a financial institution,[4] the mortgagee may violate privacy laws and face penalties by releasing the mortgagor's mortgage information. The books and records of a financial institution are confidential and shall be made available for inspection and examination only in specifically enumerated circumstances or by specifically listed individuals or entities.[5] The bill provides that the mortgage holder may provide the information required by this bill notwithstanding the confidentiality statute. This bill also provides that the mortgagee or servicer is expressly discharged from any obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the terms of the estoppel letter.

B. SECTION DIRECTORY:

Section 1. Amends s. 701.04, F.S., relating to cancellation of mortgages, liens, and judgments.

Section 2. Provides that the act will become effective upon becoming a law.

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[1] Section 701.04, F.S.

[2] Access to a financial institution's books, for persons other than the mortgagor, is appropriate under certain circumstances under s. 655.059, F.S.

[3] For example, in the administration of an estate, the personal representative could be someone legally authorized to act on behalf of the mortgagor or record title owner of the property.

[4] Section 655.005(1)(i), F.S., defines "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

[5] Section 655.059, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Mortgagees may have to increase their time and costs to accommodate additional requests, though the number and cost of any additional requests as a result of the bill is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill both *requires* mortgagees to provide all mortgage information to an individual authorized by the mortgagor and *allows* mortgagees to limit the amount of mortgage information provided to an individual authorized by the mortgagor.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Insurance & Banking Subcommittee unanimously adopted one strike-all amendment to HB 505. The strike-all made the following changes:

- Removed the phrase "owner of an interest in property encumbered by a mortgage" and replaced it with the phrase "record title owner of the property or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property." To account for this change, some technical changes were made as well.
- Added a section relieving financial institutions of liability for releasing certain mortgage information to the record title owner of the property or any person lawfully authorized to act on behalf of a mortgagor or record titled owner of the property.

On January 31, 2012, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. This amendment provides that the mortgage holder may provide the information requested notwithstanding the confidentiality statute applicable to banks and provides that the mortgagee or servicer acting in accordance with such a request is expressly discharged from any obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the estoppel letter. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to mortgages; amending s. 701.04, F.S.; requiring a mortgage holder to provide certain information within a specified time relating to the unpaid loan balance due under a mortgage if a mortgagor, a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property makes a written request under certain circumstances; allowing financial institutions to release certain mortgagor information to specified persons without penalty; providing an effective date.

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

Section 1. Section 701.04, Florida Statutes, is amended to read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1) Within 14 days after receipt of the written request of a mortgagor, a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, the holder of a mortgage shall deliver or cause the servicer of the mortgage to deliver to the person making the request ~~mortgagor~~ at a place designated in the written request an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage.~~,~~

(a) If the mortgagor, or any person lawfully authorized to act on behalf of the mortgagor, makes the request, the estoppel

letter must include an itemization of the ~~including~~ principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.

(b) If a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request:

1. The request must include a copy of the instrument showing title in the property or lawful authorization.

2. The estoppel letter may include the itemization of information required under paragraph (a), but must at a minimum include the total unpaid balance due under or secured by the mortgage on a per-day basis.

3. The mortgagee or servicer of the mortgagee acting in accordance with a request in substantial compliance with this paragraph is expressly discharged from any obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the terms of the estoppel letter.

(c) A mortgage holder may provide the financial information required under this subsection to a person authorized under this subsection to request the financial information notwithstanding s. 655.059.

(2) Whenever the amount of money due on any mortgage, lien, or judgment has been ~~shall be~~ fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom the ~~such~~ payment was ~~shall have been~~ made,

shall execute in writing an instrument acknowledging satisfaction of the ~~said~~ mortgage, lien, or judgment and have the instrument ~~same~~ acknowledged, or proven, and duly entered ~~of record in the book provided by law for such purposes~~ in the official records of the proper county. Within 60 days after ~~of~~ the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded satisfaction to the person who has made the full payment. In the case of a civil action arising out of ~~the provisions of~~ this section, the prevailing party is ~~shall be~~ entitled to attorney ~~attorney's~~ fees and costs.

(3) ~~(2)~~ Whenever a writ of execution has been issued, docketed, and indexed with a sheriff and the judgment upon which it was issued has been fully paid, it is ~~shall be~~ the responsibility of the party receiving payment to request, in writing, addressed to the sheriff, return of the writ of execution as fully satisfied.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 593 North St. Lucie River Water Control District, St. Lucie County
SPONSOR(S): Community & Military Affairs Subcommittee; Mayfield
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	12 Y, 0 N, As CS	Read	Hoagland
2) Economic Affairs Committee		Read (LHR)	Tinker JBT

SUMMARY ANALYSIS

The North St. Lucie River Water Control District ("NSLRWCD" or "the District") is an independent special district in St. Lucie County that is responsible for flood control and protection, water management, and reclamation of lands for approximately 65,000 acres. The District was created by judicial decree in 1918 and was given a corporate lifespan of ninety-nine years.

This bill extends the corporate lifespan of the NSLRWCD another ninety-nine years, to December 31, 2111. This will prevent St. Lucie County from having to take over the District's responsibilities if it was to expire.

The bill is expected to have no financial impact.

The bill has an effective date of upon becoming law, but includes a sunset provision that will repeal the extension if a bill is not filed by the first day of the 2013 Regular Legislative Session to codify the District's charter.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

North St. Lucie River Water Control District ("NSLRWCD" or "the District") is an independent special district in St. Lucie County that is responsible for the drainage infrastructure for approximately 65,000 acres. The District was created by judicial decree in 1918 and was given a corporate lifespan of ninety-nine years. This provision in the District's charter has not been amended; therefore, the District will cease to exist after December 31, 2017.

The District is subject to the provisions of Ch. 298, F.S., which governs water control districts such as NSLRWCD. Section 298.305(1), F.S., allows the board of supervisors to levy a non-ad valorem assessment on property owners on a per-acre basis. The NSLRWCD is currently funded by a $25 per acre assessment on landowners within the District.[1]

Codification:

The District's charter has been amended numerous times since 1918 but has not been codified. The special acts amending the FPFWCD's charter is as follows: Ch. 8896, L.O.F. (1921); Ch. 9635, L.O.F. (1923); Ch. 11129, L.O.F. (1925); Chs. 12106, 12108, 12109, L.O.F. (1927); Chs. 14773, 14774, 14775, L.O.F. (1931); Ch. 16089, L.O.F. (1933); Ch. 22111, L.O.F. (1943); Chs. 22112, 22113, 22142, 22143, 22144, L.O.F. (1943); Ch. 22714, L.O.F. (1945); Ch. 26790, L.O.F. (1951); Chs. 28379, 28647, L.O.F. (1953); Ch. 57-842, L.O.F.; Ch. 65-1225, L.O.F.; Ch. 69-1544, L.O.F.; and 96-529, L.O.F.

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in s. 189.429, F.S., and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997, memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended s. 189.429, F.S., to provide that reenactment of existing law pursuant to s. 189.429, F.S.: shall not be construed to grant additional authority nor to supersede the authority of an entity; shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Proposed Changes:

The bill extends the corporate lifetime of the District for another ninety-nine years beginning December 31, 2012. This will ensure that NSLRWCD will continue to maintain and manage the drainage infrastructure within the District's boundaries until December 31, 2111. If the corporate life of the District were allowed lapse, St. Lucie County would have to undertake all the responsibilities that are currently provided for by NSLRWCD.

[1] Chapter 96-529, L.O.F.

The bill has a contingent sunset date which will repeal this act, effective July 1, 2013, if a bill to codify the District's charter is not filed on or before the first day of the 2013 Regular legislative Session. The bill requires the District to submit, at its own expense, a codified charter for Legislative consideration. If a codification bill is not timely filed, the District's current expiration date of December 31, 2017 would be reinstated.

B. SECTION DIRECTORY:

Section 1: Provides a new expiration date for the District contingent upon the filing of a bill on or before the first day of the 2013 Regular Legislative Session that codifies the District's charter.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN?

October 5, 2011 and December 29, 2011.

WHERE?

Scripps Treasure Coast Newspapers

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2012, the Community & Military Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment requires:

- the District to submit a draft codified charter; and
- the filing of a bill on or before the first day of the 2013 Regular Legislative Session to codify the charter.

If the bill is not timely filed, this act is repealed effective July 1, 2013. The staff analysis was updated to reflect the committee substitute.

A bill to be entitled

An act relating to the North St. Lucie River Water Control District, St. Lucie County; providing an expiration date for the district contingent upon the district's submission of a draft codified charter to the Legislature; providing a repeal date for the act if a bill to codify the charter of the district is not filed by a specified date; providing an effective date.

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

Section 1. The North St. Lucie River Water Control District shall exist until December 31, 2111, contingent upon the district submitting to the Legislature a draft codified charter, at the district's expense, so that its special acts may be codified into a single act for reenactment by the Legislature. Section 189.429(2) and (3), Florida Statutes, shall apply to the codification of the district's special acts. If a bill to codify the charter of the district is not filed on or before the first day of the 2013 Regular Legislative Session, this act shall be repealed effective July 1, 2013.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 619 Fort Pierce Farms Water Control District, St. Lucie County
SPONSOR(S): Community & Military Affairs Subcommittee; Mayfield
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	12 Y, 0 N, As CS	Read	Hoagland
2) Economic Affairs Committee		Read	Tinker TBT

SUMMARY ANALYSIS

The Fort Pierce Farms Water Control District ("FPFWCD" or "the District") is an independent special district in St. Lucie County that is responsible for flood control and protection, water management, and reclamation of lands for approximately 13,000 acres. The District was created by judicial decree in 1919 and was given a corporate lifespan of ninety-nine years.

This bill extends the corporate lifespan of the FPFWCD another ninety-nine years, to December 31, 2111. This will prevent St. Lucie County from having to take over the District's responsibilities if it was to expire.

The bill is expected to have no financial impact.

The bill has an effective date of upon becoming law but includes a sunset provision that will repeal the extension if a bill is not filed by the first day of the 2013 Regular Legislative Session to codify the District's charter.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

Fort Pierce Farms Water Control District ("FPFWCD" or "the District") is an independent special district in St. Lucie County that is responsible for the drainage infrastructure for approximately 13,000 acres. The District was created by judicial decree in 1919 and was given a corporate lifespan of ninety-nine years. This provision in the District's charter has not been amended; therefore, the District will cease to exist after December 31, 2018.

The District is subject to the provisions of Ch. 298, F.S., which governs water control districts such as FPFWCD. Section 298.305(1), F.S., allows the board of supervisors to levy a non-ad valorem assessment on property owners on a per-acre basis. The FPFWCD is currently funded by a $25 per acre assessment on landowners within the District.[1]

Codification:

The District's charter has been amended numerous times since 1919 but has not been codified. The special acts amending the FPFWCD's charter is as follows: Ch. 9981, L.O.F. (1923); Ch. 10549, L.O.F. (1925); Ch. 12033, L.O.F. (1927); Ch. 16032, L.O.F. (1933); Ch. 25447, L.O.F. (1949); Ch. 65-1226, L.O.F.; Ch. 78-609, L.O.F.; Ch. 82-376, L.O.F.; and Ch. 87-448, L.O.F.

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in s. 189.429, F.S., and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997, memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended s. 189.429, F.S., to provide that reenactment of existing law pursuant to s. 189.429, F.S.: shall not be construed to grant additional authority nor to supersede the authority of an entity; shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Proposed Changes:

The bill extends the corporate lifetime of the District for another ninety-nine years beginning December 31, 2012. This will ensure that FPFWCD will continue to maintain and manage the drainage infrastructure within the District's boundaries until December 31, 2111. If the corporate life of the District were allowed lapse, St. Lucie County would have to undertake all the responsibilities that are currently provided for by FPFWCD.

The bill has a contingent sunset date which will repeal this act, effective July 1, 2013, if a bill to codify the District's charter is not filed on or before the first day of the 2013 Regular legislative Session. The bill requires the District to submit, at its own expense, a codified charter for Legislative consideration. If a codification bill is not timely filed, the District's current expiration date of December 31, 2018 would be reinstated.

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[1] Chapter 87-448, L.O.F.

B. SECTION DIRECTORY:

Section 1: Provides a new expiration date for the District contingent upon the filing of a bill on or before the first day of the 2013 Regular Legislative Session that codifies the District's charter.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN?

October 5, 2011 and December 29, 2011.

WHERE?

Scripps Treasure Coast Newspapers.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2012, the Community & Military Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment requires:

- the District to submit a draft codified charter; and
- the filing of a bill on or before the first day of the 2013 Regular Legislative Session to codify the charter.

If the bill is not timely filed, this act is repealed effective July 1, 2013. The staff analysis was updated to reflect the committee substitute.

A bill to be entitled

An act relating to the Fort Pierce Farms Water Control District, St. Lucie County; providing an expiration date for the district contingent upon the district's submission of a draft codified charter to the Legislature; providing a repeal date for the act if a bill to codify the charter of the district is not filed by a specified date; providing an effective date.

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

Section 1. The Fort Pierce Farms Water Control District shall exist until December 31, 2111, contingent upon the district's submitting to the Legislature a draft codified charter, at the district's expense, so that its special acts may be codified into a single act for reenactment by the Legislature. Section 189.429(2) and (3), Florida Statutes, shall apply to the codification of the district's special acts. If a bill to codify the charter of the district is not filed on or before the first day of the 2013 Regular Legislative Session, this act shall be repealed effective July 1, 2013.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1001 Timeshares
SPONSOR(S): Judiciary Committee; Business & Consumer Affairs Subcommittee and Eisnaugle
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	14 Y, 0 N, As CS	Collins	Creamer
2) Judiciary Committee	16 Y, 0 N, As CS	Caridad	Havlicak
3) Economic Affairs Committee		Collins JC	Tinker TBT

SUMMARY ANALYSIS

The bill amends ch. 721, F.S., to require the full and fair disclosure of terms, conditions and services offered by timeshare resale service providers. Specifically, the bill:

- Redefines the term 'resale service provider;'
- Defines the terms 'consumer resale timeshare interest,' 'consumer timeshare reseller,' 'resale broker,' 'resale brokerage services,' 'resale advertiser,' and 'resale advertising service;'
- Provides specific activities that a resale service provider may not engage in;
- Provides specific activities that a resale advertising service provider may not engage in;
- Requires resale advertising service providers to comply with certain contract requirements, including a minimum right of termination that must be afforded to the consumer reseller;
- Provides that a violation of this section is a violation by both the resale service provider and the individual actually committing the violation;
- Provides jurisdiction for Florida courts regarding violations of this section by a resale advertising service provider who offers services related to a timeshare interest located or offered within the state, or in a multi-state timeshare plan registered to be offered within the state; and
- Provides that violation of this section results in a civil penalty, and is also a violation of the Florida Deceptive and Unfair Trade Practices Act.

The bill has an indeterminate fiscal impact on state funds. See Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 721, F.S., Purposes

Chapter 721, F.S., governs vacation plans and timesharing. Section 721.02, F.S., provides that the purposes of the chapter are to: 1) give statutory recognition to real and personal property timeshare plans in the state; 2) establish procedures for the creation, sale, exchange, promotion and operation of timeshare plans; 3) provide full and fair disclosure to the purchasers and prospective purchasers of timeshare plans; 4) require every timeshare plan in the state to be subjected to the provisions of this chapter; and 5) recognize that a uniform and consistent method of regulation is necessary in order to safeguard Florida's tourism industry and the state's economic well-being. No mention is made regarding resale service providers.

Definition of Resale Service Provider

A "resale service provider" is defined as any person who uses unsolicited telemarketing, direct mail, or email in connection with the offering of resale brokerage and/or advertising services to owners of timeshare interests. This definition explicitly states that it does not include developers, managing entities, or exchange companies, to the extent that they offer brokerage and/or advertising services to owners of timeshare interests in their own timeshare plans or members of their own exchange programs.[1]

Resale Service Provider Disclosures

Section 721.20(9)(a), F.S., requires resale service providers to disclose the description of any fees or costs related to advertising, listing, or selling the timeshare interest that must be paid to the resale service provider or third party, and when that fee is due. Additionally, the resale service provider must disclose the ratio or percentage of the number of timeshare interests for sale versus the number of interests sold by the service provider for the previous two years. This is essentially a success rate of the broker or advertiser's services.

Resale Service Provider Penalties

Section 721.20(9)(b), F.S., provides that failure by a resale service provider to disclose required information in writing constitutes an unfair and deceptive trade practice pursuant to ch. 501, F.S. Further, any contract entered into in violation of the section is void, which entitles the purchaser to a full refund.

Effect of Proposed Changes

Chapter 721, F.S., Purposes

The bill amends s. 721.02, F.S., to designate that an additional purpose of ch. 721, F.S., is to require full and fair disclosure of terms, conditions, and services by resale service providers who are acting on

[1] Fla. Stat. § 721.05(44).

behalf of consumer timeshare resellers or purchasers, regardless of the business model employed by the service provider.

Definition of Resale Service Provider

The bill amends s. 721.05(44), F.S., to define a 'resale service provider' as any advertiser or other person or entity who offers or uses telemarketing, direct mail, email, or any other means of communication in connection with the offering of resale brokerage and/or advertising services to consumer timeshare resellers. This definition includes agents and employees of such person or entity. The definition does not include:

- Developers or managing entities to the extent that they offer brokerage or advertising services to owners of timeshare interests in their own timeshare plans;
- A consumer timeshare reseller who acquires a timeshare interest for his or her own use, and later offers that interest for rent or offers for resale seven or fewer of such timeshare interests within a year; or
- A resale broker to the extent that resale advertising services are offered in connection with resale brokerage services and no fee for the advertising service is collected in advance.

In addition, to better define "resale service provider," the bill defines the terms: "consumer resale timeshare interest," "consumer timeshare reseller," "resale broker," "resale brokerage services," "resale advertiser," and "resale advertising service."

- "Consumer resale timeshare interest" is defined as a timeshare interest owned by a purchaser; one or more reserved occupancy rights relating to a timeshare interest owned by a purchaser; or one or more reserved occupancy rights relating to or arranged through an exchange program in which a purchaser is a member.
- "Consumer timeshare reseller" is defined as a purchaser that acquires a timeshare interest for his or her own use and who later offers the interest for resale or rental.
- "Resale broker" is defined as any person, including an agent or employee of such person, who is licensed pursuant to ch. 475, F.S.,[2] and who offers or provides resale brokerage services to consumer timeshare resellers for compensation or valuable consideration. The offer may be made in person, by mail, by telephone, through the Internet, or by any other medium of communication.
- "Resale brokerage services" is defined as any activity that is traditionally performed by a broker and is carried out in relation to a consumer timeshare interest located or offered within the state.
- "Resale advertiser" is defined as any person, including an agent of such person, who offers resale advertising services to consumer timeshare resellers for compensation or valuable consideration. Generally, the term does not include: 1) media (i.e. a newspaper, periodical or website owner, operator or publisher), unless such media derives more than ten percent of its gross revenue from providing resale advertising services; and 2) a resale broker, developer, or managing entity so long as they are not providing advertising services.
- "Resale advertising service" is defined as any good or service relating to, or a promise of assistance in connection with, advertising or promoting the resale or rental of a consumer timeshare interest located or offered within the state.

Resale Service Provider Disclosures

The bill eliminates s. 721.20(9), F.S., and instead creates a new section providing disclosure requirements and penalties regarding resale service providers. These requirements are similar to the current requirements in s. 721.20(9), F.S. Specifically, before providing resale advertising services, a service provider is required to disclose:

[2] Chapter 475, F.S., relates to real estate brokers, sales associates, schools and appraisers.

- The description of any fees or costs related to the service that must be paid to the resale service provider or third party; and
- When the fees or costs are due.

The bill eliminates the requirement that resale service providers supply the consumer with their success ratios for the previous two years, unless the resale service provider states or implies that it has sold or rented a specific number of timeshare interests.

In addition, the bill places specific limitations on the actions of resale brokerage activities. Specifically, a resale service provider may not provide brokering services unless validly licensed to do so pursuant to ch. 475, F.S.

The bill also provides a list of prohibited activities relating to resale advertising service providers. Specifically, when offering resale advertising services, an advertiser may not:

- State or imply that it will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the timeshare interest;
- State or imply, directly or indirectly, that it has identified a person interested in buying or renting the timeshare interest without providing the contact information for the prospective purchaser;
- State or imply, directly or indirectly, that resales or rentals have been achieved or generated as a result of its advertising services, unless it possesses and is able to provide documentation to substantiate the statement to the consumer timeshare reseller. In such circumstances, the resale service provider must disclose the ratio or percentage of all the timeshare interests that have resulted in a sale or rental versus the number of timeshare interests advertised for sale or rent by the resale advertiser for each of the previous two calendar years, depending on whether the representation is about sales or rentals;
- State or imply that the timeshare interest has a specific resale value;
- Make or submit any charge to a consumer reseller's credit card;
- Make or cause any electronic transfer of the consumer reseller's funds;
- Collect any payment from the consumer reseller until after the advertiser has received a written contract, signed by the consumer reseller; or
- Engage in any advertising services for compensation or valuable consideration without first obtaining a written contract, signed by the consumer reseller.

Further, a contract entered into by a resale advertising service provider must contain the following information:

- The name, address, phone number, and email address of the advertiser;
- The mailing and email address at which a contract cancellation notice may be delivered by the consumer;
- A complete description of all resale advertising services to be provided, including details regarding the advertising medium(s) expected to be used, the dates or time intervals for such advertising, the minimum number of times the advertising will be run in each medium, the itemized cost of each advertising service to be provided, and a statement of the total cost of all advertising services to be provided;
- A standardized statement of the timeshare owner's right of cancellation including the consumer reseller's right to cancel the contract within ten days, which is to immediately precede the consumer reseller's signature; and
- A statement that any resale contract entered into by or on behalf of the consumer reseller must comply with the provisions of s. 721.065, F.S., regarding resale purchase agreements, including the requirement of a ten-day cancellation period for the prospective purchaser.

If a resale advertiser fails to comply with the above contract requirements, the contract is voidable at the option of the consumer reseller, available within one year after the date the contract is executed.

Moreover, the resale advertising service provider may not fail to honor a properly executed cancellation notice, or fail to provide a full refund in compliance with the right of cancellation statement.

Resale Service Provider Penalties

The bill creates s. 721.205, F.S., to provide a number of penalties regarding violation of the section. Specifically, the bill definitively states that it is the duty of the resale service provider to supervise, manage, and control all aspects of the offering of resale brokerage and/or advertising services. Any violation made while offering resale services is deemed a violation by both the resale service provider and the individual who actually commits the violation.

In addition, the bill specifically addresses resale advertising services. Specifically, it establishes that providing resale advertising services related to timeshare interests located or offered within the state constitutes "operating, conducting, engaging in, or carrying on a business or business venture" for the purposes of s. 48.193(1), F.S., relating to personal jurisdiction. Further, providing resale advertising services related to timeshare interests in a multi-state timeshare plan registered to be offered within the state constitutes "operating, conducting, engaging in, or carrying on a business or business venture" for the purposes of s. 48.193(1), F.S. These provisions effectively afford Florida courts with jurisdiction in the event of a dispute between the advertising service and the consumer reseller or another third party, so long as the timeshare interest is located within the state. It is immaterial whether any of the parties involved in the dispute are residents of the state.

Finally, the bill provides that the use of any unfair or deceptive practice by any person in connection with resale advertising services is a violation of s. 721.205, F.S., and that any violation of the section is subject to a civil penalty of not more than $15,000 per violation. Moreover, a violation of the section will also be considered an unfair and deceptive trade practice as prohibited by s. 501.204, F.S., and is subject to the penalties and remedies otherwise provided in the Florida Deceptive and Unfair Trade Practices Act.[3]

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

B. SECTION DIRECTORY:

Section 1: amends s. 721.02, F.S., to designate that a purpose of ch. 721, F.S., is to require the full and fair disclosure of terms, conditions, and services offered by resale services providers.

Section 2: amends s. 721.05(44), F.S., to redefine the definition of "resale service provider," and creates definitions for "consumer retail interest," "consumer timeshare reseller," "resale broker," "resale brokerage services," "resale advertiser," and "resale advertising service."

Section 3: amends s. 721.20, F.S., to eliminate the current resale service provider disclosures and penalties.

Section 4: creates s. 721.205, F.S., to provide for increased disclosure and oversight of timeshare resale service providers, including resale advertising services.

Section 5: provides for an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[3] *See* Part II of ch. 501, F.S.

The bill may have a positive fiscal impact on the department's trust fund related to an increase in civil penalties. This impact is indeterminate.

2. Expenditures:

The bill may have a negative fiscal impact on the Department of Business and Professional Regulation and the Office of the Attorney General due to increased workload related to compliance oversight. This impact is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There will be increased disclosure by and oversight of timeshare resale service providers, making these services more transparent to consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill may require amendment to rule 61B-41.001, F.A.C., which relates to timeshare penalties. Section 4 of this bill stipulates that any violation of the section is subject to a civil penalty not to exceed $15,000 per violation. The rule may need to be amended to reflect this guideline. Adequate rulemaking authority exists pursuant to s. 721.26(6), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At the January 24, 2012 meeting of the Business & Consumer Affairs Subcommittee, one amendment was proposed and adopted. The bill was reported favorably as a Committee Substitute. Specifically, the amendment:

- Eliminated various references to "resale transfer agreements," "resale transferee entities," and "solicitation" of consumers;

- Amended the definition of a "resale service provider" to specifically exclude from the definition, a resale broker that offers resale advertising services in connection with resale brokerage services, so long as the resale broker collects no fee for the advertising service in advance;
- Amended the definition of "resale brokerage service" and "resale advertising service" to clarify that the provisions are only applicable to timeshare interests located or offered within the state;
- Eliminates service providers who engage in brokerage services from complying with the disclosure obligations of s. 721.205, F.S.;
- Eliminated the requirement that resale service providers supply the consumer with their success ratios for the previous two years, unless the resale service provider states or implies that it has sold or rented any specific number of timeshare interests;
- Prohibited resale service providers from stating or implying that resales or rentals have been achieved or generated as a result of its advertising services, unless they possess and are able to provide documentation to substantiate the statement to the consumer timeshare reseller;
- Prohibited resale service providers from stating or implying that the timeshare interest has a specific resale value;
- Increased the consumer timeshare reseller's right to cancel the contract from seven to ten days;
- Eliminated the requirement that resale advertising service providers explicitly state in the contract for services that the resale value of the timeshare interest may be significantly less than it was purchased for;
- Clarified that it is a violation for a consumer resale service provider to fail to refund a consumer pursuant to the Timeshare Owners' Right of Cancellation; and
- Clarified that Florida jurisdiction is proper in regards to a resale timeshare interest that is located or offered within the state, or in a multi-state timeshare plan registered to be offered within the state.

On February 8, 2012, the Judiciary Committee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Modified the definition of "resale service provider" to exclude a resale broker and to remove exchange companies from the list of entities to which the term does not apply; and made corresponding changes throughout the bill;
- Modified the information which a resale advertiser must provide to a consumer timeshare reseller when the resale advertiser represents that he or she has sold or rented a specific number of timeshare interests; and
- Corrected minor drafting issues.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

A bill to be entitled

An act relating to timeshares; amending s. 721.02, F.S.; revising purposes of the chapter to include the provision of certain disclosure; amending s. 721.05, F.S.; revising the definition of the term "resale service provider"; defining the terms "consumer resale timeshare interest," "consumer timeshare reseller," "resale broker," "resale brokerage services," "resale advertiser," and "resale advertising service"; amending s. 721.20, F.S.; deleting a provision requiring resale service providers to provide certain fee or cost and listing information to timeshare interest owners; creating s. 721.205, F.S.; specifying information a resale service provider must provide to the consumer timeshare reseller; prohibiting unlicensed resale service providers from engaging in certain activities; prohibiting certain services related to the offering of resale advertising by resale advertisers; providing certain restrictions on the offering of resale advertising services by resale advertisers; providing voidability of certain contracts; providing duties of a resale service provider; providing that the provision of resale advertising services in this state constitutes operating, conducting, engaging in, or carrying on a business or business venture for purposes relating to jurisdiction of the courts of this state; providing penalties; providing an effective date.

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

Section 1. Subsection (5) of section 721.02, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section to read:

721.02 Purposes.—The purposes of this chapter are to:

(5) Require full and fair disclosure of terms, conditions, and services by resale service providers acting on behalf of consumer timeshare resellers or on behalf of prospective consumer resale purchasers, regardless of the business model employed by the resale service provider.

Section 2. Subsection (44) of section 721.05, Florida Statutes, is amended, and subsections (45) through (50) are added to that section, to read:

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

(44) "Resale service provider" means any resale advertiser, or other person or entity, including any agent or employee of such person or entity, who offers or uses ~~unsolicited~~ telemarketing, direct mail, ~~or~~ e-mail, or any other means of communication in connection with the offering of resale brokerage or resale advertising services to consumer ~~owners of~~ timeshare resellers ~~interests~~. The term does not include developers or~~,~~ managing entities~~, or exchange companies~~ to the extent they offer resale brokerage or resale advertising services to owners of timeshare interests in their own timeshare plans; resale brokers to the extent that resale advertising services are offered in connection with resale brokerage

services and no fee for the advertising service is collected in advance; or a consumer timeshare reseller who acquires a timeshare interest or timeshare interests for his or her own use and occupancy and who later offers the timeshare interest or timeshare interests for rent or offers for resale in a given calendar year seven or fewer of the timeshare interests that he or she acquired for his or her own use and occupancy ~~or members of their own exchange programs~~.

(45) "Consumer resale timeshare interest" means:

(a) A timeshare interest owned by a purchaser;

(b) One or more reserved occupancy rights relating to a timeshare interest owned by a purchaser; or

(c) One or more reserved occupancy rights relating to, or arranged through, an exchange program in which a purchaser is a member.

(46) "Consumer timeshare reseller" means a purchaser who acquires a timeshare interest for his or her own use and occupancy and later offers the timeshare interest for resale or rental.

(47) "Resale broker" means any person, or any agent or employee of such person, who is licensed pursuant to chapter 475 and who offers or provides resale brokerage services to consumer timeshare resellers for compensation or valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the Internet, or by any other medium of communication.

(48) "Resale brokerage services" means, with respect to a consumer resale timeshare interest in a timeshare property

located or offered within this state, any activity that directly or indirectly consists of any of activities described in s. 475.01(1)(a).

(49) "Resale advertiser" means any person who offers, personally or through an agent, resale advertising services to consumer timeshare resellers for compensation or valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the Internet, or by any other medium of communication. The term does not include:

(a) A resale broker to the extent that resale advertising services are offered in connection with timeshare resale brokerage services and no fee for the resale advertising service is collected in advance;

(b) A developer or managing entity to the extent that either of them offers resale advertising services to owners of timeshare interests in their own timeshare plans; or

(c) A newspaper, periodical, or website owner, operator, or publisher, unless the newspaper, periodical, or website owner, operator, or publisher derives more than 10 percent of its gross revenue from providing resale advertising services. For purposes of this paragraph, the calculation of gross revenue derived from providing resale advertising services includes revenue of any affiliate, parent, agent, and subsidiary of the newspaper, periodical, or website owner, operator, or publisher, so long as the resulting percentage of gross revenue is not decreased by the inclusion of such affiliate, parent, subsidiary, or agent in the calculation.

(50) "Resale advertising service" means any good or service relating to, or a promise of assistance in connection with, advertising or promoting the resale or rental of a consumer resale timeshare interest located or offered within this state, including any offer to advertise or promote the sale or purchase of any such interest.

Section 3. Subsection (9) of section 721.20, Florida Statutes, is amended to read:

721.20 Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.—

~~(9)(a) Prior to listing or advertising a timeshare interest for resale, a resale service provider shall provide to the timeshare interest owner a description of any fees or costs relating to the advertising, listing, or sale of the timeshare interest that the timeshare interest owner, or any other person, must pay to the resale service provider or any third party, when such fees or costs are due, and the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by the resale service provider for each of the previous 2 calendar years.~~

~~(b) Failure to disclose this information in writing constitutes an unfair and deceptive trade practice pursuant to chapter 501. Any contract entered into in violation of this subsection is void and the purchaser is entitled to a full refund of any moneys paid to the resale service provider.~~

Section 4. Section 721.205, Florida Statutes, is created to read:

721.205 Resale service providers; disclosure obligations.—

(1)(a) Before engaging in resale advertising services, a resale service provider must provide to the consumer timeshare reseller:

1. A description of any fees or costs related to such services that the consumer timeshare reseller, or any other person, is required pay to the resale service provider or to any third party.

2. A description of when such fees or costs are due.

(b) A resale service provider may not engage in those activities described in s. 475.01(1)(a) without being the holder of a valid and current active license in accordance with chapter 475.

(2) In the course of offering resale advertising services, a resale advertiser may not:

(a) State or imply that the resale advertiser will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the consumer resale timeshare interest for sale or rent by the consumer timeshare reseller.

(b) State or imply to a consumer timeshare reseller, directly or indirectly, that the resale advertiser has identified a person interested in buying or renting the timeshare resale interest without providing the name, address, and telephone number of such represented interested resale purchaser.

(c) State or imply to a consumer timeshare reseller, directly or indirectly, that sales or rentals have been achieved

or generated as a result of its advertising services unless the resale advertiser, at the time of making such representation, possesses and is able to provide documentation to substantiate the statement or implication made to the consumer timeshare reseller. In addition, to the extent that a resale advertiser states or implies to a consumer timeshare reseller that the resale advertiser has sold or rented any specific number of timeshare interests, the resale advertiser must also provide the consumer timeshare reseller the ratio or percentage of all the timeshare interests that have resulted in a sale versus the number of timeshare interests advertised for sale by the resale advertiser for each of the previous 2 calendar years if the statement or implication is about a sale or sales, or the ratio or percentage of all the timeshare interests that have actually resulted in a rental versus the number of timeshare interests advertised for rental by the resale advertiser for each of the previous 2 calendar years if the statement or implication is about a rental or rentals.

(d) State or imply to a consumer timeshare reseller that the timeshare interest has a specific resale value.

(e) Make or submit any charge to a consumer timeshare reseller's credit card account; make or cause to be made any electronic transfer of consumer timeshare reseller funds; or collect any payment from a consumer timeshare reseller until after the resale advertiser has received a written contract complying in all respects with paragraph (f) that has been signed by the consumer timeshare reseller.

(f) Engage in any resale advertising services for

compensation or valuable consideration without first obtaining a written contract to provide such services signed by the consumer timeshare reseller. Notwithstanding any other law, the contract must be printed in at least 12-point type and must contain the following information:

1. The name, address, telephone number, and web address, if any, of the resale advertiser and a mailing address and e-mail address to which a contract cancellation notice may be delivered at the consumer timeshare reseller's election.

2. A complete description of all resale advertising services to be provided, including, but not limited to, details regarding the publications, Internet sites, and other media in or on which the consumer resale timeshare interest will be advertised, the dates or time intervals for such advertising or the minimum number of times such advertising will be run in each specific medium, the itemized cost to the consumer timeshare reseller of each resale advertising service to be provided, and a statement of the total cost to the consumer timeshare reseller of all resale advertising services to be provided.

3. A statement printed in at least 12-point boldfaced type immediately preceding the space in the contract provided for the consumer timeshare reseller's signature in substantially the following form:

TIMESHARE OWNER'S RIGHT OF CANCELLATION

...(Name of resale advertiser)... will provide resale advertising services pursuant to this contract. If

...(name of resale advertiser)... represents that ...(name of resale advertiser)... has identified a person who is interested in purchasing or renting your timeshare interest, then ...(name of resale advertiser)... must provide you with the name, address, and telephone number of such represented interested resale purchaser.

You have an unwaivable right to cancel this contract for any reason within 10 days after the date you sign this contract. If you decide to cancel this contract, you must notify ...(name of resale advertiser)... in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to ...(resale advertiser's physical address)... or to ...(resale advertiser's e-mail address).... Your refund will be made within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from your cleared check, whichever is later.

You are not obligated to pay ...(name of resale advertiser)... any money unless you sign this contract and return it to ...(name of resale advertiser)....

IMPORTANT: Before signing this contract, you should carefully review your original timeshare purchase contract and other project documents to determine

whether the developer has reserved a right of first refusal or other option to purchase your timeshare interest or to determine whether there are any restrictions or special conditions applicable to the resale or rental of your timeshare interest.

4. A statement that any resale contract entered into by or on behalf of the consumer timeshare reseller must comply in all respects with s. 721.065, including the provision of a 10-day cancellation period for the prospective consumer resale purchaser.

(g) Fail to honor any cancellation notice sent by the consumer timeshare reseller within 10 days after the date the consumer timeshare reseller signs the contract for resale advertising services in compliance with subparagraph (f)3.

(h) Fail to provide a full refund of all money paid by a consumer timeshare reseller within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from a cleared check, whichever is later.

(3) If a resale service provider uses a contract for resale advertising services that fails to comply with subsection (2), such contract shall be voidable at the option of the consumer timeshare reseller for a period of 1 year after the date it is executed by the consumer timeshare reseller.

(4) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a resale service provider to supervise, manage, and control all aspects of the offering of resale advertising services by any agent or employee

of the resale service provider. Any violation of this section that occurs during such offering shall be deemed a violation by the resale service provider as well as by the person actually committing the violation.

(5) Providing resale advertising services with respect to a consumer resale timeshare interest in a timeshare property located or offered within this state, or in a multisite timeshare plan registered or required to be registered to be offered in this state, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this state for the purposes of s. 48.193(1).

(6) The use of any unfair or deceptive act or practice by any person in connection with resale advertising services is a violation of this section.

(7) Notwithstanding any other penalties provided for in this section, any violation of this section is subject to a civil penalty of not more than $15,000 per violation. In addition, a person who violates any provision of this section commits an unfair and deceptive trade practice as prohibited by s. 501.204 and is subject to the penalties and remedies provided in part II of chapter 501.

Section 5. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1003 Tangible Personal Property Tax Exemptions
SPONSOR(S): Eisnaugle
TIED BILLS: HB 1005 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	18 Y, 5 N	Aldridge	Langston
2) Economic Affairs Committee		Fennell	Tinker TBT

SUMMARY ANALYSIS

The joint resolution proposes an amendment to the Florida Constitution that would allow the Legislature to provide by general law that:

- Taxes on tangible personal property are not due unless the assessed value of the property exceeds a specified amount greater than twenty-five thousand dollars;
- Tangible personal property is subject to taxation at a specified percentage of its assessed value; or
- Tangible personal property is totally exempt from taxation.

The Revenue Estimating Conference adopted a negative indeterminate revenue impact for the joint resolution because the amendment it proposes must be approved by the voters and the legislature must implement the amendment.

The Department of State estimates that the cost of publishing the proposed constitutional amendment, as required by law, is $108,475.

For the proposed amendment to be placed on the ballot at the general election in November 2012, the Legislature must approve the joint resolution by a three-fifths vote of the membership of each house.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tangible Personal Property

Article VII, section 1, of the Florida Constitution grants exclusive authority to local governments to levy ad valorem taxes, including ad valorem taxes on tangible personal property, and establishes requirements that the state legislature and local governments must follow when levying and administering ad valorem property taxes. It requires that all ad valorem taxation be at a uniform rate within each taxing district and that property must be assessed at just value unless the Constitution provides for a different assessment standard.

Tangible personal property is singled out for special treatment in the Constitution. Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes are excluded from ad valorem taxation.[1] Household goods up to $1,000 in value are exempt.[2] Tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, classified for tax purposes, or exempted by general law.[3] Tangible personal property not specifically exempt from taxation is subject to ad valorem taxation.

Article VII, section 3(e), Florida Constitution, provides for a $25,000 exemption from the assessed value of tangible personal property subject to ad valorem taxation.

Based on the statewide aggregate average 2011 millage rate of 17.67, ad valorem taxes on the tangible personal property included on the 2011 tax roll are expected to amount to $1.72 billion.

Proposed Changes

The joint resolution proposes an amendment to the Florida Constitution that would allow the Legislature to provide by general law that:

- Taxes on tangible personal property are not due unless the assessed value of the property exceeds a specified amount greater than twenty-five thousand dollars;
- Tangible personal property is subject to taxation at a specified percentage of its assessed value; or
- Tangible personal property is totally exempt from taxation.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

[1] Article VII, section 1(b), Florida Constitution
[2] Article VII, section 3(b), Florida Constitution
[3] Article VII, section 4(b), Florida Constitution

2. Expenditures:

Article XI, section 5(d) of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the full publication costs for advertising the proposed amendment to be $108,475.[4]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference adopted a negative indeterminate revenue impact from the joint resolution because the amendment it proposes must be approved by the voters and the legislature must implement the amendment.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the amendment proposed by the joint resolution is approved by the voters, and the legislature implements the provisions contained in the amendment, certain persons owing ad valorem tax on tangible personal property could see a reduction in their taxes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.[5] The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by the a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.[6]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

V. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[4] Department of State, *House Joint Resolution 1003 (2012) Fiscal Analysis* (December 21, 2011).
[5] Art. XI, section 1 of the Florida Constitution.
[6] Art. XI, section 5 of the Florida Constitution.

House Joint Resolution

A joint resolution proposing an amendment to Section 3 of Article VII and the creation of Section 32 of Article XII of the State Constitution to remove the $25,000 cap on the amount of the ad valorem tax exemption authorized for tangible personal property and allow the Legislature by general law to specify the amount of the exemption, apply the amendment to assessments for tax years beginning January 1, 2013; and provide effective dates.

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

That the following amendment to Section 3 of Article VII and the creation of Section 32 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 3. Taxes; exemptions.—

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational,

literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

(b) There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars, and to every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars.

(c) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or municipality voting on such question in a referendum authorize the county or municipality to adopt such ordinances. An exemption so granted shall apply to improvements to real property made by or for the use of a new business and improvements to real property related to the expansion of an existing business and shall also apply to tangible personal property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such

exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law.

(d) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant historic preservation ad valorem tax exemptions to owners of historic properties. This exemption may be granted only by ordinance of the county or municipality. The amount or limits of the amount of this exemption and the requirements for eligible properties must be specified by general law. The period of time for which this exemption may be granted to a property owner shall be determined by general law.

(e) By general law and subject to conditions specified therein, not less than twenty-five thousand dollars of the assessed value of property subject to tangible personal property tax shall be exempt from ad valorem taxation. The legislature may also provide by general law that:

(1) Taxes on tangible personal property are not due unless the assessed value of the property exceeds a specified amount greater than twenty-five thousand dollars;

(2) Tangible personal property is subject to taxation at a specified percentage of its assessed value; or

(3) Tangible personal property is totally exempt from taxation.

(f) There shall be granted an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation

easements or by other perpetual conservation protections, as defined by general law.

(g) By general law and subject to the conditions specified therein, each person who receives a homestead exemption as provided in section 6 of this article; who was a member of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard; and who was deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature shall receive an additional exemption equal to a percentage of the taxable value of his or her homestead property. The applicable percentage shall be calculated as the number of days during the preceding calendar year the person was deployed on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature divided by the number of days in that year.

ARTICLE XII

SCHEDULE

SECTION 32. Tangible personal property; ad valorem tax exemption.—The amendment to Section 3 of Article VII removing the cap on the amount of the ad valorem tax exemption authorized for tangible personal property and allowing the legislature to exempt certain amounts of the assessed value of tangible personal property from ad valorem taxation shall take effect upon approval by the electors and shall apply to assessments for tax years beginning January 1, 2013. This section shall take effect upon approval of the electors.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 3

ARTICLE XII, SECTION 32

TANGIBLE PERSONAL PROPERTY; AD VALOREM TAX EXEMPTIONS; REMOVAL OF THE $25,000 CAP.—

Currently the State Constitution specifies that $25,000 of the assessed value of tangible personal property is exempt from ad valorem taxation. The amendment requires the Legislature by general law to provide that at least $25,000 of the assessed value of tangible personal property is exempt from ad valorem taxation. In addition, the amendment authorizes the Legislature to provide that tangible personal property subject to ad valorem taxation:

(1) Is any amount greater than $25,000 of the assessed value of the property that the legislature specifies in general law and taxes are not due on any amount less than that specified amount;

(2) Is any percentage amount of the assessed value of the property that the legislature specifies in general law; or

(3) Is the total amount of the assessed value of the property as specified by the legislature in general law.

This amendment takes effect upon approval of the voters and applies to assessments for tax years beginning January 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1005 Tangible Personal Property Taxation
SPONSOR(S): Eisnaugle
TIED BILLS: HJR 1003 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	17 Y, 5 N, As CS	Aldridge	Langston
2) Economic Affairs Committee		Fennell	Tinker TST

SUMMARY ANALYSIS

The bill implements the proposed constitutional amendment contained in HJR 1003. Specifically, it creates an additional exemption from ad valorem taxation of tangible personal property of up to $25,000 of taxable value. The result, as described below is an additional exemption above the current $25,000 exemption for assessed values between $25,001 and $50,000. Taxpayers with tangible personal property subject to ad valorem taxation with an assessed value above $50,000 will not qualify for the additional exemption provided in the bill.

The bill takes effect upon the approval of the amendment proposed by HJR 1003 by the voters. The bill operates prospectively to the 2013 tax roll and does not provide a basis for relief from an assessment of taxes not paid or create a right to a refund of taxes paid before January 1, 2013.

The bill provides a General Revenue appropriation of $108,475 to the Department of State to publish the proposed constitutional amendment contained in CS/HJR 1003 in newspapers in each county as required by Article XI, section 5(d) of the Florida Constitution.

The Revenue Estimating Conference has estimated that, if the amendment proposed by HJR 1003 is approved by the voters, **assuming current millage rates,** the estimated statewide impact of the bill would be annual reductions in local government revenues of $20.1 million beginning in fiscal year 2013-14, increasing to $20.3 million in fiscal year 2014-15, and $20.6 million in fiscal year 2015-16.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tangible Personal Property

Article VII, section 1, of the Florida Constitution grants exclusive authority to local governments to levy ad valorem taxes, including ad valorem taxes on tangible personal property, and establishes requirements that the state legislature and local governments must follow when levying and administering ad valorem property taxes. It requires that all ad valorem taxation be at a uniform rate within each taxing district and that property must be assessed at just value unless the Constitution provides for a different assessment standard.

Tangible personal property is singled out for special treatment in the Constitution. Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes are excluded from ad valorem taxation.[1] Household goods up to $1,000 in value are exempt.[2] Tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, classified for tax purposes, or exempted by general law.[3] Tangible personal property not specifically exempt from taxation is subject to ad valorem taxation.

Article VII, section 3(e), Florida Constitution, provides for a $25,000 exemption from the assessed value of tangible personal property subject to ad valorem taxation. This exemption is implemented in s. 196.183, F.S.

Section 196.183(1), F.S., provides that a single return must be filed for each site in the county where the owner of tangible personal property transacts business. Owners of freestanding property placed at multiple sites, other than sites where the owner transacts business, must file a single return, including all such property located in the county. Freestanding property placed at multiple sites includes vending and amusement machines, LP/propane tanks, utility and cable company property, billboards, leased equipment, and similar property that is not customarily located in the offices, stores, or plants of the owner, but is placed throughout the county.

Section 196.183(3), F.S., waives the return filing requirement under s. 193.052, F.S., for taxpayers owning taxable property the value of which, as listed on the return, does not exceed the $25,000 exemption. In order to qualify for this waiver, a taxpayer must file an initial return on which the exemption is taken. If, in subsequent years, the taxpayer owns taxable property the value of which, as listed on the return, exceeds the exemption, the taxpayer is obligated to file a return. The taxpayer may again qualify for the waiver only after filing a return on which the value as listed on the return does not exceed the exemption. A return filed or required to be filed shall be considered an application filed or required to be filed for the exemption under this section.

Proposed Changes

The bill implements the proposed constitutional amendment contained in HJR 1003. Specifically, it creates an additional exemption from ad valorem taxation of tangible personal property of $25,000 of taxable value. The bill then provides another waiver process beyond the one described above, where in order to qualify for this additional exemption, a taxpayer must file an initial return disclosing the taxable value of their property. The filing of this initial return does not result in the taxpayer incurring any tax liability. If, in subsequent years, the taxpayer owns taxable property the value of which, as listed on the

[1] Article VII, section 1(b), Florida Constitution
[2] Article VII, section 3(b), Florida Constitution
[3] Article VII, section 4(b), Florida Constitution

return, exceeds $25,000, the taxpayer is obligated to file a return. The taxpayer may again qualify for the waiver only after filing a return on which the value as listed on the return does not exceed $25,000.

The effect of this approach to implementing the constitutional amendment contained in HJR 1003 is that it provides an additional $25,000 exemption from ad valorem taxation of tangible personal property, but only to persons who would report on their returns property valued at $50,000 or less. If the total value required to be reported on the taxpayer's return exceeds $50,000, the additional exemption created by this bill is unavailable.

The bill provides a General Revenue appropriation of $108,475 to the Department of State to publish the proposed constitutional amendment contained in CS/HJR 1003 in newspapers in each county as required by Article XI, section 5(d) of the Florida Constitution.

The bill takes effect upon the approval of the amendment proposed by HJR 1003 by the voters. The bill operates prospectively to the 2013 tax roll and does not provide a basis for relief from an assessment of taxes not paid or create a right to a refund of taxes paid before January 1, 2013.

B. SECTION DIRECTORY:

Section 1: Provides an exemption from ad valorem taxation of tangible personal property.

Section 2: Provides that the act shall operate prospectively as specified.

Section 3: Provides an appropriation.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill provides a General Revenue appropriation of $108,475 to the Department of State.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has estimated that, if the amendment proposed by HJR 1003 is approved by the voters, **assuming current millage rates,** the estimated statewide impact of the bill would be annual reductions in local government revenues of $20.1 million beginning in fiscal year 2013-14, increasing to $20.3 million in fiscal year 2014-15, and $20.6 million in fiscal year 2015-16.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If this bill had been in effect for the 2011 tax rolls, approximately 156,000 additional taxpayer accounts would have been exempt from the tax (just under 50% of all accounts with a positive taxable value).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill implements a constitutional amendment to which the mandates provision of s. 18, Art. VII of the State Constitution, does not apply.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2012, the Finance & Tax Committee adopted an amendment that:

- Clarifies that the exemption begins with the 2013 tax roll.
- Provides an appropriation to publish the proposed constitutional amendment in newspapers in each county as required by the constitution [$108,475].

The analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to tangible personal property taxation; amending s. 196.183, F.S.; waiving the requirement to file an annual tangible personal property tax return for certain taxpayers who own taxable property the taxable value of which does not exceed a specified amount; providing conditions and requirements for qualifying for such waiver; providing application; providing an appropriation; providing effective dates.

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

Section 1. Section 196.183, Florida Statutes, is amended to read:

196.183 Exemption for tangible personal property.—

(1) Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to $25,000 of assessed value. A single return must be filed for each site in the county where the owner of tangible personal property transacts business. Owners of freestanding property placed at multiple sites, other than sites where the owner transacts business, must file a single return, including all such property located in the county. Freestanding property placed at multiple sites includes vending and amusement machines, LP/propane tanks, utility and cable company property, billboards, leased equipment, and similar property that is not customarily located in the offices, stores, or plants of the owner, but is placed

throughout the county. Railroads, private carriers, and other companies assessed pursuant to s. 193.085 shall be allowed one $25,000 exemption for each county to which the value of their property is allocated. The $25,000 exemption for freestanding property placed at multiple locations and for centrally assessed property shall be allocated to each taxing authority based on the proportion of just value of such property located in the taxing authority; however, the amount of the exemption allocated to each taxing authority may not change following the extension of the tax roll pursuant to s. 193.122.

(2) For purposes of this section, a "site where the owner of tangible personal property transacts business" includes facilities where the business ships or receives goods, employees of the business are located, goods or equipment of the business are stored, or goods or services of the business are produced, manufactured, or developed, or similar facilities located in offices, stores, warehouses, plants, or other locations of the business. Sites where only the freestanding property of the owner is located shall not be considered sites where the owner of tangible personal property transacts business.

(3) The requirement that an annual tangible personal property tax return pursuant to s. 193.052 be filed is waived for taxpayers who own ~~owning~~ taxable personal property:

(a) The value of which, as listed on the return, does not exceed the exemption provided in this section ~~is waived~~. In order to qualify for the ~~this~~ waiver under this paragraph, a taxpayer must file an initial return on which the exemption is taken. If, in subsequent years, the taxpayer owns taxable

property the value of which, as listed on the return, exceeds the exemption, the taxpayer is obligated to file a return. The taxpayer may again qualify for the waiver only after filing a return on which the value as listed on the return does not exceed the exemption. A return filed or required to be filed shall be considered an application filed or required to be filed for the exemption under this section; or

(b) The taxable value of which does not exceed $25,000. In order to qualify for the waiver under this paragraph, a taxpayer must file an initial return disclosing the taxable value of the property. The filing of an initial return does not result in the taxpayer incurring any tax liability. If, in subsequent years, the taxpayer owns taxable property the value of which, as listed on the return, exceeds $25,000, the taxpayer is obligated to file a return. The taxpayer may again qualify for the waiver only after filing a return on which the value as listed on the return does not exceed $25,000.

(4) Owners of property previously assessed by the property appraiser without a return being filed may, at the option of the property appraiser, qualify for the exemption under this section without filing an initial return.

(5) The exemption provided in this section does not apply in any year a taxpayer fails to timely file a return that is not waived pursuant to subsection (3) or subsection (4). Any taxpayer who received a waiver pursuant to subsection (3) or subsection (4) and who owns taxable property the value of which, as listed on the return, exceeds the exemption in a subsequent year and who fails to file a return with the property appraiser

is subject to the penalty contained in s. 193.072(1)(a) calculated without the benefit of the exemption pursuant to this section. Any taxpayer claiming more exemptions than allowed pursuant to subsection (1) is subject to the taxes exempted as a result of wrongfully claiming the additional exemptions plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted. By February 1 of each year, the property appraiser shall notify by mail all taxpayers whose requirement for filing an annual tangible personal property tax return was waived in the previous year. The notification shall state that a return must be filed if the value of the taxpayer's tangible personal property exceeds the exemption and include the penalties for failure to file such a return.

(6) The exemption provided in this section does not apply to a mobile home that is presumed to be tangible personal property pursuant to s. 193.075(2).

Section 2. The revisions to s. 196.183, Florida Statutes, by this act operate prospectively to the 2013 tax roll and do not provide a basis for relief from an assessment of taxes not paid or create a right to a refund of taxes paid before January 1, 2013.

Section 3. Effective July 1, 2012, the sum of $108,475 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of State for purposes of publishing, as required under s. 5(d), Art. XI of the State Constitution, the proposed constitutional amendment contained in House Joint Resolution 1003, or a similar joint resolution having substantially the same specific intent and purpose.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect upon the approval of House Joint Resolution 1003, or a similar joint resolution having substantially the same specific intent and purpose, at the general election to be held in November 2012 or at an earlier special election specifically authorized by law for that purpose.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1011 Warranty Associations
SPONSOR(S): Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee and Abruzzo
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Cooper	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N, As CS	Keith	Topp
3) Economic Affairs Committee		Cooper	Tinker TST

SUMMARY ANALYSIS

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

Although a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, OIR is not required to approve rates for warranties.

Under current law, warranties offered by the three types of warranty associations are cancelable by the purchaser who is entitled to a refund. For motor vehicle service agreements, refunds may be effectuated through the automobile dealer that originally sold the service agreement to the customer, although the service agreement company still remains responsible for the full refund. For home and service warranties, refunds are made by the respective associations.

The bill maintains the authority for automobile dealers to effectuate the refunds but codifies some of the documentation regarding refunds currently required by OIR. For home warranty and service warranty products, the bill specifies that the associations may provide refunds through the issuing sales representatives. Specific to service warranty associations, the bill permits refunds to be made by cash, check, store credit, gift card, or other similar means, but requires refunds by check if requested by the customer.

Currently, OIR is required to conduct periodic examinations regarding the financial and market conduct affairs of warranty associations. The bill eliminates this requirement, but authorizes OIR to examine them at its discretion. The bill continues to allow OIR to use independent examiners and levy the companies for the costs of their services, but limits those costs to no more than ten percent of the companies prior year reported income.

The bill authorizes entities to provide donations and grants to the Department of Financial Services to pursue unauthorized entities operating in violation of the statutory provisions relating to warranty associations. Also, the bill restores motor vehicle service agreement coverage for motor vehicles used for commercial purpose unless those vehicles have a gross weight rating of 10,000 pounds or more.

The bill has no fiscal impact on state or local government.

The bill takes effect on July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, OIR is not required to approve rates for warranties.

Motor Vehicle Service Agreements

Under current law, a motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended. It also includes agreements that provide for: the coverage or protection which is issued or provided in conjunction with an additive product applied to the motor vehicle; payment of vehicle protection expenses; and, the payment for paintless dent-removal services. [1] Exempt from this definition (and therefore exempt from regulation under the Florida Insurance Code) are service agreements that are sold to persons other than consumers and that cover motor vehicles used for commercial purposes.

To offer motor vehicle service agreements in Florida one must be licensed and pay an annual nonrefundable license fee to OIR. All applicants for licensure must meet certain solvency requirements and, once licensed, must report to OIR certain financial and statistical information on a quarterly basis. Companies are also required to file with the office the rates, rating schedules, or rating manuals used, including all modifications of rates and premiums, to be paid by the service agreement holder. The office does not have authority to approve rates but they are required to review and approve forms used in the state. [2]

Cancellation of Service Agreements

The bill makes several changes in the regulatory framework of motor vehicle service agreements, including cancellation provisions. Currently, any service agreement is cancelable by the purchaser within 60 days after purchase. The individual is also entitled to a refund which must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the agreement holder. After the service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

1) there has been a material misrepresentation or fraud at the time of sale of the service agreement;
2) the agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;
3) the odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or

[1] s.634.011(8), F.S.
[2] ss. 634.011-634.289, F.S.

4) for nonpayment of premium by the agreement holder.[3]

Additionally, current law states that if the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium, less any claims paid on the agreement. Current law also provides that if, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company must return directly to the agreement holder not less than 90 percent of the unearned pro rata premium and may also deduct from the refund the amount of any claims paid on the agreement. Under current law, the service agreement company remains responsible for full refunds to the consumer on canceled service agreements. However, the salesperson and agent are responsible for the refund of the unearned pro rata commission. A service agreement company may effectuate refunds through the issuing salesperson or agent.[4]

The bill provides that if the service agreement company effectuates refunds through the issuing salesperson or agent, the service agreement company must send the unearned pro rata premium refund due, less any unearned pro rata commission, to the salesperson or agent effectuating the refund. Upon receipt, the salesperson or agent must refund the unearned pro rata premium, including any unearned pro rata commission, and the sales tax refund owed to the service agreement holder.

The bill requires the salesperson or agent to maintain copies of certain documents to demonstrate that the refund has occurred and shall provide those copies to the service agreement company within 45 days after a request is made by the department or OIR.[5] If OIR finds that a salesperson or agent exhibits a pattern or practice of failing to properly provide refunds or fails to maintain or remit the specified documentation, the office must then notify the Department of Financial Service (DFS).

Another change in the bill is the restoration of motor vehicle service agreement coverage for certain vehicles used for commercial purposes. The bill eliminates the current exemption from the definition of motor service agreement for such vehicles, however, it would only apply to vehicles having a gross weight rating of less than 10,000 pounds. Vehicles over that weight will continue to not be covered because they do not meet the current definition of a motor vehicle. Thus, with the changes made by the bill, small business owners should once again receive all of the protections now provided to individual consumers.

Examination of Companies

Currently, OIR may periodically examine motor vehicle service agreement companies in the same manner and subject to the same terms and conditions as applies to insurers under part II of chapter 624. Consequently, the office may examine each insurer as often as may be warranted for the protection of the policyholders and in the public interest, but must examine each company not less frequently than once every 5 years.[6] Criteria are provided in statute for OIR to consider in determining whether to conduct examinations. Also, rules are authorized, but not required, to establish provisions for exemptions from examination.

Current law also provides that the examinations may be conducted by independent certified public accountants, actuaries, investment specialists, information technology specialists, and reinsurance specialists with the costs paid for by the companies.[7] A similar provision exists for market conduct examinations.[8]

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[3] s. 634.121(3)(b), F.S.
[4] s. 634.121, F.S.
[5] The required documentation is based, in part, on guidance provided by OIR in *Informational Memorandum, OIR-11-04M*, issued April 11, 2011.
[6] s. 634.141, F.S. and s. 624.316, F.S.
[7] s. 624.316, F.S.
[8] s. 624.3161, F.S

The bill makes several changes regarding examinations. It maintains the option to use independent examiners but limits those costs to no more than ten percent of the companies prior year reported income. The bill also specifies that OIR is not required to conduct periodic examinations, but may examine a service agreement company at its discretion. Criteria for OIR to use in determining whether to use that discretion are eliminated. It also states that an examination may cover a period of only the most recent 5 years.

Gifts and Grants to Combat Unauthorized Entities

In 2011, the Legislature created s. 626.9894, F.S., which authorizes DFS to accept, for purposes of anti-fraud efforts, any donation or grant of property or moneys from any governmental unit, public agency, institution, person, firm, or corporation. Any such gift or grant is immediately vested in the Division of Insurance Fraud and deposited into the Insurance Regulatory Trust Fund. Donations are separately accounted for and may be used by the division to carry out its duties and responsibilities, or for the subgranting of such funds to state attorneys for the purpose of funding or defraying the costs of dedicated fraud prosecutors. The law also provides that moneys deposited into the Insurance Regulatory Trust Fund may be appropriated by the Legislature for the purpose of enabling the division to carry out its duties and responsibilities, or for the purpose of funding or defraying the costs of dedicated fraud prosecutors.

The bill creates new authority for a governmental unit, public agency, institution, person, firm, or legal entity to provide money to DFS to enable the department to pursue unauthorized entities operating in violation of provisions relating to motor vehicle service agreement companies. The department is also authorized to transfer funds to OIR to take enforcement action against unauthorized entities. Similar to s. 626.9894, F.S., the bill provides that moneys deposited into the Insurance Regulatory Trust Fund may be appropriated by the Legislature for the purpose of enabling the division to carry out its duties and responsibilities, or for the purpose of funding or defraying the costs of dedicated fraud prosecutors.

Home Warranty Associations

Home warranty associations are organizations, other than authorized insurers, that issue home warranties. A home warranty is a contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss.[9]

The regulatory framework of home warranty associations is similar to the oversight of motor vehicle service agreement companies. Regarding cancellations, any home warranty agreement may be canceled by the purchaser within 10 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium must be based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium must be based upon 100 percent of unearned pro rata premium, less any claims paid on the agreement.[10]

Unlike the current law for motor vehicle service agreements which allow refunds by the issuing salesperson or agent, the current law for home warranty associations does not explicitly authorize that practice. The bill does, by stating that an association may effectuate a refund through the issuing sales representative. However, unlike the changes for motor vehicle service agreements, the bill does not provide detail or require documentation for home warranty associations regarding the effectuation of their refunds.

[9] s. 634.301, F.S.
[10] s. 634.312, F.S.

Regarding examinations of home warranty associations by OIR, the bill makes the same changes made for motor vehicle service agreements. The only difference is that currently there is no examination exemption process for home warranty associations as there is for motor vehicle service agreements. Hence, there is no rule authorization to repeal.

Also, the bill creates the same process for donating money to DFS to pursue unauthorized entities providing home warranties as provided for motor vehicle service agreement companies.

Service Warranty Associations

Service warranty associations are entities, other than insurers, which issue service warranties. A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification[11] for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.[12]

As with the other two types of warranty associations, service warranty entities must meet certain regulatory requirements to offer their products in Florida. Regarding cancellations, current law provides that each service warranty contract shall contain a cancellation provision. If the contract is canceled by the warranty holder, return of premium must be based upon no less than 90 percent of unearned pro rata premium less any claims that have been paid or less the cost of repairs made on behalf of the warranty holder. If the contract is canceled by the association, return of premium must be based upon 100 percent of unearned pro rata premium, less any claims paid or the cost of repairs made on behalf of the warranty holder.[13]

Like the provision in the bill for home warranty associations, service warranty associations may effectuate refunds through the issuing sales representative. No additional detail or documentation is provided. A provision is added to current law regarding the form of a refund (which now is apparently cash or check). The bill provides that a refund owed to a warranty holder may be in the form of cash, check, store credit, gift card, or other similar means. However, upon request of the service warranty holder the refunds must be remitted by check.

Finally, the bill authorizes entities to provide money to DFS to enable the department to pursue unauthorized parties operating in violation with the provisions relating to service warranty associations in the same manner as the bill did for the other two warranty associations.

B. SECTION DIRECTORY:

Section 1: Amends s. 634.011, F.S., relating to definitions.

Section 2: Amends s. 634.121, F. S., relating to forms, required procedures, and provisions.

Section 3: Amends s. 634.141, F.S., relating to examination of motor vehicle service agreement companies.

Section 4: Creates s. 634.2855, F.S., relating to unauthorized entities; gifts and grants.

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[11] Pursuant to s. 634.401 (5), F.S.,"Indemnify" means to undertake repair or replacement of a consumer product, or pay compensation for such repair or replacement by cash, check, store credit, gift card, or other similar means, in return for the payment of a segregated premium, when such consumer product suffers operational failure.

[12] s. 634.401(13), F.S.

[13] s. 634.414, F.S.

Section 5: Amends s. 634.312, F. S., relating to forms, required provisions, and procedures for home warranty associations.

Section 6: Amends s. 634.314, F. S., relating to examination of home warranty associations.

Section 7: Creates s. 634.3385, F.S., relating to unauthorized entities; gifts and grants.

Section 8: Amends s. 634.414, F. S., relating to forms; required provisions, for service warranty associations.

Section9: Amends s. 634.416, F. S., relating to examination of service warranty associations.

Section 10: Creates s. 634.4385, F.S., relating to unauthorized entities; gifts and grants.

Section 11: 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 bill does not appear to have a fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because regularly scheduled examinations by OIR will no longer be required for warranty associations, companies will save costs associated with preparing for and actually undergoing those examinations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take 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:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Insurance & Banking Subcommittee unanimously adopted one strike-all amendment to HB 1011 which retained many of the same provisions of the bill as filed and made the following major changes:

- Deleted the provision in current law that provides service agreements that are sold to persons other than consumers and that cover motor vehicles used for commercial purposes are excluded from the definition of motor vehicle service agreement and are exempt from regulation under the Florida Insurance Code.
- Clarified the provisions in the bill which authorize donating money to DFS for the purpose of pursuing unauthorized entities that violate the laws regarding warranty associations.
- Restored current law which the bill removes regarding OIR's use of independent examiners. However, the costs associated with the use of those examiners are capped.
- Made technical changes to correct drafting errors.

On February 13, 2012, the House Government Operations Appropriations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute.

- Amendment 1 restored current law related to the authority for the Financial Services Commission to establish by rule the process whereby motor vehicle service agreement companies may be exempt from examinations by the Office of Insurance Regulation.
- Amendment 2 restored current law related to the Office of Insurance Regulation's authority to waive examination requirements.

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to warranty associations; amending s. 634.011, F.S.; revising the definition of the term "motor vehicle service agreement"; amending s. 634.121, F.S.; providing criteria for a motor vehicle service agreement company to effectuate refunds through the issuing salesperson or agent; requiring the salesperson, agent, or service agreement company to maintain a copy of certain documents; requiring a salesperson or agent to provide a copy of a document to the service agreement company if requested by the Department of Financial Services or the Office of Insurance Regulation; requiring the office to provide to the department findings that a salesperson or agent exhibits a pattern or practice of failing to effectuate refunds or to maintain and remit to the service agreement company the required documentation; amending s. 634.141, F.S.; authorizing rather than requiring the office to examine service agreement companies; limiting the examination period to the most recent 5 years; limiting the cost of certain examinations; creating s. 634.2855, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as motor vehicle service agreement companies; providing requirements for the deposit of the money; providing that funds remaining at the end of any

fiscal year shall be available for carrying out duties and responsibilities of the department or the office; amending s. 634.312, F.S.; authorizing a home warranty association to effectuate a refund through the issuing sales representative; amending s. 634.314, F.S.; authorizing rather than requiring the office to examine home warranty associations; limiting the examination period to the most recent 5 years; limiting the cost of certain examinations; removing the requirement that the commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.3385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as home warranty associations; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; amending s. 634.414, F.S.; authorizing service warranty associations to effectuate refunds through the issuing sales representative; authorizing a service warranty association to issue refunds by cash, check, store credit, gift card, or other similar means; amending s. 634.416, F.S.; authorizing rather than requiring the office to examine service warranty associations; limiting the examination period to the most recent 5

years; limiting the costs of certain examinations; removing the requirement that the commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; removing provisions relating to the rates charged a to service warranty association for examinations; creating s. 634.4385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as service warranty associations; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; providing an effective date.

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

Section 1. Subsection (8) of section 634.011, Florida Statutes, is amended to read:

634.011 Definitions.—As used in this part, the term:

(8) "Motor vehicle service agreement" or "service agreement" means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally

intended; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles. Transactions exempt under s. 624.125 are expressly excluded from this definition and are exempt from the provisions of this part. ~~Service agreements that are sold to persons other than consumers and that cover motor vehicles used for commercial purposes are excluded from this definition and are exempt from regulation under the Florida Insurance Code.~~ The term "motor vehicle service agreement" includes any contract or agreement that provides:

(a) For the coverage or protection defined in this subsection and which is issued or provided in conjunction with an additive product applied to the motor vehicle that is the subject of such contract or agreement;

(b) For payment of vehicle protection expenses.

1.a. "Vehicle protection expenses" means a preestablished flat amount payable for the loss of or damage to a vehicle or expenses incurred by the service agreement holder for loss or damage to a covered vehicle, including, but not limited to, applicable deductibles under a motor vehicle insurance policy; temporary vehicle rental expenses; expenses for a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; sales taxes or registration fees for a replacement vehicle that is at least the same year, make, and model of the stolen vehicle; or other incidental expenses specified in the agreement.

b. "Vehicle protection product" means a product or system

installed or applied to a motor vehicle or designed to prevent the theft of the motor vehicle or assist in the recovery of the stolen motor vehicle.

2. Vehicle protection expenses shall be payable in the event of loss or damage to the vehicle as a result of the failure of the vehicle protection product to prevent the theft of the motor vehicle or to assist in the recovery of the stolen motor vehicle. Vehicle protection expenses covered under the agreement shall be clearly stated in the service agreement form, unless the agreement provides for the payment of a preestablished flat amount, in which case the service agreement form shall clearly identify such amount.

3. Motor vehicle service agreements providing for the payment of vehicle protection expenses shall either:

a. Reimburse a service agreement holder for the following expenses, at a minimum: deductibles applicable to comprehensive coverage under the service agreement holder's motor vehicle insurance policy; temporary vehicle rental expenses; sales taxes and registration fees on a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; and the difference between the benefits paid to the service agreement holder for the stolen vehicle under the service agreement holder's comprehensive coverage and the actual cost of a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; or

b. Pay a preestablished flat amount to the service agreement holder.

Payments shall not duplicate any benefits or expenses paid to the service agreement holder by the insurer providing comprehensive coverage under a motor vehicle insurance policy covering the stolen motor vehicle; however, the payment of vehicle protection expenses at a preestablished flat amount of $5,000 or less does not duplicate any benefits or expenses payable under any comprehensive motor vehicle insurance policy; or

(c)1. For the payment for paintless dent-removal services provided by a company whose primary business is providing such services.

2. "Paintless dent-removal" means the process of removing dents, dings, and creases, including hail damage, from a vehicle without affecting the existing paint finish, but does not include services that involve the replacement of vehicle body panels or sanding, bonding, or painting.

Section 2. Paragraph (b) of subsection (3) of section 634.121, Florida Statutes, is amended, and paragraphs (c), (d), and (e) are added to that subsection, to read:

634.121 Forms, required procedures, provisions.—

(3)

(b) After the service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

1. There has been a material misrepresentation or fraud at the time of sale of the service agreement;

2. The agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;

3. The odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or

4. For nonpayment of premium by the agreement holder, in which case the service agreement company shall provide the agreement holder notice of cancellation by certified mail.

If the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium, less any claims paid on the agreement. If, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company shall return directly to the agreement holder not less than 90 percent of the unearned pro rata premium, less any claims paid on the agreement. The service agreement company remains responsible for full refunds to the consumer on canceled service agreements. However, the salesperson and agent are responsible for the refund of the unearned pro rata commission. A service agreement company may effectuate refunds through the issuing salesperson or agent in accordance with paragraphs (c) and (d).

(c) If the service agreement company effectuates refunds through the issuing salesperson or agent, the service agreement company must send the unearned pro rata premium refund due, less any unearned pro rata commission, to the salesperson or agent effectuating the refund. Upon receipt, the salesperson or agent must refund the unearned pro rata premium, including any unearned pro rata commission, and the sales tax refund owed to the service agreement holder.

(d) The salesperson, agent, or service agreement company shall maintain a copy of one of the following documents, as applicable, demonstrating that the refund owed pursuant to paragraph (c) has been refunded:

1. A copy of the front and back of the cancelled check for the applicable refund amount owed to the service agreement holder;

2. A copy of the front of the check for the applicable refund amount owed to the service agreement holder and a copy of the statement from the bank account on which the check was drawn showing that the check was cashed;

3. A copy of the front of the check issued by the service agreement company to the salesperson or agent in the amount of the service agreement company's portion of the refund owed to the service agreement holder and a copy of the statement from the bank account on which the check was drawn showing that the check was cashed;

4. A copy of a completed buyer's order demonstrating that the applicable refund amount owed to the service agreement holder was credited toward the purchase or lease of another vehicle;

5. Any document received from or sent to a lender, finance company, or creditor demonstrating that a loan or amount financed by the agreement holder was decreased by the amount of the applicable refund amount owed to the service agreement holder; or

6. Any other evidence approved by the office in a written communication to a person licensed pursuant to this part

demonstrating that the applicable refund amount due to the service agreement holder was properly made.

A salesperson or agent effectuating a refund shall maintain a copy of the documentation required by this paragraph and shall provide a copy to the service agreement company within 45 days after a request is made by the department or the office to either the service agreement company or the salesperson.

(e) If the office finds that a salesperson or agent exhibits a pattern or practice of failing to properly effectuate refunds owed or to maintain and remit to the service agreement company the documentation required by paragraph (d), the office shall notify the department of its finding.

Section 3. Subsection (1) of section 634.141, Florida Statutes, is amended to read:

634.141 Examination of companies.—

(1) Motor vehicle service agreement companies licensed under this part may be subject to periodic examination by the office in the same manner and subject to the same terms and conditions as apply ~~applies~~ to insurers under part II of chapter 624. The office is not required to conduct periodic examinations pursuant to this section, but may examine a service agreement company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years. The costs of examinations conducted pursuant to ss. 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of the companies' reported net income for the prior year. The commission may by rule establish provisions whereby a company

may be exempted from examination.

Section 4. Section 634.2855, Florida Statutes, is created to read:

634.2855 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide money to the department to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds to the office to investigate, discipline, sanction, and take all action consistent with this part relative to unauthorized entities. All donations or grants of moneys to the department shall be deposited into the Insurance Regulatory Trust Fund and shall be separately accounted for in accordance with this section. Moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section may be appropriated by the Legislature, pursuant to chapter 216, for the purpose of enabling the department or the office to carry out the provisions of this section. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance of moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section remaining at the end of any fiscal year shall be available for carrying out the duties and responsibilities of the department or the office.

Section 5. Subsection (5) of section 634.312, Florida Statutes, is amended to read:

634.312 Forms; required provisions and procedures.—

(5) Each home warranty contract shall contain a cancellation provision. Any home warranty agreement may be canceled by the purchaser within 10 days after purchase. The

refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium shall be based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid on the agreement. A home warranty association may effectuate a refund through the issuing sales representative.

Section 6. Section 634.314, Florida Statutes, is amended to read:

634.314 Examination of associations.—

~~(1)~~ Home warranty associations licensed under this part may be subject to periodic examinations by the office, in the same manner and subject to the same terms and conditions as apply to insurers under part II of chapter 624 of the insurance code. The office is not required to conduct periodic examinations pursuant to this section, but may examine a home warranty company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years. The costs of examinations conducted pursuant to ss. 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of the companies' reported net income for the prior year.

~~(2) The office shall determine whether to conduct an~~

~~examination of a home warranty association by considering:~~

~~(a) The amount of time that the association has been continuously licensed and operating under the same management and control.~~

~~(b) The association's history of compliance with applicable law.~~

~~(c) The number of consumer complaints against the association.~~

~~(d) The financial condition of the association, demonstrated by the financial reports submitted pursuant to s. 634.313.~~

Section 7. Section 634.3385, Florida Statutes, is created to read:

634.3385 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide money to the department to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds to the office to investigate, discipline, sanction, and take all action consistent with this part relative to unauthorized entities. All donations or grants of moneys to the department shall be deposited into the Insurance Regulatory Trust Fund and shall be separately accounted for in accordance with this section. Moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section may be appropriated by the Legislature, pursuant to chapter 216, for the purpose of enabling the department or the office to carry out the provisions of this section. Notwithstanding s. 216.301 and pursuant to s. 216.351, any

balance of moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section remaining at the end of any fiscal year shall be available for carrying out the duties and responsibilities of the department or the office.

Section 8. Section 634.414, Florida Statutes, is amended to read:

634.414 Forms; required provisions.—

(1) Each service warranty contract shall contain a cancellation provision. If the contract is canceled by the warranty holder, return of premium shall be based upon no less than 90 percent of unearned pro rata premium less any claims that have been paid or less the cost of repairs made on behalf of the warranty holder. If the contract is canceled by the association, return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid or the cost of repairs made on behalf of the warranty holder. Service warranty associations may effectuate refunds through the issuing sales representative.

(2) Refunds owed pursuant to this section may be made by cash, check, store credit, gift card, or other similar means. Upon request of the service warranty holder, the refund shall be remitted by check.

(3) ~~(2)~~ By July 1, 2011, each service warranty contract sold in this state must be accompanied by a written disclosure to the consumer that the rate charged for the contract is not subject to regulation by the office. A service warranty association may comply with this requirement by including such disclosure in its service warranty contract form or in a

separate written notice provided to the consumer at the time of sale.

Section 9. Section 634.416, Florida Statutes, is amended to read:

634.416 Examination of associations.—

(1) ~~(a)~~ Service warranty associations licensed under this part may be subject to periodic examination by the office, in the same manner and subject to the same terms and conditions that apply to insurers under part II of chapter 624. The office is not required to conduct periodic examinations pursuant to this section, but may examine a service warranty company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years. The costs of examinations conducted pursuant to ss. 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of the companies' reported net income for the prior year.

~~(b) The office shall determine whether to conduct an examination of a service warranty association by considering:~~

~~1. The amount of time that the association has been continuously licensed and operating under the same management and control.~~

~~2. The association's history of compliance with applicable law.~~

~~3. The number of consumer complaints against the association.~~

~~4. The financial condition of the association, demonstrated by the financial reports submitted pursuant to s. 634.313.~~

~~(2) The rate charged a service warranty association by the office for examination may be adjusted to reflect the amount collected for the Form 10-K filing fee as provided in this section.~~

(2)~~(3)~~ On or before May 1 of each year, an association may submit to the office the Form 10-K, as filed with the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended. Upon receipt and review of the most current Form 10-K, the office may waive the examination requirement; if the office determines not to waive the examination, such examination will be limited to that examination necessary to ensure compliance with this part. The Form 10-K shall be accompanied by a filing fee of $2,000 to be deposited into the Insurance Regulatory Trust Fund.

(3)~~(4) The office is not required to examine an association that has less than $20,000 in gross written premiums as reflected in its most recent annual statement. The office may examine such an association if it has reason to believe that the association may be in violation of this part or is otherwise in an unsound financial condition.~~ If the office examines an association that has less than $20,000 in gross written premiums, the examination fee may not exceed 5 percent of the gross written premiums of the association.

Section 10. Section 634.4385, Florida Statutes, is created to read:

634.4385 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide money to the department to enable the

department to pursue unauthorized entities operating in violation of this part. The department may transfer funds to the office to investigate, discipline, sanction, and take all action consistent with this part relative to unauthorized entities. All donations or grants of moneys to the department shall be deposited into the Insurance Regulatory Trust Fund and shall be separately accounted for in accordance with this section. Moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section may be appropriated by the Legislature, pursuant to chapter 216, for the purpose of enabling the department or the office to carry out the provisions of this section. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance of moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section remaining at the end of any fiscal year shall be available for carrying out the duties and responsibilities of the department or the office.

Section 11. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1065 Annuities
SPONSOR(S): Insurance & Banking Subcommittee and Broxson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Reilly	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	Keith	Topp
3) Economic Affairs Committee		Reilly	Tinker

SUMMARY ANALYSIS

Section 627.4554, F.S., provides protections for consumers 65 years of age and older in annuity transactions. The section, enacted in 2004, adopted the National Association of Insurance Commissioners' (NAIC) Senior Protection in Annuity Transactions Model Regulation of 2003. In 2008, the Legislature amended the law to provide additional safeguards for senior consumers that are not in the NAIC's model regulation. In 2010, the Legislature also increased the unconditional refund period for senior consumers to 21 days and required insurers to attach a cover page, with specified information, to any annuity policy sold.

The bill amends s. 627.4554, F.S., to incorporate into Florida law the most current version of the NAIC model regulation on annuity protections (the 2010 NAIC Model), while maintaining most of the provisions adopted by Florida in 2008 and 2010. The 2010 NAIC Model, which has been enacted by 19 states, including California and New York, provides annuity protections for consumers of any age; insurer review of every annuity transaction; and clarifies that insurers are responsible for compliance with annuity protection provisions, even when they contract with third parties.

The Office of Insurance Regulation (OIR) indicates any fiscal impact associated with CS/HB 1065 is insignificant and will be absorbed within current resources.

The bill is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Annuities[1]

An annuity is a contract between a buyer and an insurance company that provides guaranteed payments over a period of time. Annuities are designed to meet retirement and long-range planning goals,[2] and are long-term contracts that typically restrict an investor's ability to access their money.

There are two basic types of annuities, fixed and variable. Fixed annuities guarantee both the rate of return and the amount of payout. Variable annuities do not guarantee the rate of return, which can fluctuate based on the performance of underlying investment options chosen by the purchaser.

Fixed and variable annuities are available as either immediate or deferred annuities. Typically, premiums for immediate annuities are paid in a lump sum amount, and the purchaser receives an immediate and regular stream of payments for a period of time. Variable annuities generally involve an accumulation phase, during which premiums paid experience tax-deferred growth, and the payout phase (annuitization phase) when the annuity provides a regular stream of periodic payments to the purchaser.

Fixed annuities are considered insurance contracts because of the mortality risk associated with payout options, and are regulated by state insurance departments. With a variable annuity, premium dollars are placed into a variety of investment options called subaccounts. Because variable annuities involve risk and provide no guarantee of principal, they are considered investments and fall within the jurisdiction of both securities regulators and state insurance departments. Agents selling variable annuities must hold a variable annuity license from the state and also possess a securities license and hold an active securities registration with a broker dealer. As investments, variable annuities also have accompanying prospectuses with disclosures regarding risk. All sales of variable annuities are subject to suitability standards established by the Financial Industry Regulatory Authority (FINRA).[3]

Equity indexed annuities are considered a hybrid of both fixed and variable annuities. They are classified, defined, and regulated as fixed annuities. In contrast to a traditional fixed annuity, which provides a stated guaranteed rate of interest, equity indexed annuities provide a minimum guaranteed interest rate in combination with an index-linked component. A guaranteed minimum interest rate may still create a loss of principal if the guarantee is based on an amount less than the amount of premium or initial payment. Investors who find it necessary to cancel an annuity to access funds prior to maturity of the contract may also lose principal through detrimental features such as surrender charges, hidden penalties, costs, fees, and massive multi-year surrender charges.

Determining whether an Annuity is a Suitable Investment for a Consumer: Suitability Issues

In 2003, the National Association of Insurance Commissioners (NAIC) adopted the "Senior Protection in Annuity Transactions Model Regulation" (Model Regulation), designed to help protect senior citizens when they purchase or exchange annuity products. In 2004, Florida adopted the Model Regulation by creating s. 627.4554, F.S. This section provides protection for senior citizens in annuity transactions,

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[1] Background information on annuities derived from "2008 White Paper on Annuities," by Roxanne Rehm, 2008 Assistant General Counsel for the DFS. On file with staff of the Insurance & Banking Subcommittee.

[2] See "Annuities," U.S. Securities and Exchange Commission at hhtp://www.sec.gov/answers/annuity.htm (Last accessed January 27, 2012).

[3] The Financial Industry Regulatory Authority (FINRA) is the largest independent regulator for all securities firms doing business in the United States.

requiring insurance companies and agents offering these products to clearly document the basis for selling the product, including consideration of a senior citizen's financial and tax status, as well as investment objectives. In 2006, the NAIC removed the age restriction from its Model Regulation, extending annuity protections to consumers of any age.

In 2008, Florida amended s. 627.4554, F.S. Although the legislation did not incorporate the 2006 change to the Model Regulation, it provided additional safeguards for senior consumers, including:

- Requiring insurers and agents to have an "objectively" reasonable basis for recommending a particular annuity product.
- Specifying the minimum information that an insurer or agent must obtain and use to determine the suitability of a recommendation before executing a purchase or exchange of a policy.
- Requiring suitability information obtained from a consumer to be recorded on a Department of Financial Services' (DFS) form, which must be completed and signed by the applicant and the agent, with a copy given to the consumer.
- Requiring the insurer or agent, in exchange situations, to provide the consumer with specified information, on a DFS form, concerning differences between the policy being recommended for purchase and an existing policy that would be surrendered or replaced.
- Increasing the "free look" refund period.
- Requiring insurers to establish standards for product training.
- Authorizing the Office of Insurance Regulation to rescind an annuity and provide a full refund of premiums paid or the accumulation value, whichever is greater, when a consumer is harmed by a violation of the suitability statute.

In 2010, the Legislature also increased the unconditional refund period for senior consumers in annuity transactions to 21 days and required insurers to attach a cover page with specified information, including notice of the refund period, contact information, and the name of the issuing company and selling agent, to each annuity sold.[4]

In March 2010, the NAIC revised its Model Regulation to clarify that insurers are responsible for compliance with the model's requirements, even if the insurer contracts with a third party; requiring insurers to review all annuity transactions; and establishing both general and product-specific training requirements for insurance agents.

To date, 19 states, including New York and California, have adopted the 2010 version of the NAIC's Model Regulation.

Effect of the Bill

The bill amends s. 627.4554, F.S., to incorporate into Florida law the most recent version of the NAIC's Model Regulation on protections in annuity transactions. The bill makes the following changes to existing law:

- Extends the protections currently afforded to senior citizens in annuity transactions to consumers of any age and sophistication level.
- Revises definitions; defines additional terms relevant to annuity transactions, including Annuity, FINRA (Financial Regulatory Authority), Recommendation, Replacement, and Suitability Information.
- Requires insurers or agents to have reasonable grounds (as opposed to "objectively" reasonable grounds under current law) for believing that recommendations made to a consumer to purchase, exchange, or replace annuity products are suitable to the consumer's circumstances and that there are reasonable grounds to believe that:
    - The consumer has been reasonably informed of specified information.
    - The consumer would benefit from the product recommended.
    - That the annuity as a whole (or the exchange or replacement of a policy) is suitable for the consumer.

[4] Section 626.99, F.S.

- Prohibits agents from dissuading, or attempting to dissuade a consumer from truthfully responding to an insurer's request for confirmation of suitability information, or from cooperating with the investigation of a complaint.
- Clarifies that compliance with FINRA requirements constitutes compliance with s. 627.4554, F.S.
- Provides that insurers are responsible for ensuring compliance with the law.
- Requires insurers to establish a supervision system that is reasonably designed to achieve insurer and agent compliance with this section, which must include procedures for the review of each recommendation before issuance of an annuity; establishing standards for agent product training; and annual reports to senior managers to determine the effectiveness of the supervision system. Permits insurers to contract with a third party as to any aspect of the supervision system, but provides that insurers remain responsible for compliance.
- Authorizes the OIR to order insurers to take reasonably appropriate corrective action for insurer or agent misconduct that harms a consumer. However, the bill removes from current law, language that specifically authorizes the OIR to rescind an annuity and provide a full refund of premiums paid or the accumulation value, whichever is greater, when a consumer is harmed by a violation of the suitability statute.

The bill also amends s. 626.99, F.S., to increase the unconditional refund period to 21 days for all consumers of annuities.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.4554, F.S., to incorporate the 2010 amendments to NAIC's model regulation on protections in annuity transactions into Florida law.

Section 2. Amends s. 626.99, F.S., to provide a 21 day unconditional refund period for all purchasers of annuities.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill provides for enactment of the most recent version of the NAIC model regulation on annuity protections, adopted by the NAIC in 2010 and enacted in 19 states to date, it will bring further uniformity to the sale of annuity products by insurers conducting business in multiple states.

D. FISCAL COMMENTS:

According to the Office of Insurance Regulation, there may be an increase in workload associated with the increased number in form re-filings based on the provisions of this bill. However, OIR indicates any costs associated with CS/HB 1065 are insignificant and can be absorbed within current resources[5].

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:

To the extent that the bill extends the protections of s. 627.4554, F.S., to all purchasers of annuities and establishes additional protections, it will offer enhanced protection to all purchasers of annuities in Florida.

B. RULE-MAKING AUTHORITY:

Authorizes the DFS to adopt rules to administer s. 627.4554, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2012, the Insurance & Banking Subcommittee adopted 11 amendments to HB 1065. The amendments:

- Made technical changes to clarify that: transactions in compliance with FINRA requirements satisfy the requirements of s. 627.4554, F.S; s. 627.4554, F.S., does not apply to direct response solicitations where there is no recommendation by an agent based on information collected from the consumer; and that the insurer has certain duties if there is no agent involved.
- Corrected a drafting error.
- Extended the unconditional refund period to all consumers of annuities to 21 days after the date of purchase.
- Restored current law to require insurers and agents to use the Department of Financial Services' (DFS) form currently in effect to document suitability information obtained from customers in annuity transactions.
- Restored current law to require insurers and agents, in transactions involving the exchange of annuities, to use the DFS form currently in effect to explain to the consumer the differences between products recommended for purchase and those that will be exchanged or surrendered.
- Removed new continuing education requirements for agents that sell annuities.
- Restored current law to require that a cover page be attached to all annuity policies, which contains specified information.
- Restored current law to limit the surrender charges or deferred sales charges for withdrawal of money from an annuity that applies to senior consumers.
- Changed the effective date of the bill to October 1, 2012.

[5] E-mail correspondence from OIR to House Appropriations Staff, February 2, 2012, on file with the House Government Operations Appropriations Staff.

A bill to be entitled

An act relating to annuities; amending s. 627.4554, F.S.; providing that recommendations relating to annuities made by an insurer or its agents apply to all consumers not just to senior consumers; revising and providing definitions; revising the duties of insurers and agents; providing that recommendations must be based on consumer suitability information; revising the information relating to annuities that must be provided by the insurer or its agent to the consumer; revising the requirements for monitoring contractors that are providing certain functions for the insurer relating to the insurer's system for supervising recommendations; revising provisions relating to the relationship between this act and the federal Financial Industry Regulatory Authority; deleting a provision providing a cap on surrender or deferred sales charges; prohibiting specified charges for annuities issued to persons 65 years of age or older; amending s. 626.99, F.S.; increasing the period of time that an unconditional refund must remain available with respect to certain annuity contracts; making such unconditional refunds available to all prospective annuity contract buyers without regard to the buyer's age; revising requirements for cover pages of annuity contracts; providing an effective date.

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

Section 1. Section 627.4554, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 627.4554, F.S., for present text.)

627.4554 Annuity investments.—

(1) PURPOSE.—The purpose of this section is to require insurers to set forth standards and procedures for making recommendations to consumers which result in transactions involving annuity products, and to establish a system for supervising such recommendations in order to ensure that the insurance needs and financial objectives of consumers are appropriately addressed at the time of the transaction.

(2) SCOPE.—This section applies to any recommendation made to a consumer to purchase, exchange, or replace an annuity by an insurer or its agent, and which results in the purchase, exchange, or replacement recommended.

(3) DEFINITIONS.—As used in this section, the term:

(a) "Agent" has the same meaning as provided in s. 626.015.

(b) "Annuity" means an insurance product under state law which is individually solicited, whether classified as an individual or group annuity.

(c) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(d) "Insurer" has the same meaning as provided in s. 624.03.

(e) "Recommendation" means advice provided by an insurer

or its agent to a consumer which results in the purchase, exchange or replacement of an annuity in accordance with that advice.

(f) "Replacement" means a transaction in which a new policy or contract is to be purchased and it is known or should be known to the proposing insurer or its agent that by reason of such transaction an existing policy or contract will be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value due to the use of nonforfeiture benefits or other policy values;

3. Amended so as to effect a reduction in benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid;

4. Reissued with a reduction in cash value; or

5. Used in a financed purchase.

(g) "Suitability information" means information related to the consumer that is reasonably appropriate to determine the suitability of a recommendation made to the consumer, including the following:

1. Age;

2. Annual income;

3. Financial situation and needs, including the financial resources used for funding the annuity;

4. Financial experience;

5. Financial objectives;

6. Intended use of the annuity;

7. Financial time horizon;

8. Existing assets, including investment and life insurance holdings;

9. Liquidity needs;

10. Liquid net worth;

11. Risk tolerance; and

12. Tax status.

(4) EXEMPTIONS.—This section does not apply to transactions involving:

(a) Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to this section;

(b) Contracts used to fund:

1. An employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act;

2. A plan described by s. 401(a), s. 401(k), s. 403(b), s. 408(k), or s. 408(p) of the Internal Revenue Code, if established or maintained by an employer;

3. A government or church plan defined in s. 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under s. 457 of the Internal Revenue Code;

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

5. Settlements or assumptions of liabilities associated

with personal injury litigation or any dispute or claim-resolution process; or

6. Formal prepaid funeral contracts.

(5) DUTIES OF INSURERS AND AGENTS.—

(a) When recommending the purchase or exchange of an annuity to a consumer which results in an insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer, based on the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

1. The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk.

2. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or the death or living benefit.

3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable; and, in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer based on his or her suitability information.

4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable after taking into consideration whether the consumer:

a. Will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

b. Would benefit from product enhancements and improvements; and

c. Has had another annuity exchange or replacement, in particular, an exchange or replacement within the preceding 36 months.

(b) Before executing a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurer or its agent must make reasonable efforts to obtain the consumer's suitability information. The information shall be collected on form DFS-H1-1980, which is hereby incorporated by reference, and completed and signed by the applicant and agent. Questions requesting this information must be presented in at least 12-point type and be sufficiently clear so as to be readily understandable by both the agent and the consumer. A true and correct executed copy of the form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and shall be provided to the consumer no later than the date of delivery of the contract or contracts.

(c) Except as provided under paragraph (d), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(d) An insurer's issuance of an annuity must be reasonable based on all the circumstances actually known to the insurer at the time the annuity is issued. However, an insurer or its agent does not have an obligation to a consumer related to an annuity transaction under paragraph (a) or paragraph (c) if:

1. A recommendation has not been made;

2. A recommendation was made and is later found to have been based on materially inaccurate information provided by the consumer;

3. A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of an insurer or its agent.

(e) At the time of sale, the agent or the agent's representative must:

1. Make a record of any recommendation made to the consumer pursuant to paragraph (a);

2. Obtain the consumer's signed statement documenting his or her refusal to provide suitability information, if applicable; and

3. Obtain the consumer's signed statement acknowledging that an annuity transaction is not recommended if he or she decides to enter into an annuity transaction that is not based

on the insurer's or its agent's recommendation, if applicable.

(f) Before executing a replacement or exchange of an annuity contract resulting from a recommendation, the agent must provide on form DFS-H1-1981, which is hereby incorporated by reference, information that compares the differences between the existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer. A true and correct executed copy of this form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and must be provided to the consumer no later than the date of delivery of the contract or contracts.

(g) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its agent's compliance with this section.

1. Such system must include, but is not limited to:

a. Maintaining reasonable procedures to inform its agents of the requirements of this section and incorporating those requirements into relevant agent training manuals;

b. Establishing standards for agent product training;

c. Providing product-specific training and training materials that explain all material features of its annuity products to its agents;

d. Maintaining procedures for the review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis for determining that

a recommendation is suitable. Such review procedures may use a screening system for identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. Such electronic or other system may be designed to require additional review only of those transactions identified for additional review using established selection criteria;

e. Maintaining reasonable procedures to detect recommendations that are not suitable. These may include, but are not limited to, confirmation of consumer suitability information, systematic customer surveys, consumer interviews, confirmation letters, and internal monitoring programs. This sub-subparagraph does not prevent an insurer from using sampling procedures or from confirming suitability information after the issuance or delivery of the annuity; and

f. Annually providing a report to senior managers, including the senior manager who is responsible for audit functions, which details a review, along with appropriate testing, which is reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

2. An insurer is not required to include in its supervision system agent recommendations to consumers of products other than the annuities offered by the insurer.

3. An insurer may contract for performance of a function required under subparagraph 1.

a. If an insurer contracts for the performance of a function, the insurer must include the supervision of

contractual performance as part of those procedures listed in subparagraph 1. These include, but are not limited to:

(I) Monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed; and

(II) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis for representing that the function is being properly performed.

b. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to subsection (8) regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with sub-subparagraph a.

(h) An agent may not dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer's request for confirmation of suitability information;

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

(i) Sales made in compliance with FINRA requirements pertaining to the suitability and supervision of annuity transactions shall satisfy the requirements of this section. This paragraph applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, this paragraph does not limit the ability of the office or the department to enforce, including investigate, the provisions of this section. For this paragraph to apply, an insurer must:

1. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

2. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer in maintaining its supervision system.

(6) RECORDKEEPING.—

(a) Insurers and agents must maintain or be able to make available to the office or department records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer may maintain the documentation on behalf of its agent.

(b) Records required to be maintained under this subsection may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.

(7) COMPLIANCE MITIGATION; PENALTIES.—

(a) An insurer is responsible for compliance with this section. If a violation occurs because of the action or inaction of the insurer or its agent, the office may order an insurer to take reasonably appropriate corrective action for a consumer harmed by the insurer's or by its agent's violation of this section and may impose appropriate penalties and sanctions.

(b) The department may order:

1. An insurance agent to take reasonably appropriate corrective action, including monetary restitution of penalties

or fees incurred by the consumer for any consumer harmed by a violation of this section by the insurance agent and impose appropriate penalties and sanctions.

2. A managing general agency or insurance agency that employs or contracts with an insurance agent to sell or solicit the sale of annuities to consumers must take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the insurance agent.

(c) In addition to any other penalty authorized under chapter 626, the department shall order an insurance agent to pay restitution to a consumer who has been deprived of money by the agent's misappropriation, conversion, or unlawful withholding of moneys belonging to the senior consumer in the course of a transaction involving annuities. The amount of restitution required to be paid may not exceed the amount misappropriated, converted, or unlawfully withheld. This paragraph does not limit or restrict a person's right to seek other remedies as provided by law.

(d) Any applicable penalty under the Florida Insurance Code for a violation of this section shall be reduced or eliminated according to a schedule adopted by the office or the department, as appropriate, if corrective action for the consumer was taken promptly after a violation was discovered.

(e) A violation of this section does not create or imply a private cause of action.

(8) PROHIBITED CHARGES.—An annuity contract issued to a senior consumer age 65 or older may not contain a surrender or deferred sales charge for a withdrawal of money from an annuity

exceeding 10 percent of the amount withdrawn. The charge shall be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the date of each premium payment when multiple premiums are paid, whichever is later. This subsection does not apply to annuities purchased by an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission, or to those annuities specified in paragraph (4)(b).

(9) RULES.—The department may adopt rules to administer this section.

Section 2. Subsection (4) of section 626.99, Florida Statutes, is amended to read:

626.99 Life insurance solicitation.—

(4) DISCLOSURE REQUIREMENTS.—

(a) The insurer shall provide to each prospective purchaser a buyer's guide and a policy summary prior to accepting the applicant's initial premium or premium deposit, unless the policy for which application is made provides an unconditional refund for ~~a period of~~ at least 14 days, or unless the policy summary contains an offer of such an unconditional refund. In these instances, the buyer's guide and policy summary must be delivered with the policy or before ~~prior to~~ delivery of the policy.

(b) With respect to fixed and variable annuities, the policy must provide an unconditional refund for ~~a period of~~ at least 21 ~~14~~ days. For fixed annuities, the buyer's guide must ~~shall~~ be in the form ~~as~~ provided by the National Association of Insurance Commissioners (NAIC) Annuity Disclosure Model

Regulation, until ~~such time as~~ a buyer's guide is developed by the department, at which time the department guide must be used. For variable annuities, a policy summary may be used, which may be contained in a prospectus, until such time as a buyer's guide is developed by NAIC or the department, at which time one of those guides must be used. Unconditional refund means ~~If the prospective owner of an annuity contract is 65 years of age or older~~:

1. An unconditional refund of premiums paid for a fixed annuity contract, including any contract fees or charges, must be available for a period of 21 days; and

2. An unconditional refund for variable or market value annuity contracts must be available for a period of 21 days. The unconditional refund shall be equal to the cash surrender value provided in the annuity contract, plus any fees or charges deducted from the premiums or imposed under the contract, or a refund of all premiums paid. This subparagraph does not apply if the prospective owner is an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission.

(c) The insurer shall attach a cover page to any annuity contract ~~policy~~ informing the purchaser of the unconditional refund period prescribed in paragraph (b). The cover page must also provide contact information for the issuing company and the selling agent, and the department's toll-free help line~~, and any other information required by the department by rule~~. The cover page must also contain the following disclosures in bold print and at least 12-point type, if applicable:

1. "PLEASE BE AWARE THAT THE PURCHASE OF AN ANNUITY CONTRACT IS A LONG-TERM COMMITMENT AND MAY RESTRICT ACCESS TO YOUR FUNDS."

2. "IT IS IMPORTANT THAT YOU UNDERSTAND HOW THE BONUS FEATURE OF YOUR CONTRACT WORKS. PLEASE REFER TO YOUR POLICY FOR FURTHER DETAILS."

3. "INTEREST RATES MAY HAVE CERTAIN LIMITATIONS. PLEASE REFER TO YOUR POLICY FOR FURTHER DETAILS."

4. "A [PROSPECTUS AND POLICY SUMMARY] [BUYERS GUIDE] IS REQUIRED TO BE GIVEN TO YOU."

The cover page is part of the policy and is subject to review by the office pursuant to s. 627.410.

(c) ~~(d)~~ The insurer shall provide a buyer's guide and a policy summary to a ~~any~~ prospective purchaser upon request.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1183 East County Water Control District, Lee and Hendry Counties
SPONSOR(S): Kreegel
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The East County Water Control District (ECWCD) is an independent special district that covers the eastern portions of Lee County and the western portion of Hendry County. The ECWCD was created in Lee County by judicial decree in 1958. The District was later expanded into Hendry County by judicial decree in 1961. In 2000, the ECWCD charter was codified pursuant to s. 189.429, F.S. The district is responsible for the maintenance of drainage infrastructure for 70,000 acres in portions of these two counties.

This bill provides for the Governor to fill any vacancies on the Board of Commissioners to serve until the next general election for which candidates can qualify so as long as the appointment is consistent with general law.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

The East County Water Control District (ECWCD) is an independent special district that covers the eastern portions of Lee County and the western portion of Hendry County. The ECWCD was created in Lee County by judicial decree in 1958. The District was later expanded into Hendry County by judicial decree in 1961. In 2000, the ECWCD charter was codified pursuant to s. 189.429, F.S. The district is responsible for the maintenance of drainage infrastructure for 70,000 acres in these counties. The district's Commissioners are elected by the popular vote of electors living within the special district's boundaries.[1]

Water control districts are governed by the provisions of Ch. 298, F.S. unless their charters say otherwise. Section 298.11, F.S., requires that election of a Board of Supervisors be done on a one-acre one-vote basis. Consistent with the one-acre, one-vote requirement, s. 298.12, F.S., requires that "in case of a vacancy in any office of supervisor[2] *elected by the landowners*, the remaining supervisors or, if they fail to act within 30 days, the Governor may fill such vacancy until the next annual meeting, when a successor shall be elected for the unexpired term."[3] However, s. 298.12, F.S., is not clear whether the same process (i.e. the remaining supervisors fill the vacancy or, if they fail to act within 30 days, the governor fills the vacancy) applies to the ECWCD because its board is elected by popular vote and *not elected by landowners*.

In 2009, the Florida Legislature amended the ECWCD's charter to resolve the ambiguity concerning the process of filling vacancies on the board.[4] The requirement that vacancies be filled pursuant to s. 298.12, F.S., was amended to read that vacancies be filled pursuant to s. 189.405(3)(a), F.S. This section requires that "[i]f a multicounty special district has a popularly elected governing board, elections for the purpose of electing members to such board shall conform to the Florida Election Code, chapters 97-106."[5] Because s. 189.405(3)(a), F.S., speaks more directly to the issue of elections for a multicounty special district with a popularly elected board—a more accurate description of the ECWCD than the description in s. 298.12, F.S.—the ECWCD believed this would resolve the ambiguities in the vacancy appointment process.[6]

The changes made in 2009 to the ECWCD's charter, however, failed to resolve the ambiguity as the Florida Election Code (chapters 97-106) does not clearly speak to how vacancies on the governing boards of special districts should be filled. Section 100.111, F.S., is entitled "Filling Vacancy." Yet there is little direction as to how a vacancy on the board of a special district must be filled. This is because the language in s. 100.111(1)(a), F.S., applies only to offices required to be filled pursuant to s. 1(f), Art. IV of the Florida Constitution,[7] i.e. only "state or county" offices. Therefore, the question of whether this provision encompasses the board members of an independent special district was still ambiguous. This continued legal uncertainty led to the filing of this bill so as to make the vacancy filling process unambiguously clear.[8]

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[1] ECWCD Charter, Section 4(4).
[2] Chapter 298 calls the elected officials on the board of a water control district "supervisors." However, Ch. 2009-260, L.O.F., changed the term "supervisors" to "commissioners" for purposes of the ECWCD.
[3] (Emphasis added).
[4] Chapter 2009-260, L.O.F.
[5] Section 189.405(3)(a), F.S.
[6] The ECWCD's executive director noted the ambiguity in s. 298.12, F.S. as the reasons for the amendment contained in Ch. 2009-260, L.O.F., during a telephone conversation with Community & Military Affairs Subcommittee staff.
[7] [T]he governor shall fill by appointment any vacancy in state or county office for the remainder of the term of an appointive office, and for the remainder of the term of an elective office if less than twenty-eight months, otherwise until the first Tuesday after the first Monday following the next general election.
[8] The ECWCD's executive director noted that the Florida Election Code contained legal uncertainties about the process for appointing vacancies during a telephone conversation with Community & Military Affairs Subcommittee staff.

Proposed Changes:

The bill amends the ECWCD's charter to clarify that "the Governor shall appoint a successor to serve until the next general election for which candidates may qualify." The bill also provides that the appointment must be consistent with general law. If in the future s. 298.12, F.S., is amended to clearly apply to water control districts whose board is not elected on a one-acre one-vote basis, then that amended provision contained in general law would control.

B. SECTION DIRECTORY:

Section 1: Amends Section 4 of the ECWCD charter to provide that, unless inconsistent with general law, the governor shall appoint members to the Board of Commissioners if a vacancy arises.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? December 1, 2011.

WHERE? Fort Myers News-Press.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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 East County Water Control District, Lee and Hendry Counties; amending chapter 2000-423, Laws of Florida, as amended; revising the procedure for filling vacancies on the district's board of commissioners; providing an effective date.

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

Section 1. Subsection (4) of section 4 of section 3 of chapter 2000-423, Laws of Florida, as amended by chapter 2009-260, Laws of Florida, is amended to read:

Section 4. Board of Commissioners; elections; candidate qualifications; powers and duties.—The provisions of chapter 298, Florida Statutes, to the contrary notwithstanding, the following provisions, to the extent of any conflict, shall control the East County Water Control District:

(4) Unless otherwise provided by general law, if a vacancy occurs on the Board of Commissioners before a general election, the Governor shall appoint a successor to serve until the next general election for which candidates may qualify ~~Vacancies on the Board shall be filled pursuant to section 189.405(3)(a), Florida Statutes~~.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1277 Money Services Businesses
SPONSOR(S): Insurance & Banking Subcommittee, Davis
TIED BILLS: HB 1279 **IDEN./SIM. BILLS:** SB 1586

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Barnum	Cooper
2) Economic Affairs Committee		Barnum	Tinker

SUMMARY ANALYSIS

In 2011, the Chief Financial Officer convened the Money Service Business Facilitated – Workers' Compensation Work Group to study the issue of workers' compensation premium fraud in Florida, as facilitated by check cashers, and develop recommendations to resolve the issue. The fraud makes possible avoidance of tax collections by the state, results in underpayment of workers compensation insurance premiums to the carriers, and places law-abiding contractors at a competitive disadvantage when competing, on a price basis, with contractors benefitting from the fraud.

The Office of Financial Regulations (OFR) is responsible for licensing money services businesses. There are currently 1,065 licensed businesses authorized to cash checks. Customer files, documentation, and records are reviewed during an examination or investigation by the OFR. Under current law, an examination must be conducted within 6 month of a license being issued, and then at least every 5 years. Because of the OFR's workload and limited assets, after the initial examination, a licensee can assume, with reasonable certainty, that it will not be examined again for several years, and knows that it will be provided advance notice. Thus, those conducting illegal activities are able to hide, destroy, or tamper with pertinent records or materials.

Check cashers who negotiate suspect checks may encounter difficulties in having their own financial institutions honor the checks, and credit their accounts. This incentivizes some to sell checks that their financial institutions will not honor. Selling of payment instruments within 5 business days after acceptance is permissible under current law. When money service businesses do not properly negotiate, endorse, or deposit checks, it may be difficult for the OFR to detect irregularities or illegalities.

The bill eliminates the requirement that the OFR provide a 15-day advance notice to money services business licensees prior to conducting an examination or investigation. This reduces the opportunity for hiding, destroying, or otherwise tampering with records and materials which may be pertinent to the OFR's examination or investigation. While retaining the requirement that each licensee be examined at least once every 5 years, the bill eliminates the requirement that the OFR conduct an examination of a business within 6 months of licensure. This will provide greater flexibility to the OFR by permitting use of its resources in a more targeted manner. Both changes reduce the predictability of when a business may be examined.

The bill requires that a check cashing business deposit payment instruments into its own commercial account at a federally insured financial institution and deletes the authorization to sell payment instruments within 5 business days after acceptance. Audit trails and tracking of moneys are facilitated by requiring that the deposit of all payment instruments be made into the business's own account.

The bill authorizes disciplinary action and provides for penalties should a check casher fail to maintain a depository account in its own name, or fail to deposit all payment instruments into its own account.

The bill stipulates that a check casher may only accept or cash a payment instrument from a person who is the original payee or a conductor who is an authorized officer of the corporate payee named on the instrument's face. In addition, it codifies the $5 verification fee currently established by rule. Acceptance and cashing of third-party checks is no longer authorized.

The bill has an indeterminate positive impact on state government and no impact on local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

In 2008, the Attorney General impaneled the Eighteenth Statewide Grand Jury to look into the issue of fraudulent insurance and other organized criminal enterprises. In March 2008, it published the Second Interim Report of the Statewide Grand Jury entitled "Check Cashers: A Call for Enforcement." As a result, Ch. 560, F.S., Money Services Business, underwent a major re-write to address concerns with fraudulent insurance and money laundering activities. While the reforms were positive, the legislation did not cure the problem of facilitators creating shell companies for the purpose of purchasing workers compensation insurance policies and then, for a fee, allowing uninsured contractors to use those certificates of insurance.

In 2011, the Chief Financial Officer convened the Money Service Business Facilitated – Workers' Compensation Work Group to study the issue of workers' compensation premium fraud in Florida, as facilitated by check cashers, and develop recommendations to resolve the issue. It was comprised of representatives from state government and industry stakeholders. A report containing the work group's recommendations and other relevant materials are available online.[1]

Workers' compensation insurance fraud continues to be a problem within Florida's construction industry. The scheme involves facilitators, contractors, and money services businesses. Facilitators create fake shell companies, typically incorporated online through the Department of State, so as to avoid true review and verification. The shell companies then purchase a minimal workers' compensation insurance policy, usually by describing its operations as a two to four person company. The facilitator may then approach an uninsured subcontractor who is looking for work but lacks the valid workers' compensation policy necessary to obtain contracts from a general contractor. The facilitator makes the shell company's name and workers' compensation policy available for use by the uninsured subcontractor, for a fee. Subsequently, a general contractor, knowingly or unknowingly, uses the uninsured subcontractor to perform work.

Once the uninsured subcontractor completes work under the guise of the shell company, payment will be made to him/her from the general contractor via company check made payable to the shell company. Typically, the check cannot be cashed at a bank because most banks will not cash a check made payable to a business or third party, but rather will require that the check be deposited into the payee's bank account. However, money service businesses will allow the cashing of the third-party business-to-business checks by certain "authorized" persons related to the payee. These "authorized" persons are the facilitator and others designated by the facilitator. Many times, these people have been introduced to the money service business' employees in advance, and limited powers of attorney listing these "authorized" persons are found in the "Know Your Customer" files of the money service business's records.

When checks made payable to the shell company are negotiated at the complicit money services business, two fees are taken out. One, usually between 1.5% and 2%, is taken out for the money services business as the fee for cashing the check. The second fee, usually between 6% and 8%, is taken out for the facilitator, as the fee for use of the shell company's name and workers' compensation insurance policy. The balance of the check is then returned to the uninsured subcontractor, posing as the shell company, in cash. The money paid in this manner is not reported to the shell company's workers' compensation insurance carrier, effectively avoiding the payment of any workers' compensation premiums or applicable payroll taxes. The payments are not considered payroll exposure because, on paper, the transaction appears to be a legitimate contractor to insured subcontractor payment.

[1] http://www.myfloridacfo.com/sitePages/agency/sections/MoneyServiceBusiness.aspx (Last visited on January 26, 2012).

Some money service businesses are at least tacitly aware of the fraud and their role in its success. Complicit money service businesses falsify required documents regarding the true identity of those persons authorized to conduct the transactions. To do this, they will complete Currency Transaction Reports for transactions in excess of $10,000 in the name of the owner of the shell company, rather than the facilitator, to protect the latter's identity.

Facilitators may duplicate this scheme multiple times using the same workers' compensation insurance policy. Upon becoming concerned with detection, they close the shell company, which only exists on paper, and form a new entity. Shell company documentation often reflects questionable information, such as an owner who does not exist or is in the country illegally. Therefore, it is difficult link these fraudulent activities.

Uninsured subcontractors, by avoiding actual workers' compensation premiums, are able to pass that cost savings on to general contractors, some of whom may be complicit in this fraud. Contractors and subcontractors who are in compliance with the state's workers' compensation insurance laws are placed at a competitive disadvantage when competing, on a price basis, with contractors benefitting from the fraud.

These fraudulent activities make possible avoidance of tax collection by the state. They result in underpayment of workers compensation insurance premiums to the carriers. Additionally, when an uninsured worker is injured, the costs are ultimately paid for by all taxpayers.

Current Situation:

The Office of Financial Regulations (OFR) is responsible for licensing money services businesses. There are currently 1,065 licensed businesses having authority to engage in check cashing.[2] Current law provides that the requirement for licensure does not apply to a person cashing payment instruments that have an aggregate face value of less than $2,000 per person per day and that are incidental to the retail sale of goods or services, within certain parameters. The $2,000 benchmark was selected in 2008 after conversations with interested parties including representatives from Jackson Hewitt, Wal-Mart, Amscot Financial, Inc., and others. The $2,000 amount was felt to still provide protection against fraudulent insurance and money laundering activities, and was consistent with the IRS's reported average federal tax refund.

There are no federal regulations which require a bank to cash a check for an individual who does not have an account with that bank. A 2009 Federal Deposit Insurance Corporation national survey of unbanked and underbanked household reported that an estimated 7.7% of U.S. households do not have a checking or savings account. According to the survey, 527,000 or 7% of Florida's households are unbanked.[3]

Check cashers are limited in the fees they may charge. By law, a check casher may not charge fees:

- In excess of 5% of the face amount of the payment instrument, or $5, whichever is greater.
- In excess of 3% of the face amount of the payment instrument, or $5, whichever is greater, if the payment instrument is any kind of state public assistance or federal social security benefit.
- For personal checks or money orders in excess of 10% of the face amount of those payment instruments, or $5, whichever is greater.[4]

Check cashers are authorized to collect a fee linked to the direct costs of verifying such things as a customer's identity or employment. That fee, established by rule, may not exceed $5.[5]

Documentation and record keeping requirements for Florida-licensed check cashers are established in law. These specify that, for any payment instrument accepted having a face value of $1,000 or more,

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[2] Office of Financial Regulation HB 1277 Bill Analysis dated January 20, 2012, on file with the Insurance & Banking Subcommittee.
[3] http://www.fdic.gov/householdsurvey (Last visited on January 26, 2012).
[4] s. 560.309(8), F.S.
[5] 69V-560.801, F.A.C.

the check casher must maintain a copy of the personal identification that bears a photograph of the customer used as identification and a thumbprint of the customer taken by the licensee. Licensees are required to affix customer thumbprints to the original of each payment instrument exceeding $1,000, as well as secure and maintain a copy of the original payment instrument, a copy of the customer's personal identification presented at the time of acceptance, and maintain customer files for those cashing a corporate and third party payment instrument. Those customer files must include documentation from the Secretary of State verifying the corporate registration, Articles of Incorporation, information from the Department of Financial Services Compliance Proof of Coverage Query Page, and documentation of those authorized to negotiate payment instruments on the corporation's behalf. The files must be updated annually. Record keeping requirements for check cashers when the payment instrument is $1,000 or more, at a minimum, must include:

- Transaction date.
- Payor name.
- Payee name.
- Conductor name, if other than the payee.
- Amount of payment instrument.
- Amount of currency provided.
- Type of payment instrument.
- Fee charged for the cashing of the payment instrument.
- Branch/Location where instrument was accepted.
- Identification type presented by conductor.
- Identification number presented by conductor.

It is required that logs of these transactions be maintained in an electronic format that is readily retrievable and capable of being exported to most widely available software applications including Microsoft EXCEL.[6]

Customer files, documentation, and records are reviewed during an examination or investigation by the OFR. By law, an examination must be conducted within 6 months of a license being issued, and then at least every 5 years.[7] With few exceptions, the OFR is required to provide at least 15 days' notice to a money services business prior to conducting an examination or investigation.[8] Thus, those conducting illegal activities are able to hide, destroy, or tamper with pertinent records or materials. Because of the OFR's workload and limited assets, after the initial examination, a licensee can assume, with reasonable certainty, that it will not be examined again for several years and, when the examination or investigation does occur, it will receive advance notice.

Check cashers who negotiate suspect checks may encounter difficulties in having their financial institutions honor the checks, and in turn, credit their accounts. This incentivizes some check cashing facilities to sell checks that their financial institutions will not honor. Selling of payment instruments within 5 business days after acceptance is permissible under current law.[9] When money service businesses do not properly negotiate, endorse, or deposit checks, it may be difficult for the OFR to detect irregularities or illegalities.[10]

Effect of the bill:

The bill eliminates the requirement that the OFR provide a 15-day advance notice to money services business licensees prior to conducting an examination or investigation. This change reduces the opportunity for hiding, destroying, or otherwise tampering with records and materials which may be pertinent to the OFR's examination or investigation. While retaining the requirement that each licensee be examined at least once every 5 years, the bill eliminates the requirement that the OFR conduct an examination of a business within 6 months of the business becoming licensed. This will provide greater

[6] 69V-560.704 F.A.C.
[7] *Id.*
[8] s. 560.109(1), F.S.
[9] s. 560.309(3), F.S.
[10] *A Report by the Money Services Business Facilitated Workers' Compensation Fraud Work Group*

flexibility to the OFR by permitting use of its resources in a more targeted manner. Both changes reduce the predictability of when a business may be examined.

The bill requires that a check cashing business deposit payment instruments into its own commercial account at a federally insured financial institution and deletes the authorization to sell payment instruments within 5 business days after acceptance. Audit trails and tracking of moneys are facilitated by requiring that the deposit of all payment instruments be made into the business's own account. Maintaining such an account is a prerequisite for continued operation. A licensee is required to notify the OFR within 5 business days after it ceases to maintain a commercial depository account in its own name and, before resuming check cashing, must reestablish such an account and notify the OFR that the account exists.

The bill authorizes disciplinary action and provides for penalties should a check casher fail to maintain a depository account in its own name, or fail to deposit all payment instruments into its own account. Possible disciplinary actions include denial, revocation, or suspension of a license. In addition, it provides a definition for "fraudulent identification paraphernalia"[11] and specifies that that possession and use of fraudulent identification paraphernalia is a prohibited act punishable as a felony of the third degree.

The bill stipulates that a check casher may only accept or cash a payment instrument from a person who is the original payee or a conductor who is an authorized officer of the corporate payee named on the instrument's face. Acceptance and cashing of third-party checks is no longer authorized.

The bill codifies the $5 fee, currently established by rule, which is linked to the direct cost of verifying such things as a customer's identity or employment.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 560.103, F.S., relating to definitions.

Section 2: Amends s. 560.109, F.S., relating to examinations and investigations.

Section 3: Amends s. 560.111, F.S., relating to prohibited acts.

Section 4 Reenacts and amends s. 560.114, F.S., relating to disciplinary action penalties.

Section 5: Amends s. 560.126, F.S., relating to required notice by licensee.

Section 6: Amends s. 560.309, F.S., relating to conduct of business.

Section 7: Amends s. 560.310, F.S., relating to records of check cashers and foreign currency exchangers.

Section 8: Provides an effective date of July 1, 2012.

[11] "Fraudulent identification paraphernalia" means all equipment, products, or materials of any kind that are used, intended for use, or designed for use in the misrepresentation of a customer's identity. The term includes a signature or thumbprint stamp, blank, stolen, counterfeit, or unlawfully issued personal identification.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. There may be an increase in tax revenue as underpayment of workers' compensation insurance premium and falsified reporting of payroll are reduced.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

- Elimination of the competitive advantage resulting from use of subcontractors without workers' compensation insurance may result in additional business for law-abiding contractors.
- By ensuring all appropriate individuals are covered by workers compensation insurance, the cost of care for the uninsured, which is ultimately paid for by all taxpayers, may be reduced.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take 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

At the January 30, 2012 meeting of the Insurance & Banking Subcommittee, a Proposed Committee Substitute was considered and adopted. It was reported favorably as a Committee Substitute.

The Proposed Committee Substitute:

- Removed authorization for the establishment and administration of a centralized database of check cashing transaction information.
- Removed the requirement for real-time reporting of transaction data.
- Removed the funding mechanism for establishment, maintenance, and administration of the centralized database.

The analysis is drafted to the Committee Substitute.

A bill to be entitled

An act relating to money services businesses; amending s. 560.103, F.S.; defining terms for purposes of provisions regulating money services businesses; amending s. 560.109, F.S.; revising the frequency and notice requirements for examinations and investigations by the Office of Financial Regulation of money services business licensees; amending s. 560.111, F.S.; prohibiting money services businesses, authorized vendors, and affiliated parties from knowingly possessing certain paraphernalia used or intended or designed for use in misrepresenting a customer's identity, for which penalties apply; prohibiting certain persons from providing a customer's personal identification information to a money services business licensee and providing penalties; reenacting s. 560.114(1)(h), F.S., relating to penalties for certain prohibited acts by money services businesses, to incorporate amendments made by the act to s. 560.111, F.S., in a reference thereto; amending s. 560.114, F.S.; prohibiting certain acts by money services businesses, authorized vendors, and affiliated parties, for which penalties apply; revising the conditions for which a money services business license may be suspended; amending ss. 560.126 and 560.309, F.S.; requiring a money services business licensee to maintain its own federally insured depository account and deposit into the

account any payment instruments cashed; requiring a licensee to notify the office and cease to cash payment instruments if the licensee ceases to maintain the account; prohibiting a licensee from accepting or cashing a payment instrument from a person who is not the original payee except under certain circumstances; establishing a limit on the amount of fees that licensees may charge for the direct costs of verification of payment instruments cashed; amending s. 560.310, F.S.; revising requirements for the records that a money services business licensee must maintain related to the payment instruments cashed; providing an effective date.

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

Section 1. Subsections (9) and (10) of section 560.103, Florida Statutes, are renumbered as subsections (11) and (12), respectively, present subsections (11) through (14) are renumbered as subsections (14) through (17), respectively, present subsections (15) through (27) are renumbered as subsections (19) through (31), respectively, present subsections (28) through (30) are renumbered as subsections (33) through (35), respectively, and new subsections (9), (10), (13), (18), and (32) are added to that section, to read:

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

(9) "Conductor" means a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument.

(10) "Corporate payment instrument" means a payment instrument on which the payee named on the instrument's face is other than a natural person.

(13) "Department" means the Department of Financial Services.

(18) "Fraudulent identification paraphernalia" means all equipment, products, or materials of any kind that are used, intended for use, or designed for use in the misrepresentation of a customer's identity. The term includes, but is not limited to:

(a) A signature stamp, thumbprint stamp, or other tool or device used to forge a customer's personal identification information.

(b) An original of any type of personal identification listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully issued.

(c) A blank, forged, fictitious, or counterfeit instrument in the similitude of any type of personal identification listed in s. 560.310(2)(b) which would in context lead a reasonably prudent person to believe that such instrument is an authentic original of such personal identification.

(d) Counterfeit, fictitious, or fabricated information in the similitude of a customer's personal identification information that, although not authentic, would in context lead a reasonably prudent person to credit its authenticity.

(32) "Personal identification information" means a customer's name that, alone or together with any of the following information, may be used to identify that specific customer:

(a) Customer's signature.

(b) Photograph, digital image, or other likeness of the customer.

(c) Unique biometric data, such as the customer's thumbprint or fingerprint, voice print, retina or iris image, or other unique physical representation of the customer.

Section 2. Subsections (1) and (7) of section 560.109, Florida Statutes, are amended to read:

560.109 Examinations and investigations.—The office may conduct examinations and investigations, within or outside this state to determine whether a person has violated any provision of this chapter and related rules, or of any practice or conduct that creates the likelihood of material loss, insolvency, or dissipation of the assets of a money services business or otherwise materially prejudices the interests of their customers.

(1) The office may, without advance notice, examine or investigate each licensee as often as is warranted for the protection of customers and in the public interest. However, the office must examine each licensee~~, but~~ at least once every 5 years. ~~A new licensee shall be examined within 6 months after the issuance of the license. The office shall provide at least 15 days' notice to a money services business, its authorized vendor, or license applicant before conducting an examination or~~

~~investigation. However,~~ The office may, without advance notice, examine ~~conduct an examination~~ or investigate ~~investigation of~~ a money services business, authorized vendor, ~~or~~ affiliated party, or license applicant at any time ~~and without advance notice~~ if the office suspects that the money services business, authorized vendor, ~~or~~ affiliated party, or license applicant has violated or is about to violate any provision ~~provisions~~ of this chapter or any criminal law ~~laws~~ of this state or of the United States.

(7) Reasonable and necessary costs incurred by the office or third parties authorized by the office in connection with examinations or investigations may be assessed against any person subject to this chapter on the basis of actual costs incurred. Assessable expenses include, but are not limited to, expenses for: interpreters; certified translations of documents into the English language required by this chapter or related rules; communications; legal representation; economic, legal, or other research, analyses, and testimony; and fees and expenses for witnesses. The failure to reimburse the office is a ground for denial of a license application, denial of a license renewal, or for revocation of any approval thereof. Except for examinations authorized under this section ~~s. 560.109~~, costs may not be assessed against a person unless the office determines that the person has operated or is operating in violation of this chapter.

Section 3. Paragraph (g) is added to subsection (1) of section 560.111, Florida Statutes, subsections (3) and (4) are renumbered as subsections (4) and (5), respectively, and a new subsection (3) is added to that section, to read:

560.111 Prohibited acts.—

(1) A money services business, authorized vendor, or affiliated party may not:

(g) Knowingly possess any fraudulent identification paraphernalia. This paragraph does not prohibit the maintenance and retention of any records required by this chapter.

(3) A person other than the conductor of a payment instrument may not provide a licensee engaged in cashing the payment instrument with the customer's personal identification information.

Section 4. Paragraph (h) of subsection (1) of section 560.114, Florida Statutes, is reenacted, paragraphs (aa)and (bb) are added to that subsection, and subsection (2) of that section is amended, to read:

560.114 Disciplinary actions; penalties.—

(1) The following actions by a money services business, authorized vendor, or affiliated party constitute grounds for the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or taking any other action within the authority of the office pursuant to this chapter:

(h) Engaging in an act prohibited under s. 560.111.

(aa) Failure of a check casher to maintain a federally insured depository account as required by s. 560.309.

(bb) Failure of a check casher to deposit into its own federally insured depository account any payment instrument cashed as required by s. 560.309.

(2) The office may immediately suspend the license of any

money services business if the money services business fails to:

(a) Provide to the office, upon written request, any of the records required by s. ~~ss.~~ 560.123, s. 560.1235, s. 560.211, or s. ~~and~~ 560.310 or any rule adopted under those sections. The suspension may be rescinded if the licensee submits the requested records to the office.

(b) Maintain a federally insured depository account as required by s. 560.309.

For purposes of s. 120.60(6), failure to perform ~~provide~~ any of the acts specified in this subsection ~~above-mentioned records~~ constitutes immediate and serious danger to the public health, safety, and welfare.

Section 5. Subsection (4) is added to section 560.126, Florida Statutes, to read:

560.126 Required notice by licensee.—

(4) A licensee that engages in check cashing must notify the office within 5 business days after the licensee ceases to maintain a federally insured depository account as required by s. 560.309(3) and, before resuming check cashing, must reestablish such an account and notify the office of the account.

Section 6. Subsections (3), (4), and (8) of section 560.309, Florida Statutes, are amended to read:

560.309 Conduct of business.—

(3) A licensee under this part must maintain and deposit payment instruments into its own ~~a~~ commercial account at a federally insured financial institution. If a licensee ceases to

maintain such a depository account, the licensee must not engage in check cashing until the licensee reestablishes such an account and notifies the office of the account as required by s. 560.126(4) ~~or sell payment instruments within 5 business days after the acceptance of the payment instrument~~.

(4) A licensee may not accept or cash a ~~multiple~~ payment instrument ~~instruments~~ from a person who is not the original payee; however, this subsection does not prohibit a licensee from accepting or cashing a corporate payment instrument from a conductor who is an authorized officer of the corporate payee named on the instrument's face~~, unless the person is licensed to cash payment instruments pursuant to this part and all payment instruments accepted are endorsed with the legal name of the person~~.

(8) Exclusive of the direct costs of verification, which shall be established by rule not to exceed $5, a check casher may not:

(a) Charge fees, except as otherwise provided by this part, in excess of 5 percent of the face amount of the payment instrument, or $5, whichever is greater;

(b) Charge fees in excess of 3 percent of the face amount of the payment instrument, or $5, whichever is greater, if such payment instrument is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument; or

(c) Charge fees for personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or $5, whichever is greater.

Section 7. Section 560.310, Florida Statutes, is amended to read:

560.310 Records of check cashers and foreign currency exchangers.—

(1) ~~In addition to the record retention requirements specified in s. 560.1105,~~ A licensee engaged in check cashing must maintain for the period specified in s. 560.1105 a copy of each payment instrument cashed.

(2) If the payment instrument exceeds $1,000, the following additional information must be maintained ~~the following~~:

(a) Customer files, as prescribed by rule, on all customers who cash corporate ~~or third-party~~ payment instruments that exceed ~~exceeding~~ $1,000.

(b) ~~For any payment instrument accepted having a face value of $1,000 or more:~~

~~1.~~ A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer. Acceptable personal identification is limited to a valid driver ~~driver's~~ license; a state identification card issued by any state of the United States or its territories or the District of Columbia, and showing a photograph and signature; a United States Government Resident Alien Identification Card; a passport; or a United States Military identification card.

(c)~~2.~~ A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.

(d) ~~(c)~~ A payment instrument log that must be maintained electronically as prescribed by rule. For purposes of this paragraph, multiple payment instruments accepted from any one person on any given day which total $1,000 or more must be aggregated and reported on the log.

(3) ~~(2)~~ A licensee under this part may engage the services of a third party that is not a depository institution for the maintenance and storage of records required by this section if all the requirements of this section are met.

Section 8. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1297 City of Dania Beach, Broward County
SPONSOR(S): Jenne
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N	Read	Hoagland
2) Agriculture & Natural Resources Subcommittee	14 Y, 0 N	Deslatte	Blalock
3) Economic Affairs Committee		Read HR	Tinker TBT

SUMMARY ANALYSIS

This bill provides for the municipal annexation of an area seaward of the City of Dania Beach. The area to be annexed extends three miles offshore to the territorial boundary of Florida. The main effect of this annexation will be the inclusion of the Dania Pier in the City of Dania Beach. Currently the pier is outside of the city's jurisdiction even though the city has proprietary interest via a sovereign submerged lands lease for the land beneath the pier.

The bill is expected to have no fiscal impact.

The bill's effective date is upon becoming a law.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill because the area proposed to be annexed does not meet the minimum requirements of s. 171.043, F.S., which defines the types of areas that may be annexed.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

The City of Dania Beach is an incorporated municipality in southeast Broward County. One of the main attractions in the City of Dania Beach is the Dania Pier, which extends approximately 1,300 feet into the Atlantic Ocean.[1] However, most of the pier, i.e., those parts seaward of the mean low water mark, is not within the territorial boundaries of the city.[2] The city's territorial boundary ends at the mean low water mark. As such, the city is unable to enforce their municipal ordinances on the pier.[3]

The eastern territorial boundary of both the State of Florida[4] and Broward County[5] extends out into the Atlantic Ocean three miles off the coast of Florida.

Annexation:

Article VII, Section 2(c) of the Florida Constitution states that "[m]unicipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law." Chapter 171, F.S., sets out statutory requirements for municipal annexation. However, due to limitations contained in Ch. 171, F.S.,[6] the City of Dania Beach is unable to annex the proposed area under the procedures described in that chapter.

Annexation of sovereign submerged lands seaward to the territorial limits of Florida (three miles off the coast) is also consistent with the practice of other municipalities in Broward County. Pompano Beach,[7] Lauderdale-by-the-Sea,[8] and Fort Lauderdale[9] have each annexed such sovereign submerged lands.

Effect of Proposed Changes:

The bill would result in the annexation of all sovereign submerged lands extending three miles out into the Atlantic Ocean.

B. SECTION DIRECTORY:

Section 1: Describes the area to be annexed.

Section 2: Provides an effective date of becoming law.

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[1] *See* Joe Julavits, *Countdown to Opening Day: Pier pressure for new facility*, THE JACKSONVILLE TIMES-UNION (July 25, 2004) *available at* http://jacksonville.com/tu-online/stories/072504/spo_16184226.shtml.

[2] Per correspondence with Broward Legislative Delegation (January 18, 2012).

[3] Per correspondence with Bob Daniels, City Manager, City of Dania Beach (January 20, 2012).

[4] Article X, Sec. 16(c)(5) (defining "nearshore and inshore Florida waters" as "all Florida waters inside a line three miles seaward of the coastline along the Gulf of Mexico and inside a line one mile seaward of the coastline along the Atlantic Ocean.").

[5] Section 7.06, F.S.

[6] *See* s. 171.043, F.S., describing lands that may be annexed. The reason the area proposed to be annexed does not satisfy the this requirement is that the sovereign submerged lands are neither developed for urban purposes, s. 171.043(2), F.S., nor lying between the municipal boundary and an area developed for urban purposes, s. 171.043(3)(a), F.S., nor "adjacent, on at least 60 percent of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes," s. 171.043(3)(a), F.S.

[7] Article I, Sec 2 of the Pompano Beach Charter.

[8] *See* Ch. 2002-357, L.O.F. (annexing sovereign submerged lands out to "the eastern boundary line of the State of Florida"); Art. II, Sec 2-2 of the Town of Lauderdale-by-the-Sea Charter.

[9] Article II, Sec. 2-01 of the Fort Lauderdale Charter.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? December 7, 2011

WHERE? The Sun-Sentinel in Broward County.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

According to the economic impact statement, there will be no economic impact as a result of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill because the area proposed to be annexed does not meet the minimum requirements of s. 171.043, F.S., which defines the types of areas that may be annexed.

Section 171.043 sets the minimum requirements for areas that may be annexed. The area to be annexed must be: (1) contiguous to the municipality; and (2) either developed for urban purposes or be in between other areas developed for urban purposes. Because the annexing of sovereign submerged lands does not satisfy these minimum requirements for annexation, this bill may be an exemption from general law.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to City of Dania Beach, Broward County; extending the corporate limits of the City of Dania Beach to include the area that extends 3 miles into the Atlantic Ocean from the city's existing shoreline; providing an effective date.

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

Section 1. The present corporate limits of the City of Dania Beach, Broward County, Florida, are extended and enlarged effective September 15, 2012, so as to include, in addition to the territory presently within its corporate limits, the area that extends 3 miles into the Atlantic Ocean from the city's existing shoreline, particularly described as follows:

A portion of the Atlantic Ocean lying between the mean (ordinary) low water mark and the three mile limit and adjoining that portion of the Corporate Limits of the City of Dania Beach lying in Section 36, Township 50 South, Range 42 East, Broward County, Florida and being more particularly described as follows:

BEGINNING at the intersection of the Easterly projection of the common boundary of Lots 71 and 72 of Block 172, HOLLYWOOD CENTRAL BEACH, according to the plat thereof as recorded in Plat Book 4, page 20, of the Public Records of Broward County and the mean

(ordinary) low water mark of the Atlantic Ocean, said point being on Northerly line of the Corporate Limits of the City of Dania Beach as established by Chapter 30689, Acts 1955 of the Laws of Florida the same being the Corporate Limits of the City of Hollywood as established by Chapter 30836 of the Laws of Florida;

Thence Easterly on said Easterly projection of the common boundary of Lots 71 and 72 of Block 172, HOLLYWOOD CENTRAL BEACH to the intersection with the East boundary line of the State of Florida, also known as the three mile limit;

Thence Southerly on said East boundary line of the State of Florida, also known as the three mile limit, to the intersection with the Easterly projection of the South line of Block 206 of said HOLLYWOOD CENTRAL BEACH, said South line being the original Corporate Limits as described in the Municipal Code of the City of Dania Beach and the Corporate Limits of the City of Hollywood as established by Chapter 30836 of the Laws of Florida;

Thence Westerly on said Easterly projection of the South line of Block 206 to the intersection with the mean (ordinary) low water mark of the Atlantic Ocean;

Thence Northerly on said mean (ordinary) low water

mark of the Atlantic Ocean and on said Original Corporate Limits of the City of Dania Beach as established by said Chapter 30689, Acts 1955 of the Laws of Florida, to the POINT OF BEGINNING.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1483 Alachua County
SPONSOR(S): Chestnut IV
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N	Duncan	Hoagland
2) Economic Affairs Committee		Duncan	Tinker TST

SUMMARY ANALYSIS

In 1957, the Legislature authorized the establishment and maintenance of a law library located in the Alachua County Courthouse and stated that a law library would benefit the public in general and aid in expediting matters before the court in Alachua County.

The bill moves the location of the John A.H. Murphree Law Library from the Alachua County Courthouse to the Alachua County Library District Headquarters to provide greater access to the public and local attorneys. The bill also deletes the provisions authorizing assessments and fees and removes obsolete language and outdated terms.

The bill provides an effective of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1957,[1] the Legislature authorized the establishment and maintenance of a law library located in the Alachua County Courthouse and stated that a law library would benefit the public in general and aid in expediting matters before the court in Alachua County.

A board of trustees (Board) consisting of five members for the John A.H. Murphree Law Library has the power and authority to establish, operate, and maintain a law library in the county courthouse; and to prescribe rules and regulations as to the Board's functions and organization and the use, maintenance, and operation of the library.

Each member of the bar who is practicing law in Alachua County and is not exempt from paying an occupational license tax is required to pay $5.00 in addition to the annual county occupational license tax. The proceeds of the additional county occupational tax assessed and collected by the Alachua County tax collector must be transmitted to the Board annually.

Additionally, the clerk of the circuit court is directed to collect no more than $5.00 for each civil case in addition to other legal fees and forward the funds collected to the Board on a monthly basis. The Board is granted the authority to, by resolution, reduce the amount to be collected.

Effect of Proposed Changes

The bill moves the location of the John A.H. Murphree Law Library from the Alachua County Courthouse to the Alachua County Library District Headquarters[2] to provide greater access to the public and local attorneys. The bill also deletes the provisions relating to the assessment and fees and replaces obsolete language and outdated terms.

B. SECTION DIRECTORY:

Section 1: Amends ch. 57-1118, L.O.F., as amended by ch. 79-426, L.O.F., relating to the location of the John A.H. Murphree Law Library.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 11, 2011

WHERE? *The Gainesville Sun*, a daily newspaper published in Alachua County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

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[1] Chapter 57-1118, L.O.F.

[2] The Alachua County Library District is an independent special district created to provide a library system services and facilities for the citizens of Alachua County. The library district does not have authority over the school library system in Alachua County. Chapter 2003-375, L.O.F.

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2012-2013 or 2013-2014.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

A bill to be entitled

An act relating to Alachua County; amending chapter 57-1118, Laws of Florida, as amended; revising the location of the county law library; removing outdated and unnecessary sections relating to assessment of certain fees and court costs; providing editorial revisions to update the act; providing an effective date.

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

Section 1. Chapter 57-1118, Laws of Florida, as amended by chapter 79-426, Laws of Florida, is amended to read:

Section 1. There is hereby created a board of trustees to be known as the "Board of Trustees, John A. H. Murphree Law Library," ~~,~~ which ~~board~~ shall consist of five ~~(5)~~ members: the chief judge of the Eighth Judicial Circuit of Florida, one member to represent the Board of County Commissioners of Alachua ~~said~~ County to be chosen by the ~~said~~ board biennially, the clerk of the circuit court of the ~~said~~ county, and two ~~(2)~~ practicing attorneys of the ~~said~~ county to be appointed by the president of the bar association of the Eighth Judicial Circuit of Florida. At the time this act takes effect, one ~~(1)~~ practicing attorney shall be appointed for a term ending April 1, 1958, and one ~~(1)~~ for a term ending April 1, 1959; on April 1, 1958, and annually thereafter, one ~~(1)~~ practicing attorney shall be appointed for a term of ~~two~~ ~~(2)~~ years. The ~~Said~~ board of trustees shall have full power and authority to establish, operate, and maintain a

law library, to be known as the "John A. H. Murphree Law Library" in the Alachua County Library District Headquarters ~~courthouse~~, Alachua County, Florida, and to prescribe rules and regulations as to the ~~said~~ board's functions and organization~~,~~ and the use, maintenance, and operation of the ~~said~~ law library.

~~Section 2. Each member of the bar engaged in the practice of law in said county and not exempt from payment of an occupational license as such shall be required to pay in addition to the annual county occupational license tax the sum of five dollars ($5.00) which shall constitute and be considered as an integral part and portion of the county occupational tax payable in said county. The proceeds of such additional county occupational tax as assessed and collected shall be turned over by the county tax collector of said county to the board of trustees each year to be kept and expended as hereinafter provided.~~

~~Section 3. There shall be taxed and collected by the clerk of the circuit court of said county, the sum of five dollars ($5.00) as costs in each civil cause at law or in equity commenced therein, in addition to the costs otherwise provided by law, the whole of which sum shall be set apart by said clerk and turned over at the end of each month to the board of trustees herein established; provided, however, that said board of trustees may, from time to time by resolution direct said clerk to collect any lesser amount, until such time as said board by similar resolution may direct said clerk to collect a larger amount, not exceeding said sum of five dollars ($5.00).~~

Section 2. ~~4.~~ The board of county commissioners ~~of said county~~ is authorized to appropriate ~~other~~ available funds for the use of the ~~said~~ law library.

Section 3. ~~5.~~ All funds for the use of the ~~said~~ law library shall be placed by the ~~said~~ board of trustees in a fund to be known as the "Alachua County Law Library Fund," which may ~~said fund shall~~ be expended by the ~~said~~ board of trustees only for the purpose of establishing, operating, and maintaining a law library as herein provided, including securing furnishings and equipment and employing necessary personnel appropriate thereto.

Section 4. ~~6.~~ ~~Upon the creation of the Alachua county law library,~~ All donations to the law library ~~same~~ and all property ~~in anywise~~ acquired by donations, purchase, or otherwise shall be deemed to be held and used by the ~~said~~ board of trustees as a charitable public trust for the benefit and use of the inhabitants of Alachua County, Florida, and shall be exempt from all taxation.

Section 5. ~~7.~~ All laws and parts of laws in conflict with this act ~~be, and the same~~ are superseded to the extent of such conflict ~~hereby repealed~~.

Section 6. ~~8.~~ If any clause, section, or other part of this act shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and in no wise affecting the validity of the other provisions of this act.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7039 PCB THSS 12-01 Transportation Facility Designations
SPONSOR(S): Transportation & Highway Safety Subcommittee, Drake and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Highway Safety Subcommittee	13 Y, 0 N	Johnson	Kruse
1) Economic Affairs Committee		Johnson	Tinker

SUMMARY ANALYSIS

State law provides for legislative designations of transportation facilities for honorary or memorial purposes, or to distinguish a particular facility. The legislative designations do not officially change the current names of the facilities, nor does the law require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings.

The bill makes the following designations and directs the Department of Transportation to erect suitable markers for each of these designations:

- SP4 Thomas Berry Corbin Memorial Highway and U.S. Navy BMC Samuel Calhoun Chavous Jr., Memorial Highway in Dixie County.
- Marine Lance Corporal Brian R. Buesing Memorial Highway, United States Army Sergeant Karl A. Campbell Memorial Highway, and U.S. Army SPC James A. Page Memorial Highway in Levy County.
- Alma Lee Loy Bridge in Indian River County.
- Joyce Webb Nobles Bridge in Escambia County
- Corporal Michael Joseph Roberts Memorial Highway and Ivey Edward Cannon Memorial Bridge in Hillsborough County.
- Edna S. Hargrett-Thrower Avenue in Orange County.
- USS Stark Memorial Drive and Duval County Law Enforcement Memorial Overpass in Duval County.
- Coach Jimmy Carnes Boulevard in Alachua County.
- Harry T. and Harriette V. Moore Memorial Highway in Brevard County.
- Whale Harbor Joe Roth, Jr. Bridge in Monroe County.
- Jim Mandich Memorial Highway, Tanya Martin Oubre Pekel Street, Jacob Fleishman Street, Margaret Haines Street, Florencio 'Kiko" Pernas Avenue, and Dr. Oscar Elias Biscet Boulevard in Miami-Dade County.
- Florida Highway Patrol Trooper Nicholas G. Sottile Memorial in Highlands County.
- Captain Jim Reynolds, Jr., USAF "Malibu" Road in Lake County.
- Mardi Gras Way, West Park Boulevard and Pembroke Park Boulevard in Broward County.
- Sheriff Stanley H. Cannon Memorial Highway in Lafayette County.
- Veterans Memorial Highway in Putnam County.
- Santa Fe Military Trail in Bradford, Union, and Columbia Counties.
- Samuel B. Love Memorial Highway in Marion County.
- Ben G. Watts Highway in Washington County.

The bill also corrects errors in the Miss Lillie Williams Boulevard and the Father Jean-Juste Street designations that passed in 2010.

The bill has an estimated negative fiscal impact of $30,000, which is the cost to the Department of Transportation to erect the markers.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 334.071, F.S., provides for legislative designations of transportation facilities for honorary or memorial purposes, or to distinguish a particular facility. The legislative designations do not officially change the current names of the facilities, nor does the statute require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings.

The statute requires the Department of Transportation (DOT) to place a marker at each termini or intersection of an identified road or bridge, and to erect other markers it deems appropriate for the transportation facility. The statute also provides that a city or county must pass a resolution in support of a particular designation before road markers are erected. Additionally, if the designated road segment extends through multiple cities or counties, a resolution must be passed by each affected local government.

- SP4 Thomas Berry Corbin was killed in combat in South Vietnam in 1968. He received the Army Silver Star.
- Navy BMC Samuel Calhoun Chavous, Jr., was killed in combat in South Vietnam in 1968.
- Marine Lance Cpl. Brian Rory Buesing was killed in combat in Iraq in 2003.
- Army Sgt. Karl Andrew Campbell was killed in Afghanistan in 2010.
- Army SPC. James Anthony Page was killed in Afghanistan in 2010.
- Alma Lee Loy was the first woman elected to the Indian River County Commission.
- Joyce Webb Nobles cut the ribbon when the East Cervantes Street Bridge (State Road 10A) in Pensacola opened in 1935 and when a concrete bridge replaced the original wooden structure.
- Corporal Michael Joseph Roberts was a Tampa Police Officer who was shot and killed in the line of duty on August 19, 2009.
- Edna Sampson Hargrett-Thrower was the head of the Choral Music department at Jones High School in Orlando. She passed away on April 19, 2010
- Based in Mayport, FL., the USS Stark was attacked by an Iraqi jet fighter in 1987, killing 37 American sailors.
- Coach Jimmy Carnes was the track coach at the University of Florida from 1965 to 1976. He passed away on March 3, 2011.
- Harry T. and Harriette V. Moore were early pioneers of the civil rights movement who were killed for their activities on December 25, 1951.
- Joe Roth, Jr., was a philanthropist and entrepreneur in the Florida Keys.
- Jim Mandich was a player for the Miami Dolphins and a radio host and commentator.
- Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile was killed in the line of duty on January 12, 2007.
- Captain Jim Reynolds, Jr., USAF "Malibu" was killed during a training mission at the Nellis Air Force Base Range in Nevada in 1993.
- Tanya Martin Oubre Pekel was a Miami native who served as an associate director of Education and Policy Planning in the Clinton White House. She passed away on May 22, 2006.
- Jacob Fleishman founded Jacob Fleishman Cold Storage, a fourth generation family business.
- Margaret Haines is active in community outreach activities in Miami-Dade County.
- Sheriff Stanley H. Cannon was sheriff of Lafayette County from 1971 to 1980. He passed away on May 11, 2011.
- Florencio "Kiko" Pernas: after emigrating from Cuba he owned several video stores and pawn shops in Hialeah.

- Dr. Óscar Elías Biscet is a Cuban medical professional and a noted advocate for human rights who is currently in prison in Cuba for alleged crimes against the sovereignty and the integrity of Cuba.
- Ivey Edward Cannon was a farmer in Hillsborough County since 1935 who also operated the Blackwater Creek Ultralight Flight Park since 1983. He passed away on June 16, 2004.
- Samuel B. Love was citrus grower and rancher who was involved in the agricultural community.
- Ben G. Watts served as Secretary of DOT from 1989 to 1997.

Proposed Changes

The bill makes the following honorary designations:

- That portion of U.S. Highway 19/27A/98/State Road 55 between the Suwannee River Bridge and N.E. 592nd Street/Chavous Road/Kate Green Road in Dixie County as "SP4 Thomas Berry Corbin Memorial Highway."
- That portion of U.S. Highway 19/98/State Road 55 between N.E. 592nd Street/Chavous Road/Kate Green Road and N.E. 170th Street in Dixie County as "U.S. Navy BMC Samuel Calhoun Chavous, Jr., Memorial Highway."
- That portion of State Road 24 between County Road 347 and Bridge Number 340053 in Levy County as "Marine Lance Corporal Brian R. Buesing Memorial Highway."
- That portion of U.S. Highway 19/98/State Road 55/S. Main Street between N.W. 1st Avenue and S.E. 2nd Avenue in Levy County as "United States Army Sergeant Karl A. Campbell Memorial Highway."
- That portion of U.S. Highway 27A/State Road 500/Hathaway Avenue between State Road 24/Thrasher Drive and Town Court in Levy County as "U.S. Army SPC James A. Page Memorial Highway."
- Bridge Number 880077 on State Road 656 in Indian River County between State Road A1A and Indian River Boulevard in Vero Beach as "Alma Lee Loy Bridge."
- The U.S. Highway 90/98, State Road 10A, East Cervantes Street Bridge (Bridge Number 480198) in Escambia County as "Joyce Webb Nobles Bridge."
- I-275 in Hillsborough County between the Livingston Avenue Bridge and the intersection with I-75 at the Hillsborough-Pasco County line as "Corporal Michael Joseph Roberts Memorial Highway."
- That portion of Orange Blossom Trail between Gore Street and Church Street in Orange County as "Edna S. Hargrett-Thrower Avenue."
- That portion of State Road 101/Mayport Road between State Road A1A and Wonderwood Connector in Duval County as "USS Stark Memorial Drive."
- That portion of S.W. 23rd Street, in front of James G. Pressley Stadium and 4211 S.W. 23rd Street, between S.W. 2nd Avenue and Fraternity Row/Drive in Alachua County as "Coach Jimmy Carnes Boulevard."
- That portion of State Road 46 in Brevard County from U.S.1 to the Volusia County line as "Harry T. and Harriette V. Moore Memorial Highway."
- The Interstate 295/State Road 9A overpass (Bridge Numbers 720256 and 720347) over Interstate 10/State Road 8 in Duval County as "Duval County Law Enforcement Memorial Overpass."
- Whale Harbor Bridge (Bridge Number 900076) on U.S. Highway 1/State Road 5 in Monroe County as "Whale Harbor Joe Roth, Jr. Bridge."
- That portion of SR 826/Palmetto Expressway between on-ramp 87260330 and on-ramp 87260333 in Miami-Dade County is designated as "Jim Mandich Memorial Highway."
- Milepost 22.182 on U.S. Highway 27 in Highlands County as "Florida Highway Trooper Sgt. Nicholas G. Sottile Memorial."
- That portion of State Road 44 in Lake County between U.S. Highway 441 and State Road 44/East Orange Avenue near Eustis as "Captain Jim Reynolds, Jr., USAF "Malibu" Road.
- That portion of State Road 932/N.E. 103rd Street between N.W. 3rd Avenue and N.E. 6th Avenue in Miami-Dade County as "Tanya Martin Oubre Pekel Street.

- That portion of State Road 934/N.W. 79th Street between N.W. 14th Avenue and N.W. 7th Avenue in Miami-Dade County as Jacob Fleishman Street.
- That portion of N.W. 59th Street between N.W. 27th Avenue and N.W. 25th Avenue in Miami-Dade County as "Margaret Haines Street."
- That portion of State Road 824 between Interstate 95/State Road 9 and U.S. Highway 1/State Road 5 in Broward County as "Mardi Gras Way."
- That portion of U.S. Highway 441/State Road 7 between State Road 824/Pembroke Road and State Road 852/N.W. 215th Street/County Line Road in Broward County as "West Park Boulevard."
- That portion of State Road 858/Hallandale Beach Boulevard between Interstate 95/State Road 9 and S.W. 56th Avenue in Broward County as "Pembroke Park Boulevard."
- That portion of State Road 51 between Cooks Hammock and the Lafayette/Taylor County Line in Lafayette County as "Sheriff Stanley H. Cannon Memorial Highway."
- That portion of State Road 19 in Putnam County between U.S. 17/State Road 15 and Carriage Drive as "Veterans Memorial Highway."
- That portion of County Road 18 in Bradford, Union, and Columbia Counties between State Road 100 in Bradford County and State Road 20 in Columbia County as "Santa Fe Military Trail."
- That portion of State Road 953/LeJeune Road/N.E. 8th Avenue between East 32nd street and East 41st Street in Miami-Dade County as "Florencio 'Kiko' Pernas Avenue."
- That portion of State Road 972/S.W. 22nd Street between S.W. 32nd Avenue and S.W. 37th Avenue/Douglas Road in Miami-Dade County as "Dr. Oscar Elias Biscet Boulevard."
- Bridge Numbers 100646 and 100647 on Paul S. Buchman Highway/State Road 39 between County Line Road and Half Mile Road in Hillsborough County as "Ivey Edward Cannon Memorial Bridge."
- That portion of Sunset Harbor Road between S.E. 105th Avenue and S.E. 115th Avenue in Marion County as Samuel B. Love Memorial Highway.
- That portion of U.S. Highway 90/State Road 10 between the Holmes County line and the Jackson County line in Washington County as "Ben G. Watts Highway."

The bill directs DOT to erect suitable markers designating each of the above designations.

The bill also amends the "Miss Lillie Williams Boulevard" and "Father Gerard Jean-Juste Street" designations which were created in 2010 in order to correct errors in the previous designations.[1]

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

B. SECTION DIRECTORY:

Section 1 Designates the SP4 Thomas Berry Corbin Memorial Highway; directs DOT to erect suitable markers.

Section 2 Designates the U.S. Navy BMC Samuel Calhoun Chavous, Jr. Memorial Highway; directs DOT to erect suitable markers.

Section 3 Designates the Marine Lance Corporal Brian R. Buesing Memorial Highway; directs DOT to erect suitable markers.

Section 4 Designates the Army Sergeant Karl A. Campbell Memorial Highway; directs DOT to erect suitable markers.

Section 5 Designates the U.S. Army SPC James A. Page Memorial Highway; directs DOT to erect suitable markers.

Section 6 Designates the Alma Lee Loy Bridge; directs DOT to erect suitable markers.

[1] Ch. 2010-230, L.O.F.

Section 7 Designates the Joyce Webb Nobles Bridge; directs DOT to erect suitable markers.

Section 8 Designates the Corporal Michael Joseph Roberts Memorial Highway; directs DOT to erect suitable markers.

Section 9 Designates Edna S. Hargrett-Thrower Avenue; directs DOT to erect suitable markers.

Section 10 Designates USS Stark Memorial Drive; directs DOT to erect suitable markers.

Section 11 Designates Coach Jimmy Carnes Boulevard; directs DOT to erect suitable markers.

Section 12 Designates Harry T. and Harriette V. Moore Memorial Highway; directs DOT to erect suitable markers.

Section 13 Designates Duval County Law Enforcement Memorial Overpass; directs DOT to erect suitable markers.

Section 14 Designates Whale Harbor Joe Roth, Jr. Bridge; directs DOT to erect suitable markers.

Section 15 Designates Jim Mandich Memorial Highway; directs DOT to erect suitable markers.

Section 16 Designates Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile Memorial; directs DOT to erect suitable markers.

Section 17 Designates Captain Jim Reynolds, Jr., USAF "Malibu" Road; directs DOT to erect suitable markers.

Section 18 Designates Tanya Marie Oubre Pekel Street; directs DOT to erect suitable markers.

Section 19 Designates Jacob Fleishman Street; directs DOT to erect suitable markers.

Section 20 Designates Margaret Haines Street; directs DOT to erect suitable markers.

Section 21 Designates Mardi Gras Way; directs DOT to erect suitable markers.

Section 22 Designates West Park Boulevard; directs DOT to erect suitable markers.

Section 23 Designates Pembroke Park Boulevard; directs DOT to erect suitable markers.

Section 24 Designates Sheriff Stanley H. Cannon Memorial Highway; directs DOT to erect suitable markers.

Section 25 Designates Veterans Memorial Highway; directs DOT to erect suitable markers.

Section 26 Designates Santa Fe Military Trail; directs DOT to erect suitable markers.

Section 27 Designates Florencio 'Kiko' Pernas Avenue; directs DOT to erect suitable markers.

Section 28 Designates Dr. Oscar Elias Biscet Boulevard; directs DOT to erect suitable markers.

Section 29 Designates Ivey Edward Cannon Memorial Bridge; directs DOT to erect suitable markers.

Section 30 Designates Samuel B. Love Memorial Highway; directs DOT to erect suitable markers.

Section 31 Designates Ben G. Watts Highway; directs DOT to erect suitable markers.

Section 32 Amends s. 24 of ch. 2010-230, L.O.F., amending the "Miss Lillie Williams Boulevard" designation.

Section 33 Amends s. 45 of ch. 2010-230, L.O.F., amending the "Father Jean-Juste Street." designation.

Section 34 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DOT will incur costs of approximately $30,000 (from the State Transportation Trust Fund) for erecting markers for the designations. This is based on the assumption that two markers for each designation will be erected at a cost of $500 per marker. DOT will also incur the recurring costs of maintaining these signs over time, and for future replacement of the signs as necessary. However, the Florencio 'Kiko' Pernas designation indicates that the signage and installation is to be paid by the Pernas family.[2]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to 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:

[2] The estimated expenditures do not include a sign for the Florencio 'Kiko' Pernas designation.

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Coach Jimmy Carnes Boulevard, Margaret Haines Street, Samuel B. Love Memorial Highway, and the majority of the Santa Fe Military Trail designations are not on the State Highway System.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Transportation & Highway Safety Subcommittee adopted two amendments to the Proposed Committee Bill.

Amendment 1	Makes a technical change making the Ivey E. Cannon Memorial Bridge the Ivey Edward Cannon Memorial Bridge.
Amendment 2	Designates the Samuel B. Love Memorial Highway and the Ben G. Watts Highway.

A bill to be entitled

An act relating to transportation facility designations; providing honorary designations of various transportation facilities in specified counties; directing the Department of Transportation to erect suitable markers; revising designations in a specified county; providing an effective date.

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

Section 1. SP4 Thomas Berry Corbin Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of U.S. Highway 19/27A/98/State Road 55 between the Suwannee River Bridge and N.E. 592nd Street/Chavous Road/Kate Green Road in Dixie County is designated as "SP4 Thomas Berry Corbin Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating SP4 Thomas Berry Corbin Memorial Highway as described in subsection (1).

Section 2. U.S. Navy BMC Samuel Calhoun Chavous, Jr., Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of U.S. Highway 19/98/State Road 55 between N.E. 592nd Street/Chavous Road/Kate Green Road and N.E. 170th Street in Dixie County is designated as "U.S. Navy BMC Samuel Calhoun Chavous, Jr. Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating U.S. Navy BMC Samuel Calhoun Chavous, Jr. Memorial Highway as described in subsection (1).

Section 3. Marine Lance Corporal Brian R. Buesing Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 24 between County Road 347 and Bridge Number 340053 in Levy County is designated as "Marine Lance Corporal Brian R. Buesing Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating Marine Lance Corporal Brian R. Buesing Memorial Highway as described in subsection (1).

Section 4. United States Army Sergeant Karl A. Campbell Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of U.S. Highway 19/98/State Road 55/South Main Street between N.W. 1st Avenue and S.E. 2nd Avenue in Levy County is designated as "United States Army Sergeant Karl A. Campbell Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating United States Army Sergeant Karl A. Campbell Memorial Highway as described in subsection (1).

Section 5. U.S. Army SPC James A. Page Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of U.S. Highway 27A/State Road 500/Hathaway Avenue between State Road 24/Thrasher Drive and Town Court in Levy County is designated as "U.S. Army SPC James

A. Page Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating U.S. Army SPC James A. Page Memorial Highway as described in subsection (1).

Section 6. Alma Lee Loy Bridge designated; Department of Transportation to erect suitable markers.—

(1) Bridge Number 880077 on State Road 656 between State Road A1A and Indian River Boulevard in the City of Vero Beach in Indian River County is designated as "Alma Lee Loy Bridge."

(2) The Department of Transportation is directed to erect suitable markers designating Alma Lee Loy Bridge as described in subsection (1).

Section 7. Joyce Webb Nobles Bridge designated; Department of Transportation to erect suitable markers.—

(1) The U.S. Highway 90/98, State Road 10A, East Cervantes Street Bridge (Bridge Number 480198) in Escambia County is designated as "Joyce Webb Nobles Bridge."

(2) The Department of Transportation is directed to erect suitable markers designating Joyce Webb Nobles Bridge as described in subsection (1).

Section 8. Corporal Michael Joseph Roberts Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of Interstate 275 in Hillsborough County between the Livingston Avenue Bridge and the intersection with Interstate 75 at the Hillsborough-Pasco County line is designated as "Corporal Michael Joseph Roberts Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating Corporal Michael Joseph Roberts Memorial Highway as described in subsection (1).

Section 9. Edna S. Hargrett-Thrower Avenue designated; Department of Transportation to erect suitable markers.—

(1) That portion of Orange Blossom Trail between W. Gore Street and W. Church Street in Orange County is designated as "Edna S. Hargrett-Thrower Avenue."

(2) The Department of Transportation is directed to erect suitable markers designating Edna S. Hargrett-Thrower Avenue as described in subsection (1).

Section 10. USS Stark Memorial Drive designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 101/Mayport Road between State Road A1A and Wonderwood Connector in Duval County is designated as "USS Stark Memorial Drive."

(2) The Department of Transportation is directed to erect suitable markers designating USS Stark Memorial Drive as described in subsection (1).

Section 11. Coach Jimmy Carnes Boulevard designated; Department of Transportation to erect suitable markers.—

(1) That portion of S.W. 23rd Street, in front of James G. Pressly Stadium and 4211 S.W. 23rd Street, between S.W. 2nd Avenue and Fraternity Row/Drive in Alachua County is designated as "Coach Jimmy Carnes Boulevard."

(2) The Department of Transportation is directed to erect suitable markers designating Coach Jimmy Carnes Boulevard as described in subsection (1).

Section 12. Harry T. and Harriette V. Moore Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 46 in Brevard County between U.S. Highway 1 and the Volusia County line is designated as "Harry T. and Harriette V. Moore Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating Harry T. and Harriette V. Moore Memorial Highway as described in subsection (1).

Section 13. Duval County Law Enforcement Memorial Overpass designated; Department of Transportation to erect suitable markers.—

(1) The Interstate 295/State Road 9A overpass (Bridge Numbers 720256 and 720347) over Interstate 10/State Road 8 in Duval County is designated as "Duval County Law Enforcement Memorial Overpass."

(2) The Department of Transportation is directed to erect suitable markers designating Duval County Law Enforcement Memorial Overpass as described in subsection (1).

Section 14. Whale Harbor Joe Roth, Jr. Bridge designated; Department of Transportation to erect suitable markers.—

(1) Whale Harbor Bridge (Bridge Number 900076) on U.S. Highway 1/State Road 5 in Monroe County is designated as "Whale Harbor Joe Roth, Jr. Bridge."

(2) The Department of Transportation is directed to erect suitable markers designating Whale Harbor Joe Roth, Jr. Bridge as described in subsection (1).

Section 15. Jim Mandich Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 826/Palmetto Expressway between on-ramp 87260330 and on-ramp 87260333 in Miami-Dade County is designated as "Jim Mandich Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating Jim Mandich Memorial Highway as described in subsection (1).

Section 16. Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile Memorial designated; Department of Transportation to erect suitable markers.—

(1) Milepost 22.182 on U.S. Highway 27 in Highlands County is designated as "Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile Memorial."

(2) The Department of Transportation is directed to erect suitable markers designating Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile Memorial as described subsection (1).

Section 17. Captain Jim Reynolds, Jr., USAF "Malibu" Road designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 44 between U.S. Highway 441 and State Road 44/East Orange Avenue near the City of Eustis in Lake County is designated as "Captain Jim Reynolds, Jr., USAF 'Malibu' Road."

(2) The Department of Transportation is directed to erect suitable markers designating Captain Jim Reynolds, Jr., USAF "Malibu" Road as described in subsection (1).

Section 18. Tanya Martin Oubre Pekel Street designated;

Department of Transportation to erect suitable markers.—

(1) That portion of State Road 932/N.E. 103rd Street between N.W. 3rd Avenue and N.E. 6th Avenue in Miami-Dade County is designated as "Tanya Martin Oubre Pekel Street."

(2) The Department of Transportation is directed to erect suitable markers designating Tanya Martin Oubre Pekel Street as described in subsection (1).

Section 19. Jacob Fleishman Street designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 934/N.W. 79th Street between N.W. 14th Avenue and N.W. 9th Avenue in Miami-Dade County is designated as "Jacob Fleishman Street."

(2) The Department of Transportation is directed to erect suitable markers designating Jacob Fleishman Street as described in subsection (1).

Section 20. Margaret Haines Street designated; Department of Transportation to erect suitable markers.—

(1) That portion of N.W. 59th Street between N.W. 27th Avenue and N.W. 25th Avenue in Miami-Dade County is designated as "Margaret Haines Street."

(2) The Department of Transportation is directed to erect suitable markers designating Margaret Haines Street as described in subsection (1).

Section 21. Mardi Gras Way designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 824 between Interstate 95/State Road 9 and U.S. Highway 1/State Road 5 in Broward County is designated as "Mardi Gras Way."

(2) The Department of Transportation is directed to erect suitable markers designating Mardi Gras Way as described in subsection (1).

Section 22. West Park Boulevard designated; Department of Transportation to erect suitable markers.—

(1) That portion of U.S. Highway 441/State Road 7 between State Road 824/Pembroke Road and State Road 852/N.W. 215th Street/County Line Road in Broward County is designated as "West Park Boulevard."

(2) The Department of Transportation is directed to erect suitable markers designating West Park Boulevard as described in subsection (1).

Section 23. Pembroke Park Boulevard designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 858/Hallandale Beach Boulevard between Interstate 95/State Road 9 and S.W. 56th Avenue in Broward County is designated as "Pembroke Park Boulevard."

(2) The Department of Transportation is directed to erect suitable markers designating Pembroke Park Boulevard as described in subsection (1).

Section 24. Sheriff Stanley H. Cannon Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 51 between Cooks Hammock and the Lafayette-Taylor County line in Lafayette County is designated as "Sheriff Stanley H. Cannon Memorial Highway."

(2) The Department of Transportation is directed to erect

suitable markers designating Sheriff Stanley H. Cannon Memorial Highway as described in subsection (1).

Section 25. Veterans Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 19 between U.S. Highway 17/State Road 15 and Carriage Drive in Putnam County is designated as "Veterans Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating Veterans Memorial Highway as described in subsection (1).

Section 26. Santa Fe Military Trail designated; Department of Transportation to erect suitable markers.—

(1) That portion of County Road 18 in Bradford, Union, and Columbia Counties between State Road 100 in Bradford County and State Road 20 in Columbia County is designated as "Santa Fe Military Trail."

(2) The Department of Transportation is directed to erect suitable markers designating Santa Fe Military Trail as described in subsection (1).

Section 27. Florencio "Kiko" Pernas Avenue designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 953/LeJeune Road/N.E. 8th Avenue between E. 32nd Street and E. 41st Street in Miami-Dade County is designated as "Florencio 'Kiko' Pernas Avenue."

(2) The Department of Transportation is directed to erect suitable markers designating Florencio "Kiko" Pernas Avenue as described in subsection (1). The cost of signage and installation shall be paid by the Pernas family.

Section 28. Dr. Oscar Elias Biscet Boulevard designated; Department of Transportation to erect suitable markers.—

(1) That portion of State Road 972/S.W. 22nd Street between S.W. 32nd Avenue and S.W. 37th Avenue/Douglas Road in Miami-Dade County is designated as "Dr. Oscar Elias Biscet Boulevard."

(2) The Department of Transportation is directed to erect suitable markers designating Dr. Oscar Elias Biscet Boulevard as described in subsection (1).

Section 29. Ivey Edward Cannon Memorial Bridge designated; Department of Transportation to erect suitable markers.—

(1) Bridge Numbers 100646 and 100647 on Paul S. Buchman Highway/State Road 39 between County Line Road and Half Mile Road in Hillsborough County are designated "Ivey Edward Cannon Memorial Bridge."

(2) The Department of Transportation is directed to erect suitable markers designating Ivey Edward Cannon Memorial Bridge as described in subsection (1).

Section 30. Samuel B. Love Memorial Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of Sunset Harbor Road between S.E. 105th Avenue and S.E. 115th Avenue in Marion County is designated as "Samuel B. Love Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating Samuel B. Love Memorial Highway as described in subsection (1).

Section 31. Ben G. Watts Highway designated; Department of Transportation to erect suitable markers.—

(1) That portion of U.S. Highway 90/State Road 10 between the Holmes County line and the Jackson County line in Washington County is designated as "Ben G. Watts Highway."

(2) The Department of Transportation is directed to erect suitable markers designating Ben G. Watts Highway as described in subsection (1).

Section 32. Section 24 of chapter 2010-230, Laws of Florida, is amended to read:

Section 24. Miss Lillie Williams Boulevard designated; Department of Transportation to erect suitable markers.—

(1) That portion of N.W. 79th Street between N.W. 6th Avenue and N.W. 7th ~~E. 12th~~ Avenue in Miami-Dade County is designated as "Miss Lillie Williams Boulevard."

(2) The Department of Transportation is directed to erect suitable markers designating Miss Lillie Williams Boulevard as described in subsection (1).

Section 33. Section 45 of chapter 2010-230, Laws of Florida, is amended to read:

Section 45. Father Gerard Jean-Juste Street designated; Department of Transportation to erect suitable markers.—

(1) That portion of N.W. 54th Street in Miami-Dade County between N.W. 2nd Avenue and N.E. ~~N.W.~~ 3rd Avenue in Little Haiti is designated "Father Gerard Jean-Juste Street."

(2) The Department of Transportation is directed to erect suitable markers designating Father Gerard Jean-Juste Street as described in subsection (1).

Section 34. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7065 PCB THSS 12-02 Pub. Rec./Personal Identifying Information/Toll Facilities
SPONSOR(S): Transportation & Highway Safety Subcommittee, Drake
TIED BILLS: **IDEN./SIM. BILLS:** SB 1284

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Highway Safety Subcommittee	15 Y, 0 N	Johnson	Kruse
1) State Affairs Committee	14 Y, 0 N, As CS	Thompson	Hamby
2) Economic Affairs Committee		Johnson SAS	Tinker TBT

SUMMARY ANALYSIS

Current law provides a public records exemption for personal identifying information provided to, acquired by, or in the possession of the Department of Transportation (DOT), a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities. This prepayment system is the electronic transponder method of toll payment otherwise known as "SunPass."

The bill expands the current public records exemption to include personal identifying information held by DOT, a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and other amounts due. This would include personal identifying information of customers who use the post-payment method of toll payment otherwise known as "Toll-By-Plate."

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Electronic Toll Payment

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.[3] The Department of Transportation (DOT) is authorized to adopt rules relating to the payment, collection, and enforcement of tolls, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.[4] Consequently, DOT has implemented two programs for electronic toll collections.

SunPass[5] is an electronic system of toll collection accepted on all Florida toll roads and nearly all toll bridges. SunPass utilizes a prepaid account system and electronic devices called transponders that attach to the inside of a car's windshield. When a car equipped with SunPass goes through a tolling location, the transponder sends a signal and the toll is deducted from the customer's prepaid account. SunPass account information includes, license plate number, address, and credit card information.[6]

Toll-By-Plate[7] is an image based system of toll collection available on the HEFT (Homestead Extension of Florida's Turnpike) from Florida City to Miramar in Miami- Dade County. Toll-By-Plate takes a photo of a license plate as a vehicle travels through a Turnpike tolling location and mails a monthly bill for the tolls, including a $2.50 administrative charge, to the registered owner of the vehicle. Accounts can be

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[1] Section 24(c), Art. I of the State Constitution.
[2] Section 119.15, F.S.
[3] *See* s. 338.155(1), F.S. The exemptions include toll employees on official state business, state military personnel on official military business, persons authorizing resolution for bonds to finance the facility, persons using the toll facility as a required detour route, law enforcement officers or persons operating a fire or rescue vehicle when on official business, funeral processions of law enforcement officers killed in the line of duty, and persons with a certified disability that substantially impairs that person's ability to put tolls in the toll basket.
[4] Section 338.155(1), F.S.
[5] Rule 14-15.0081, F.A.C.
[6] Information on SunPass is available at, http://www.floridasturnpike.com/all-electronictolling/SunPass.cfm (Last visited January 30, 2012).
[7] Rule 14-100.005, F.A.C., established the Florida Department of Transportation Toll-By-Plate program in 2010.

set up as pre-paid or post-paid.[8] Pre-paid accounts are administered through the SunPass system and post-paid accounts are administered through an invoice system. Invoice accounts may require name, address, email, drivers license number, day time phone number, and credit and debit card numbers.[9]

Toll Exemption

Currently, personal identifying information provided to, acquired by, or in the possession of DOT, a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities charges is exempt[10] from public records requirements.[11] This exemption does not include personal identifying information related to the post-payment of electronic toll facilities by Toll-By-Plate customers.

Proposed Changes

The bill expands the current public records exemption to include personal identifying information held by the Department of Transportation (DOT), a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and other amounts due for the use of toll facilities to DOT, a county, or an expressway authority. This would include personal identifying information related to the post-payment of electronic toll facilities by Toll-By-Plate customers.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.[12]

B. SECTION DIRECTORY:

Section 1 amends s. 338.155, F.S., related to the payment of tolls on toll facilities.

Section 2 provides a finding of public necessity.

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:

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[8] Information on toll-by-plate is available at, http://www.floridasturnpike.com/all-electronictolling/TOLL-BY-PLATE.cfm (Last visited January 30, 2012).

[9] Information on toll-by-plate accounts can be found at, https://www.tollbyplate.com/displaySelectCustomerTypeRegisterAccountNewAccount (Last visited January 30, 2012).

[10] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

[11] Chapter 96-178, L.O.F.; codified as s. 338.155(6), F.S.

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

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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

Public Necessity Statement
Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Public Necessity Statement
The exemption section of the bill classifies personal identifying information as exempt; however, the public necessity statement uses the term confidential. There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. Lines 41 and 42 may need an amendment to conform the public necessity statement to the public record exemption.

Other Comments: Retroactive Application
The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.[13] The bill does not contain a provision requiring retroactive application. As such, the public record exemption would apply prospectively. The Toll-By-Plate program has been available on the southern 47 miles of Florida's Turnpike in Miami-Dade since it was established in 2010.[14]

[13] *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).
[14] Information received by telephone from Cindy Price, the Florida Department of Transportation, January 30, 2012.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2012, the State Affairs Committee adopted one amendment to HB 7065. The amendment conforms the public necessity statement to the public record exemption, making it clear the information is exempt only, and not confidential.

A bill to be entitled

An act relating to public records; amending s. 338.155, F.S.; revising an exemption from public records requirements for personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and other amounts due for the use of toll facilities; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a finding of public necessity; providing an effective date.

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

Section 1. Subsection (6) of section 338.155, Florida Statutes, is amended to read:

338.155 Payment of toll on toll facilities required; exemptions.—

(6)(a) Personal identifying information held by ~~provided to, acquired by, or in the possession of~~ the Department of Transportation, a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and other amounts due for the use of toll facilities ~~using a credit card, charge card, or check for the prepayment of electronic toll facilities charges~~ to the department, a county, or an expressway authority is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to exempt personal identifying information about individuals which is held by the Department of Transportation, a county, or an expressway authority for the purpose of paying for use of toll facilities by any means of payment. The exemption puts individuals who pay with TOLL-BY-PLATE (video billed) on equal footing with individuals who pay by a check, charge card, or credit card, or who pay cash at the toll booth. The exemption protects the health and safety of the public by making exempt information as to the whereabouts of individuals as they use the toll road system. The exemption promotes the use of the electronic toll collection system, which is a more efficient and effective government collection system for tolls, because paying by TOLL-BY-PLATE (video billed) or paying for tolls by check, charge card, or credit card not only saves individuals time in passing through the toll facilities, in comparison with individuals who pay cash, but also costs much less to administer. Further, the exemption protects the privacy of individuals and promotes the right to be let alone from unreasonable government intrusion by prohibiting the public disclosure of private information about the finances and location of the individual using the toll road system.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7075 PCB CMAS 12-03 Military Installations
SPONSOR(S): Community & Military Affairs Subcommittee, Workman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Community & Military Affairs Subcommittee	12 Y, 2 N	Tait	Hoagland
1) Economic Affairs Committee		Tait MCT	Tinker TBT

SUMMARY ANALYSIS

The military presence in Florida accounts for approximately $60 billion of the state's gross domestic product. The Florida Constitution and Florida statutes contain numerous provisions relating to support of military installations, military personnel and veterans.

The bill addresses military installation support as follows:

Encroachment: Current law contains a number of provisions relating to coordination between local governments and the military regarding land use decisions. The bill clarifies provisions relating to commanders' advisory comments on land use changes; however, despite these changes, the original intent and meaning of the statutes remains unchanged. In addition, the bill requires advisory comments be supported by appropriate data and analyses that are to be provided with the comments.

Defense Grants: Current law provides for seven grant programs designed to aid in the transition from a defense economy to a nondefense economy and to aid in the retention of military bases. The bill streamlines these provisions into the Military Base Protection Program, the Florida Defense Reinvestment Grant Program and the Florida Defense Infrastructure Grant Program. It also revises legislative intent for the programs to include the Legislature's interest in supporting and sustaining military installations throughout the state.

Military Support Organizations: Florida currently has two statutorily created organizations designed to support the military, the Florida Council on Military Base and Mission Support (Council) and the Florida Defense Support Task Force (Task Force). The bill repeals provisions relating to the Council and transfers the powers, duties, functions, records, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds of the Council to the Task Force. The bill also amends provisions related to the Task Force to remove language relating to federal base realignment and closure action and remove obsolete provisions relating to the reporting requirements.

Public Records and Public Meetings Exemptions: The bill transfers existing exemptions of the Council to the Task Force for records and discussions of the strengths and weaknesses of the state's military bases and strategies that are formulated to protect those bases during a base realignment and closure process. The sunset date for the exemption remains October 2, 2014.

Other Changes: The bill amends additional sections of statute to make conforming changes.

While the bill does not have an impact on state revenues or expenditures, it may have a positive impact on the state and local economy if it is successful in keeping the state's current military base infrastructure intact while promoting the transfer of additional military assets to the state.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Military Presence in Florida

Present Situation

Florida is home to 20 major military installations and three unified combatant commands. In 2008, defense related spending was estimated to be responsible for nearly $60 billion of the state's gross domestic product.[1] The state is also home to many of the nation's leading defense companies and a large pool of highly skilled workers and veterans. Florida's top ten contractors alone employ more than 28,000 Floridians. In 2010, Florida companies generated $12.8 billion in Department of Defense Contract awards, ranking the state fourth in the nation.[2] Only tourism and agriculture contribute more to Florida's economy.

The Department of Defense (DoD) recently completed implementing the 2005 round of base realignments and closures, commonly referred to as "BRAC."[3] The BRAC process reflects a desire to eliminate excess capacity, experience the savings from that reduction in capacity, and fund higher priority weapon platforms and troop training. There have been five BRAC rounds between 1988 and 2005. During the 1993 round, four Florida bases were closed.[4]

As a result of the 2005 BRAC round, a U.S. Army Special Forces Group of approximately 3,000 soldiers was moved from Ft. Bragg, North Carolina to Eglin Air Force Base in Northwest Florida. Also, Eglin was selected to establish multi-service/multi-nation training facilities for the F-35 Joint Strike Fighter aircraft. In addition, the 2005 BRAC round brought the new Navy P-8 aircraft mission to Naval Air Station Jacksonville.

In 2008, the U.S. Navy, in a decision unrelated to the BRAC process, announced its intention to homeport one of its nuclear powered aircraft carriers to Naval Station Mayport in Jacksonville. This basing decision will have significant positive economic impact on the Jacksonville area; however, as all nuclear powered aircraft carriers are currently homeported in Norfolk, Virginia, the Virginia Congressional delegation is actively trying to prevent this move.

Due to constraints with the federal budget and the drawdown of troops overseas, the federal government is focusing on redefining the scope and structure of the U.S. military. While there has not yet been an official call for another BRAC round, federal budget cuts and restructuring have led to changes in the missions at military installations throughout the nation, including calls to reorganize the Air Armament Center at Eglin Air Force Base due to a larger Air Force-wide effort.

Growth Management - Military Base Commander Comments

Present Situation

The Legislature has found that incompatible development of land close to military installations can adversely affect the ability of the installation to carry out its mission.[5] Such development can also

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[1] Enterprise Florida, Inc. Florida Industry Clusters: Homeland Security/Defense. http://www.eflorida.com/Homeland_Security_Defense.aspx?id=324 (last visited on January 21, 2011).
[2] *Id.*
[3] See the Defense Base Closure and Realignment Act of 1990, Pub. L. 101-510, as amended through the National Defense Authorization Act of Fiscal Year 2003.
[4] During the 1993 BRAC round, Florida lost the Naval Aviation Depot Pensacola, the Naval Aviation Station Cecil Field Jacksonville, the Naval Training Center Orlando, and Homestead Air Force Base. Florida did not have any major DoD closures or realignments during the 1998, 1991, and 1995 BRAC rounds.
[5] S. 163.3175, F.S.

threaten public safety if accidents are to occur near the military installation and may also affect the economic vitality of a community when military operations or missions must be relocated because of urban encroachment.[6] Based on these findings, the Legislature established s. 163.3175, F.S., to encourage compatible land use between local governments and military installations, help prevent incompatible encroachment, and facilitate the continued presence of military installations in this state. Further, the Legislature in 2011 passed the Community Planning Act,[7] which recognized the military as an important part of the traditional economic base of Florida.[8]

In an effort to encourage cooperation between local governments and the military and facilitate the exchange of information, the local government is required to include a representative of the military installation as an *ex officio*, nonvoting member of the affected local government's land planning or zoning board.[9] Section 163.3175, F.S., also requires local governments to provide information to the commanding officer of an affected military installation relating to any proposed changes to the local comprehensive plan or proposed changes to the local land development regulations, which if approved, would affect the intensity, density, or use of land adjacent to or in close proximity to the military installation. If the commanding officer requests, the local government must also transmit copies of applications the local government receives for development orders requesting a variance or waiver from height or lighting restrictions or noise attenuation reduction requirements within the military zone of influence defined in the local comprehensive plan.[10] Once these proposed changes are transmitted to the military installation, the local government must provide an opportunity for the commanding officer or his or her designee to review and comment on the proposed changes.[11]

The comments on the proposed changes may include factors identified in s. 163.3175(5), F.S., including whether the proposed changes will be incompatible with certain safety and noise standards,[12] whether the changes are incompatible with the findings of a Joint Land Use Study (JLUS) for the area, and whether the military installation's mission will be adversely affected by the proposed changes being made by the local government. The commanding officer's comments, the underlying studies, and reports are not intended to be binding on the local government[13] but instead advisory, for the local government to take into consideration when evaluating proposed changes.[14] Section 163.3175(6), F.S., was amended in 2011 to emphasize the importance of private property rights and to clarify that the local government when considering comments from a military installation must be sensitive to private property rights and not be unduly restrictive on those rights.

A local government's future land use plan and plan amendments are required to be based upon surveys, studies, and data regarding the area. Among other factors, the future land use plan is to include information relating to the compatibility of uses on lands adjacent to or closely proximate to military installations, if applicable.[15] The future land use plan element must also include criteria to be used to achieve the compatibility of lands adjacent or closely proximate to military installations.[16] The

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[6] *Id.*
[7] Ch. 2011-139, L.O.F.
[8] *See* s. 163.3161, F.S.
[9] S. 163.3175(8), F.S.
[10] S. 163.3175(4), F.S.
[11] *Id.*
[12] Comments provided may include whether the proposed changes are compatible with the Air Installation Compatible Use Zone (AICUZ) adopted by the military installation that has an airfield and whether the proposed changes are compatible with the Installation Environmental Noise Management Program (IENMP) of the U.S. Army.
[13] *See* s. 163.3175(5), F.S.
[14] *See* s. 163.3175(6), F.S.
[15] S. 163.3177(6)(a)2.f., F.S.
[16] S. 163.3175(9), F.S., provides that if the local government does not adopt criteria and address compatibility of lands adjacent to or closely proximate to existing military installations in its future land use plan element by June 30, 2012, the local government, military installation, state land planning agency, and other parties identified by the regional planning Council, including but not limited to private landowner representatives must enter into mediation. If by December 31, 2013, the local government comprehensive plan does not contain criteria, the state land planning agency may notify the Administration Commission, which may impose sanctions on the local government. Local governments that adopted criteria in 2004 found to be in compliance to address military installation compatibility requirements are exempt until required to update the comprehensive plan during the evaluation and appraisal review pursuant to s. 163.3191, F.S.

local government in establishing the criteria within the future land use plan element must consider the factors identified in s. 163.3175(5), F.S., described above.

When a proposed comprehensive plan or plan amendment affects a major military installation in Florida,[17] s. 163.3184(1)(c), F.S., defines the commanding officer of an affected military installation as a reviewing agency.[18] This allows the commanding officer of the military installation to submit comments on the proposed plan or plan amendment to the local government at the same time as other reviewing agencies. Comments from the military installation on a proposed comprehensive plan or comprehensive plan amendment are to be provided in accordance with the guidelines set in s. 163.3175, F.S.,[19] as described above. Since the commanding officer of an affected military installation is defined as one of the "reviewing agencies", the comments submitted by the military installation regarding proposed comprehensive plan amendments are to be considered and weighed by the local government similar to comments from other reviewing agencies representing interests that may be affected by proposed changes such as the environment, public schools, or transportation. Along with reviewing agency comments, the local government also takes into consideration public testimony and other information and data at its disposal.

Effect of Proposed Changes

The bill clarifies that commanding officer comments on proposed changes that may have an impact on the mission of the military installation are advisory to the local government, and provides that the advisory comments must be based on appropriate data and analyses provided with the comments. Further, the local government must consider the comments, underlying studies, and reports in the same manner as comments received by other reviewing agencies pursuant to s. 163.3184, F.S.[20]

The bill also specifies that the local government must take into consideration any comments and accompanying data and analyses provided by the commanding officer or his or her designee as they relate to the strategic mission of the base, public safety, and the economic vitality associated with the base's operations,[21] while also respecting private property rights and not being unduly restrictive on those rights. Although the bill makes changes to the language in s. 163.3175(5) and (6), F.S., in an attempt to clarify, the original intent and meaning remains unchanged.

Grants for Military Base Retention

Present Situation

Section 288.980, F.S., establishes grant programs designed to aid defense-dependent communities throughout the state. The legislative intent of this section, created in 1994 after the series of base

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[17] Major military installations that due to their mission and activities have a greater potential for experiencing compatibility and coordination issues than others are specifically listed in s. 163.3175(2), F.S.

[18] (c) "Reviewing agencies" means:
1. The state land planning agency;
2. The appropriate regional planning Council;
3. The appropriate water management district;
4. The Department of Environmental Protection;
5. The Department of State;
6. The Department of Transportation;
7. In the case of plan amendments relating to public schools, the Department of Education;
8. In the case of plans or plan amendments that affect a military installation listed in s. 163.3175, the commanding officer of the affected military installation;
9. In the case of county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and
10. In the case of municipal plans and plan amendments, the county in which the municipality is located.

[19] *See* s. 163.3184(3)(b)3.d., F.S.

[20] S. 163.3184(1)(c), defines "reviewing agencies", which includes in the case of plans or plan amendments that affect a military installation, the commanding officer of the affected military installation. S. 163.3184(3)(b)2., F.S., provides in part that comments from reviewing agencies, if not resolved, may result in a challenge by the state land planning agency to the plan amendment.

[21] These issues are consistent with the legislative findings in s. 163.3175(1), F.S.

closures from the 1993 BRAC round, focuses on aiding these communities transition from a defense economy to a nondefense economy in light of the federal BRAC process.

It contains provisions creating the Florida Economic Reinvestment Initiative, which is comprised of two distinct grant programs, the Florida Defense Planning Grant Program and the Florida Defense Implementation Grant Program. It also creates the Florida Military Installation Reuse Planning and Marketing Grant Program, the Defense Infrastructure Grant Program, the Defense Related Business Adjustment Program, and the Retention of Military Installations Program.

In addition, it authorizes the Department of Economic Opportunity (DEO) to award nonfederal matching funds specifically for the construction, maintenance, and analysis of a Florida defense workforce database. This database is to be a registry of worker skills that can be used to match the worker needs of companies that are relocating to Florida or to assist workers in relocating to other areas within Florida where similar or related employment is available. This database has not been created.

The Florida Defense Alliance serves as the overall advisory body for defense-related activity for Enterprise Florida, Inc. In addition, the Florida Defense Alliance may receive funding from appropriations made for that purpose to DEO.

Many of the grant programs have not been funded. Recent grants have focused on military base retention, which is inconsistent with the statute's emphasis on response to base closure.

Effect of Proposed Changes

The bill revises the legislative intent found in s. 288.980, F.S. While it retains the intent to encourage communities to initiate a coordinated program of response and plan of action in advance of future actions of the federal government relating to realignments and closures, it also recognizes the need for communities to develop and implement strategies to preserve and protect military installations. It further recognizes that the state needs to coordinate all efforts that can support military installations through the state.

Many of the changes in this section are to update the statutes to reflect how the grants have been funded and utilized.

The bill statutorily creates the Military Base Protection Program, and authorizes that funds appropriated to the program may be used to address emergent needs relating to mission sustainment and base retention. In addition, these funds may be used to match federal funds. DEO is directed to coordinate and implement this program.

The bill authorizes DEO to award grants on a competitive basis to support activities related to the Florida Defense Reinvestment Grant Program (DRG) and the Florida Defense Infrastructure Grant Program (DIG).

The DRG program is established with two purposes: to work with defense-dependent communities to develop and implement strategies to help the communities support the missions of military installations and to help communities transition from a defense economy to a nondefense economy. Eligible applicants include defense-dependent counties and cities, and local economic development councils located within such communities. DEO is directed to administer the program. Grant awards under the DRG program may be provided to support community-based activities that: protect existing military installations; diversify the economy of a defense-dependent community; or develop plans for the reuse of closed or realigned military installations, including any plans necessary for infrastructure improvements needed to facilitate reuse and related marketing activities.

The bill clarifies that grants under the DIG program are prohibited from being used to fund on-base military construction projects.

The bill repeals the Florida Economic Reinvestment Initiative, which consisted of the Florida Defense Planning Grant Program and the Florida Defense Implementation Grant Program. It repeals the Florida Military Installation Reuse Planning and Marketing Grant Program; however, the DRG program incorporates much of this program. In addition, it repeals the Defense Related Business Adjustment Program. Finally, it repeals the Retention of Military Installations Program.

The bill maintains the authorization for DEO to award funds for a Florida defense workforce database. It also retains limitations that payment for administrative expenses are limited to no more than ten percent of any grants issued. DEO is directed to establish guidelines to implement and carry out the purpose and intent of the programs.

Florida's Military Support Organizations

Present Situation

Florida Council on Military Base and Mission Support

In 2009, the Legislature established the Florida Council on Military Base and Mission Support (Council).[22] The mission of the Council is to support and strengthen all DoD missions and bases located in Florida; know the capabilities of Florida's military installations in order to support future military growth opportunities; and support local community efforts relating to mission support of a military base by acting as a liaison between the local communities and the Legislature.

The Council is composed of nine members. The President of the Senate and the Speaker of the House each appoint three members: a member of their respective Legislative body, a representative from a community-based defense support organization, and a retired military general or flag rank officer or an executive officer of a defense contracting firm doing significant business in Florida. The Governor appoints the three remaining Council members: the director or designee of DEO, a board member of Enterprise Florida, Inc., and one at-large member. Legislative members of the Council serve a term of two-years commencing on July 1 of each odd year. The remaining members are appointed to four-year terms with vacancies filled for any unexpired portion in the same manner as the initial appointment. Members of the Council elect a chair and vice-chair. The chair and vice-chair serve terms of two years and are eligible to succeed themselves.

The Secretary of Environmental Protection, the Secretary of Transportation, the Adjutant General of Florida, and the Executive Director of Veterans' Affairs are required to attend all Council meetings and provide assistance, information, and support upon request. Each of the officials is permitted to send a designee in his or her stead.

The Council is directed to establish four workgroups: the Intrastate Activities Workgroup, Federal Activities Workgroup, Competitive Advantages Workgroup, and the Public Communications Workgroup. Each of these workgroups is tasked with duties defined in s. 288.984(3), F.S. These duties include collecting information and conducting analyses, developing ongoing dialogue with DoD officials, working to leverage Florida's competitive advantage with respect to BRAC activities, and increasing public awareness of BRAC activities and public investment in preserving the state's military bases.

The Council is required to provide an annual report to the Legislature and the Governor, summarizing the current status of the state's military bases, the Council's activities, and any recommendations for legislative or executive action, by January 1 each year.

DEO is directed to provide administrative support to the Council. The Legislature has not appropriated funds for use by the Council.

[22] S. 289.984, F.S.

Florida Defense Support Task Force

In 2011, the Legislature established the Florida Defense Support Task Force (Task Force).[23] The mission of the Task Force is to make recommendations to prepare the state to effectively compete in any federal base realignment and closure action; support the state's position in research and development related to or arising out of military missions and contracting; and improve the state's military-friendly environment for service members, military dependents, military retirees, and businesses that bring military and base-related jobs to the state.

The Task Force is comprised of the Governor or his or her designee and twelve members comprised of four members appointed by the Governor, President of the Senate, and Speaker of the House, respectively. Task Force members represent defense-related industries or communities that host military bases and installations. With the exception of Legislative members, Task Force members serve for a term of four years, with the first term ending July 1, 2015. Vacancies are to be filled for the remainder of the unexpired term in the same manner as the initial appointment. Legislative members of the Task Force serve until the expiration of their Legislative term. When the Governor participates in Task Force activities, he or she serves as the chair; however, the Governor's designee does not serve as the chair in his or absence. The President of the Senate and the Speaker of the House each designates one of their appointees to serve as chair, with the President of the Senate's appointee serving as the initial chair. The chair shall rotate between the President of the Senate's appointee and the Speaker of the House's appointee each July 1.

The director of the Office of Tourism, Trade and Economic Development (OTTED),[24] or his or her designee, serves as the ex officio, nonvoting executive director of the Task Force.

The Task Force is required to submit a progress report and work plan for the remainder of the Fiscal Year 2011 – 2012 to the Governor, President of the Senate, and Speaker of the House by February 1, 2012. After that, the Task Force is required to submit an annual report every February 1.

OTTED is to contract with the Task Force for the expenditure of appropriated funds which can be used for economic and product research and development, joint planning with host communities to accommodate military missions and prevent base encroachment, advocacy on the state's behalf with federal civilian and military officials, assistance to school districts in providing a smooth transition for large numbers of additional military-related students, job training and placement for military spouses in communities with high proportions of active duty military personnel, and promotion of the state to military and related contractors and employers. The Task Force is authorized to spend up to $200,000 of funds appropriated for staffing and administrative expenses, including travel and per diem costs incurred by Task Force members who are not otherwise eligible for state reimbursement. OTTED was appropriated $5 million in nonrecurring General Revenue for the Task Force in Fiscal Year 2011 – 2012.

Effect of Proposed Changes

The bill repeals s. 288.984, F.S., relating to the Council. It transfers the powers, duties, functions, records, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds of the Council to the Task Force.

The bill amends s. 288.987, F.S., to remove language relating to BRAC and remove obsolete provisions relating to the reporting requirements.

It also amends ss. 163.3175 and 288.987, F.S., to make conforming changes.

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[23] S. 288.987, F.S.

[24] Section 4, ch. 2011-142, L.O.F., transferred all of the powers, duties, and functions of OTTED to DEO.

Public Records and Meetings Exemption

Present Situation

General Policies

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[25]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[26] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Exemption for the Florida Council on Military Base and Mission Support

In 2009, the Legislature created a public records and meetings exemption for certain activities of the Council.[27] Council records and discussions of the strengths and weaknesses of the state's military bases and strategies that are formulated to protect those bases during a base realignment and closure process are covered under the exemption.

General law provides a public disclosure exemption for the following records held by the Council including that portion of a record relating to:

- Strengths and weaknesses of military installations or missions in this state relative to BRAC realignment and closure selection criteria;
- Strengths and weaknesses of military installations or missions in other states or territories relative to BRAC realignment and closure selection criteria; and
- The state's strategies to retain, relocate, or realign its military bases during any BRAC realignment or closure process.

Council meetings or portions thereof where exempt records are presented or discussed are exempt from public disclosure. Any records generated during such meetings, including but not limited to minutes, tape recordings, videotapes, digital recordings, transcriptions, or notes, are exempted.

Any person who willfully and knowingly violates the exemption commits a misdemeanor of the first degree punishable as provided in ss. 775.082 or 775.083, F.S.

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[25] Article I, s. 24(c) of the Florida Constitution.
[26] S. 119.15, F.S.
[27] S. 288.985, F.S.

The section of statute relating to the public records and meetings exemption is subject to the Open Government Sunset Review Act pursuant to s. 119.15, F.S. The section shall stand repealed on October 2, 2014, unless reviewed and reenacted by the Legislature.

When it created the exemption for the Council, the Legislature provided a finding of public necessity for the meetings and records disclosure exemption. This finding stated that military bases enhance the national defense and the state's economic development, and given the economic contribution of military installations and defense-related industry, the state has a substantial financial interest in retaining its military bases. Consequently, protecting critical information such as strengths, weaknesses, or strategies relating to locating or retaining military bases is important if Florida is to effectively compete against other states and territories whose records are not open to the public. The state's ability to protect military bases and missions from realignment or closure or to attract new bases will be impaired if Council meetings, portions of thereof, and related records are not exempted.

Effect of Proposed Changes

The bill transfers the exemption from public records and public meetings requirements found in s. 288.985, F.S., from the Council to the Task Force. The sunset date for the exemption remains October 2, 2014.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3175, F.S., transferring a duty of the Florida Council of Military Base and Mission Support to the Florida Defense Support Task Force and clarifying provisions relating to comments from commanding officers on a local government's proposed comprehensive plan or plan amendment.

Section 2: Amends s. 288.972, F.S., conforming change.

Section 3: Amends s. 288.980, F.S., revising Legislative intent and streamlining grant programs relating to military base retention.

Section 4: Transfers the functions of the Florida Council of Military Base and Mission Support to the Florida Defense Support Task Force.

Section 5: Repeals s. 288.984, relating to the Florida Council of Military Base and Mission Support.

Section 6: Amends s. 288.985, F.S. transferring the exemptions from public records and public meetings requirements from the Florida Council of Military Base and Mission Support to the Florida Defense Support Task Force.

Section 7: Amends s. 288.987, F.S., revising the mission of the Florida Defense Support Task Force, amending the reporting requirements to remove obsolete requirements, and conforming cross-references.

Section 8: 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:

The bill may have a positive impact on the state and local economy if it is successful in keeping the state's current military base infrastructure intact while promoting the transfer of additional military assets to the state.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to military installations; amending s. 163.3175, F.S.; authorizing the Florida Defense Support Task Force to recommend to the Legislature specified changes in military installations and local governments under the Community Planning Act; clarifying and revising procedures related to exchange of information between military installations and local governments under the act; amending s. 288.972, F.S.; revising legislative intent with respect to proposed closure or reuse of military bases; amending s. 288.980, F.S.; creating the Military Base Protection Program within the Department of Economic Opportunity; providing for use of program funds; revising provisions relating to the award of grants for retention of military installations; revising a definition; eliminating the Florida Economic Reinvestment Initiative; establishing the Florida Defense Reinvestment Grant Program to be administered by the Department of Economic Opportunity; specifying purposes of the program; specifying activities for which grant awards may be provided; eliminating the Defense-Related Business Adjustment Program, the Florida Defense Planning Grant Program, the Florida Defense Implementation Grant Program, the Florida Military Installation Reuse Planning and Marketing Grant Program, and the Retention of Military Installations Program; transferring and reassigning

the functions and responsibilities of the Florida Council on Military Base and Mission Support within the Department of Economic Opportunity to the Florida Defense Support Task Force within the Department of Economic Opportunity by type two transfer; repealing s. 288.984, F.S., which establishes the Florida Council on Military Base and Mission Support and provides purposes thereof; amending s. 288.985, F.S.; conforming provisions relating to exempt records and meetings of the Council on Military Base and Mission Support; amending s. 288.987, F.S.; revising provisions relating to the Florida Defense Support Task Force, to conform; providing an effective date.

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

Section 1. Subsections (3), (5), and (6) of section 163.3175, Florida Statutes, are amended to read:

163.3175 Legislative findings on compatibility of development with military installations; exchange of information between local governments and military installations.—

(3) The Florida Defense Support Task Force ~~Council on Military Base and Mission Support~~ may recommend to the Legislature changes to the military installations and local governments specified in subsection (2) based on a military base's potential for impacts from encroachment, and incompatible land uses and development.

(5) The commanding officer or his or her designee may

provide advisory comments to the affected local government on the impact such proposed changes may have on the mission of the military installation. Such advisory comments shall be based on appropriate data and analyses provided with the comments and may include:

(a) If the installation has an airfield, whether such proposed changes will be incompatible with the safety and noise standards contained in the Air Installation Compatible Use Zone (AICUZ) adopted by the military installation for that airfield;

(b) Whether such changes are incompatible with the Installation Environmental Noise Management Program (IENMP) of the United States Army;

(c) Whether such changes are incompatible with the findings of a Joint Land Use Study (JLUS) for the area if one has been completed; and

(d) Whether the military installation's mission will be adversely affected by the proposed actions of the county or affected local government.

The commanding officer's comments, underlying studies, and reports shall be considered by the local government in the same manner as the comments received from other reviewing agencies pursuant to s. 163.3184 ~~are not binding on the local government~~.

(6) The affected local government shall take into consideration any comments and accompanying data and analyses provided by the commanding officer or his or her designee pursuant to subsection (4) as they relate to the strategic mission of the base, public safety, and the economic vitality

associated with the base's operations, while also respecting ~~and must also be sensitive to~~ private property rights and not being ~~be~~ unduly restrictive on those rights. The affected local government shall forward a copy of any comments regarding comprehensive plan amendments to the state land planning agency.

Section 2. Subsections (9) and (10) of section 288.972, Florida Statutes, are amended to read:

288.972 Legislative intent.—It is the policy of this state, once the Federal Government has proposed any base closure or has determined that military bases, lands, or installations are to be closed and made available for reuse, to:

~~(9) Coordinate the development of the Defense-Related Business Adjustment Program to increase commercial technology development by defense companies.~~

(9)~~(10)~~ Coordinate the development, maintenance, and analysis of a workforce database to assist workers adversely affected by defense-related activities in their relocation efforts.

Section 3. Section 288.980, Florida Statutes, is amended to read:

288.980 Military base retention; legislative intent; grants program.—

(1)(a) It is the intent of this state to provide the necessary means to assist communities with military installations in supporting and sustaining those installations ~~that would be adversely affected by federal base realignment or closure actions~~. It is further the intent to encourage communities to initiate a coordinated program of response and

plan of action in advance of future actions of the federal government relating to realignments and closures ~~Base Realignment and Closure Commission~~. It is critical that ~~closure-vulnerable~~ communities develop and implement strategies ~~such a program~~ to preserve and protect ~~affected~~ military installations. The Legislature hereby recognizes that the state needs to coordinate all efforts that can support ~~facilitate the retention of all remaining~~ military installations throughout ~~in~~ the state. The Legislature, therefore, declares that providing such assistance to support the defense-related initiatives within this section is a public purpose for which public money may be used.

(b) The Florida Defense Alliance, an organization within Enterprise Florida, is designated as the organization to ensure that Florida, its resident military bases and missions, and its military host communities are in competitive positions as the United States continues its defense realignment and downsizing. The defense alliance shall serve as an overall advisory body for defense-related activity of Enterprise Florida, Inc. The Florida Defense Alliance may receive funding from appropriations made for that purpose administered by the department.

(2) The Military Base Protection Program is created. Funds appropriated to this program may be used to address emergent needs relating to mission sustainment and base retention. All funds appropriated for the purposes of this program are eligible to be used for matching of federal funds. The department shall coordinate and implement this program.

(3) ~~(2)~~ (a) The department is authorized to award grants on

a competitive basis from any funds available to it to support activities related to the Florida Defense Reinvestment Grant Program and the Florida Defense Infrastructure Grant Program ~~retention of military installations potentially affected by federal base closure or realignment~~.

(b) The term "activities" as used in this section means studies, presentations, analyses, plans, and modeling. For the purposes of the Florida Defense Infrastructure Grant Program, the term "activities" also includes, but is not limited to, construction, land purchases, and easements. Staff salaries are not considered an "activity" for which grant funds may be awarded. Travel costs and costs incidental thereto incurred by a grant recipient shall be considered an "activity" for which grant funds may be awarded.

(c) ~~Except for grants issued pursuant to the Florida Military Installation Reuse Planning and Marketing Grant Program as described in paragraph (3)(c), the amount of any grant provided to an applicant may not exceed $250,000.~~ The department shall require that an applicant:

1. Represent a local government with a military installation or military installations that could be adversely affected by federal actions ~~base realignment or closure~~.

2. Agree to match at least 30 percent of any grant awarded.

3. Prepare a coordinated program or plan of action delineating how the eligible project will be administered and accomplished.

4. Provide documentation describing the potential for

changes to the mission ~~realignment or closure~~ of a military installation located in the applicant's community and the potential ~~adverse~~ impacts such changes ~~realignment or closure~~ will have on the applicant's community.

(d) In making grant awards the department ~~office~~ shall consider, at a minimum, the following factors:

1. The relative value of the particular military installation in terms of its importance to the local and state economy relative to other military installations ~~vulnerable to closure~~.

2. The potential job displacement within the local community should the mission of the military installation be changed ~~closed~~.

3. The potential ~~adverse~~ impact on industries and technologies which service the military installation.

(4) ~~(3)~~ The Florida Defense Reinvestment Grant Program ~~Economic Reinvestment Initiative~~ is established to respond to the need for this state to work in conjunction with defense-dependent communities in developing and implementing strategies and approaches that will help communities support the missions of military installations, and in developing and implementing ~~and defense-dependent communities in this state to develop~~ alternative economic diversification strategies to transition from a defense economy to a nondefense economy ~~lessen reliance on national defense dollars in the wake of base closures and reduced federal defense expenditures and the need to formulate specific base reuse plans and identify any specific infrastructure needed to facilitate reuse~~. Eligible applicants

include defense-dependent counties and cities, and local economic development councils located within such communities. The program ~~initiative~~ shall ~~consist of the following two distinct grant programs to~~ be administered by the department and grant awards may be provided to support community-based activities that:

(a) Protect existing military installations; ~~The Florida Defense Planning Grant Program, through which funds shall be used to analyze the extent to which the state is dependent on defense dollars and defense infrastructure and prepare alternative economic development strategies. The state shall work in conjunction with defense-dependent communities in developing strategies and approaches that will help communities make the transition from a defense economy to a nondefense economy. Grant awards may not exceed $250,000 per applicant and shall be available on a competitive basis.~~

(b) Diversify the economy of a defense-dependent community; or ~~The Florida Defense Implementation Grant Program, through which funds shall be made available to defense-dependent communities to implement the diversification strategies developed pursuant to paragraph (a). Eligible applicants include defense-dependent counties and cities, and local economic development councils located within such communities. Grant awards may not exceed $100,000 per applicant and shall be available on a competitive basis. Awards shall be matched on a one-to-one basis.~~

(c) ~~The Florida Military Installation Reuse Planning and Marketing Grant Program, through which funds shall be used to~~

~~help counties, cities, and local economic development councils~~ Develop ~~and implement~~ plans for the reuse of closed or realigned military installations, including any plans necessary for infrastructure improvements needed to facilitate reuse and related marketing activities.

Applications for grants under this subsection must include a coordinated program of work or plan of action delineating how the eligible project will be administered and accomplished, which must include a plan for ensuring close cooperation between civilian and military authorities in the conduct of the funded activities and a plan for public involvement.

(5) ~~(4)~~ The Defense Infrastructure Grant Program is created. The department shall coordinate and implement this program, the purpose of which is to support local infrastructure projects deemed to have a positive impact on the military value of installations within the state. Funds are to be used for projects that benefit both the local community and the military installation. ~~It is not the intent, however, to fund on-base military construction projects.~~ Infrastructure projects to be funded under this program include, but are not limited to, those related to encroachment, transportation and access, utilities, communications, housing, environment, and security. Grant requests will be accepted only from economic development applicants serving in the official capacity of a governing board of a county, municipality, special district, or state agency that will have the authority to maintain the project upon completion. An applicant must represent a community or county in

which a military installation is located. There is no limit as to the amount of any grant awarded to an applicant. A match by the county or local community may be required. The program may not be used to fund on-base military construction projects. The department shall establish guidelines to implement the purpose of this subsection.

~~(5)(a) The Defense-Related Business Adjustment Program is hereby created. The department shall coordinate the development of the Defense-Related Business Adjustment Program. Funds shall be available to assist defense-related companies in the creation of increased commercial technology development through investments in technology. Such technology must have a direct impact on critical state needs for the purpose of generating investment-grade technologies and encouraging the partnership of the private sector and government defense-related business adjustment. The following areas shall receive precedence in consideration for funding commercial technology development: law enforcement or corrections, environmental protection, transportation, education, and health care. Travel and costs incidental thereto, and staff salaries, are not considered an "activity" for which grant funds may be awarded.~~

~~(b) The department shall require that an applicant:~~

~~1. Be a defense-related business that could be adversely affected by federal base realignment or closure or reduced defense expenditures.~~

~~2. Agree to match at least 50 percent of any funds awarded by the United States Department of Defense in cash or in-kind services. Such match shall be directly related to activities for~~

~~which the funds are being sought.~~

~~3. Prepare a coordinated program or plan delineating how the funds will be administered.~~

~~4. Provide documentation describing how defense-related realignment or closure will adversely impact defense-related companies.~~

~~(6) The Retention of Military Installations Program is created. The department shall coordinate and implement this program.~~

(6)~~(7)~~ The department may award nonfederal matching funds specifically appropriated for construction, maintenance, and analysis of a Florida defense workforce database. Such funds will be used to create a registry of worker skills that can be used to match the worker needs of companies that are relocating to this state or to assist workers in relocating to other areas within this state where similar or related employment is available.

(7)~~(8)~~ Payment of administrative expenses shall be limited to no more than 10 percent of any grants issued pursuant to this section.

(8)~~(9)~~ The department shall establish guidelines to implement and carry out the purpose and intent of this section.

Section 4. The powers, duties, functions, records, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds of the Florida Council on Military Base and Mission Support within the Department of Economic Opportunity are transferred by a type two

transfer, as defined in s. 20.06(2), Florida Statutes, to the Florida Defense Support Task Force within the Department of Economic Opportunity.

Section 5. Section 288.984, Florida Statutes, is repealed.

Section 6. Subsections (1) and (2) of section 288.985, Florida Statutes, are amended to read:

288.985 Exemptions from public records and public meetings requirements.—

(1) The following records held by the Florida Defense Support Task Force ~~Council on Military Base and Mission Support~~ are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) That portion of a record which relates to strengths and weaknesses of military installations or military missions in this state relative to the selection criteria for the realignment and closure of military bases and missions under any United States Department of Defense base realignment and closure process.

(b) That portion of a record which relates to strengths and weaknesses of military installations or military missions in other states or territories and the vulnerability of such installations or missions to base realignment or closure under the United States Department of Defense base realignment and closure process, and any agreements or proposals to relocate or realign military units and missions from other states or territories.

(c) That portion of a record which relates to the state's strategy to retain its military bases during any United States

Department of Defense base realignment and closure process and any agreements or proposals to relocate or realign military units and missions.

(2) Meetings or portions of meetings of the Florida Defense Support Task Force ~~Council on Military Base and Mission Support~~, or a workgroup of the task force ~~council~~, at which records are presented or discussed which are exempt under subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

Section 7. Subsections (2), (5), (6), and (7) of section 288.987, Florida Statutes, are amended to read:

288.987 Florida Defense Support Task Force.—

(2) The mission of the task force is to make recommendations ~~to prepare the state to effectively compete in any federal base realignment and closure action,~~ to support the state's position in research and development related to or arising out of military missions and contracting, and to improve the state's military-friendly environment for service members, military dependents, military retirees, and businesses that bring military and base-related jobs to the state.

(5) The executive director of Department of Economic Opportunity ~~the Office of Tourism, Trade, and Economic Development within the Executive Office of the Governor~~, or his or her designee, shall serve as the ex officio, nonvoting executive director of the task force.

(6) ~~The chair shall schedule and conduct the first meeting of the task force by October 1, 2011.~~ The task force shall submit an annual ~~a~~ progress report and work plan ~~for the~~

~~remainder of the 2011-2012 fiscal year~~ to the Governor, the President of the Senate, and the Speaker of the House of Representatives ~~by February 1, 2012, and shall submit an annual report~~ each February 1 ~~thereafter~~.

(7) The department ~~Office of Tourism, Trade, and Economic Development~~ shall contract with the task force for expenditure of appropriated funds, which may be used by the task force for economic and product research and development, joint planning with host communities to accommodate military missions and prevent base encroachment, advocacy on the state's behalf with federal civilian and military officials, assistance to school districts in providing a smooth transition for large numbers of additional military-related students, job training and placement for military spouses in communities with high proportions of active duty military personnel, and promotion of the state to military and related contractors and employers. The task force may annually spend up to $200,000 of funds appropriated to the department ~~Executive Office of the Governor, Office of Tourism, Trade, and Economic Development~~, for the task force for staffing and administrative expenses of the task force, including travel and per diem costs incurred by task force members who are not otherwise eligible for state reimbursement.

Section 8. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7113 PCB FTC 12-06 Additional Ad Valorem Tax Exemption for Deployed Servicemembers
SPONSOR(S): Finance & Tax Committee, Precourt
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee	22 Y, 0 N	Aldridge	Langston
1) Economic Affairs Committee		Tait MT	Tinker TBT

SUMMARY ANALYSIS

The bill amends s. 196.173(2), F.S., to make changes to the designated operations for which deployed servicemembers may qualify for an ad valorem tax exemption. The changes are based upon the report required to be delivered by the Department of Military Affairs to the legislature of all known and unclassified military operations outside the continental United States, Alaska, or Hawaii for which servicemembers based in the continental United States have been deployed during the previous calendar year. The bill makes the following changes to the statutory list of operations:

- Operation Noble Eagle, which began on September 15, 2001, and is ongoing, is added,
- Operation Odyssey Dawn which began March 19, 2011, and ended on October 31, 2011, is added,
- Operation New Dawn, which began September 1, 2010, and is currently identified in statute, has its ending date of December 15, 2011 added.

The bill amends 196.173(3), F.S., to recognize these changes in statute.

The bill provides an exception to the March 1 application deadline in s. 196.173(5), F.S., for 2012 only, by establishing June 1, 2012, as the deadline for an eligible servicemember to file a claim for an additional tax exemption for qualifying deployment during the 2011 calendar year.

The Revenue Estimating Conference estimated a negative $0.1 million impact on local governments in FY 2012-13.

The bill is effective upon becoming law and first applies to ad valorem tax rolls for 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 196.173, F.S., provides an additional ad valorem tax exemption for homestead property owned by a person who was a member of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard deployed outside of the continental United States, Alaska, or Hawaii in support of military operations designated by the Legislature.

Eligible Military Operations

The exemption is available to servicemembers who were deployed during the previous calendar year on active duty outside the continental United State, Alaska, or Hawaii in support of:

- Operation Enduring Freedom which began on October 7, 2001;
- Operation Iraqi Freedom which began on March 19, 2003 and ended on August 31, 2010; or
- Operation New Dawn which began September 1, 2010.

Annual Report of All Known and Unclassified Military Operations

By January 15 of each year, the Department of Military Affairs must submit to the President of the Senate, the Speaker of the House of Representatives, and the tax committees of each house of the Legislature a report of all known and unclassified military operations outside the continental United States, Alaska, or Hawaii for which servicemembers based in the continental United States have been deployed during the previous calendar year. To the extent possible, the report must include:

- the official and common names of the military operations;
- the general location and purpose of each military operation;
- the number of servicemembers deployed to each military operation;
- the number of servicemembers deployed to each military operation who were based in this state at the time of deployment, including the number by county of residence or military base, if known;
- the date each military operation commenced;
- the date each military operation terminated, unless the operation is ongoing; and
- any other relevant information.

Amount of Exemption

The amount of the exemption is equal to the taxable value of the homestead of the servicemember on January 1 of the year in which the exemption is sought multiplied by the number of days that the servicemember was on a qualifying deployment in the preceding calendar year and divided by the number of days in that year.

Exemption Application

A servicemember who seeks to claim the additional tax exemption must file an application for exemption with the property appraiser on or before March 1 of the year following the year of the qualifying deployment. The application must be made on a form prescribed by the Department of Revenue and furnished by the property appraiser. The servicemember must provide:

- proof that the servicemember participated in a qualifying deployment;
- the dates of the qualifying deployment; and
- other information necessary to verify eligibility for and the amount of the exemption.

In the event a servicemember is unable to apply for the deployed servicemember exemption for reasons such as deployment, a spouse who also owns the homestead as entireties or jointly with the right of survivorship, an individual with the servicemember's power of attorney, or the personal representative of the servicemember's estate may apply for the exemption on the servicemember's behalf.

Exemption Approval or Denial

The property appraiser must consider a servicemember's application for the exemption within 30 days after receipt of the application. If a servicemember's application for the exemption is denied, the property appraiser must send a notice of disapproval no later than July 1, citing the reason for disapproval and advising the servicemember of the right to appeal the decision to the value adjustment board along with the procedures for filing such appeal.

Definition of "Servicemember"

The term "servicemember" as used in this section, is defined to mean "a member or former member of any branch of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard."

Effect of Proposed Changes

The Department of Military Affairs has submitted the report required by s. 196.173(3), F.S., described above and providing the names, dates, locations and general purposes of all known and unclassified military operations that occurred outside the United States in calendar year 2011.[1]

The report identified three differences from the designated operations currently identified in s. 196.173(2), F.S.:

- Operation Noble Eagle, which began on September 15, 2001, and is ongoing, is not currently identified in statute;
- Operation New Dawn, which began September 1, 2010, and is currently identified in statute, ended on December 15, 2011; and
- Operation Odyssey Dawn which began March 19, 2011, and ended on October 31, 2011, is not currently identified in statute.

The bill amends 196.173(3), F.S., to recognize these changes in statute.

The bill provides an exception to the March 1 application deadline in s. 196.173(5), F.S., for 2012 only, by establishing June 1, 2012, as the deadline for an eligible servicemember to file a claim for an additional tax exemption for qualifying deployment during the 2011 calendar year. Any applicant who fails to meet the June 1 deadline must subsequently submit an application to the property appraiser on or before the 25th day following the mailing by the property appraiser of the notices required under s.194.011(1), F.S. Upon receipt of the application, the property appraiser may grant the tax exemption if the property appraiser determines the applicant failed to meet the application deadline due to extenuating circumstances.

[1] On file with the Finance and Tax Committee.

If the property appraiser determines that extenuating circumstances did not prevent an applicant from meeting the deadline and denies the application, the applicant may file a petition with the value adjustment board requesting that the exemption by granted. No filing fee is due for this petition. The value adjustment board may grant the exemption for the current year if the board determines that extenuating circumstances existed.

B. SECTION DIRECTORY:

Section 1: Amends s. 196.173(2), F.S., to designate military operations for which deployed servicemembers may qualify for an additional homestead property tax exemption.

Section 2: Moves the March 1 application deadline to June 1 for qualifying deployment during calendar year 2011.

Section 3: Provides an effective date.

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:

The Revenue Estimating Conference estimated a negative $0.1 million impact on local governments in FY 2012-13.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Qualifying servicemembers who were deployed overseas during 2011 on or in support of the operations designated by this bill may see a reduction in their property taxes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill expands the designated operations which certain deployed servicemembers may be eligible for an exemption from ad valorem taxes; however, an exemption may apply because the fiscal impact is insignificant.

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 additional ad valorem tax exemption for deployed servicemembers; amending s. 196.173, F.S.; authorizing servicemembers who receive a homestead exemption and who are deployed in certain military operations to receive an additional ad valorem tax exemption; providing a deadline for claiming tax exemptions for qualifying deployments during the 2011 calendar year; providing procedures and requirements for filing applications and petitions to receive the tax exemption after expiration of the deadline; providing application; providing an effective date.

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

Section 1. Subsection (2) of section 196.173, Florida Statutes, is amended to read:

196.173 Exemption for deployed servicemembers.—

(2) The exemption is available to servicemembers who were deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of:

(a) Operation Noble Eagle, which began on September 15, 2001;

(b) ~~(a)~~ Operation Enduring Freedom, which began on October 7, 2001;

(c) ~~(b)~~ Operation Iraqi Freedom, which began on March 19,

2003, and ended on August 31, 2010; ~~or~~

(d) ~~(c)~~ Operation New Dawn, which began on September 1, 2010, and ended on December 15, 2011; or

(e) Operation Odyssey Dawn, which began on March 19, 2011, and ended on October 31, 2011.

The Department of Revenue shall notify all property appraisers and tax collectors in this state of the designated military operations.

Section 2. Notwithstanding the application deadline in s. 196.173(5), Florida Statutes, the deadline for an eligible servicemember to file a claim for an additional ad valorem tax exemption for a qualifying deployment during the 2011 calendar year is June 1, 2012. Any applicant who seeks to claim the additional exemption and who fails to file an application by June 1 must file an application for the exemption with the property appraiser on or before the 25th day following the mailing by the property appraiser of the notices required under s. 194.011(1), Florida Statutes. Upon receipt of sufficient evidence, as determined by the property appraiser, demonstrating the applicant was unable to apply for the exemption in a timely manner or otherwise demonstrating extenuating circumstances judged by the property appraiser to warrant granting the exemption, the property appraiser may grant the exemption. If the applicant fails to produce sufficient evidence demonstrating the applicant was unable to apply for the exemption in a timely manner or otherwise demonstrating extenuating circumstances as judged by the property appraiser, the applicant may file,

pursuant to s. 194.011(3), Florida Statutes, a petition with the value adjustment board requesting that the exemption be granted. Such petition must be filed during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser as provided in s. 194.011(1), Florida Statutes. Notwithstanding s. 194.013, Florida Statutes, the applicant is not required to pay a filing fee for such a petition. Upon reviewing the petition, if the applicant is qualified to receive the exemption and demonstrates particular extenuating circumstances judged by the value adjustment board to warrant granting the exemption, the value adjustment board may grant the exemption for the current year.

Section 3. This act shall take effect upon becoming a law and first applies to ad valorem tax rolls for 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7119 PCB BCAS 12-04 Early Learning Programs
SPONSOR(S): Business & Consumer Affairs Subcommittee, Ahern
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Consumer Affairs Subcommittee	11 Y, 3 N	Croom	Creamer
1) Economic Affairs Committee		Croom	Tinker TBT

SUMMARY ANALYSIS

The bill provides functions and responsibilities for the Office of Early Learning in administering the school readiness program to support the efforts of parents to work and be financially self-sufficient and to enhance the quality of child care programs in the state. The office is responsible for the prudent use of state and federal funds and the oversight of the early learning coalitions. In addition, the bill provides the office with the authority to adopt child development standards and a standard school readiness plan by rule. The bill requires the office to implement a statewide pre and post assessment aligned with child development standards, which are to be implemented by school readiness providers to inform classroom instruction.

The bill provides for no more than 25 coalitions statewide. The bill alters the early learning coalition board makeup, including reducing the maximum board size from 30 to 18, requiring the Governor to designate between competing designees, and providing that the Governor may remove a board member or an executive director for cause. The bill also changes the private board makeup requiring at least one-fourth of the board to be made up of private sector business members. The bill also requires coalition board members to file financial disclosures, and prohibits public dollars from being used for meals, food, beverage or unreasonable travel expenses.

The bill provides functions and responsibilities of the early learning coalitions including the submission of a school readiness plan, detailed budget and operational information, and development of policies and procedures for proper administration of public resources. In addition, the bill requires the office to create a scorecard to measure coalition performance.

The bill sets clear requirements for school readiness providers and establishes a standard provider agreement for the school readiness program that must be adopted by rule by the Office of Early Learning. The bill requires providers to: use a curriculum and character development program that meets the adopted child development standards, meet licensure requirements for health and safety; and ensure minimum standards associated with child discipline. The bill continues Warm-line services for providers, including developmental screenings for school readiness children.

The bill provides for monitoring of providers and provides for restitution and penalties for fraudulent activities.

The bill provides for eligibility and enrollment requirements, including the order of priority for children being served by the school readiness program. It establishes program budget, allocation and allowable use requirements for expending appropriated federal, state, and local-match funds. The bill provides caps for coalition overhead expenditures, increasing the amount of funds that will be allocated towards direct services for working-families so that more young children may be served in the program.

The bill will establish a standardized way to allocate funding to school readiness providers, requiring a standard reimbursement rate for children served regardless of age, a standardized reimbursement for Gold Seal providers, and a standardized parent fee—all of which will be provided annually in the General Appropriations Act.

The bill does not reduce funding for the school readiness program. There is no fiscal impact on state or local funds. The bill provides for an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Office of Early Learning

The Office of Early Learning (OEL) serves as the lead agency responsible for the administration of school readiness. The OEL has duties which include providing final approval and an annual review of coalitions and plans; safeguarding the effective use of federal, state, local, and private resources to achieve the highest possible level of school readiness for the state's children; adopting a system for measuring school readiness that provides objective data regarding the expectations for school readiness and can be used to assist in determining program effectiveness; developing and adopting performance standards and outcome measures and preparing a plan for measuring school readiness which includes a uniform screening that will provide objective data regarding expectations for school readiness.

Chapter 2011-142, Laws of Florida, transferred the Office of Early Learning from the Agency for Workforce Innovation to the Department of Education. The office is a separate budget entity that is not subject to the control or oversight of the Department of Education or the State Board of Education. Essentially, the office is a single office that only reports to the Governor.

Early Learning Coalitions

In 1999, the Florida Legislature enacted s. 411.01, F.S., the School Readiness Act (Act), which created early learning coalitions statewide. The intent of this legislation was to provide an avenue for each county to adopt and maintain a coordinated system of School Readiness programs to help ensure that every child is ready for school upon entrance into kindergarten.

Early learning coalitions are not-for-profit corporations, designed to fulfill the intent of this legislation at the local level. The governing boards consist of 15 to 30 members of the local community. The school readiness program must, at a minimum, enhance the age-appropriate progress of each child in attaining the performance standards and outcome measures adopted by the Office of Early Learning.

Currently, there are 31 coalitions. Each coalition is legislatively responsible for developing a comprehensive service delivery plan for administering the School Readiness and Voluntary Prekindergarten Education Programs. Coalitions are legislatively charged to implement a comprehensive program of school readiness services in accordance with the rules adopted by the office which enhance the cognitive, social, and physical development of children to achieve the performance standards and outcome measures. At a minimum, these programs must contain developmentally appropriate curriculum, a character development program, age appropriate screening of a child's development, a healthy and safe environment and a resource and referral network.

School Readiness Program

The School Readiness Program provides early childhood education and child care services for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities. The School Readiness Program is a state-federal partnership between Florida's Office of Early Learning (OEL) and the Child Care Bureau of the United States Department of Health and Human Services. The School Readiness Program receives funding from a mixture of state and federal sources, including the federal Child Care and Development Fund (CCDF) block grant, the federal Temporary Assistance for Needy Families (TANF) block grant, and General Revenue, and other state funds.

The program is administered by early learning coalitions (ELC) at the county or regional level. OEL administers the program at the state level, including statewide coordination of the ELCs. Governance of the School Readiness Program is structured in a manner that provides for local delivery and management of school readiness services, with OEL developing program performance standards and

outcome measures and approving ELC school readiness plans. Administrative staff at the state level must be maintained at the minimum necessary to administer OEL's duties.

Florida law requires families served in this program have a "choice of settings and locations in licensed, registered, religious-exempt, or school-based programs." A wide range of public and private providers of early childhood education and child care services participate in the School Readiness Program, including:

- Public and private schools;
- Licensed child care facilities and large family child care homes;
- Licensed and registered family day care homes;
- Faith-based child care facilities and after-school programs, and
- Informal providers (e.g., friends, relatives, and in-home care providers).

Auditor General Audit Report No. 2012-061

As required by Section 2 of Chapter 2011-142, Laws of Florida, the Auditor General completed a financial and performance audit of the Office of Early Learning Services' programs and related delivery systems. The audit focused on the governance structure of the State's early learning programs, statewide administration and oversight of the School Readiness and Voluntary Prekindergarten Education (VPK) programs, and early learning coalition program delivery and operations.

The audit disclosed areas in which the efficiency and effectiveness of early learning program administration and accountability could be enhanced. Specifically, the Auditor General noted that OEL did not always provide the oversight necessary for the effective and efficient administration of the school readiness and VPK programs or implement the necessary statewide measures to determine whether legislative objectives are being met, measure school readiness program successes, and assess the effectiveness of the investments made. The audit also disclosed deficiencies in coalition financial management, operations, school readiness and VPK program administration, and information technology practices, as well as instances of noncompliance with state laws and federal regulations. The Auditor General noted that control deficiencies at OEL and the early learning coalitions contributed to many of the problems described in the report.

The results of the audit, when considered as a whole, indicated that the statewide governance structure of the early learning programs, as designed, was adequate for purposes of the school readiness and VPK programs. However, the audit procedures also disclosed that, notwithstanding the adequacy of its design, the governance structure's effectiveness had been impaired by the lack of the execution of certain program duties and responsibilities.

There were a total of 32 audit findings. Some of the findings include:

- A total of $39.8 million was paid to individuals who were improperly receiving school readiness program benefits under a work-dependent eligibility category and were also receiving benefits under the unemployment insurance program totaling an additional $54.2 million.
- The OEL had not developed or implemented statewide uniform outcome measures.
- Coalition school readiness plans did not always include all the required elements and OEL's plan review and approval processes were not always efficient and effective.
- The types of expenditures classified as quality dollar expenditures varied and at times did not relate to activities that improved the quality of care.
- Some coalition waiting lists were not prioritized according to participant eligibility category and reimbursements to providers were not always in accordance with approved payment schedules;
- Some coalitions did not always ensure that employees who may come into contact with children or have access to confidential information timely received background screenings.
- Coalitions did not always have effective procurement procedures, some expenses didn't appear reasonable, and some coalition property records were not accurate.

Effect of Proposed Changes

Office of Early Learning

The bill requires the Governor to designate the Office of Early Learning as the lead agency for administration of the federal Child Care and Development Fund and provides functions and responsibilities for the office in administering the school readiness program; specifically it requires the office to:

- Ensure the availability of school readiness services to support the efforts of parents to work and be financially self-sufficient and to enhance the quality of child care programs in the state.
- Provide services that preserve parental choice by permitting parents to choose from a variety of child care categories.
- Use state and federal funds prudently to achieve the highest practicable level of school readiness for the children.
- Maintain a single statewide information system that each coalition must use for the purpose of managing the single point of entry, tracking children's progress, coordinating services, determining eligibility, and tracking child attendance.
- Allow no more than 25 coalitions statewide; that each serve at least 1,700 children per year and to ensure access in all 67 counties.
- Approve coalition plans annually prior to expenditure of funds.
- Monitor and evaluate through onsite visits the performance of coalitions to ensure proper payments of benefits and implementation of their plan.
- Monitor the coalitions to ensure that requirements beyond those specified in state law or rule are not imposed on providers.
- Provide technical assistance to coalitions to avoid duplication of services.
- Ensure that all expenditures are properly allocated by expenditure type, including separation of staff costs from other expenditures.
- Coordinate with the Child Care Services Program Office of the Department of Children and Family Services with respect to health and safety monitoring, background screenings, and the collection and maintenance of child care training and credentialing.
- Coordinate with the Department of Economic Opportunity to perform data matches on families participating in the school readiness program and receiving unemployment compensation.
- Prepare and submit a unified budget request for the school readiness system.
- Adopt by rule a standardized format and the required content of school readiness plans and publish a copy of the standardized format and required content on its Internet website.

In addition, the bill allows the OEL to contract with a qualified entity to deliver school readiness and Voluntary Pre-Kindergarten Education program services if a coalition fails to serve at least 1,700 children or if the coalition does not administer the program in accordance with their plan or policy, law or rule. The office may determine if any adverse finding should result in terminating a contract. In the event of a coalition contract being terminated, the office may shift funds from a coalition to another qualified entity.

The bill requires the OEL to adopt by rule child development standards for the physical health approaches to learning, social and emotional development, language and communication, cognitive development and general knowledge and motor development. These child development standards shall align with the performance standards adopted by the Department of Education for the VPK program.

The OEL must implement a statewide pre and post assessment aligned with child development standards. The instrument is to be implemented by school readiness providers. The instrument may not be used to evaluate providers for high stakes accountability. The OEL shall collect the results of the assessments to evaluate the effectiveness of the program. The assessment must be administered at least once to school readiness children within the first 45 days of enrollment. A post assessment shall be administered to each school readiness child in a provider's program for at least 6 months and must be completed by May 30 of each year.

The bill requires the OEL to adopt rules prescribing the statewide provider agreement. Coalitions are required to use the agreement to annually contract with all eligible providers. The provider agreement must include child eligibility enrollment procedures and requirements; funding, payment, and

expenditures for the school readiness programs; child development and provider standards; requirements for maintenance of records and data confidentiality; requirements for notifications; procedures for reporting and certifying student attendance; specific grounds for termination or agreement; specific grounds for high-risk monitoring; dispute resolution procedures; and provisions for indemnification of the coalition.

The bill requires the OEL to create a scorecard to measure coalition performance. The office shall consider measures relating to provider satisfaction, parent satisfaction, payment process, fraud intervention, child attendance and stability, utilization of Child Care Resource and Referral to support families, and school readiness outcomes for children in VPK upon entry into kindergarten. The scorecard must be implemented by July 1, 2013, and be included in the first applicable annual report.

The bill requires the OEL to submit an annual report on January 1 of its activities to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The reports must include a summary of the coalitions' annual reports; a statewide summary; an analysis of school readiness activities; information on children served; a summary, breakdown and description of expenditures; a summary of fraud findings and collections; coalition scorecard performance data; total number of children disenrolled and cause, the total number of provider contracts revoked with reasons, and the results from preassessments and postassessments.

Early Learning Coalitions

The bill provides that an early learning coalition is established upon the approval of the coalition's school readiness plan by OEL. No more than 25 coalitions may be established and each coalition must serve a minimum of 1,700 children annually. If a coalition would serve fewer than the minimum required, they must merge with another coalition to form a multicounty coalition.

Early Learning Coalitions have the following responsibilities detailed in the bill:

- Administer the school readiness program at the county or regional level.
- Establish a unified waiting list to track eligible children waiting for enrollment.
- Establish a resource and referral network to assist parents in making an informed choice.
- Establish a regional Warm-line as directed by OEL.
- Establish child eligibility and provider eligibility in accordance with statute, and provide documentation as to why a child is no longer eligible based on termination codes.
- Ensure proper maintenance of records related to eligibility and enrollment files, provider payments, coalition staff background screenings, and other documents.
- Establish a records retention requirement for sign-in and sign-out sheets that is consistent with state and federal law.
- Follow the requirements of the Chief Financial Officer with regards to property.
- Comply with state procurement requirements and expenditure requirements of state and federal law.
- Ensure proper information technology security is in place.
- Establish written contracting policies and procedures.

The bill also requires the coalitions to monitor school readiness providers on an annual basis, or in response to a parent complaint to ensure standards are met. Any provider that is considered to be high-risk shall be monitored more frequently. The coalition shall monitor the basic health and safety of facilities exempt from licensure, registered family day care homes and informal providers to ensure they meet licensure standards. Finally, the coalitions must monitor provider's records, including child eligibility and attendance to reduce the risk of fraud and overpayment.

The bill alters the early learning coalition board makeup, including reducing the maximum board size from 30 to 18, requiring the Governor to designate between competing designees, and providing that the Governor may remove a board member or the executive director for cause. The Governor appoints the chair of each coalition, and up to 2 additional members from the private sector. The bill also changes the private board makeup requiring at least one-fourth of the board to be made up of private

sector business members. A multicounty region must have representatives on the board from each county.

Each coalition board must have the following representation:

- The Department of Children and Families circuit administrator or designee.
- A district superintendent or designee.
- A regional workforce board executive or designee.
- A county health department director or designee.
- The president of a Florida College System institution or designee.
- One member appointed by a board of county commissioners or governing body of a municipality.
- A head start director.
- A representative of private for-profit child care providers.
- A representative of faith-based child care providers.
- A representative of programs for children with disabilities appointed by the Governor.

The bill also requires coalition board members and the executive director, or other person designated as being responsible for the coalition's operational and administrative functions, to file financial disclosures if not already required to do so.

The bill prohibits public dollars from being used for meals, food, beverage or unreasonable travel expenses. Preapproved reasonable per diem and travel expenses may be reimbursed at the standard travel reimbursement rate established in s. 112.061, F.S. The costs must also be in compliance with all other state and federal requirements.

The bill provides functions and responsibilities of the early learning coalitions. Coalitions must submit a school readiness plan to the OEL before the expenditure of funds, and they may not implement such a plan until the OEL has given its approval. The plan must include:

- A detailed budget including segregated expenditures, detailed sources of revenues, listing of staff positions, contracted costs, and a capital improvement plan.
- A detailed accounting of revenues and expenditures from the prior year.
- A description of quality activities planned that will be used to meet the federal requirement for quality expenditures.
- Updated policies and procedures for procurement, maintenance of tangible personal property, maintenance of records, information technology security, and expense and disbursement controls.
- Documentation that the coalition has solicited and considered local community comments.

The bill requires coalitions to submit an annual report by October 1 to OEL that documents segregation of school readiness, VPK and Child Care Executive Partnership funds; details of expenditures for administrative activities, quality activities, and nondirect and direct services; the total number of coalition staff and related salary information; the number of children served by age and eligibility priority category; the total number of children disenrolled and the reason; and a listing of providers whose eligibility has been revoked.

School Readiness Program Eligibility and Enrollment

The bill provides for eligibility and enrollment requirements, including the order of priority for children being served by the school readiness program. The bill provides for the following priority order:

- Birth to age 12 for a working family that includes an adult receiving temporary cash assistance.
- Birth to age 8 for at-risk families.
- Birth to the beginning of the school year for which a child is eligible for kindergarten for a working family that is economically disadvantaged, except that a child ceases to be eligible if the family income exceeds 200 percent of the federal poverty level.
- A child enrolled concurrently in the federal Head Start program and the VPK program.
- At risk children age 9 through 12.

A child in a working family will no longer be eligible for service if their parent becomes unemployed and remains unemployed for longer than 30 days. If the coalition needs to disenroll children from the school readiness program, the coalition must disenroll children in the reverse of the priority order, beginning with the highest income families.

School Readiness Provider Standards

The bill requires the following for a school readiness provider to be eligible:

- Be a licensed child care facility or large family child care home.
- Be an unlicensed public or nonpublic school , faith-based child care provider, after-school program, or family child care home but meet basic licensing requirements for health and safety.
- Must enhance the age-appropriate progress of each child through the selection or design of a curriculum and character development program.
- Ensure the health and safety of its premises and facilities as defined.
- Maintain a record demonstrating that each child served has applicable immunizations.
- Ensure minimum standards associated with child discipline.
- And execute the statewide provider agreement.

The bill prohibits the OEL from imposing any requirement on a child care or early childhood education provider that does not deliver services under the school readiness program or that does not receive any state or federal funding for early learning programs. In addition, the OEL and the coalitions are prohibited from imposing any requirement on a school readiness provider that exceeds the authority provided in law.

School Readiness Funding

The bill establishes program budget, allocation and allowable use requirements for expending appropriated funding. This includes restrictions on the percentage and uses of federal, state, and local match funds at the coalition level. The proposal caps administrative expenditures at 4 percent and provides allowable categories, quality expenditures at 6 percent and provides allowable categories, and nondirect expenditures at 8 percent and provides allowable categories. If a coalition charges less than the percentages allowed for administration and nondirect expenditures, the remaining amounts may be used to increase quality expenditures.

Quality expenditures may be used for:

- Child Care Resource and Referral programs to provide comprehensive consumer education and educate parents and the public regarding participation in the School Readiness Program.
- Awarding grants to school readiness providers to assist them in implementing curricula, purchasing classroom resources to implement the curricula, and provide literacy supports.
- Providing training to providers and parents on a variety of topics including: child development standards, developmentally appropriate curricula, child screenings, child assessments, character development, teacher-child interactions, age-appropriate discipline practices, and teacher-child interactions.
- Direct expenditures to assist with infant and toddler care.
- Implementing a pre and post assessment for children served in the program.
- Responding to Warm-line requests, including providing developmental and health screenings to school readiness children.

The bill requires standard rates for parent fees and for provider reimbursements that will be provided in the General Appropriations Act. A provider's total payment for a child shall be equal to the provider payment rate less the parent's copayment amount. However, the provider's payment may not exceed the provider's charges to the general public. The OEL may request a budget amendment for approval by the Legislative Budget Commission to increase the adjusted payment rate percentage for a specific geographic area in order to ensure that care levels are available throughout the state.

The bill provides for the OEL's Inspector General to investigate early learning coalitions, recipients and providers of the school readiness and VPK programs to determine if any overpayments are due to fraud. If fraud is suspected, the Inspector General shall conduct an investigation and make a

determination. If an overpayment is determined to be due to a fraudulent act, the parent or provider shall be responsible for repayment and restitution, and the OEL shall use any legal means to recover the funds. A provider or parent may not participate in the programs until all funds have been repaid. The OEL Inspector General may refer any suspected fraud to the Department of Law Enforcement. The current penalty in law for fraud is as follows: If the value of the public assistance is less than a total value of $200 in any 12 consecutive months, such person commits a misdemeanor of the first degree and if the value of the public assistance is of a total value of $200 or more in any 12 consecutive months, such person commits a felony of the third degree. Any provider that is found guilty of committing fraud shall be permanently ineligible to participate in the school readiness and VPK programs.

The bill provides the purpose of the Early Learning Advisory Council is to share best practices of administering the school readiness and VPK programs. The bill requires the council to meet at least annually.

The bill eliminates the Child Care Executive Partnership board and transfers responsibilities of the program to the OEL.

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

B. SECTION DIRECTORY:

Section 1 creates ss. 431.01, 431.03, 431.05, 431.07, 431.09, 431.11, 431.13, 431.15, 431.17, 431.19, 431.23 and 431.41 of the Florida Statutes dealing with early learning programs.

Section 2 transfers ss. 411.011 to s. 431.21, F.S., relating to records of children and makes reference corrections.

Section 3 transfers ss. 411.0101 to s. 431.25, F.S., relating to child care and early childhood resource and referral and makes reference corrections.

Section 4 transfers ss. 411.01013 to 431.27, F.S., relating to prevailing market rate schedule and amends language due to changes made in section 1 of the bill.

Section 5 transfers ss. 411.01015 to s. 431.29, F.S., relating to consultation to child care centers and family day care homes regarding health, developmental, disability, and special needs issues and corrects a reference.

Section 6 transfers ss. 411.0102 to s. 431.31, F.S., relating to the Child Care Executive Partnership and deletes language.

Section 7 transfers ss. 411.0103 to s. 431.33, F.S., relating to the teacher education and compensation helps scholarship program.

Section 8 transfers ss. 411.0105 to s. 431.35, F.S., relating to the Early Learning Opportunities Act and Even Start Family Literacy Programs.

Section 9 transfers ss. 411.0106 to s. 431.37, F.S., relating to infants and toddlers in state-funded education and care programs and makes reference changes.

Section 10 transfers ss. 1002.77 to 431.39, F.S., relating to the Florida Early Learning Advisory Council and amends language.

Section 11 amends s. 11.45, F.S., relating to the Auditor General's authority to correct a reference.

Section 12 amends s. 20.15, F.S., relating to the Department of Education to correct a reference.

Section 13 amends s. 216.136, F.S., relating to consensus estimating conferences to correct references.

Section 14 amends s. 402.302, F.S., relating to child care facilities definitions to correct a reference.

Section 15 amends s. 490.014, F.S., relating to psychological services exemptions to correct a reference.

Section 16 amends s. 491.014, F.S., relating to clinical, counseling, and psychotherapy services exemptions to correct a reference.

Section 17 amends s. 1002.51, F.S., relating to Voluntary Prekindergarten Education Program definitions to correct a reference.

Section 18 amends s. 1002.53, F.S., relating to Voluntary Prekindergarten Education Program eligibility and enrollment to correct a reference.

Section 19 amends s. 1002.67, F.S., relating to Voluntary Prekindergarten Education Program performance standards to correct a reference.

Section 20 amends s. 1002.71, F.S., relating to Voluntary Prekindergarten Education Program funding to correct a reference.

Section 21 amends s. 1006.03, F.S., relating to learning services diagnostic and learning resource centers to correct a reference.

Section 22 repeals ss. 411.01, s. 411.01014, s. 411.0104, s. 445.023, and s. 445.032, F.S.

Section 23 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:

The bill's intent is to establish a more efficient and effective school readiness program by providing caps for coalition overhead expenditures, increasing the amount of funds that will be allocated towards

direct services for working-families so that more young children may be served in the program. There may be a positive impact to providers since the bill will establish a standardized way to allocate funding to school readiness providers, requiring a standard reimbursement percentage for children served regardless of age. In addition, the bill will set a statewide Gold Seal reimbursement rate so that accredited providers meeting the legislatively created Gold Seal standard will all receive the same percentage of additional reimbursement regardless of the county in which they are located. Also, there is a benefit to working families with young children since the bill increases the number of young children that will be receiving services, prioritizing the state's youngest and most vulnerable children. The bill refocuses the school readiness program on serving families with young children who would otherwise find it difficult to work due to the high cost associated with child care.

D. FISCAL COMMENTS:

The bill will provide an estimated additional $26 million to be used for direct services for children, allowing more children to be removed from the waiting lists.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill requires that the Office of Early Learning adopt rules prescribing child development standards for the physical health, approaches to learning, social and emotional development, language and communication, cognitive development, and general knowledge and motor development of children served in the school readiness program.

The bill provides that the Office of Early Learning is provided the authority to adopt rules to administer the provisions of Chapter 431, which confers the duties upon the office.

The bill requires that the Office of Early Learning adopt rules prescribing a standardized format and required content of school readiness plans as necessary for a coalition or other qualified entity to administer the school readiness program as provided in this section and s. 431.11.

The bill requires the Office of Early Learning to adopt rules for the disbursement of Child Care Executive Partnership Program funds.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to early learning programs; creating chapter 431, F.S.; providing a short title; defining terms; providing for designation of the Office of Early Learning as lead agency for the federal Child Care and Development Fund; providing the office's powers and duties for administering the school readiness program; providing for a preassessment and postassessment of children enrolled in the school readiness program; limiting uses of assessment data; requiring the office to submit an annual report to the Governor and Legislature; providing for the establishment and duties of early learning coalitions; limiting the number of coalitions and providing the minimum number of children that each coalition must serve; providing for the merger of coalitions under certain circumstances; providing for the membership of coalition boards; limiting the use of certain funds by coalitions; requiring coalitions to annually submit school readiness plans to the Office of Early Learning in the format prescribed by the office; establishing a scorecard to measure coalition performance; providing the coalitions' powers and duties for administering the school readiness program; requiring the coalitions to submit annual reports to the Office of Early Learning; establishing eligibility criteria for the enrollment of children in the school readiness program and the priorities by which children are enrolled;

providing procedures and notice requirements for the disenrollment of children; providing reporting requirements for children who are absent from the program; providing standards and eligibility criteria for school readiness providers; requiring school readiness providers to execute the statewide provider agreement prescribed by the Office of Early Learning; providing for the allocation of school readiness funds as specified in the General Appropriations Act; limiting expenditures for administrative activities, quality activities, and nondirect services; providing for the payment of school readiness providers according to calculations of payment rates and sliding fee scales as provided in the General Appropriations Act; authorizing the Office of Early Learning to request budget amendments for increased payment rates in certain geographic areas under certain circumstances; providing for compliance with federal parental choice requirements through payment of school readiness providers with payment certificates; providing for investigations of fraud or overpayment in the school readiness program; providing for the repayment of identified overpayments; limiting the participation of school readiness providers and parents in the program until repayment is made in full; providing penalties for certain acts of fraud; authorizing the Office of Early Learning to adopt rules; specifying additional rulemaking requirements;

transferring, renumbering, and amending ss. 411.0101 and 411.011, F.S.; conforming cross-references; transferring, renumbering, and amending s. 411.01013, F.S.; revising provisions for calculation of the prevailing market rate schedule; requiring school readiness providers to annually submit their market rates by a specified date; transferring, renumbering, and amending s. 411.01015, F.S.; conforming a cross-reference; transferring, renumbering, and amending s. 411.0102, F.S.; deleting a short title; deleting provisions for the membership and duties of the Child Care Executive Partnership; requiring the Office of Early Learning to administer the Child Care Executive Partnership Program; deleting provisions of community child care task forces and the disbursement of funds through local purchasing pools; transferring and renumbering ss. 411.0103 and 411.0105, F.S.; transferring, renumbering, and amending s. 411.0106, F.S.; conforming a cross-reference; transferring, renumbering, and amending s. 1002.77, F.S.; revising the purpose of the Florida Early Learning Advisory Council; revising frequency of council meetings; conforming cross-references; amending ss. 11.45, 20.15, 216.136, 402.302, 490.014, 491.014, 1002.51, 1002.53, 1002.67, 1002.71, and 1006.03, F.S.; F.S.; conforming cross-references; conforming terminology; repealing ss. 411.01, 411.01014, 411.0104, 445.023, and 445.032, F.S., relating to the School Readiness

Act, school readiness transportation services, Early Head Start collaboration grants, dependent care for families with children with special needs, and transitional child care; providing an effective date.

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

Section 1. Chapter 431, Florida Statutes, consisting of sections 431.01, 431.03, 431.05, 431.07, 431.09, 431.11, 431.13, 431.15, 431.17, 431.19, 431.23, and 431.41, is created to read:

CHAPTER 431

EARLY LEARNING

431.01 Short title.—This chapter may be cited as the "School Readiness Act."

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

(1) "Adjusted payment rate percentage" means a specified percentage provided in the General Appropriations Act that is applied to the prevailing market rate for each type of school readiness provider and level of care.

(2) "At-risk child" means:

(a) A child who is from a family that is under investigation by the Department of Children and Family Services or a designated sheriff's office for child abuse, neglect, abandonment, or exploitation.

(b) A child who is in a diversion program provided by the Department of Children and Family Services or its contracted provider and is from a family that is actively participating and complying in department-prescribed activities, including

education, health services, or work.

(c) A child who is from a family that is under supervision by the Department of Children and Family Services or a contracted service provider for abuse, neglect, abandonment, or exploitation.

(d) A child who is placed in court-ordered, long-term custody or under the guardianship of a relative or nonrelative after termination of supervision by the Department of Children and Family Services or its contracted provider.

(3) "Authorized hours of care" means the hours of care that are necessary to provide protection or complete work activities or eligible educational activities, including reasonable travel time.

(4) "Coalition" means an early learning coalition established under s. 431.07.

(5) "Earned income" means gross remuneration derived from work, professional service, or self-employment. The term includes commissions, bonuses, back pay awards, and the cash value of all remuneration paid in a medium other than cash.

(6) "Economically disadvantaged" means having a family income that does not exceed 150 percent of the federal poverty level.

(7) "Family income" means the combined gross income, whether earned or unearned, that is derived from any source by all family or household members who are 18 years of age or older and currently reside together in the same dwelling unit. The term does not include income earned by a currently enrolled high school student who, since attaining the age of 18 years, has not

terminated school enrollment or received a high school diploma, high school equivalency diploma, special diploma, or certificate of high school completion. The term also does not include food stamp benefits or federal housing assistance payments issued directly to a landlord or the associated utilities expenses.

(8) "Family or household members" means spouses, former spouses, persons related by blood or marriage, persons who are parents of a child in common regardless of whether they have been married, and other persons who are currently residing together in the same dwelling unit as if a family.

(9) "Fraud" means an intentional deception or misrepresentation made by a person with knowledge that the deception or misrepresentation may result in unauthorized benefit to that person or another person. The term includes any act that constitutes fraud under applicable federal or state law.

(10) "Full-time care" means at least 6 hours, but not more than 11 hours, of child care or early childhood education services within a 24-hour period.

(11) "Gold Seal premium percentage" means a specified percentage provided in the General Appropriations Act that, for a school readiness provider that has the Gold Seal Quality Care designation under s. 402.281, is applied to the provider's adjusted payment rate.

(12) "Informal child care provider" means, to the extent authorized in the state's Child Care and Development Fund Plan as approved by the United States Department of Health and Human Services pursuant to 45 C.F.R. s. 98.18, an in-home child care

provider as defined in 45 C.F.R. s. 98.2 or a relative, such as a grandparent, great grandparent, aunt, uncle, or sibling who provides care for the child.

(13) "In loco parentis" means acting as a child's temporary guardian.

(14) "Market rate" means the price that a child care or early childhood education provider charges for full-time or part-time daily, weekly, or monthly child care or early childhood education services.

(15) "Office" means the Office of Early Learning of the Department of Education established under s. 20.15(3)(h).

(16) "Parent" means a parent by blood, marriage, or adoption; a legal guardian; or another person standing in loco parentis.

(17) "Part-time care" means less than 6 hours of child care or early childhood education services within a 24-hour period.

(18) "Payment certificate" means a child care certificate as defined in 45 C.F.R. s. 98.2.

(19) "Prevailing market rate" means the biennially determined statewide median of the market rate for child care and early childhood education services.

(20) "Single point of entry" means an integrated information system that allows a parent to enroll his or her child in the school readiness program at various locations throughout a county, that may allow a parent to enroll his or her child by telephone or through an Internet website, and that uses a unified waiting list to track eligible children waiting

for enrollment in the school readiness program.

(21) "Unearned income" means income other than earned income. The term includes, but is not limited to:

(a) Documented alimony and child support received.

(b) Social security benefits.

(c) Supplemental security income benefits.

(d) Workers' compensation benefits.

(e) Unemployment compensation benefits.

(f) Veterans' benefits.

(g) Retirement benefits.

(h) Temporary cash assistance under chapter 414.

(i) Military housing assistance under the federal Family Subsistence Supplemental Allowance Program.

(22) "Working family" means:

(a) A single-parent family in which the parent with whom the child resides is employed or engaged in eligible education activities for at least 20 hours per week;

(b) A two-parent family in which both parents with whom the child resides are each employed or engaged in eligible education activities for at least 20 hours per week; or

(c) A family in which the parents, as prescribed by rules adopted by the office, are exempt from work requirements due to age or disability as determined and documented by a physician licensed under chapter 458 or chapter 459.

431.05 Office of Early Learning; powers and duties.—

(1) The Governor shall designate the Office of Early Learning as the lead agency for administration of the federal Child Care and Development Fund, 45 C.F.R. parts 98 and 99, and

the office shall comply with the lead agency responsibilities under federal law.

(2) The office shall:

(a) Administer the school readiness program at the state level and coordinate with the early learning coalitions to ensure the availability of school readiness services to support the efforts of parents to work and be financially self-sufficient and to enhance the quality of child care programs in the state.

(b) Provide the school readiness services authorized in this chapter in a manner that ensures the preservation of parental choice.

(c) Be responsible for the prudent use of all public and private funds in accordance with all legal and contractual requirements, safeguarding the effective use of federal, state, and local resources to achieve the highest practicable level of school readiness for the children described in s. 431.13.

(d) Maintain a single statewide information system that each coalition must use for the purposes of managing the single point of entry, tracking children's progress, coordinating services among stakeholders, determining eligibility, tracking child attendance, and streamlining administrative processes for providers and coalitions.

(e) Ensure statewide access to school readiness services throughout each county.

(f) Ensure that each coalition serves the minimum number of children required in s. 431.07(1)(b) and that the maximum number of coalitions is not exceeded.

(g) Approve school readiness plans annually.

(h) Monitor and evaluate the performance of each coalition in administering the school readiness program, ensuring proper payments for school readiness services, and implementing the coalition's school readiness plan. These monitoring and performance evaluations must include, at a minimum, onsite monitoring of each coalition's finances, management, operations, and programs.

(i) Monitor each coalition to ensure that additional regulations or requirements are not placed upon school readiness providers that exceed the authority provided under this chapter or rules adopted pursuant to this chapter.

(j) Provide technical assistance to early learning coalitions consistent with the purposes of this chapter to avoid duplication of services.

(k) Ensure that all expenditures are properly allocated by expenditure type, clearly accounting for indirect and direct expenditures, and ensuring that funds used to support staff and salaries, contracts, and vendors are accounted for separate and apart from other expenditures within each expenditure type.

(l) Coordinate with the Child Care Services Program Office of the Department of Children and Family Services with respect to health and safety monitoring, background screenings, and the collection and maintenance of data pertaining to child care training and credentialing.

(m) Coordinate with the Department of Economic Opportunity to perform data matches on families participating in the school readiness program and receiving unemployment compensation.

(3) The office has authority to administer this chapter, including the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept from any source contributions of money, property, labor, or any other thing of value, to be held, used, and applied for purposes of this chapter.

(4) The office must exercise due diligence in securing full payment of all accounts receivable and other claims due to the state and comply with procedures for collections under s. 17.20.

(5) The office shall prepare and submit a unified budget request for the school readiness system in accordance with chapter 216.

(6) The office shall adopt rules prescribing child development standards for the physical health, approaches to learning, social and emotional development, language and communication, cognitive development, and general knowledge and motor development of children served in the school readiness program. The child development standards must align with performance standards adopted by the Department of Education for the Voluntary Prekindergarten Education Program pursuant to s. 1002.67.

(7) The office shall implement a statewide preassessment and postassessment aligned with the child development standards adopted pursuant to subsection (6). The assessment shall be implemented and used by school readiness providers to inform classroom instruction. The assessment may not be used for evaluating providers or for high-stakes accountability. The

office shall collect the results of the preassessments and postassessments statewide to evaluate the effectiveness of the school readiness program. At a minimum, a preassessment shall be administered to each school readiness child that participates in the program within the first 60 days after enrollment. By May 30 of each year, a postassessment shall be administered to each school readiness child who participates in a provider's program for at least the previous 6 months.

(8) By January 1 of each year, the office shall submit an annual report of its activities conducted under this chapter to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include a summary of the coalitions' annual reports, a statewide summary, and the following:

(a) An analysis of school readiness activities throughout the state.

(b) The total and average number of children served in the school readiness program, enumerated by age, eligibility priority category, and coalition.

(c) A summary of expenditures by coalition, including a breakdown by coalition of the percentage of expenditures for administrative activities, quality activities, nondirect services, and direct services for children.

(d) A description of the office's and each coalition's expenditures for the quality activities described in s. 431.19(4)(b).

(e) A summary of annual findings and collections related to provider fraud and parent fraud.

(f) Coalition scorecard performance data to measure the success of the coalitions in implementing the early learning programs.

(g) The total number of children disenrolled statewide and the reason for disenrollment.

(h) The total number of provider contracts revoked and the reasons for revocation.

(i) The statewide results obtained through preassessments and postassessments.

431.07 Early learning coalitions; coalition boards.—

(1)(a) A coalition is established upon the approval of the coalition's school readiness plan by the Office of Early Learning pursuant to s. 431.09.

(b) No more than 25 coalitions may be established, and each coalition must serve at least 1,700 children, which shall be calculated according to the average number of children served per month in the school readiness program during the previous 12 months. Each coalition's service area shall comprise one or more counties. If a coalition would serve fewer children than the minimum number established in this paragraph, the coalition must merge with another county to form a multicounty coalition.

(c) The office shall adopt rules prescribing procedures for merging coalitions, including procedures for the consolidation of merging coalitions, and for the early termination of the terms of coalition board members, which are necessary to accomplish the mergers.

(2) Each coalition shall be governed by a coalition board composed of at least 12 members but not more than 18 members:

(a) The Governor shall appoint the chair and at least two additional members who must each be private sector business members and meet the qualifications in paragraph (d).

(b) The coalition board shall include the following public sector members:

1. A Department of Children and Family Services circuit administrator or his or her designee who is authorized by the Secretary of Children and Family Services to make decisions on behalf of the department or, if applicable, the head of a local licensing agency approved under ss. 402.306 and 402.307 or his or her designee. If the coalition's service area includes multiple circuits or counties, the Governor shall make the appointment from one of the circuits or counties.

2. A district superintendent of schools or his or her designee who is authorized by the district school board to make decisions on behalf of the district. If the coalition's service area includes multiple school districts, the Governor shall, from term to term, rotate the appointment among each of the districts.

3. A regional workforce board executive director or his or her designee. If the coalition's service area includes multiple regional workforce board service delivery areas, the Governor shall make the appointment from one of the regional workforce boards.

4. A county health department director or his or her designee. If the coalition's service area includes multiple counties, the Governor shall make the appointment from one of the counties.

5. If the coalition's service area includes a Florida College System institution, the college president or his or her designee. If the coalition's service area includes multiple Florida College System institutions, the Governor shall make the appointment from one of the institutions.

6. One member appointed by a board of county commissioners. If the coalition's service area includes multiple counties, the Governor shall determine which county shall make the appointment.

7. If the coalition's service area includes a municipality, one member appointed by the governing board of the municipality. If the coalition's service area includes multiple municipalities, the Governor shall determine which municipality shall make the appointment.

8. If the coalition's service area includes a federal Head Start program, the Head Start director. If the coalition's service area includes multiple Head Start programs, the Governor shall make the appointment from one of the programs.

9. A representative of programs for children with disabilities under the federal Individuals with Disabilities Education Act.

(c) The following members shall be selected by providers:

1. A representative of private for-profit child care providers, including private for-profit family day care homes, who shall be selected by majority vote of such providers located in the coalition's service area.

2. A representative of faith-based child care providers who shall be selected by majority vote of such providers located

in the coalition's service area.

(d) At least one-fourth of the members of each coalition board must be private sector business members who do not have, and none of whose relatives as defined in s. 112.3143 has, a substantial financial interest in the design or delivery of the Voluntary Prekindergarten Education Program created under part V of chapter 1002 or the school readiness program. The coalition board shall appoint additional members to the early learning coalition in order to meet the requirements of this paragraph. Private sector board members serve at the pleasure of the Governor.

(e) A coalition serving more than one county must include representation from each county.

(3)(a) A majority of the voting membership of a coalition board constitutes a quorum required to conduct the business of the coalition. A coalition board may use any method of telecommunications to conduct meetings, including establishing a quorum through telecommunications, provided that the public is given proper notice of a telecommunications meeting and reasonable access to observe and, when appropriate, participate.

(b) Except as otherwise provided in subsection (2), a member of a coalition board may not appoint a designee to act in his or her place. A member may send a representative to coalition board meetings, but that representative does not have voting privileges. When a member appoints a designee under subsection (2), the designee serves at the pleasure of the designating official. Unless the designee is removed by the designating official, the designee is the voting member of the

coalition board, and any individual attending in the designee's place, including the designating official, does not have voting privileges.

(c) Each member of a coalition board is subject to ss. 112.313, 112.3135, and 112.3143. For purposes of s. 112.3143(3)(a), each member is a local public officer who must abstain from voting when a voting conflict exists.

(d) For purposes of tort liability, each coalition board member and employee is governed by s. 768.28.

(4) Each coalition board shall establish terms for all appointed members of the board. The terms of members must be staggered and must be a uniform length that does not exceed 4 years per term. Members appointed under paragraph (2)(a), subparagraphs (2)(b)6.-9., or paragraphs (2)(c) or (d) may serve a maximum of 8 consecutive years, not including any unexpired term for which the member was originally appointed. When a vacancy occurs in an appointed position, the coalition must advertise the vacancy, and notify the appointing authority.

(5) Each coalition board member who is not otherwise required to file financial disclosure pursuant to s. 8, Art. II of the State Constitution or s. 112.3144 shall file a disclosure of financial interest pursuant to s. 112.3145. A coalition's executive director or other person designated as being responsible for the coalition's operational and administrative functions who is not otherwise required to file financial disclosure pursuant to s. 8, Art. II of the State Constitution or s. 112.3144 shall file disclosure of financial interests pursuant to s. 112.3145.

(6) The Governor may, for cause, remove any coalition board member or executive director. As used in this subsection, the term "cause" includes engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, and official incompetence and irresponsibility justifying removal in the public interest.

(7) State, federal, and local maintenance-of-effort and matching funds provided to the early learning coalitions may not be used directly or indirectly to pay for meals, food, or beverages for coalition board members or employees. Preapproved, reasonable, and necessary per diem allowances and travel expenses may be reimbursed. Such reimbursement shall be at the standard travel reimbursement rates established in s. 112.061 and must comply with all applicable federal and state requirements.

(8) The office may contract with a qualified entity to administer the school readiness program or Voluntary Prekindergarten Education Program in the coalition's service area under the programmatic and fiscal requirements established by law or rule for coalitions if:

(a) The coalition serves fewer children than the minimum number required in paragraph (1)(b) and does not merge on its own;

(b) The office determines through monitoring and performance evaluations that a coalition has not administered its school readiness plan or the Voluntary Prekindergarten Education Program in accordance with law or rule; or

(c) The office determines through monitoring and

performance that a coalition has not met the legal requirements of federal or state law to implement the school readiness program or the Voluntary Prekindergarten Education Program.

(9) The office may determine whether any adverse findings shall result in terminating a contract with a coalition.

(10) The office may shift school readiness funds from a designated coalition to another qualified entity if, for any reason, the contract with the coalition is terminated under subsection (8).

431.09 School readiness plans; scorecard.—

(1) The Office of Early Learning shall adopt rules prescribing the standardized format and required content of school readiness plans as necessary for a coalition or other qualified entity to administer the school readiness program as provided in this section and s. 431.11.

(2) Each coalition must annually submit a school readiness plan to the office before the expenditure of funds. A coalition may not implement its school readiness plan until it receives approval from the office. A coalition may not implement any revision to its school readiness plan until the coalition submits the revised plan to and receives approval from the office. If the office rejects a plan or revision, the coalition must continue to operate under its previously approved plan. The plan must include:

(a) The coalition's business organization, which must include the coalition's articles of incorporation and bylaws if the coalition is organized as a corporation. If the coalition is not organized as a corporation or other business entity, the

plan must include the contract with a fiscal agent.

(b) A detailed budget that outlines estimated expenditures for state, federal, and local maintenance-of-effort and matching funds at the lowest level of detail available by other-cost-accumulator code number; all estimated sources of revenue with identifiable descriptions; a listing of full-time equivalent positions; contracted subcontractor costs with related annual gross salary amount or hourly rate of compensation; and a capital improvements plan outlining existing fixed capital outlay projects and proposed capital outlay projects that will begin during the budget year.

(c) A detailed accounting, in the format prescribed by the office, of all revenues and expenditures during the previous state fiscal year. Revenue sources should be identifiable and expenditures should be reported by three categories: state and federal funds, local maintenance-of-effort and matching funds, and Child Care Executive Partnership Program funds.

(d) A description of the quality activities as described in s. 431.19(4)(b) and related expenditures used to meet the minimum requirements in 45 C.F.R. s. 98.51 for expenditures to improve the quality of child care. Quality activities shall be described and include a summary of the activity, estimated costs, and a timeline indicating when each activity will occur and be completed.

(e) Updated policies and procedures, including those governing procurement, maintenance of tangible personal property, maintenance of records, information technology security and expenses, and disbursement controls.

(f) Documentation that the coalition has solicited and considered comments regarding the proposed school readiness plan from the local community.

(3) The coalition may periodically amend its plan as necessary. An amended plan must be submitted to the office before any expenditures for quality activities are incurred on new direct activities.

(4) The office shall publish a copy of the standardized format and required content of school readiness plans on its Internet website and provide a copy of the format and content to each early learning coalition.

(5) The office shall establish a scorecard to measure coalition performance. In considering potential measures for the scorecard, the office shall consider measures related to provider satisfaction, parent satisfaction, payment processes, fraud intervention, child attendance and stability, use of child care resource and referral to support families, and school readiness outcomes for children in the Voluntary Prekindergarten Education Program upon entry into kindergarten. The office shall request input from the coalitions, the Department of Education, and school readiness providers before finalizing the scorecard format and measures to be used. The scorecard shall be implemented beginning July 1, 2013, and results of the scorecard must be included in the office's annual report under s. 431.05(8).

431.11 Early learning coalitions; powers and duties.—Each early learning coalition shall:

(1) Administer the school readiness program at the county

or regional level in accordance with this chapter.

(2) Establish a unified waiting list to track eligible children waiting for enrollment in the school readiness program.

(3) Establish a resource and referral network operating under s. 431.25 to assist parents in making an informed choice and to provide maximum parental choice of providers.

(4) Establish a regional Warm-Line under s. 431.29 as directed by the office.

(5) Determine child eligibility pursuant to s. 431.13 and provider eligibility pursuant to s. 431.15. Child eligibility must be redetermined annually. A coalition must document the reason why a child is no longer eligible for the school readiness program according to the termination codes prescribed by the office.

(6) Determine provider eligibility annually pursuant to s. 431.15.

(7) Ensure proper maintenance of records related to eligibility and enrollment files, provider payments, coalition staff background screenings, and other documents required for the implementation of the school readiness program.

(8) Establish a records-retention requirement for sign-in and sign-out sheets that is consistent with state and federal law.

(9) Follow the requirements established by the Chief Financial Officer for the recording of real property and for the periodic review of property for inventory purposes.

(10) Comply with state procurement requirements and the expenditure requirements of federal and state law and state

rules.

(11) Ensure that proper information technology security controls are in place, including, but not limited to, periodically reviewing the appropriateness of access privileges assigned to users of certain systems; monitoring system hardware performance and capacity-related issues; and ensuring appropriate backup procedures and disaster recovery plans are in place.

(12) Develop written policies, procedures, and standards for monitoring vendor contracts, including, but not limited to, provisions specifying the particular procedures that may be used to evaluate contractor performance and the documentation that is to be maintained to serve as a record of contractor performance. This subsection does not apply to contracts with school readiness providers.

(13) Monitor school readiness providers on an annual basis, or in response to a parental complaint, to ensure that the standards prescribed in ss. 431.15 and 431.17 are met.

(a) Providers determined to be high risk by the coalition, as demonstrated by substantial findings of violations of federal law or the general or local laws of the state, shall be monitored more frequently.

(b) To ensure basic health and safety standards, coalitions shall annually monitor faith-based child care providers exempt from licensure under s. 402.316, family day care homes registered under s. 402.313, and informal child care providers.

(14) Monitor the provider's records, including child

eligibility and child attendance, to reduce the risk of fraud and overpayment and to recover state, federal, and local funds.

(15) By October 1 of each year, submit an annual report to the office. The report must include:

(a) Segregation of school readiness funds, Voluntary Prekindergarten Education Program funds, and Child Care Executive Partnership Program funds.

(b) Details of expenditures, including total expenditures for administrative activities, quality activities, nondirect services, and direct services for children.

(c) The total number of coalition staff and the related expenditures for salaries and benefits.

(d) The number of children served in the school readiness program, enumerated by age and eligibility priority category, which shall be calculated using the number of children served during the first week of every month, the average full-time equivalent child participation throughout the month, and the number of children served during the last week of the month.

(e) The total number of children disenrolled during the year and the reasons for disenrollment.

(f) A listing of any school readiness providers, by type, whose eligibility to deliver the school readiness program is revoked, including a brief description of the state or federal violation that resulted in the revocation.

431.13 School readiness program; eligibility and enrollment.—

(1) Each coalition shall give priority for participation in the school readiness program as follows:

(a) Priority shall be given first to a child younger than 13 years of age from a working family that includes an adult receiving temporary cash assistance under chapter 414.

(b) Priority shall be given next to an at-risk child younger than 9 years of age.

(c) Priority shall be given next to a child from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. from a working family that is economically disadvantaged. However, the child ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.

(d) Priority shall be given next to an at-risk child who is at least 9 years of age, but younger than 13 years of age. An at-risk child whose sibling is enrolled in the school readiness program within an eligibility priority category listed in paragraphs (a)-(c) shall be given priority over other children who are eligible under this paragraph.

(e) Notwithstanding paragraphs (a)-(d), priority shall be given last to a child who otherwise meets one of the eligibility criteria in paragraphs (a)-(d) but who is also enrolled concurrently in the federal Head Start Program and the Voluntary Prekindergarten Education Program.

(2)(a) Each parent enrolling a child in the school readiness program must complete and submit an application to the coalition through the single point of entry established under s. 431.05(2)(d).

(b) Each coalition shall coordinate with each school

district within the coalition's service area in the development of procedures for enrolling children in the school readiness program who are served by public schools.

(c) A coalition shall enroll all eligible children, including those from its waiting list, according to the eligibility priorities provided in subsection (1).

(3) A school readiness provider may be paid only for the authorized hours of care provided for a child in the school readiness program. A child enrolled in the Voluntary Prekindergarten Education Program may receive part-time care from the school readiness program if the child is eligible according to the eligibility priorities provided in subsection (1).

(4) The parent of a child enrolled in the school readiness program must notify the coalition or its designee within 10 days after any change in employment, income, or family size.

(5) A child ceases to be eligible for the school readiness program if a parent with whom the child resides does not reestablish employment within 30 days after becoming unemployed.

(6) Eligibility for each child must be reevaluated annually. Upon reevaluation, a child may not continue to receive school readiness services if he or she has ceased to be eligible under this section.

(7) If a coalition disenrolls children from the school readiness program, the coalition must disenroll the children in reverse order of the eligibility priorities listed in subsection (1), beginning with children from families with the highest family incomes. A notice of disenrollment must be sent to

parents and school readiness providers at least 2 weeks before disenrollment to ensure adequate time for parents to arrange alternative care for their children.

(8)(a) If a child is absent for 5 consecutive days without contact from a parent, the school readiness provider shall report the absences to the coalition for a determination of the need for continued care.

(b) Notwithstanding s. 39.604, a school readiness provider, regardless of whether the provider is licensed, shall comply with the reporting requirements of the Rilya Wilson Act for each at-risk child enrolled in the school readiness program, regardless of the child's age or eligibility for protective services.

431.15 School readiness provider standards; eligibility to deliver school readiness program.—

(1) To be eligible to deliver the school readiness program, a school readiness provider must:

(a) Be a child care facility licensed under s. 402.305, family day care home licensed or registered under s. 402.313, large family child care home licensed under s. 402.3131, public school or nonpublic school exempt from licensure under s. 402.3025, faith-based child care provider exempt from licensure under s. 402.316, before-school or after-school program described in s. 402.305(1)(c), or an informal child care provider, to the extent authorized in the state's Child Care and Development Fund Plan as approved by the United States Department of Health and Human Services pursuant to 45 C.F.R. s. 98.18.

(b) Enhance the age-appropriate progress of each child in attaining the child development standards adopted by the office under s. 431.05(6). To satisfy this requirement, a school readiness provider must select or design and implement a curriculum and character development program for each child in the school readiness program.

(c) Ensure the basic health and safety of its premises and facilities and compliance with requirements for age-appropriate immunizations of children enrolled in the school readiness program. For a child care facility, large family child care home, or licensed family day care home, compliance with s. 402.305, s. 402.3131, or s. 402.313 satisfies this requirement. For a public or nonpublic school, compliance with s. 402.3025 or s. 1003.22 satisfies this requirement. A faith-based child care provider exempt from licensure under s. 402.316 must meet or exceed the requirements of s. 402.305, except for square footage, as determined by an onsite inspection by an early learning coalition. An informal child care provider, a registered family day care home, or a before-school or after-school program, must meet or exceed the requirements of s. 402.313.

(d) Ensure the minimum standards associated with child discipline under s. 402.3105(12) are met.

(e) Execute the statewide provider agreement prescribed under s. 431.17, except that:

1. An individual who owns or operates multiple providers within a coalition's service area may execute a single agreement on behalf of each provider.

2. A school district may execute a single agreement with the coalition on behalf of all district schools delivering the school readiness program.

(2) If a school readiness provider fails or refuses to comply with this chapter or any contractual obligation of the statewide provider agreement under s. 431.17, the coalition or the office may revoke the provider's eligibility to deliver the school readiness program or receive state or federal funds under this chapter.

(3) The office and the coalitions may not:

(a) Impose any requirement on a child care or early childhood education provider that does not deliver services under the school readiness program or receive state or federal funds under this chapter; or

(b) Impose any requirement on a school readiness provider that exceeds the authority provided under this chapter or rules adopted pursuant to this chapter.

431.17 Statewide provider agreement.—

(1)(a) The Office of Early Learning shall adopt rules prescribing the statewide provider agreement for the school readiness program.

(b) A coalition must use the statewide provider agreement to annually contract with each school readiness provider that delivers the school readiness program within the coalition's service area.

(c) The rules must prescribe the standardized uniform format for the statewide provider agreement. A coalition may not omit, supplement, or amend any provision of the statewide

provider agreement. In addition, a coalition may not insert or append attachments, addenda, or exhibits to the statewide provider agreement.

(2) The statewide provider agreement must include:

(a) Child eligibility and enrollment procedures and requirements under s. 431.13.

(b) Funding, payment, and expenditures for the school readiness program under s. 431.19.

(c) Child development standards for the school readiness program under s. 431.05(6).

(d) School readiness provider standards under s. 431.15.

(e) Requirements for the maintenance of records and data and the confidentiality of such information.

(f) Requirements for notifications between the early learning coalition, the school readiness provider, and the parent, which may include, but are not limited to:

1. Changes to information submitted in the provider's registration form.

2. A parent's withdrawal of his or her child from the school readiness program or a provider's dismissal of a child.

3. Temporary closure of a school readiness provider's facility and subsequent reopening of the facility.

(g) Procedures for the reporting and certification of child attendance.

(h) Specific grounds for termination of the agreement for failure to comply with federal or state law.

(i) Specific grounds for monitoring by the coalition of providers determined to be high risk.

(j) Dispute resolution procedures, including a method for a provider to seek guidance from the office on a dispute.

(k) Provisions under which the school readiness provider indemnifies the coalition from liability arising under the agreement.

(3)(a) A coalition may not execute the statewide provider agreement with a school readiness provider before the coalition determines that the provider is eligible to deliver the school readiness program under s. 431.15.

(b) A coalition shall submit to the office each original, fully executed, and dated agreement. The coalition shall provide a copy of the executed agreement to the school readiness provider or school district that executed the agreement. The coalition shall also maintain a copy of the executed agreement in the coalition's records.

(c) A school readiness provider may not deliver the school readiness program until the statewide provider agreement is fully executed.

(4) The office shall publish a copy of the statewide provider agreement on its Internet website and provide a copy of the agreement to each coalition.

431.19 School readiness program; funding.—

(1) Funding for the school readiness program shall be allocated among the coalitions in accordance with this section as provided in the General Appropriations Act.

(2)(a) The Office of Early Learning shall administer school readiness funds and shall prepare and submit a unified budget request for the school readiness system in accordance

with chapter 216.

(b) All instructions to coalitions for administering this chapter shall emanate from the office as provided by law.

(3) All state, federal, and required local maintenance-of-effort and matching funds provided to a coalition for purposes of this section shall be used for implementation of its approved school readiness plan, including the hiring of staff to effectively operate the coalition's school readiness program.

(4) Costs shall be kept to the minimum necessary for the efficient and effective administration of the school readiness program but, of the funds described in subsection (3):

(a) No more than 4 percent may be expended for administrative activities as described in 45 C.F.R. s. 98.52, which shall be limited to the following:

1. Planning for local implementation of the school readiness program.

2. Providing local officials and the public with information about the school readiness program to support fundraising efforts for local maintenance-of-effort and matching funds.

3. Monitoring program activities for compliance with program requirements.

4. Evaluating and reporting program activities and accomplishments to the office.

5. Maintaining substantiated complaint files.

6. Coordinating with state and local child care, early childhood education, and before-school and after-school care programs for the provision of school readiness services.

7. Paying travel expenses.

8. Accounting and audit services.

9. Purchasing goods and services required for the administration of the program.

10. Indirect costs.

(b) No more than 6 percent may be expended for activities to improve the quality of child care as described in 45 C.F.R. s. 98.51, which shall be limited to the following:

1. Developing, establishing, expanding, operating, and coordinating resource and referral programs specifically related to the provision of comprehensive consumer education to parents and the public regarding participation in the school readiness program.

2. Awarding grants to school readiness providers to assist them in implementing developmentally appropriate curricula and related classroom resources that support the curricula and providing literacy supports.

3. Providing training to school readiness providers and parents on child development standards, child screenings, child assessments, developmentally appropriate curricula, character development, teacher-child interactions, age-appropriate discipline practices, health and safety, nutrition, first aid, the recognition of communicable diseases, and child abuse detection and prevention.

4. Providing from among the funds provided for the activities described in subparagraphs 1.-3., adequate funding of direct services for infants and toddlers as necessary to meet federal requirements related to expenditures for quality

activities for infant and toddler care.

5. Assisting the provider to implement a preassessment and postassessment approved by the office.

6. Responding to Warm-Line requests by providers related to school readiness children, including providing developmental and health screenings to school readiness children as requested under s. 431.29.

However, a coalition may expend for quality activities under this paragraph any unused funds available within the expenditure limits imposed by paragraphs (a) and (c) upon administrative activities and nondirect services.

(c) No more than 8 percent may be expended for nondirect services required to administer the school readiness program, which shall be limited to the following:

1. Eligibility determination and redetermination.

2. Enrollment processes and services.

3. Processing and tracking attendance records.

4. Paying providers.

5. Review and supervision of child care placements to ensure compliance with federal, state, and local laws.

6. Preparation and participation in judicial hearings.

7. Child care placement.

8. The establishment and maintenance of computerized child care information systems necessary to implement the school readiness program.

As used in this paragraph, the term "nondirect services" does

not include payments to school readiness providers for direct services provided to eligible children pursuant to s. 431.15, administrative activities described in paragraph (a), or quality activities described in paragraph (b).

(5)(a) A sliding fee scale percentage shall be provided in the General Appropriations Act, which shall be the same for all school readiness providers. A parent's copayment for the school readiness program shall be determined by multiplying the sliding fee scale percentage by the family income and adjusting for family size.

(b) Each coalition shall implement the sliding fee scale as provided in the General Appropriations Act. A coalition may, on a case-by-case basis, waive the copayment for an at-risk child or temporarily waive the copayment for a child whose family experiences a natural disaster or emergency situation such as a household fire or burglary.

(6)(a) An adjusted payment rate percentage shall be provided in the General Appropriations Act, which shall be used to determine annual payment rates for school readiness providers. The annual payment rates for each type of school readiness provider and level of care shall be calculated by:

1. Multiplying the prevailing market rate for the respective type of school readiness provider and level of care by the adjusted payment rate percentage;

2. Adjusting the product of subparagraph 1. by the district cost differential as provided in s. 1011.62(2) for the county in which the school readiness provider is located; and

3. If the school readiness provider has the Gold Seal

Quality Care designation under s. 402.281, multiplying the product of subparagraph 2. by the Gold Seal premium percentage.

(b) A school readiness provider's total payment for a child shall be equal to the payment rate calculated under paragraph (a) less the amount of the parent's copayment as determined under subsection (5). However, payments made to the school readiness provider may not exceed the provider's charges to the general public for the same services.

(7) The office may request a budget amendment to increase the adjusted payment rate percentage for a specific geographic area in order to ensure that care levels are available throughout the state. Any request to increase an adjusted payment rate percentage must be funded through the current year's appropriation and within each early learning coalition's allocation for the affected geographic area. The budget amendment is subject to review and approval by the Legislative Budget Commission.

(8) State funds appropriated for the school readiness program may not be used for the construction of new facilities or the purchase of buses.

(9)(a) The school readiness program, in accordance with 45 C.F.R. s. 98.30, shall provide parental choice through a payment certificate that ensures, to the maximum extent possible, flexibility in the school readiness program and payment arrangements. The payment certificate must bear the names of the beneficiary and the school readiness provider and, when redeemed, must bear the signatures of both the beneficiary and the provider's authorized representative.

(b) If it is determined that a school readiness provider has given any cash to the beneficiary in return for receiving a payment certificate, the coalition or its fiscal agent shall refer the matter to the Department of Financial Services pursuant to s. 414.411 for investigation.

431.23 Fraudulent submission of false enrollment or attendance information.—

(1) To recover state, federal, and local maintenance-of-effort and matching funds, the inspector general of the Office of Early Learning shall investigate coalitions, recipients, and providers of the school readiness program and the Voluntary Prekindergarten Education Program to determine possible fraud or overpayment. If by its own inquiries, or as a result of a complaint, the office has reason to believe that a person has engaged in, or is engaging in a fraudulent act, it shall investigate and determine whether any overpayment has occurred due to the fraudulent act. During the investigation, the office may examine all records, including electronic benefits transfer records, and make inquiry of all persons who may have knowledge as to any irregularity incidental to the disbursement of public moneys or other items or benefit authorizations to recipients.

(2) If the inspector general determines that an overpayment has occurred due to a fraudulent act, the parent or provider is responsible for repayment and restitution of any costs associated with the fraud, and the office shall pursue collection through any legal means. A provider or parent may not participate in the program until the repayment is made in full. Any provider that shares an officer or director with a provider

that is ineligible to participate under this section is not permitted to participate until repayment is made in full.

(3) Based on the results of the investigation, the inspector general may, in his or her discretion, refer the investigation to the Department of Law Enforcement for criminal prosecution, seek civil enforcement, or refer the matter to the applicable coalition. Any suspected criminal violation identified by the inspector general must be referred to the Department of Legal Affairs for investigation.

(4) If a school readiness provider, after investigation and adjudication by a court of competent jurisdiction, is convicted of fraudulently misrepresenting enrollment or attendance related to the school readiness program or the Voluntary Prekindergarten Education Program, the coalition shall permanently refrain from contracting with, or using the services of, that provider. In addition, the coalition shall permanently refrain from contracting with, or using the services of, any provider that shares an officer or director with a provider that is convicted of fraudulently misrepresenting enrollment or attendance related to the school readiness program or the Voluntary Prekindergarten Education Program.

(5) If the investigation is not confidential or otherwise exempt from disclosure by law, the results of an investigation may be reported by the Office of Early Learning to the appropriate legislative committees, the Department of Education, the Department of Children and Family Services, and to such other persons as the office deems appropriate.

(6) A person who commits an act of fraud as defined in s.

431.03 is subject to the penalties provided in s. 414.39(5)(a) and (b).

431.41 Rulemaking.—In addition to the requirements of s. 120.54, at least 30 days before publication in the Florida Administrative Weekly of notice of the proposed adoption, amendment, or repeal of any rule authorized by this chapter, the office must provide copies of the notice and the proposed rule to the President of the Senate and the Speaker of the House of Representatives.

Section 2. Section 411.011, Florida Statutes, is transferred and renumbered as section 431.21, Florida Statutes, and subsection (1) and paragraph (g) of subsection (3) of that section are amended to read:

431.21 ~~411.011~~ Records of children in the school readiness program ~~programs~~.—

(1) The individual records of children enrolled in the school readiness program ~~programs~~ provided under this chapter ~~s. 411.01~~, held by an early learning coalition or the Office of Early Learning, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this section, records include assessment data, health data, records of teacher observations, and personal identifying information.

(3) School readiness records may be released to:

(g) Parties to an interagency agreement among early learning coalitions, local governmental agencies, school readiness providers ~~of school readiness programs~~, state agencies, and the Office of Early Learning for the purpose of

implementing the school readiness program.

Agencies, organizations, or individuals that receive school readiness records in order to carry out their official functions must protect the data in a manner that does not permit the personal identification of a child enrolled in a school readiness program and his or her parents by persons other than those authorized to receive the records.

Section 3. Section 411.0101, Florida Statutes, is transferred and renumbered as section 431.25, Florida Statutes, and subsection (1) and paragraph (a) of subsection (3) of that section are amended to read:

431.25 ~~411.0101~~ Child care and early childhood resource and referral.—

(1) As a part of the school readiness program ~~programs~~, the Office of Early Learning shall establish a statewide child care resource and referral network that is unbiased and provides referrals to families for child care. Preference shall be given to using the already established early learning coalitions as the child care resource and referral agencies. If an early learning coalition cannot comply with the requirements to offer the resource information component or does not want to offer that service, the early learning coalition shall select the resource and referral agency for its county or multicounty region based upon a request for proposal pursuant to s. 287.057 ~~s. 411.01(5)(c)1.~~.

(3) Child care resource and referral agencies shall provide the following services:

(a) Identification of existing public and private child care and early childhood education services, including child care services by public and private employers, and the development of a resource file of those services through the single statewide information system developed by the Office of Early Learning under s. 431.05(2)(d) ~~s. 411.01(5)(c)1.e~~. These services may include family day care, public and private child care programs, the Voluntary Prekindergarten Education Program, Head Start, the school readiness program, special education programs for prekindergarten children with disabilities, services for children with developmental disabilities, full-time and part-time programs, before-school and after-school programs, vacation care programs, parent education, the Temporary Cash Assistance Program, and related family support services. The resource file shall include, but not be limited to:

1. Type of program.
2. Hours of service.
3. Ages of children served.
4. Number of children served.
5. Significant program information.
6. Fees and eligibility for services.
7. Availability of transportation.

Section 4. Section 411.01013, Florida Statutes, is transferred, renumbered as section 431.27, Florida Statutes, and amended to read:

431.27 ~~411.01013~~ Prevailing market rate schedule.—

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

~~(a) "Market rate" means the price that a child care~~

~~provider charges for daily, weekly, or monthly child care services.~~

~~(b) "Prevailing market rate" means the annually determined 75th percentile of a reasonable frequency distribution of the market rate in a predetermined geographic market at which child care providers charge a person for child care services.~~

(1)~~(2)~~ The Office of Early Learning shall establish ~~procedures for~~ the ~~adoption of a~~ prevailing market rate schedule. The schedule must ~~include, at a minimum, county-by-county rates:~~

~~(a) At the prevailing market rate, plus the maximum rate, for child care providers that hold a Gold Seal Quality Care designation under s. 402.281.~~

~~(b) At the prevailing market rate for child care providers that do not hold a Gold Seal Quality Care designation.~~

~~(3) The prevailing market rate schedule, at a minimum, must~~:

(a) Differentiate rates by type, including, but not limited to, ~~a child care provider that holds a Gold Seal Quality Care designation under s. 402.281,~~ a child care facility licensed under s. 402.305, a public or nonpublic school exempt from licensure under s. 402.3025, a faith-based child care facility exempt from licensure under s. 402.316 ~~that does not hold a Gold Seal Quality Care designation~~, a large family child care home licensed under s. 402.3131, or a family day care home licensed or registered under s. 402.313.

(b) Differentiate rates by the type of child care services provided for ~~children with special needs or risk categories,~~

infants, toddlers, preschool-age children, and school-age children.

(c) Differentiate rates between full-time and part-time child care services.

~~(d) Consider discounted rates for child care services for multiple children in a single family.~~

(2) ~~(4)~~ The prevailing market rate schedule must be based exclusively on the prices charged for child care services. If a conflict exists between this subsection and federal requirements, the federal requirements shall control.

(3) ~~(5)~~ Each child care and early childhood education provider that receives school readiness funds must submit its market rate by August 1 of each year to the office for inclusion in the calculation of the prevailing market rate ~~shall be considered by an early learning coalition in the adoption of a payment~~ schedule ~~in accordance with s. 411.01(5)(c)2~~.

(4) ~~(6)~~ The office ~~of Early Learning~~ may contract with one or more qualified entities to administer this section and provide support and technical assistance for child care providers.

(5) ~~(7)~~ The office ~~of Early Learning~~ may adopt rules ~~pursuant to ss. 120.536(1) and 120.54 for~~ establishing procedures for the collection of child care providers' market rate, the calculation of a reasonable frequency distribution of the market rate, and the publication of a prevailing market rate schedule.

Section 5. Section 411.01015, Florida Statutes, is transferred and renumbered as section 431.29, Florida Statutes,

and subsection (3) of that section is amended to read:

431.29 ~~411.01015~~ Consultation to child care centers and family day care homes regarding health, developmental, disability, and special needs issues.—

(3) The office ~~of Early Learning~~ shall annually inform child care centers and family day care homes of the availability of this service through the child care resource and referral network under s. 431.25 ~~s. 411.0101~~.

Section 6. Section 411.0102, Florida Statutes, is transferred, renumbered as section 431.31, Florida Statutes, and amended to read:

431.31 ~~411.0102~~ Child Care Executive Partnership ~~Act~~; findings and intent; grant; limitation; rules.—

~~(1) This section may be cited as the "Child Care Executive Partnership Act."~~

(1)~~(2)~~(a) The Legislature finds that when private employers provide onsite child care or provide other child care benefits, they benefit by improved recruitment and higher retention rates for employees, lower absenteeism, and improved employee morale. The Legislature also finds that there are many ways in which private employers can provide child care assistance to employees: information and referral, vouchering, employer contribution to child care programs, and onsite care. Private employers can offer child care as part of a menu of employee benefits. The Legislature recognizes that flexible compensation programs providing a child care option are beneficial to the private employer through increased productivity, to the private employee in knowing that his or her

children are being cared for in a safe and nurturing environment, and to the state in more dollars being available for purchasing power and investment.

(b) It is the intent of the Legislature to promote public-private ~~public/private~~ partnerships to ensure that the children of the state be provided safe and enriching child care at any time, but especially while parents work to remain self-sufficient. It is the intent of the Legislature that private employers be encouraged to participate in the future of this state by providing employee child care benefits. Further, it is the intent of the Legislature to encourage private employers to explore innovative ways to assist employees to obtain quality child care.

(c) The Legislature further recognizes that many parents need assistance in paying the full costs of quality child care. The public and private sectors, by working in partnership, can promote and improve access to quality child care and early education for children of working families who need it. Therefore, a more formal mechanism is necessary to stimulate the establishment of public-private partnerships. It is the intent of the Legislature to expand the availability of scholarship options for working families by providing incentives for employers to contribute to meeting the needs of their employees' families through matching public dollars available for child care.

(2)(a) ~~(3)~~ The office ~~There is created a body politic and corporate known as the Child Care Executive Partnership which~~ shall ~~establish and~~ govern the Child Care Executive Partnership

Program. The purpose of the Child Care Executive Partnership Program is to utilize state and federal funds as incentives for matching local funds derived from local governments, employers, charitable foundations, and other sources so that Florida communities may create local flexible partnerships with employers. The Child Care Executive Partnership Program funds shall be used at the discretion of local communities to meet the needs of working parents. A child care purchasing pool shall be developed with the state, federal, and local funds to provide subsidies to low-income working parents whose family income does not exceed the allowable income for any federally subsidized child care program with a dollar-for-dollar match from employers, local government, and other matching contributions. The funds used from the child care purchasing pool must be used to supplement or extend the use of existing public or private funds.

~~(4) The Child Care Executive Partnership, staffed by the Office of Early Learning, shall consist of a representative of the Executive Office of the Governor and nine members of the corporate or child care community, appointed by the Governor.~~

~~(a) Members shall serve for a period of 4 years, except that the representative of the Executive Office of the Governor shall serve at the pleasure of the Governor.~~

~~(b) The Child Care Executive Partnership shall be chaired by a member chosen by a majority vote and shall meet at least quarterly and at other times upon the call of the chair. The Child Care Executive Partnership may use any method of telecommunications to conduct meetings, including establishing a~~

~~quorum through telecommunications, only if the public is given proper notice of a telecommunications meeting and reasonable access to observe and, when appropriate, participate.~~

~~(c) Members shall serve without compensation, but may be reimbursed for per diem and travel expenses in accordance with s. 112.061.~~

~~(d) The Child Care Executive Partnership shall have all the powers and authority, not explicitly prohibited by statute, necessary to carry out and effectuate the purposes of this section, as well as the functions, duties, and responsibilities of the partnership, including, but not limited to, the following:~~

~~1. Assisting in the formulation and coordination of the state's child care policy.~~

~~2. Adopting an official seal.~~

~~3. Soliciting, accepting, receiving, investing, and expending funds from public or private sources.~~

~~4. Contracting with public or private entities as necessary.~~

~~5. Approving an annual budget.~~

~~6. Carrying forward any unexpended state appropriations into succeeding fiscal years.~~

~~7. Providing a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate, on or before December 1 of each year.~~

~~(5)(a) The Legislature shall annually determine the amount of state or federal low-income child care moneys which shall be used to create Child Care Executive Partnership Program child~~

~~care purchasing pools in counties chosen by the Child Care Executive Partnership, provided that at least two of the counties have populations of no more than 300,000. The Legislature shall annually review the effectiveness of the child care purchasing pool program and reevaluate the percentage of additional state or federal funds, if any, which can be used for the program's expansion.~~

(b) To ensure a seamless service delivery and ease of access for families, an early learning coalition or the office ~~of Early Learning~~ shall administer the child care purchasing pool funds.

(c) The office ~~of Early Learning, in conjunction with the Child Care Executive Partnership,~~ shall adopt rules ~~develop procedures~~ for the disbursement of Child Care Executive Partnership Program funds ~~through the child care purchasing pools~~. In order to be considered for funding, an early learning coalition or the office ~~of Early Learning~~ must commit to:

1. Matching the state purchasing pool funds on a dollar-for-dollar basis; and

2. Expending only those public funds that are matched by employers, local government, and other matching contributors who contribute to the purchasing pool. Parents shall also pay a fee, which may not be less than the amount identified in the ~~early learning coalition's~~ school readiness program sliding fee scale.

~~(d) Each early learning coalition shall establish a community child care task force for each child care purchasing pool. The task force must be composed of employers, parents, private child care providers, and one representative from the~~

~~local children's services council, if one exists in the area of the purchasing pool. The early learning coalition is expected to recruit the task force members from existing child care councils, commissions, or task forces already operating in the area of a purchasing pool. A majority of the task force shall consist of employers.~~

(d)~~(c)~~ Each participating ~~early learning~~ coalition board shall develop a plan for the use of child care purchasing pool funds. The plan must show how many children will be served by the purchasing pool, how many will be new to receiving child care services, and how the early learning coalition intends to attract new employers and their employees to the program.

~~(6) The Office of Early Learning shall adopt any rules necessary for the implementation and administration of this section.~~

(3) Child Care Executive Partnership Program funds are subject to the funding requirements of s. 431.19.

(4) The office shall report the activities and detailed expenditures related to the Child Care Executive Partnership Program in the annual report required under s. 431.05(8). Each coalition receiving Child Care Executive Partnership Program funds shall include a summary of related activities and detailed expenditures associated with this program in its annual report required under s. 431.11(15)(b).

Section 7. Section 411.0103, Florida Statutes, is transferred and renumbered as section 431.33, Florida Statutes.

Section 8. Section 411.0105, Florida Statutes, is transferred and renumbered as section 431.35, Florida Statutes.

Section 9. Section 411.0106, Florida Statutes, is transferred, renumbered as section 431.37, Florida Statutes, and amended to read:

431.37 ~~411.0106~~ Infants and toddlers in state-funded education and care programs; brain development activities.—Each state-funded education and care program for children from birth to 5 years of age must provide activities to foster brain development in infants and toddlers. A program must provide an environment that helps children attain the child development ~~performance~~ standards adopted by the office ~~of Early Learning~~ under s. 431.05(6) ~~s. 411.01(4)(d)8.~~ and must be rich in language and music and filled with objects of various colors, shapes, textures, and sizes to stimulate visual, tactile, auditory, and linguistic senses in the children and must include classical music and at least 30 minutes of reading to the children each day. A program may be offered through an existing early childhood program such as Healthy Start, the Title I program, the school readiness program, the Head Start program, or a private child care program. A program must provide training for the infants' and toddlers' parents including direct dialogue and interaction between teachers and parents demonstrating the urgency of brain development in the first year of a child's life. Family day care centers are encouraged, but not required, to comply with this section.

Section 10. Section 1002.77, Florida Statutes, is transferred, renumbered as section 431.39, Florida Statutes, and subsections (1) and (3) of that section are amended to read:

431.39 ~~1002.77~~ Florida Early Learning Advisory Council.—

(1) There is created the Florida Early Learning Advisory Council within the Office of Early Learning. The purpose of the advisory council is to share best practices ~~submit recommendations to the department on the early learning policy of this state, including recommendations~~ relating to effective administration of the Voluntary Prekindergarten Education Program under part V of chapter 1002 ~~this part~~ and the school readiness program ~~programs~~ under this chapter ~~s. 411.01~~.

(3) The advisory council shall meet at least annually ~~quarterly but may meet as often as necessary~~ to carry out its duties and responsibilities.

Section 11. Paragraph (p) of subsection (3) of section 11.45, Florida Statutes, is amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

(p) The school readiness system, including the early learning coalitions, created under chapter 431 ~~s. 411.01~~.

Section 12. Paragraph (h) of subsection (3) of section 20.15, Florida Statutes, is amended to read:

20.15 Department of Education.—There is created a Department of Education.

(3) DIVISIONS.—The following divisions of the Department of Education are established:

(h) The Office of Early Learning, which shall administer

the school readiness system in accordance with chapter 431 ~~s. 411.01~~ and the operational requirements of the Voluntary Prekindergarten Education Program in accordance with part V of chapter 1002. The office is a separate budget entity and is not subject to control, supervision, or direction by the Department of Education or the State Board of Education in any manner including, but not limited to, personnel, purchasing, transactions involving personal property, and budgetary matters. The office director shall be appointed by the Governor and confirmed by the Senate, shall serve at the pleasure of the Governor, and shall be the agency head of the office for all purposes. The office shall enter into a service agreement with the department for professional, technological, and administrative support services. The office shall be subject to review and oversight by the Chief Inspector General or his or her designee.

Section 13. Subsection (8) of section 216.136, Florida Statutes, is amended to read:

216.136 Consensus estimating conferences; duties and principals.—

(8) EARLY LEARNING PROGRAMS ESTIMATING CONFERENCE.—

(a) The Early Learning Programs Estimating Conference shall develop estimates and forecasts of the unduplicated count of children eligible for the school readiness program ~~programs~~ in accordance with the standards of eligibility established in s. 431.13 ~~s. 411.01(6)~~, and of children eligible for the Voluntary Prekindergarten Education Program in accordance with s. 1002.53(2), as the conference determines are needed to

support the state planning, budgeting, and appropriations processes.

(b) The Office of Early Learning shall provide information on needs and waiting lists for the school readiness program ~~programs~~, and information on the needs for the Voluntary Prekindergarten Education Program, as requested by the Early Learning Programs Estimating Conference or individual conference principals in a timely manner.

Section 14. Subsection (9) of section 402.302, Florida Statutes, is amended to read:

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

(9) "Household children" means children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, the large family child care home operator, or an adult household member who permanently or temporarily resides in the home. Supervision of the operator's household children shall be left to the discretion of the operator unless those children receive subsidized child care through the school readiness program pursuant to s. 431.23 ~~s. 411.0101~~ to be in the home.

Section 15. Paragraph (a) of subsection (2) of section 490.014, Florida Statutes, is amended to read:

490.014 Exemptions.—

(2) No person shall be required to be licensed or provisionally licensed under this chapter who:

(a) Is a salaried employee of a government agency; a developmental disability facility or program; a mental health, alcohol, or drug abuse facility operating under chapter 393,

chapter 394, or chapter 397; the statewide child care resource and referral network operating under s. 431.25 ~~s. 411.0101~~; a child-placing or child-caring agency licensed pursuant to chapter 409; a domestic violence center certified pursuant to chapter 39; an accredited academic institution; or a research institution, if such employee is performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution, so long as the employee is not held out to the public as a psychologist pursuant to s. 490.012(1)(a).

Section 16. Paragraph (a) of subsection (4) of section 491.014, Florida Statutes, is amended to read:

491.014 Exemptions.—

(4) No person shall be required to be licensed, provisionally licensed, registered, or certified under this chapter who:

(a) Is a salaried employee of a government agency; a developmental disability facility or program; a mental health, alcohol, or drug abuse facility operating under chapter 393, chapter 394, or chapter 397; the statewide child care resource and referral network operating under s. 431.25 ~~s. 411.0101~~; a child-placing or child-caring agency licensed pursuant to chapter 409; a domestic violence center certified pursuant to chapter 39; an accredited academic institution; or a research institution, if such employee is performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution, so long as the employee is not held out to the public as a clinical social worker, mental

health counselor, or marriage and family therapist.

Section 17. Subsection (4) of section 1002.51, Florida Statutes, is amended to read:

1002.51 Definitions.—As used in this part, the term:

(4) "Early learning coalition" or "coalition" means an early learning coalition established ~~created~~ under s. 431.07 ~~s. 411.01~~.

Section 18. Paragraph (a) of subsection (4) of section 1002.53, Florida Statutes, is amended to read:

1002.53 Voluntary Prekindergarten Education Program; eligibility and enrollment.—

(4)(a) Each parent enrolling a child in the Voluntary Prekindergarten Education Program must complete and submit an application to the early learning coalition through the single point of entry established under s. 431.05(2)(d) ~~s. 411.01~~.

Section 19. Paragraph (d) of subsection (3) of section 1002.67, Florida Statutes, is amended to read:

1002.67 Performance standards; curricula and accountability.—

(3)

(d) Each early learning coalition, the Office of Early Learning, and the department shall coordinate with the Child Care Services Program Office of the Department of Children and Family Services to minimize interagency duplication of activities for monitoring private prekindergarten providers for compliance with requirements of the Voluntary Prekindergarten Education Program under this part, the school readiness program ~~programs~~ under chapter 431 ~~s. 411.01~~, and the licensing of

providers under ss. 402.301-402.319.

Section 20. Paragraph (a) of subsection (5) of section 1002.71, Florida Statutes, is amended to read:

1002.71 Funding; financial and attendance reporting.—

(5)(a) Each early learning coalition shall maintain through the single point of entry established under s. 431.05(2)(d) ~~s. 411.01~~ a current database of the students enrolled in the Voluntary Prekindergarten Education Program for each county within the coalition's region.

Section 21. Subsection (4) of section 1006.03, Florida Statutes, is amended to read:

1006.03 Diagnostic and learning resource centers.—

(4) Diagnostic and learning resource centers may assist districts in providing testing and evaluation services for infants and preschool children with or at risk of developing disabilities, and may assist districts in providing interdisciplinary training and resources to parents of infants and preschool children with or at risk of developing disabilities and to the school readiness program ~~programs~~.

Section 22. Sections 411.01, 411.01014, 411.0104, 445.023, and 445.032, Florida Statutes, are repealed.

Section 23. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EAC 12-04 Exemptions from Local Business Taxes
SPONSOR(S): Economic Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill exempts any individual who is licensed and operating as a real estate sales or broker associate under ch. 475, F.S., from having to pay a local business tax or obtain a local business tax receipt. They are not required to apply for this exemption.

The Revenue Estimating Conference estimates that this bill will have a negative recurring impact to local governments of $3.8 million beginning in FY 2012-13. There is no fiscal impact on state funds.

The effective date of this bill is October 1, 2012.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

The local business tax, authorized in ch. 205, F.S., represents the fees charged and the method by which a local government authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. Counties and municipalities may levy a business tax, and the tax proceeds are considered general revenue for the local government.[1] This tax does not refer to any regulatory fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.[2]

Prior to 1972, the state imposed an occupational license tax and shared the revenues with the counties. Municipalities levied their own occupational license taxes pursuant to local ordinance or resolution. Counties had no authority to levy an occupational license tax until October 1, 1972, when ch. 72-306, L.O.F., repealed the state tax and authorized both counties and cities to impose an occupational tax at the state or city rate then in effect. In 1980, the legislature authorized counties and municipalities to increase rates by a specified percentage based upon the rates then in effect.[3] In 1986, the Legislature authorized Miami-Dade, Broward, Monroe and Collier counties to increase their rates by an additional 50 percent, with the proceeds being dedicated to specified economic development activities.[4]

Effective January 1, 2007, the legislature changed the name of the Local Occupational License Tax to the Local Business Tax.[5] This was done in response to some individuals representing that the fact that they had obtained an "occupational license" under ch. 205, F.S., conferred upon them some type of official proof of their competency to perform various repairs and services. The name change was intended to clarify that the payments made under ch. 205, F.S., were taxes and not some type of regulatory fee.

Exemptions

Chapter 205, F.S., provides several exemptions and exclusions from local business taxes. Customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions are excluded from the definition of "business," "profession," and "occupation" and are thereby excluded from paying local business taxes.[6] There is an optional partial exemption for businesses located in enterprise zones.[7] The delivery and transportation of tangible personal property by a business that is otherwise required to pay a local business tax may not be charged a separate local business tax for such delivery or transportation service.[8] There are also exemptions for persons engaged in specified farming activities,[9] certain nonresident persons regulated by the Department of Professional Regulation,[10] certain employees of businesses that are required to pay a local business tax,[11] certain disabled persons, the aged, and widows with minor dependents,[12] disabled veterans of

[1] Sections 205.033 and 205.042, F.S.
[2] Section 205.022(5), F.S.
[3] Chapter 80-274, L.O.F.
[4] Chapter 86-298, L.O.F.
[5] Chapter 2006-152, L.O.F.
[6] Section 205.022(1), F.S.
[7] Section 205.054, F.S.
[8] Section 205.063, F.S.
[9] Section 205.064, F.S.
[10] Section 205.065, F.S.
[11] Section 205.066, F.S.
[12] Section 205.162, F.S.

any war or their unremarried spouses,[13] and certain mobile home setup operations.[14] Charitable, religious, fraternal, youth, civic, service, or other similar organization that make occasional sales or engage in fundraising projects that are performed exclusively by the members where the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic and service activities of the organization are also exempt.[15] While real estate sales associates and broker associates licensed under ch. 475, F.S., are included in the exemption for employees provided by s. 205.066, F.S., the employee exemption does not apply to any municipality or county which imposes a business tax on individual employees that was adopted by that municipality or county prior to October 13, 2010.[16]

Distribution of Revenues

The revenues derived from the business tax imposed by county governments, exclusive of the costs of collection and any credit given for municipal business taxes, are apportioned between the county's unincorporated area and the incorporated municipalities located within the county by a ratio derived by dividing their respective populations by the county's total population.[17] Within 15 days following the month of receipt, the apportioned revenues are sent to each governing authority; however, this provision does not apply to counties that have established a new rate structure pursuant to s. 205.0535, F.S.[18]

Authorized Uses of Revenues

The tax proceeds are considered general revenue for the county or municipality. Additionally, the county business tax proceeds may be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities and other sales and marketing techniques.[19] The proceeds of the additional county business tax imposed pursuant to s. 205.033(6), F.S., are distributed by the county's governing body to a designated organization or agency for the purpose of implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.[20]

Real Estate Sales and Broker Associates

Chapter 475, F.S., provides for the licensure of real estate brokers and sales associates. Section 475.01, F.S., defines "broker associate" as a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another. "Sales associate" means a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person.

Proposed Changes

Real Estate Sales and Broker Associates Exemption

The bill creates s. 205.067, F.S., which excludes any individual who is licensed and operating as a real estate broker associate or sales associate under ch. 475, F.S., from having to pay a local business tax or obtain a local business tax receipt. They are not required to apply for this exemption.

No local governing authority may hold the individual sales associate or broker associate liable for the failure of his employer to pay local business tax, obtain a local business tax receipt, or apply for an exemption from the local business tax. An employer who is required to obtain a local business tax

[13] Section 205.171, F.S.
[14] Section 205.193, F.S.
[15] Section 205.192, F.S.
[16] Section 205.066(4), F.S.
[17] Section 205.033(4), F.S.
[18] Section 205.033(5), F.S.
[19] Section 205.033(7), F.S.
[20] Section 205.033(6)(b), F.S.

receipt may not be required by a local governing authority to provide contact information to that authority for his or her sales associates and broker associates.

B. SECTION DIRECTORY:

Section 1 creates s. 205.067, F.S., excluding real estate sales and broker associates from the local business tax.

Section 2 amends s. 205.066, F.S., striking a portion of the employee exemption that the bill makes redundant.

Section 3 provides an effective date.

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:

The Revenue Estimating Conference estimates that this bill will have a negative recurring impact to local governments of $3.8 million beginning in FY 2012-13.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Real estate sales and broker associates who are in a local governing authority that adopted a local business tax imposed upon employees prior to October 13, 2010, will no longer have to pay that tax. The reduction in business taxes paid to local governments is estimated to be $3.8 million.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The local government mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill excludes currently taxable employees from the local business tax. This bill does not

appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

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 exemptions from local business taxes; creating s. 205.067, F.S.; specifying that an individual licensed and operating as a broker associate or sales associate is not required to apply for an exemption from a local business tax or take certain actions relating to a local business tax; prohibiting a local governing authority from holding such exempt individual liable for the failure of a principal or employer to comply with certain obligations related to a local business tax or from requiring the exempt individual to take certain actions related to a local business tax; prohibiting a local governing authority from requiring a principal or employer to provide personal or contact information for such exempt individuals in order to obtain a local business tax receipt; amending s. 205.066, F.S.; conforming provisions; providing an effective date.

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

Section 1. Section 205.067, Florida Statutes, is created to read:

205.067 Exemptions; broker associates and sales associates.—

(1) An individual licensed and operating as a broker associate or sales associate under chapter 475 is not required to apply for an exemption from a local business tax, pay a local

business tax, or obtain a local business tax receipt.

(2) An individual exempt under this section may not be held liable by any local governing authority for the failure of a principal or employer to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt. An individual exempt under this section may not be required by any local governing authority to apply for an exemption from a local business tax, otherwise prove his or her exempt status, or pay any tax or fee related to a local business tax.

(3) A principal or employer who is required to obtain a local business tax receipt may not be required by a local governing authority to provide personal or contact information for individuals exempt under this section in order to obtain a local business tax receipt.

Section 2. Subsection (1) of section 205.066, Florida Statutes, is amended to read:

205.066 Exemptions; employees.—

(1) An individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt. ~~For purposes of this section, an individual licensed and operating as a broker associate or sales associate under chapter 475 is an employee.~~ An individual acting in the capacity of an independent contractor is not an employee.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 7043 Obsolete or Outdated Programs and Requirements
SPONSOR(S): Economic Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2086

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Affairs Committee		Tecler AT	Tinker TWT

SUMMARY ANALYSIS

The proposed committee substitute for HB 7043 repeals or amends statutes related to several obsolete programs and requirements. Specifically, the bill eliminates references to inactive or duplicative advisory boards within the Department of Transportation, the Department of Management Services, the Department of Environmental Protection, the Department of Health, and the Office of Insurance Regulation.

The bill repeals and amends statutory references to inactive offices administratively housed in the Florida Small Business Development Center Network. The bill also eliminates a requirement for bicycle operators and repeals a statute related to an inactive University of Florida research program.

The bill does not have an impact on state funds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida State Employee Wellness Council
The Florida State Employee Wellness Council was created in 2006 to advise the Department of Management Services on providing health education information to state employees and to assist DMS in developing minimum benefits for all health care providers when providing age and gender-based wellness benefits. The Department has stated that the Council has been inactive since 2008 and its duties related to wellness programs were reassigned to other state entities.[1] In 2008, the Office of Program Policy Analysis and Government Accountability (OPPAGA) recommended abolishing the Council.[2]

Effect of the Bill:
The bill repeals s. 110.123(13), F.S., relating to the Florida State Employee Wellness Council.

Judah P. Benjamin Memorial at Gamble Plantation Historical Site Advisory Council
The Judah P. Benjamin Memorial at Gamble Plantation Historic State Park serves as a memorial to a former Confederate Secretary of State and as a historical site depicting the way of life and economic system that existed before the Civil War.[3] Located in Manatee County, the Gamble Mansion is the only surviving antebellum plantation house in south Florida. In 1925, the mansion and 16 acres were saved by the United Daughters of the Confederacy and donated to the state.

Under current law, the Judah P. Benjamin Memorial at Gamble Plantation Historical Site Advisory Council was created to advise the Department of Environmental Protection's Division of Recreation and Parks in the operation, restoration, development, and preservation of the historical site. According to the DEP, the advisory council only meets on average once a year and does not regularly advise the Division. In addition, the park works more closely with its citizen support organization, the Gamble Plantation Preserve Alliance, the United Daughters of the Confederacy, other state entities within DEP and the Department of State.

Effect of the Bill:
The bill repeals s. 258.155, F.S., relating to the Judah P. Benjamin Memorial at Gamble Plantation Historical Site Advisory Council.

Small Business Regulatory Advisory Council
The Small Business Regulatory Advisory Council (SBRAC) was created by the Small Business Regulatory Relief Act passed during the 2008 legislative session. The Council was administratively housed with the Small Business Development Center Network. SBRAC provided state agencies and the Legislature with input regarding rules or programs that may adversely affect small business or private property rights. The Rules Ombudsman, within the Executive Office of the Governor, shares many of the same statutory duties and responsibilities with the SBRAC. The SBRAC was not funded in the current fiscal year and became inactive on June 30, 2011.

Effect of the Bill:
The bill repeals s. 288.7001, F.S., related to the Small Business Regulatory Advisory Council. Further, the bill transfers certain provisions related to rulemaking oversight from SBRAC to the Rules Ombudsman. The bill also deletes a requirement that OPPAGA, upon the Council's request and

[1] According to the Department of Management Services, the Council's last recorded meeting occurred in June 2008 and the last members appointed to the Council termed out in December 2010. No new appointments have been made to the council.
[2] Department of Management Services Advisory Committees Assessment, Office of Program Policy Analysis and Government Accountability, Dec. 2008, http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/08-S11.pdf (last visited February 8, 2012).
[3] P. Benjamin Confederate Memorial at Gamble Plantation Historic State Park, http://www.floridastateparks.org/gambleplantation/ (Last visited February 8, 2012).

approval by the Legislature, conduct a study and issue a report related to the impact of an agency proposed rule and any alternative options rejected by such agency.

Office of the Small Business Advocate

The Office of the Small Business Advocate (OSBA) served as a liaison between state government and small businesses. The Office was charged with reaching out to small and medium-sized enterprises to identify issues, concerns, and solutions to help lessen the burden of state government and encourage small business development within the state. The OSBA was not funded in the current fiscal year and became inactive on June 30, 2011. Many of the duties charged to the OSBA are provided through the Small Business Development Center Network, the Department of Economic Opportunity and the Governor's Office of Fiscal Accountability and Regulatory Reform.

Effect of the Bill:

The bill repeals s. 288.7002, F.S., relating to the Office of the Small Business Advocate.

Bicycle Operators

In general, bicyclists must obey the same rules of the road as other vehicle operators, including obeying traffic signs, signals, and lane markings.[4] Section 316.2065(7), F.S., specifies that operators of a bicycle must keep at least one hand upon the handlebars. Violators of this section are subject to a pedestrian violation and certain fines in ch. 318, F.S. The base fine is $15 plus $8.50 in required fees. Other fees depend upon the county in which the violation occurs, either because only certain counties are eligible to assess the fee by statute or because the option and amount is determined by ordinance.[5]

Effect of the Bill

The bill repeals s. 316.2065(7), F.S., relating to a requirement that bicycle operators must keep at least one hand upon the handlebars. The bill also corrects a cross reference related to bicycle regulations.

Statewide Intermodal Transportation Advisory Council

In 2003, the Strategic Intermodal System was established to serve the state's mobility needs, help the state become a worldwide economic leader, enhance economic prosperity and competitiveness, enrich quality of life and reflect responsible environmental stewardship. The 2003 law also created a Statewide Intermodal Transportation Advisory Council to advise and make recommendations to the Legislature and the Department of Transportation on the policies, planning, and funding of intermodal transportation projects. The Council is no longer active and held its last meeting in December 2004.[6]

Effect of the Bill:

The bill repeals s. 339.64(5), F.S., relating to the Statewide Intermodal Transportation Advisory Council.

Health Information Systems Council

The Florida Health Information Systems Council was created in the Department of Health by the Information Resource Management Reform Act of 1997.[7] The purpose of the Council is to coordinate, and provide for, the identification, collection, standardization, and sharing of health-related data among federal, state, local, and private entities. According to the Department of Health, the Council has continued to meet as required, but takes no official action.[8] The last meeting of the Council at which any official action was taken occurred on October 22, 2003.[9] At that meeting, the Council adopted revisions to its Strategic Plan for FY 2004-05 through 2008-09.[10] However, none of the

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[4] U.S. Department of Transportation, National Highway Traffic Safety Administration, Traffic Safety Facts: 2009 Data, http://www-nrd.nhtsa.dot.gov/Pubs/811386.pdf (Last visited February 13, 2012).

[5] These fees are authorized by ss. 318.1215, 318.18, 938.15, and 938.19, F.S.

[6] April 16, 2009, email from Department of Transportation to the Roads, Bridges & Ports Policy Committee staff.

[7] Section 27, ch. 97-286, L.O.F.

[8] Telephone conference between Department of Health legislative affairs staff and Health and Human Services Quality Subcommittee staff.

[9] Florida Department of Health, Florida Health Information Systems Council, Meeting Minutes, October 22, 2003, http://www.doh.state.fl.us/floridahisc/Meetings/102203mts.html (last viewed on February 8, 2012).

[10] Department of Health, Florida Health Information Systems Council, Strategic Plan-Fiscal Years 2004-05 through 2008-09, May 15, 2003 (revised October 22, 2003), available at

recommendations contained in the Plan have been implemented over the last 8 years. In addition, the Council has not received any recent funding, nor have any appointments to the Council been made in the last two years.

Effect of the bill:
The bill repeals s. 381.90, F.S., relating to the Health Information Systems Council.

Developmental Disabilities Compact
Section 624.916, F.S., called the "Window of Opportunity Act", required the Office of Insurance Regulation (OIR) to convene a workgroup for the purpose of developing and executing a compact including a binding agreement among the participants relating to insurance and access to services for persons with developmental disabilities. Participants in the agreement would be exempt from the provisions of the Steven A. Geller Autism Act because the agreement covered autism spectrum disorder, as well as other developmental disabilities.[11]

One company became a participant in the agreement prior to the April 1, 2009 deadline. During its period of operation under the Compact, the company had no claims for evaluation or treatment of developmental disabilities. According to OIR, effective April 30, 2010, the certificate of authority for this company was suspended because the company was winding down its commercial operations.[12] Currently, the company no longer operates in Florida.[13] As a result, there are no longer any signatories to the Developmental Disabilities Compact.

Effect of the bill:
The bill repeals s. 624.916, F.S., relating to the Developmental Disabilities Compact. The bill also corrects several cross references related to the Compact. The bill does not have an impact on the coverage mandates contained in the Steven A. Geller Autism Act.

Florida Institute for Nuclear Detection and Security
In 2004, the Legislature created the Florida Institute for Nuclear Detection and Security within the Department of Nuclear Engineering and Radiological Sciences at the University of Florida. The Institute was to serve as a design-basis center for research, development, testing, and engineering projects that directly address certain critical nuclear detection and security needs.

The Institute was to solicit and receive state, federal, and private funds for the purpose of conducting research and development in the area of nuclear security technology. Faculty at the University's College of Engineering confirms that funding was never appropriated or obtained for the program. Further, the Institute's Board of Advisors was never established and the two faculty members that were to staff the Institute have since left the University.[14]

Effect of the bill:
The bill repeals s. 1004.63, F.S., relating to the Florida Institute for Nuclear Detection and Security.

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

B. SECTION DIRECTORY:

Section 1: Repeals s. 1110.123(13), F.S., relating to the Florida State Employee Wellness Council.

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http://www.doh.state.fl.us/floridahisc/Plan/FHISCSP_2003_approved_revision_10_22_2003.pdf (last viewed February 8, 2012).
[11] Sections 627.6686 and 641.31098, F.S.
[12] Florida Office of Insurance Regulation, *2011 Developmental Disabilities Compact Annual Report*, page 2, http://www.floir.com/siteDocuments/DDCWGReport02142011.pdf (Last viewed February 8, 2012).
[13] January 11, 2012, telephone conference between Michelle Robleto, Deputy Insurance Commissioner of Life and Health Insurance, Florida Office of Insurance Regulation, and the Health and Human Services Quality Subcommittee staff.
[14] Conversation with Dr. David P. Norton, Associate Dean for Research and Graduate Programs, College of Engineering, University of Florida, January 20, 2012.

Section 2: Repeals s. 258.155, F.S., relating to the Judah P. Benjamin Memorial at Gamble Plantation Historical Site Advisory Council.

Section 3: Repeals s. 288.7001, F.S., relating to the Small Business Regulatory Advisory Council.

Section 4: Repeals s. 288.7002, F.S., relating to the Office of the Small Business Advocate.

Section 5: Repeals s. 339.64(5), F.S., relating to the Statewide Intermodal Transportation Advisory Council.

Section 6: Repeals s. 381.90, F.S., relating to the Health Information Systems Council.

Section 7: Repeals s. 624.916, F.S., relating to the Developmental Disabilities Compact.

Section 8: Repeals s. 1004.63, F.S., relating to the Florida Institute for Nuclear Detection and Security.

Section 9: Amends s. 120.54, F.S., transferring certain provisions related to rulemaking oversight from the Small Business Regulatory Advisory Council to the Rules Ombudsman.

Section 10: Amends s. 120.745, F.S., removing a requirement that the Office of Program Policy Analysis and Government Accountability conduct a study and issue a report related to proposed rules.

Section 11: Repeals s. 316.2065(7), F.S., relating to a requirement that bicycle operators must keep at least one hand upon the handlebars.

Sections 12, 13, and 14: Correct cross-references.

Section 15: 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. 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 obsolete or outdated programs and requirements; repealing s. 110.123(13), F.S., relating to the Florida State Employee Wellness Council; repealing s. 258.155, F.S., relating to the Judah P. Benjamin Memorial at Gamble Plantation Historical Site Advisory Council; repealing s. 288.7001, F.S., relating to the Small Business Regulatory Advisory Council; repealing s. 288.7002, F.S., relating to the Office of Small Business Advocate; repealing s. 339.64(5), F.S., relating to the Statewide Intermodal Transportation Advisory Council; repealing s. 381.90, F.S., relating to the Health Information Systems Council; repealing s. 624.916, F.S., relating to the Developmental Disabilities Compact Workgroup; repealing s. 1004.63, F.S., relating to the Florida Institute for Nuclear Detection and Security; amending ss. 120.54 and 120.745, F.S., relating to rule adoption by state agencies; requiring the rules ombudsman in the Executive Office of the Governor to assume certain duties formerly performed by the Small Business Regulatory Advisory Council; deleting provisions that require the Office of Program Policy Analysis and Government Accountability, upon request, to conduct a study and issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the impact on small business of certain proposed agency rules that have

been rejected; amending s. 316.2065, F.S.; removing a requirement to keep one hand on the handlebars while operating a bicycle; amending ss. 322.27, 627.6686 and 641.31098, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. Subsection (13) of section 110.123, Florida Statutes, is repealed.

Section 2. Section 258.155, Florida Statutes, is repealed.

Section 3. Section 288.7001, Florida Statutes, is repealed.

Section 4. Section 288.7002, Florida Statutes, is repealed.

Section 5. Subsection (5) of section 339.64, Florida Statutes, is repealed.

Section 6. Section 381.90, Florida Statutes, is repealed.

Section 7. Section 624.916, Florida Statutes, is repealed.

Section 8. Section 1004.63, Florida Statutes, is repealed.

Section 9. Paragraph (b) of subsection (3) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

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

1. Statement of estimated regulatory costs.—Before the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided

by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or

b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after the implementation of the rule.

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

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

of these entities:

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

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

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

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

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

b.(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph a., the agency shall send written notice of the rule to the rules ombudsman in the Executive Office of the Governor ~~Small Business Regulatory Advisory Council and the Department of Economic Opportunity~~ at least 28 days before the intended action.

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

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

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

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

Section 10. Paragraphs (a) and (c) of subsection (5) of section 120.745, Florida Statutes, are amended to read:

120.745 Legislative review of agency rules in effect on or before November 16, 2010.—

(5) COMPLIANCE ECONOMIC REVIEW OF RULES AND REQUIRED REPORT.—Each agency shall perform a compliance economic review and report for all rules, including separate reviews of subparts, listed under Group 1 "Group 1 rules" or Group 2 "Group 2 rules" pursuant to subparagraph (2)(g)3. Group 1 rules shall be reviewed and reported on in 2012, and Group 2 rules shall be reviewed and reported on in 2013.

(a) No later than May 1, each agency shall:

1. Complete a compliance economic review for each entire rule or subpart in the appropriate group.

2. File the written certification of the agency head with the committee verifying the completion of each compliance economic review required for the respective year. The

certification shall be dated and published as an addendum to the report required in subsection (3). The duty to certify completion of the required compliance economic reviews is the responsibility solely of the agency head as defined in s. 120.52(3) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.

3. Publish a copy of the compliance economic review, directions on how and when interested parties may submit lower cost regulatory alternatives to the agency, and the date the notice is published in the manner provided in subsection (7).

4. Publish notice of the publications required in subparagraphs 2. and 3. in the manner provided in subsection (7).

5. Submit each compliance economic review to the rules ombudsman in the Executive Office of the Governor ~~Small Business Regulatory Advisory Council~~ for its review.

(c) No later than August 1, the rules ombudsman in the Executive Office of the Governor ~~Small Business Regulatory Advisory Council~~ may submit lower cost regulatory alternatives to any rule to the agency that adopted the rule. No later than June 15, other interested parties may submit lower cost regulatory alternatives to any rule.

Section 11. Subsections (7) through (20) of section 316.2065, Florida Statutes, are amended to read:

316.2065 Bicycle regulations.—

~~(7) Any person operating a bicycle shall keep at least one~~

~~hand upon the handlebars.~~

(7) ~~(8)~~ Every bicycle in use between sunset and sunrise shall be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear each exhibiting a red light visible from a distance of 600 feet to the rear. A bicycle or its rider may be equipped with lights or reflectors in addition to those required by this section.

(8) ~~(9)~~ No parent of any minor child and no guardian of any minor ward may authorize or knowingly permit any such minor child or ward to violate any of the provisions of this section.

(9) ~~(10)~~ A person propelling a vehicle by human power upon and along a sidewalk, or across a roadway upon and along a crosswalk, has all the rights and duties applicable to a pedestrian under the same circumstances.

(10) ~~(11)~~ A person propelling a bicycle upon and along a sidewalk, or across a roadway upon and along a crosswalk, shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian.

(11) ~~(12)~~ No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device, may go upon any roadway except while crossing a street on a crosswalk; and, when so crossing, such person shall be granted all rights and shall be subject to all of the duties applicable to pedestrians.

(12) ~~(13)~~ This section shall not apply upon any street while set aside as a play street authorized herein or as designated by state, county, or municipal authority.

(13) ~~(14)~~ Every bicycle shall be equipped with a brake or brakes which will enable its rider to stop the bicycle within 25 feet from a speed of 10 miles per hour on dry, level, clean pavement.

(14) ~~(15)~~ A person engaged in the business of selling bicycles at retail shall not sell any bicycle unless the bicycle has an identifying number permanently stamped or cast on its frame.

(15) ~~(16)~~ (a) A person may not knowingly rent or lease any bicycle to be ridden by a child who is under the age of 16 years unless:

1. The child possesses a bicycle helmet; or

2. The lessor provides a bicycle helmet for the child to wear.

(b) A violation of this subsection is a nonmoving violation, punishable as provided in s. 318.18.

(16) ~~(17)~~ The court may waive, reduce, or suspend payment of any fine imposed under subsection (3) or subsection (15) ~~(16)~~ and may impose any other conditions on the waiver, reduction, or suspension. If the court finds that a person does not have sufficient funds to pay the fine, the court may require the performance of a specified number of hours of community service or attendance at a safety seminar.

(17) ~~(18)~~ Notwithstanding s. 318.21, all proceeds collected pursuant to s. 318.18 for violations under paragraphs (3)(e) and (15)(b) ~~(16)(b)~~ shall be deposited into the State Transportation Trust Fund.

(18) ~~(19)~~ The failure of a person to wear a bicycle helmet

or the failure of a parent or guardian to prevent a child from riding a bicycle without a bicycle helmet may not be considered evidence of negligence or contributory negligence.

(19) ~~(20)~~ Except as otherwise provided in this section, a violation of this section is a noncriminal traffic infraction, punishable as a pedestrian violation as provided in chapter 318. A law enforcement officer may issue traffic citations for a violation of subsection (3) or subsection (15) ~~(16)~~ only if the violation occurs on a bicycle path or road, as defined in s. 334.03. However, a law enforcement officer may not issue citations to persons on private property, except any part thereof which is open to the use of the public for purposes of vehicular traffic.

Section 12. Paragraph (d) of subsection (3) of section 322.27, Florida Statutes, is amended to read:

322.27 Authority of department to suspend or revoke license.—

(3) There is established a point system for evaluation of convictions of violations of motor vehicle laws or ordinances, and violations of applicable provisions of s. 403.413(6)(b) when such violations involve the use of motor vehicles, for the determination of the continuing qualification of any person to operate a motor vehicle. The department is authorized to suspend the license of any person upon showing of its records or other good and sufficient evidence that the licensee has been convicted of violation of motor vehicle laws or ordinances, or applicable provisions of s. 403.413(6)(b), amounting to 12 or more points as determined by the point system. The suspension

shall be for a period of not more than 1 year.

(d) The point system shall have as its basic element a graduated scale of points assigning relative values to convictions of the following violations:

1. Reckless driving, willful and wanton—4 points.

2. Leaving the scene of a crash resulting in property damage of more than $50—6 points.

3. Unlawful speed resulting in a crash—6 points.

4. Passing a stopped school bus—4 points.

5. Unlawful speed:

a. Not in excess of 15 miles per hour of lawful or posted speed—3 points.

b. In excess of 15 miles per hour of lawful or posted speed—4 points.

6. A violation of a traffic control signal device as provided in s. 316.074(1) or s. 316.075(1)(c)1.—4 points. However, no points shall be imposed for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer. In addition, a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer may not be used for purposes of setting motor vehicle insurance rates.

7. All other moving violations (including parking on a highway outside the limits of a municipality)—3 points. However, no points shall be imposed for a violation of s. 316.0741 or s. 316.2065(11) ~~316.2065(12)~~; and points shall be imposed for a

violation of s. 316.1001 only when imposed by the court after a hearing pursuant to s. 318.14(5).

8. Any moving violation covered above, excluding unlawful speed, resulting in a crash—4 points.

9. Any conviction under s. 403.413(6)(b)—3 points.

10. Any conviction under s. 316.0775(2)—4 points.

Section 13. Subsection (10) of section 627.6686, Florida Statutes, is amended to read:

627.6686 Coverage for individuals with autism spectrum disorder required; exception.—

~~(10) The Office of Insurance Regulation may not enforce this section against an insurer that is a signatory no later than April 1, 2009, to the developmental disabilities compact established under s. 624.916. The Office of Insurance Regulation shall enforce this section against an insurer that is a signatory to the compact established under s. 624.916 if the insurer has not complied with the terms of the compact for all health insurance plans by April 1, 2010.~~

Section 14. Subsection (9) of section 641.31098, Florida Statutes, is amended to read:

641.31098 Coverage for individuals with developmental disabilities.—

~~(9) The Office of Insurance Regulation may not enforce this section against a health maintenance organization that is a signatory no later than April 1, 2009, to the developmental disabilities compact established under s. 624.916. The Office of Insurance Regulation shall enforce this section against a health maintenance organization that is a signatory to the compact~~

~~established under s. 624.916 if the health maintenance organization has not complied with the terms of the compact for all health maintenance contracts by April 1, 2010.~~

Section 15. This act shall take effect July 1, 2012.

PCS for HB 1373

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1373 Commemoration of the 40th Anniversary of the End of the United States' Involvement in the Vietnam War
SPONSOR(S): Economic Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The United States Armed Forces began serving in an advisory role to South Vietnam in the mid-1950s, but became directly involved in the mid-1960s when troops were sent into Vietnam. United States ground troops were withdrawn from Vietnam on March 30, 1973, under the terms of the Paris Peace Accords. More than 58,000 United States service members lost their lives in the war, including 1,952 Floridians, and more than 153,000 were wounded and required hospital care. There are approximately 7.5 million living veterans of the Vietnam War, with approximately 454,000 living in Florida. Due to the controversy surrounding the Vietnam War, many veterans returned to the United States without formal recognition of their service.

Current law establishes 50 legal holidays and special observance days, including Memorial Day, Veterans' Day, and Patriots' Day. Legal holidays and special observances may apply throughout the state or they may be limited to particular counties. Designation of a day as a legal holiday does not necessarily make that day a paid holiday for public employees. Current law does not contain a designation for the commemoration of the 40th anniversary of the end of the United States' Involvement in the Vietnam War.

The bill designates March 30, 2013 as the date for the State of Florida to commemorate the 40th anniversary of the end of the United States' involvement in the Vietnam War. It authorizes the Governor to issue a proclamation in honor of the anniversary. The bill provides that the day is to be observed for the purpose of providing opportunities throughout the state to demonstrate and express appreciation for the honorable service and sacrifice of veterans from the Vietnam Era. It also provides that the date shall be observed by public exercises in the State Capitol and elsewhere as the Governor designates.

Additionally, the bill allows the Florida Veterans' Foundation to collaborate with Florida's veterans' organizations to administratively promote and support the efforts of counties, municipalities, and bona fide veterans' organizations that voluntarily hold special community events to commemorate the anniversary. These events may include, but are not limited to, parades or ceremonies held on or about March 30, 2013.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

United States Involvement in the Vietnam War

The Geneva Accords were signed in July of 1954, dividing Vietnam into a communist north and democratic south. The rationale developed by the Eisenhower Administration to explain its economic and military support of South Vietnam became known as the "domino theory." Likening the countries of southeast Asia to a row of dominos, the President argued that if one country fell, it would trigger the fall of others.[1] Thus, the United States began to endorse and support South Vietnam's effort to defend against the communist North.

The U.S. initially supported South Vietnam in an advisory role but, by the mid-1960s, U.S. military forces were directly involved in combat operations against the North. More than 3 million Americans served in the Vietnam War, some 1.5 million of whom actually saw combat in Vietnam.[2] American involvement in the war began to decline after the Paris Peace Accords were signed on January 27, 1973. The U.S. completed withdrawal of its ground troops from Vietnam on March 30, 1973, but thousands of U.S. support personnel remained in Vietnam. All remaining U.S. personnel were evacuated when Saigon fell on April 30, 1975.[3]

The United States supported South Vietnam from the beginning of the war until its end on May 7, 1975. The U.S. Congress and President have defined the Vietnam era as beginning February 28, 1961, and ending on May 7, 1975.[4] This is the period used to determine qualification for veterans' benefits. The Vietnam Veterans Association likewise uses this period to determine eligibility for membership.[5]

Military involvement in Vietnam, and the neighboring countries of Laos and Cambodia, resulted in the deaths of 58,220 U.S. service members, 1,952 of whom were from Florida.[6] An additional 153,303 U.S. service members required hospital care as a result of wounds.[7] There are approximately 7.5 million surviving veterans of the Vietnam War[8], with approximately 454,000 residing in Florida.[9]

The Vietnam War was a divisive issue in the U.S., and many veterans did not return to the acknowledgment and appreciation of their service traditionally afforded veterans of other military conflicts.

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[1] *The War in Vietnam, 1954-1964;* http://faculty.smu.edu/dsimon/Change-Viet.html.
[2] *Echoes of Combat: The Vietnam War in American Memory*, Stanford University (June 2001).
[3] U.S. Congress, President, and Florida Legislature recognize May 7, 1975, as the end of the Vietnam War (for purpose of veteran affairs). Text at: http://www.gpo.gov/fdsys/pkg/CFR-2005-title45-vol3/pdf/CFR-2005-title45-vol3-sec506-10.pdf; 14 Fla. Prac., Elder Law § 14:5 (2010-11 ed.).
[4] U.S. Code of Federal Regulations, Title 45, Volume 3, Sec. 506.10, "Vietnam Conflict" defined, available at http://frwebgate2.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=xr1v3B/30/1/0&WAISaction=retrieve
[5] Vietnam Veterans Association, *Membership Brochure*, http://www.vva.org/member_brochure.html
[6] http://thewall-usa.com/summary.asp.
[7] Anne Leland; Mari-Jana "M-J" Oboroceanu, *American War and Military Operations: Casualties: Lists and Statistics*, Congressional Research Service, http://www.fas.org/sgp/crs/natsec/RL32492.pdf (February 26, 2010); http://siadapp.dmdc.osd.mil/personnel/CASUALTY/castop.htm.
[8] *Statistics at a Glance,* Dep't of Veterans Affairs (as of 8/12/2011) and *America's Wars*, Dep't of Veterans Affairs (May 2010) available at http://www1.va.gov/opa/publications/factsheets/fs_americas_wars.pdf .
[9] *Fast Facts*, Fl. Dep't of Veterans' Affairs, http://www.floridavets.org/.

Congressional Action

The National Defense Authorization Act of 2008 authorized the Secretary of Defense to commemorate the 50th anniversary of the Vietnam War.[10] In doing so, the Secretary "shall coordinate, support, and facilitate other programs of the Federal Government, State and local governments, and other persons or organizations in the commemoration of the Vietnam War." The commemoration program consists of events and activities, held across the nation and over the course of several years, to thank, honor, and recognize the contributions and sacrifices made by veterans during the Vietnam War.[11]

On March 7, 2011, the U.S. Senate unanimously adopted a resolution that designated March 30, 2011, as "Welcome Home Vietnam Veterans Day."[12] The resolution honors Vietnam veterans who, because of the divisiveness and controversy surrounding the war, were not properly acknowledged or honored upon return. The resolution encourages individual states to establish a "Welcome Home Vietnam Veterans Day" holiday as well.

Legal Holidays and Special Observances in Florida

Current Florida law establishes 50 legal holidays and special observance days, including Memorial Day, Veterans' Day, and Patriots' Day.[13] Legal holidays and special observances may apply throughout the state or they may be limited to particular counties. Designation of a day as a legal holiday does not necessarily make that day a paid holiday for public employees.[14] Current law does not contain a designation for the commemoration of the 40th anniversary of the end of the United States' Involvement in the Vietnam War.[15]

Effects of Proposed Changes

The bill designates March 30, 2013, as the date for the State of Florida to commemorate the 40th anniversary of the end of the United States' involvement in the Vietnam War. The bill provides that the intent behind the act is to provide legislative direction and to ensure the appropriate commemoration of this anniversary and proper demonstration of appreciation for the honorable service and tremendous sacrifice of Vietnam Era veterans.

The bill authorizes the Governor to issue a proclamation in honor of the anniversary. The bill provides that the day is to be observed for the purpose of providing opportunities throughout the state to demonstrate and express appreciation for the honorable service and sacrifice of veterans from the Vietnam Era. It also provides that the date shall be observed by public exercises in the State Capitol and elsewhere as the Governor designates.

Additionally, the bill allows the Florida Veterans' Foundation[16] to collaborate with Florida's veterans' organizations to administratively promote and support the efforts of counties, municipalities, and bona fide veterans' organizations that voluntarily hold special community events to commemorate the anniversary. These events may include, but are not limited to, parades or ceremonies held on or about March 30, 2013.

B. SECTION DIRECTORY:

Section 1 Creates s. 683.025, F.S., to designate March 30, 2013, as the date for the State of Florida to commemorate the 40th anniversary of the end of the United States' involvement in the Vietnam War.

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[10] National Defense Authorization Act for Fiscal Year 2008, Pub. L. no. 110-181, 598, 122 Stat. 141 (2008).
[11] http://www.vietnamwar50th.com/assets/1/7/Commemoration_Fact_Sheet_Sept_2010_v2.pdf.
[12] S. RES 55, 112th CONGRESS, 1st Session.
[13] *See* chapter 683, F.S.
[14] Section 110.117, F.S., establishes which legal holidays are paid holidays for public employees.
[15] *See* chapter 683, F.S.
[16] The Florida Veterans' Foundation is a 501(c)(3) organization that serves as the Florida Department of Veteran Affairs' Direct Support Organization. It is authorized in s. 292.055, 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:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to commemoration of the 40th anniversary of the end of the United States' involvement in the Vietnam War; creating s. 683.025, F.S.; designating March 30, 2013, as the date for the observance of the 40th anniversary of the end of the United States' involvement in the Vietnam War; specifying purpose of the observance; allowing the Florida Veterans' Foundation to collaborate with Florida's veterans' organizations and their local posts and chapters to administratively promote and support the efforts of counties, municipalities, and veterans' organizations that voluntarily hold special community events commemorating the 40th anniversary of the end of the United States' involvement in the Vietnam War; providing an effective date.

WHEREAS, March 30, 2013, marks the 40th anniversary of the end of United States' involvement in the Vietnam War, and

WHEREAS, it is the intent of this act to provide legislative direction and support for recognition of the importance of this event and to ensure the appropriate commemoration of this anniversary and proper demonstration of appreciation for the honorable service and tremendous sacrifice of veterans who served in the United States Armed Services during the Vietnam Era, NOW, THEREFORE,

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

Section 1. Section 683.025, Florida Statutes, is created to read:

683.025 Commemoration of 40th anniversary of end of United States' involvement in Vietnam War.-

(1) In recognition of the historical significance of the 40th anniversary of the end of United States' involvement in the Vietnam War, March 30, 2013, shall be observed as the 40th anniversary of the end of United States' involvement in the Vietnam War.

(2) The Governor may issue a proclamation in honor of the 40th anniversary of the end of United States' involvement in the Vietnam War. The day shall be suitably observed for the purpose of providing opportunities throughout the state to demonstrate and express appreciation for the honorable service and sacrifice of veterans who served in the United States Armed Forces during the Vietnam Era and shall otherwise be suitably observed by such public exercises in the State Capitol and elsewhere as the Governor may designate.

(3) The Florida Veterans' Foundation created under s. 292.055 may collaborate with Florida's veterans' organizations and their local posts and chapters to administratively promote and support the efforts of counties, municipalities, and bona fide veterans' organizations that voluntarily hold special community events commemorating the 40th anniversary of the end of the United States' involvement in the Vietnam War on March 30, 2013, as provided in s. 683.025. Such events may include,

but are not limited to, parades or ceremonies held on or about that date.

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

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

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