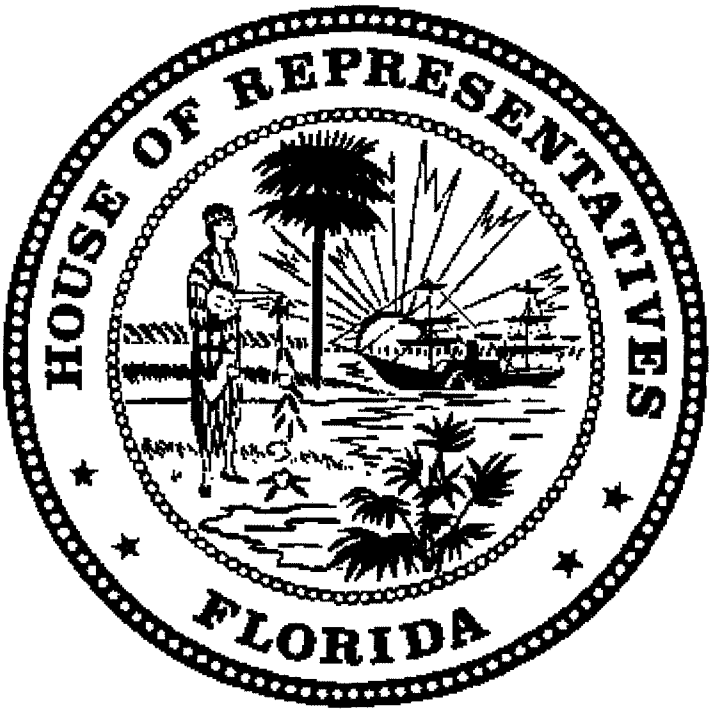

Judiciary Committee

Thursday, March 31, 2011
12:00 PM
404 HOB

Meeting Packet

Dean Cannon
Speaker

William Snyder
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Thursday, March 31, 2011 12:00 pm

End Date and Time: Thursday, March 31, 2011 02:45 pm

Location: 404 HOB
Duration: 2.75 hrs

Consideration of the following bill(s):

HB 347 Vehicle Crashes Involving Death by Diaz, Trujillo
CS/CS/HB 353 Drug Screening of Potential and Existing Beneficiaries of Temporary Assistance for Needy Families by Rulemaking & Regulation Subcommittee, Health & Human Services Access Subcommittee, Smith
CS/HB 423 Mobile Home Park Lot Tenancies by Civil Justice Subcommittee, Nuñez
HB 567 Judgment Interest by Hudson
CS/HB 701 Property Rights by Community & Military Affairs Subcommittee, Eisnaugle
HB 1029 Interstate Compact for Juveniles by Brodeur
HB 4159 State Attorneys by Ray
HB 7127 Prison Diversion Programs by Criminal Justice Subcommittee, Julien
HB 7135 Cotton or Leaf Tobacco by Criminal Justice Subcommittee, Trujillo
HB 7139 Levying War Against People of the State by Criminal Justice Subcommittee, Grant
HB 7145 Unlawful Use of Insignia by Criminal Justice Subcommittee, Van Zant
HB 7147 Correctional Policy Advisory Council by Criminal Justice Subcommittee, Harrell
HB 7149 Water Hyacinths by Criminal Justice Subcommittee, Perry

NOTICE FINALIZED on 03/29/2011 16:15 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 347 Vehicle Crashes Involving Death
SPONSOR(S): Diaz and Trujillo
TIED BILLS: None **IDEN./SIM. BILLS:** SB 514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Williams	Cunningham
2) Transportation & Highway Safety Subcommittee	13 Y, 0 N	Brown	Brown
3) Judiciary Committee		Williams	Havlicak

SUMMARY ANALYSIS

Currently, Florida law requires the driver of any vehicle involved in a crash that results in a person's death to immediately stop at the scene and remain there until fulfilling certain statutory duties, including assisting the injured and, insofar as possible, providing vehicular and personal identifying information. Willfully failing to stop at the scene of a crash which results in a death is punishable as a first degree felony.

HB 347 provides that a person arrested for failure to stop a vehicle at the scene of an accident involving the death of any person and who has previously been convicted of s. 316.027, F.S. (leaving the scene of an accident), s. 316.061, F.S. (crashes involving damage to vehicle or property), s. 316.191, F.S. (racing on highways), s. 316.193, F.S. (driving under the influence), or a felony violation of s.322.34, F.S. (driving while license suspended, revoked, canceled, or disqualified), must be held in custody until first appearance.

This would prevent judges who issue warrants for failure to stop a vehicle at the scene of an accident involving death from setting a predetermined bond amount in an arrest warrant. The bill would also prevent local jurisdictions from placing the offense on a bond schedule with predetermined bond amounts.

The bill cites the act as the "Ashley Nicole Valdes Act," in honor of an eleven year old hit-and-run victim.

The bill may have a minimal fiscal impact on local jail beds and is effective October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Section 316.027(1)(b), F.S., provides that the driver of any vehicle involved in a crash occurring on public or private property that results in the death of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062, F.S.[1] Any person who willfully violates this subsection commits a first degree felony.[2] The offense is currently ranked in level 7 of the offense severity ranking chart of the Criminal Punishment Code.[3]

Section 901.02, F.S., provides that a law enforcement officer may arrest a person who commits a crime if the officer obtains an arrest warrant signed by a judge. At the time of the issuance of the warrant, the judge may set a bond amount[4] or, in some circumstances,[5] require the arrestee be held until first appearance[6] for determination of a bond amount. A person arrested on a warrant with a predetermined bond amount may immediately bond out of jail following an arrest by posting the bond amount.

A law enforcement officer may arrest a person who commits a felony without a warrant if the officer reasonably believes a felony has been committed.[7] In such instances, the arrestee is generally held until first appearance for a determination of probable cause and bail amount. In some jurisdictions, a bond schedule with predetermined bond amounts for certain offenses is agreed to and provided by judicial officers to the county detention facility. If an arrestee meets the requirements of the bond schedule, the arrestee may bond out of jail for the predetermined bond amount. This eliminates the need for an arrestee to make a first appearance before a judge.

Proposed Changes

HB 347 provides that a person arrested for failure to stop a vehicle at the scene of an accident involving the death of any person and who has previously been convicted of s. 316.027, F.S. (leaving the scene of an accident), s. 316.061, F.S. (crashes involving damage to vehicle or property), s. 316.191, F.S. (racing on highways), s. 316.193, F.S. (driving under the influence), or a felony violation of s. 322.34, F.S. (driving while license suspended, revoked, canceled, or disqualified), must be held in custody until first appearance.

This requirement would prevent judges who issue warrants for failure to stop a vehicle at the scene of an accident involving death from setting a predetermined bond amount in an arrest warrant. The bill would prevent local jurisdictions from placing the offense on a bond schedule with predetermined bond amounts.

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[1] Section 316.062, F.S., provides that a driver of a vehicle involved in a crash resulting in death or serious bodily injury or damage to any vehicle or other property driven or attended by any person must provide his or her name, address, and the registration number of the vehicle he or she is driving, and must provide a driver's license to a police officer or other person involved in the crash. The section also requires the driver of any vehicle involved in a crash to report the incident to the nearest police department.

[2] A first degree felony is punishable by imprisonment for up to 30 years and a maximum $10,000 fine. *See* ss. 775.082 and 775.083, F.S.

[3] Section 921.0022(3)(g), F.S.

[4] Section 903.046, F.S., provides criteria a judge may consider in determining a bail amount. A judge can also issue "no bond" in certain instances. *See* s. 907.041, F.S.

[5] Section 741.2901(3), F.S., provides that a defendant arrested for domestic violence shall be held in custody until brought before the court for admittance to bail under Ch. 903, F.S. At first appearance the court must consider the safety of the victim if the defendant is released.

[6] Florida Rule of Criminal Procedure 3.130 requires the state to bring an arrestee before a judge for a first appearance within 24 hours of arrest. At first appearance, a judge determines if there is probable cause to hold the arrestee, provides the arrestee notice of the charges against them, and advises the arrestee of his or her rights. If an arrestee is eligible for bail, the judge conducts a hearing in accordance with s. 903.046, F.S.

[7] Section 901.15, F.S.

The bill cites the act as the "Ashley Nicole Valdes Act," in honor of an eleven year old hit-and-run victim.

B. SECTION DIRECTORY:

Section 1. Cites the act as the "Ashley Nicole Valdes Act."

Section 2. Amends s. 316.027, F.S., relating to crash involving death or personal injuries.

Section 3. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. Provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There could be a potential jail bed impact since defendants arrested under the provisions of HB 347 would be required to remain in jail until first appearance. Since first appearance must occur within 24 hours of arrest, the impact is likely to be minimal.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and 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 vehicle crashes involving death; providing a short title; amending s. 316.027, F.S.; requiring a defendant who was arrested for leaving the scene of a crash involving death be held in custody until brought before a judge for admittance to bail in certain circumstances; reenacting s. 921.0022(3)(g), F.S., relating to the Criminal Punishment Code, to incorporate the amendments made to s. 316.027, F.S., in a reference thereto; providing an effective date.

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

Section 1. This act may be cited as the "Ashley Nicole Valdes Act."

Section 2. Paragraph (b) of subsection (1) of section 316.027, Florida Statutes, is amended to read:

316.027 Crash involving death or personal injuries.—

(1)

(b) The driver of any vehicle involved in a crash occurring on public or private property that results in the death of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062. A person who is arrested for a violation of this paragraph and who has previously been convicted of a violation of s. 316.027, s. 316.061, s. 316.191, or s. 316.193, or a felony violation of s. 322.34, shall be held

in custody until brought before the court for admittance to bail in accordance with chapter 903. Any person who willfully violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who willfully commits such a violation ~~violates this paragraph~~ while driving under the influence as set forth in s. 316.193(1) shall be sentenced to a mandatory minimum term of imprisonment of 2 years.

Section 3. For the purpose of incorporating the amendment made by this act to section 316.027, Florida Statutes, in a reference thereto, paragraph (g) of subsection (3) of section 921.0022, Florida Statutes, is reenacted to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high

		speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.

458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.

483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.

655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular

		homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.

784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass

			destruction.
97			
	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
98			
	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
99			
	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
100			
	796.03	2nd	Procuring any person under 16 years for prostitution.
101			
	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
102			
	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
103			

806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.

812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341(2)(b)	1st	Making false entries of material fact

& (3)(b)		or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.

838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or

		community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.

893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements,

		financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.

944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

Section 4. This act shall take effect October 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 353 Drug Screening of Potential and Existing Beneficiaries of Temporary Assistance for Needy Families
SPONSOR(S): Rulemaking & Regulation Subcommittee, Health & Human Services Access Subcommittee; Smith and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 556

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	12 Y, 3 N, As CS	Batchelor	Schoolfield
2) Rulemaking & Regulation Subcommittee	9 Y, 6 N, As CS	Miller	Rubottom
3) Judiciary Committee		Woodburn	Havlicak
4) Health Care Appropriations Subcommittee			
5) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill creates s. 414.0652, F.S., requiring the Department of Children and Families (DCF) to perform a drug screening for temporary cash assistance applicants as a condition of eligibility. The bill provides the following:

- DCF shall require a drug test consistent with s. 112.0455, F.S.
- All applicants for Temporary Assistance to Needy Families (TANF) shall be drug screened as a condition of eligibility to receive cash assistance benefits.
- Applicants who test positive for controlled substances will be disqualified from receiving temporary cash assistance for 1 year. DCF must inform applicants who test positive of the ability to apply again one year from the date of the positive test. Applicants who test positive again will be ineligible to receive TANF benefits for 3 years from the date of the second positive test.
- If a parent tests positive for controlled substances, DCF may designate a "protective payee" to receive the cash assistance benefits on behalf of a dependent child. Alternatively, the parent may choose an immediate family member to receive benefits on behalf of the child or DCF may approve another individual to receive the benefits; a person so designated by the parent or approved by DCF also must undergo drug testing.
- The cost of drug testing will be paid by the individual applicant.
- DCF will be required to provide any individual who tests positive for controlled substances with information concerning drug abuse and treatment programs in the area in which he or she resides. The bill specifies that neither DCF nor the state is responsible for providing or paying for substance abuse treatment as part of screening under this section.
- DCF is authorized to adopt rules as necessary to implement the law.

The bill raises important constitutional questions related to the permissibility of suspicionless drug testing as a condition of public assistance.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Temporary Assistance for Needy Families (TANF)

Under the welfare reform legislation of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act – PWRORA – Public Law 104-193, the Temporary Assistance for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children (AFDC), the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program. The law ended federal entitlement to assistance and instead created TANF as a block grant that provides States, territories and tribes federal funds each year. These funds cover benefits, administrative expenses, and services targeted to needy families. TANF became effective July 1, 1997, and was reauthorized in February 2006 under the Deficit Reduction Act of 2005.[1] States receive block grants to operate their individual programs and to accomplish the goals of the TANF program. Those goals include:

- Assisting needy families so that children can be cared for in their homes;
- Reducing the dependency of needy parents by promoting job preparation, work and marriage;
- Preventing out-of-wedlock pregnancies;
- Encouraging the formation and maintenance of two-parent families. [2]

Currently, DCF administers the TANF program in conjunction with the Agency for Workforce Innovation (AWI).[3] Current law provides that families are eligible for cash assistance for a lifetime cumulative total of 48 months (4 years).[4] DCF reports that approximately 113,346 people are receiving temporary cash assistance.[5] The FY 2010-2011 appropriation of TANF funds to support temporary cash assistance was $211,115,965.

The TANF program expires on September 30, 2011 and must be reauthorized by Congress to continue.

Food Assistance Program (Supplemental Nutrition Assistance Program-SNAP)

The Food Assistance Program is a 100 % federally funded program to help low-income people buy food they need for good health. The U.S. Department of Agriculture (USDA) determines the amount of food assistance benefits an individual or family receives. Food assistance benefits are a supplement to a family's food budget. Households may need to spend some of their own cash, along with their food assistance benefits, to buy enough food for a month.[6] DCF reports that over 1.9 million Floridians received food assistance during fiscal year 2009-10.[7]

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[1] US Dept. of Health and Human Services, Administration on Children and Families http://www.acf.hhs.gov/programs/ofa/tanf/about.html (last visited on 3/30/11).
[2] *Id.*
[3] State Plan for Temporary Assistance for Needy Families Renewal, October 1, 2008-September 30, 2011, @ http://www.dcf.state.fl.us/Search.shtml?cx=001246626777910876508%3Aznyjo2rfb2i&cof=FORID%3A11&ie=UTF-8&q=Drug+test#1086
[4] Section 414.105, F.S.
[5] DCF Quick Facts, Access Program, January 1, 2011.
[6] Food Assistance Program Fact Sheet, DCF http://www.dcf.state.fl.us/programs/access/foodstamps.shtml (last visited 3/30/11)
[7] DCF Quick Facts, Access Program, January 1, 2011.

Pilot Project for Drug Testing TANF Applicants

Currently, DCF does not drug screen any individual as a condition of eligibility for cash assistance. From January 1999 to May 2001, DCF, in consultation with Workforce Florida, implemented a pilot project in Regions 3 and 8 to drug screen and drug test applicants for TANF.[8] A Florida State University researcher under contract to evaluate the pilot program did not recommend continuation or statewide expansion of the project. Overall research and findings concluded that there is very little difference in employment and earnings between those who test positive versus those who test negative. Researchers concluded that the cost of the pilot program was not warranted.

Sanctions to Welfare and Food Assistance Recipients from Felony Drug Convictions

Federal law provides that an individual convicted (under federal or state law) of any offense which is classified as a felony related to the possession, use or distribution of a controlled substance shall not be eligible for assistance under the TANF program or benefits under the food stamp program or any program carried out under the Food and Nutrition Act of 2008.[9]

The same section of federal law provides that each state has the right to exempt individuals from having benefits withheld due to a felony drug charge.[10] Florida has opted to exempt individuals from this provision and does not deny benefits for a felony drug conviction, unless the conviction is for drug trafficking.[11]

Drug Testing Welfare and Food Assistance Recipients

Federal law regarding the use of TANF funds provides that states may test welfare recipients for use of controlled substances and sanction those recipients who test positive.[12] However, there is no provision in federal law allowing drug testing recipients of the food assistance program. Further the Federal code provides that states cannot, as a condition of eligibility, impose additional application or application processing requirements on recipients of the food assistance program. [13]

Protective Payees

The TANF program requires that people receiving cash assistance must satisfy work requirements established in federal law. Florida statutes provide that the Agency for Workforce Innovation develop specific activities that satisfy the work requirements.[14]

In the event that a TANF recipient is noncompliant with the work activity requirements, DCF has authority to terminate cash assistance to the family.[15] In the event that assistance is terminated, DCF will establish a protective payee that will receive TANF funds on behalf of any children in the home who are under the age of 16.[16] The protective payee shall be designated by DCF and may include: [17]

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children.
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children.

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[8] Evaluation Report, Robert E.Crew, Florida State University (on file with committee staff).
[9] P.L. 104-193, Section 115, 21 U.S.C. 862(a).
[10] Id.
[11] Section 414.095, F.S.
[12] P.L. 104-193, Section 902, 21 U.S.C. 862(b).
[13] 7 CFR Part 273.2.
[14] Section 445.024, F.S.
[15] Section 414.065, F.S.
[16] Id.
[17] Id.

- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and utilize the assistance in the best interest of the child or children.

Challenges under the U.S. Constitution

The United States Supreme Court has ruled in four situations that suspicion-less drug testing is constitutional and does not violate the Fourth Amendment, which protects an individual's rights against unreasonable search and seizure. These situations include suspicion-less drug testing of:

- Students in extracurricular activities;[18]
- Student athletes;[19]
- Certain Customs employees;[20] and
- Railroad employees after major accidents.[21]

In these cases the court focused on the special need of the government, the unique situation involved (school setting, drug enforcement, and major train accidents) and public safety.

The U.S. Supreme Court has held one suspicion-less drug test unconstitutional. In Chandler v. Zell, the state of Georgia required all candidates for designated state offices to certify that they had taken a drug test and the result was negative in order to run for state office.[22] In ruling the drug testing unconstitutional, the court held that,

> Where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as 'reasonable'...But where, as in this case, public safety is not genuinely in jeopardy, the Fourth Amendment precludes the suspicionless search.[23]

The U.S. Supreme Court has not ruled on the constitutionality of suspicion-less drug testing of welfare recipients, but in 1999, the State of Michigan enacted a pilot program for suspicion-less drug testing of all family assistance recipients with the intent for the program eventually to become effective statewide.[24] Welfare recipients challenged the new law authorizing suspicion-less drug testing in federal court. The federal district court found that the law was an unconstitutional violation of an individual's right to privacy under the Fourth Amendment. The court specifically ruled that drug testing was unconstitutional when applied universally or randomly without reasonable suspicion of drug use.[25]

Agency for Health Care Administration – Laboratory Certifications

The Agency for Health Care Administration (AHCA) regulates facilities that perform clinical, anatomic, or cytology lab services to provide information or materials for use in diagnosis, prevention or treatment of a disease or in the identification or assessment of a medical or physical condition in accordance with chapters 408 and 483, F.S. These are considered clinical labs. Additionally, AHCA regulates facilities for "Drug Free Workplaces."[26] These types of labs perform chemical, biological or physical instrumental analyses to determine the presence or absence of specified drugs or their metabolites in job applicants,

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[18] Board of Education v. Earls, 536 U.S. 822 (2002) (Drug testing students in extracurricular activities).
[19] Veronica School District v. Acton, 515 U.S. 646 (1995) (Drug testing student athletes).
[20] National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989) (Testing of certain Customs employees).
[21] Skinner v. Railway Labor Executives' Association, 489 U.S. 602 (1989) (Testing of railroad employees after major accidents).
[22] Chandler v. Miller, 520 U.S. 305 (1997).
[23] Id. at 323.
[24] P.A. 1999, No. 17, codified as s. 400.571, Michigan Compiled Statutes Annotated.
[25] Marchwinski v. Howard, 113 F. Supp. 2d 1134 (E. D. Mich. 2000). On appeal a panel of the Sixth Circuit first reversed the District Court, finding the required testing did not violate the Fourth Amendment to the U.S. Constitution. Marchwinski v. Howard, 309 F. 3d 330 (6th Cir. 2002). That decision was vacated for the entire court to consider the case. Marchwinski, vacated 319 F. 3d 258. The appellate court deadlocked 6-6 to reverse so the lower court decision stood affirmed. Marchwinski, affirmed after rehearing *en banc*, 60 Fed. Appx. 601, 2003 WL 1870916 (6th Cir. 2003).
[26] Section 112.0455, 440.102, F.S.

including those of any agency in state government.[27] AHCA does not have the statutory authority to drug screen temporary cash assistance benefits in either type of lab.

U.S. Department of Health and Human Services Division of Workplace Programs

The United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA), Division of Workplace Programs (DWP), provides oversight for the Federal Drug Free Workplace Program. DWP certifies labs that conduct forensic drug testing for federal agencies and for some federally-regulated industries.[28]

Agency Rulemaking

DCF must comply with the statutory requirements for rulemaking when implementing or interpreting a substantive statute.[29] Exercising rulemaking authority delegated by the Legislature requires the authority to adopt rules and sufficient statutory guidance to implement a specific statute.[30] DCF currently has no statutory authority, guidance, or direction to develop and implement a program of drug testing for TANF applicants.

Effect of Proposed Changes

The bill creates s. 414.0652, F.S., requiring DCF to drug test each individual applying for temporary cash assistance as a condition of eligibility for those benefits. DCF shall provide notice of the required drug testing at the time of application. The notice must advise each person to be tested of the opportunity to voluntarily disclose any prescription or over-the-counter medication the person is taking prior to the test. DCF shall require each person subject to being tested to sign an acknowledgement form that he/she has received notice of DCF's drug screen policy, that he/she can refuse to undergo the screen by choosing not to apply for benefits, and that he/she has the opportunity to voluntarily disclose any medication being taken prior to the test.

Under the bill, all individuals included within the cash assistance group covered by the TANF application would be required to submit to testing with the exception of children under the age of 18. The bill requires all parents to be tested but is silent on minor children under the age of 18 who themselves are parents of other minor children covered by the application.

The bill provides an individual will be disqualified from receiving TANF benefits if that person tests positive for controlled substances. The initial disqualification is for one year from the date of the positive test. If the person re-applies after the period of disqualification but again tests positive for controlled substances, that individual is disqualified from receiving TANF benefits for 3 years from the date of that positive test.

DCF may designate a statutory "protective payee" to receive funds on behalf of the child whose parent is disqualified from receiving TANF benefits under this section.[31] Alternatively, a parent found ineligible under this section may designate an immediate family member, or an individual approved by DCF, to receive TANF benefits on behalf of the child. The bill does not require a statutory protective payee to submit to drug testing but does require testing for the immediate family member or other individual designated by the parent. The bill does not define "immediate family member."

DCF shall provide an individual who tests positive for controlled substances with information concerning substance abuse treatment programs which are available in the individual's geographic area. Neither

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[27] Chapter 408, F.S.
[28] Id.
[29] Section 120.54, F.S.
[30] Section 120.536(1), F.S. Sloban v. Florida Board of Pharmacy, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc., 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[31] Current law authorizes DCF to continue TANF payments through a "protective payee" for children under the age of 16 in a family where a member repeatedly fails to comply with the requirements of the program. The payee is selected by DCF and may be a relative, community member associated with a charitable organization, or volunteer member of an organization; the payee or organization must state in writing the payments will be used in the best interests of the child or children. Section 414.065(2), F.S.

DCF nor the state is responsible for providing or paying for substance abuse treatment for these individuals as part of the screening required by the law.

The individuals required to be tested shall be responsible for the cost of the drug test. DCF estimated the initial screening cost at $10 per person and the confirmatory test at $25 per person.[32]

B. SECTION DIRECTORY:

Section 1: Creates s. 414.0652, F.S., relating to drug screening.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None. The bill authorizes no new revenue sources and existing revenues would not be increased by implementation of the program.

   The bill does not address the resolution of potential conflicts with the present TANF Plan under which Florida will continue to receive TANF funding until September 30, 2011, unless renewed. The Plan as approved does not include universal drug testing of applicants as a condition of eligibility for benefits. The Plan discloses recipient eligibility is set by state statute.[33]

2. Expenditures:

   Indeterminate. DCF may incur some cost to implement and execute the program, primarily in the initial implementation and on-going receipt, review and recording of the individual drug test results. The primary testing costs will be borne by applicants subject to testing.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill authorizes no new revenue sources and existing revenues would not be increased.

2. Expenditures:

   The bill requires no expenditures by local governments.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an impact on applicants who are required to undergo a drug test as a condition of eligibility for temporary cash assistance funds. DCF estimated the initial drug screen costs will be $10.00 per person and the confirmatory test will be $25.00 per person.[34]

C. FISCAL COMMENTS:

None.

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[32] Per DCF bill analysis, 2/8/2011 (on file with HHSA subcommittee staff). The original bill required DCF to solicit competitive bids for drug screening and confirmatory testing to ensure the lowest possible cost.

[33] Temporary Assistance For Needy Families State Plan Renewal, October 1, 2008-September 30, 2011, found at http://www.dcf.state.fl.us/Search.shtml?cx=001246626777910876508%3Aznyjo2rfb2i&cof=FORID%3A11&ie=UTF-8&q=Drug+test#1086 (last visited 3/30/11).

[34] DCF Bill Analysis on HB 353 (2/8/2011).

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 revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

U.S. Constitution

As discussed above, under certain circumstances the U.S. Supreme Court found suspicion-less drug testing is constitutional and does not violate the Fourth Amendment.[35] In only one circumstance has the U.S. Supreme Court found a suspicion-less search unconstitutional. That case involved the drug testing of all candidates who wished to run for state office in Georgia. Those decisions did not address universal, suspicion-less drug testing of applicants for TANF benefits. In the only reported case addressing suspicion-less drug testing of all family assistance recipients the court ruled drug testing was unconstitutional when applied universally or randomly without reasonable suspicion of drug use. The current bill mandates universal, suspicion-less drug testing.

Florida Constitution

The Florida Constitution guarantees every natural person's right to be let alone and free of governmental intrusion into their private life except as the Constitution otherwise provides.[36] In the context of medical treatment, this has been judicially interpreted as requiring a compelling state interest sufficient enough to overcome the constitutional right.[37] This right has not been interpreted in the context of drug testing as a condition of eligibility for TANF.

Providing rulemaking authority without sufficient direction has been found to be an invalid delegation of legislative power in violation of the Florida constitutional separation of powers.[38]

B. RULE-MAKING AUTHORITY:

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[39] Rulemaking authority is delegated by the Legislature[40] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[41] a rule.

Insufficient Statutory Guidance for Rulemaking

The bill provides general rule making authority to DCF, which is necessary but not sufficient to fully implement the drug testing program.[42] The bill does not direct DCF with sufficient specificity in development and implementation of the drug testing program required by the statute, including direction in the following areas:

- Selecting and approving testing laboratories;

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[35] See note 20, above.
[36] Art. I, §23, Fla. Const.
[37] Burton v. State, 49 So.3d 263, 265 (Fla. 1st DCA 2010).
[38] Art. II, §3, Fla. Const.; Sloban v. Florida Board of Pharmacy, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc., 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[39] Section 120.52(16); Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[40] Southwest Florida Water Management District v. Save the Manatee Club, Inc., 773 So. 2d 594 (Fla. 1st DCA 2000).
[41] Section 120.52(17), F.S.
[42] Section 120.536(1), F.S.

- Establishing standards for taking, securing, preserving, and transporting the samples to be tested;
- Approving what method(s) of testing are scientifically accepted and sufficiently accurate for the purposes intended by the legislation;
- Establishing standards for drug screening and testing by approved laboratories;Developing drug- testing protocols, policies, and procedures necessary to implement the program;
- Reporting test results;
- Retaining and securing test results for the periods allowed in the statute for reapplications;
- Confidentiality of test results.

The original bill partially addressed methods of drug screening and confirmatory testing, including policies and procedures for specimen collection, testing, storage and transportation. The original bill required DCF to approve laboratories to perform drug tests, establish standards for drug screening, adopt protocols, policies, and procedures for drug screening and confirmation testing, and solicit competitive bids for drug screening and confirmatory screening services to ensure the lowest costs, but did not provide sufficient statutory guidance for development and implementation of such policies. This attempted guidance is absent in the present bill.[43]

Available Guidance for DCF

The bill requires "a drug test consistent with s. 112.0455," which creates a comprehensive drug testing program known as the "Drug Free Workplace Act."[44] As presently drafted, the plain meaning of the bill is to require a "drug test" as that phrase is specifically defined:

> "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites.[45]

As the wording of this section will be interpreted by giving otherwise undefined terms their ordinary and plain meaning,[46] the standards set out in s. 112.0455, F.S.,[47] will be limited to the definition of drug test. The language appears inadequate for DCF by rule to incorporate those statutory standards into a testing program required by this bill.

DCF has prior experience with implementing a comprehensive drug testing program under s. 112.0455, F.S. Since 1998 DCF has implemented the Drug Free Workplace Act for testing agency employees as an operating procedure.[48] Revising the bill to provide authority for DCF to implement the new drug testing program by referring to specific, pertinent provisions of existing statute would clarify the agency's rulemaking scope.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The bill states that neither the department nor the state is responsible for paying for substance abuse treatment for individuals as part of the testing conducted in this section. This language could create both a potential statutory conflict as well as a practical problem for DCF.

    - Present law and the TANF Plan provide a diversion program for families at risk of welfare dependency due to substance abuse, authorizing certain payments and services intended to prevent the family of a substance abuser from requiring sustained TANF payments.[49] Unless

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[43] Under the original bill, approved labs were required to agree to defend the results and conclusions in appeal hearings, as described in s. 409.285, F.S.

[44] Section 112.0455(1), F.S.

[45] Section 112.0455(5)(b), F.S.

[46] Greenfield v. Daniels, 51 So. 3d 421 (Fla. 2010); Donato v. American Telephone and Telegraph Co., 767 So. 2d 1146 (Fla. 2000); Forsythe v. Longboat Key Beach Erosion Control District, 604 So. 2d 452, 454 (Fla. 1992).

[47] Standards established under s. 112.0455, the Drug Free Workplace Act, may provide the guidance necessary for proper rulemaking, particularly the following subsections: 112.0455(5), (8), (11), (12), and (13).

[48] CF Operating Procedure 60-05, Ch. 12 (1998), found at: http://www.dcf.state.fl.us/Search.shtml?cx=001246626777910876508%3Aznyjo2rfb2i&cof=FORID%3A11&ie=UTF-8&q=Drug+test#910 (last visited 3/30/11).

[49] Section 414.1585, F.S., implemented through section 2.8.e of the Plan (see note 31 above).

payments under this diversion program are separate and distinct from TANF benefit applications subject to testing, the bill may prevent provision of services to this separate population.

- Some individuals who test positive in the TANF drug screening may seek help at a DCF licensed substance abuse treatment facility or provider. DCF would need to establish a system to cross reference those denied temporary cash assistance due to drug testing with those who are seeking substance abuse treatment.

2. If the cost of drug testing is too expensive, TANF applicants may be deterred from applying for cash assistance.

3. The bill is silent on how, when, and to whom the testing results are reported.

4. Confidentiality of the Results. Article I, Section 24, Florida Constitution, makes all records of a public agency public unless expressly exempted by a law addressing no other subject and enacted by a 2/3 majority of both houses of the Legislature.

   - The results of certain mandatory drug testing are exempt from disclosure under Ch. 119, F.S., the Florida Public Records Act. These exemptions are found in the applicable substantive statutes for workplace drug testing,[50] workers compensation records held by the Florida Self-Insurers Guaranty Association, Inc.,[51] and unemployment compensation records which could disclose the identity of an employer or employee.[52] While there is not a specific exemption for drug testing results of TANF applicants in the bill, s. 414.295, F.S., does provide a general exemption for personal information relating to TANF that may apply. Section 414.295(1), F.S., provides that:

     > Personal identifying information of a temporary cash assistance program participant, a participant's family, or a participant's family or household member, except for information identifying a parent who does not live in the same home as the child, held by the department, the Agency for Workforce Innovation, Workforce Florida, Inc., the Department of Health, the Department of Revenue, the Department of Education, or a regional workforce board or local committee created pursuant to s. 445.007 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

   - Federal law may require the report of drug testing to remain confidential. Section 42 U.S.C. 290dd-2 provides:

     > Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

     The corresponding regulation prevents state law from compelling any otherwise prohibited disclosure.[53] There is also an issue as to whether records pertaining to personal health information are confidential.[54] If the disclosure of the drug testing report is subject to federal

[50] Section 112.0455(11), F.S.; s. 440.102, F.S.
[51] Section 440.3851(1), F.S.
[52] Section 443.1715(1), F.S.
[53] 42 CFR s. 2.20.
[54] Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.

confidentiality, the bill may need to state that nothing in the testing program shall be construed to compel disclosure of records required by federal law to remain confidential.

The bill is not clear on whether teenagers under the age of 18 but who are parents of children who may be eligible for TANF will be tested. The bill expressly requires testing of parents and expressly exempts children under the age of 18 from testing. The Florida TANF Plan provides for cash assistance payments to defined teenage parents under the age of 19 but the payments are paid on behalf of both the teenage parent and the child to an alternate payee selected by DCF.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2011, the Rulemaking & Regulation Subcommittee approved a strike-all amendment creating CS/CS/HB 353. The original bill and the CS by the Health & Human Services Access Subcommittee only required drug testing for TANF participants with recent prior drug felony convictions. The CS/CS by the Rulemaking & Regulation Subcommittee substantially expanded the scope of the first CS. This analysis reflects the changes made by the latter amendment.

A bill to be entitled

An act relating to drug screening of potential and existing beneficiaries of Temporary Assistance for Needy Families; creating s. 414.0652, F.S.; requiring the Department of Children and Family Services to perform a drug test on an applicant for Temporary Assistance for Needy Families benefits; requiring such individual to bear the cost of the drug test; requiring the department to provide, and the applicant to acknowledge receipt of, notice of the drug-screening policy; providing procedures for testing and retesting; requiring the department to provide information concerning local substance abuse treatment programs to an individual who tests positive; providing that, if a parent is ineligible as a result of failing a drug test, the eligibility of the children is not affected; providing conditions for designating another protective payee; providing rulemaking authority to the department; providing an effective date.

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

Section 1. Section 414.0652, Florida Statutes, is created to read:

414.0652 Drug screening for applicants for Temporary Assistance for Needy Families.—

(1) The department shall require a drug test consistent with s. 112.0455 to screen each individual who applies for Temporary Assistance for Needy Families (TANF). The cost of drug

testing is the responsibility of the individual tested.

(a) An individual subject to the requirements of this section includes any parent or caretaker relative who is included in the cash assistance group, including an individual who may be exempt from work activity requirements due to the age of the youngest child or who may be exempt from work activity requirements under s. 414.065(4).

(b) An individual who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive TANF benefits for 1 year after the date of the positive drug test.

(2) The department shall:

(a) Provide notice of drug testing to each individual at the time of application. The notice must advise the individual that drug testing will be conducted as a condition for receiving TANF benefits and that the individual must bear the cost of testing. The individual shall be advised that the required drug testing may be avoided if the individual does not apply for TANF benefits. Children under the age of 18 are exempt from the drug-testing requirement.

(b) Require that for two-parent families, both parents must comply with the drug-testing requirement.

(c) Advise each individual to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over-the-counter medication he or she is taking.

(d) Require each individual to be tested to sign a written acknowledgment that he or she has received and understood the

notice and advice provided under paragraphs (a) and (c).

(e) Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample.

(f) Specify circumstances under which an individual who fails a drug test has the right to take one or more additional tests.

(g) Inform an individual who tests positive for a controlled substance and is deemed ineligible for TANF benefits that the individual may reapply for those benefits 1 year after the date of the positive drug test. If the individual tests positive again, he or she is ineligible to receive TANF benefits for 3 years after the date of the second positive drug test.

(h) Provide any individual who tests positive with information concerning substance abuse treatment programs that may be available in the area in which he or she resides. Neither the department nor the state is responsible for providing or paying for substance abuse treatment as part of the screening conducted under this section.

(3) If a parent is deemed ineligible for TANF benefits as a result of failing a drug test conducted under this section:

(a) The dependent child's eligibility for TANF benefits is not affected.

(b) An appropriate protective payee shall be designated to receive benefits on behalf of the child.

(c) The parent may choose to designate another individual to receive benefits for the parent's minor child. The designated

individual must be an immediate family member or, if an immediate family member is not available or the family member declines the option, another individual, approved by the department, may be designated. The designated individual must also undergo drug testing before being approved to receive benefits on behalf of the child. If the designated individual tests positive for controlled substances, he or she is ineligible to receive benefits on behalf of the child.

(4) The department shall adopt rules to implement this section.

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Judiciary

Representative(s) Brandes offered the following:

Amendment (with title amendment)

Remove lines 29-44 and insert:

testing is the responsibility of the department.

(a) An individual subject to the requirements of this section includes any parent or caretaker relative who is included in the cash assistance group, including an individual who may be exempt from work activity requirements due to the age of the youngest child or who may be exempt from work activity requirements under s. 414.065(4).

(b) An individual who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive TANF benefits for 1 year after the date of the positive drug test.

(2) The department shall:

(a) Provide notice of drug testing to each individual at the time of application. The notice must advise the individual

that drug testing will be conducted as a condition for receiving TANF benefits and that the department shall bear the cost of

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

Remove line 7 and insert:

Needy Families benefits; requiring the department to bear

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Judiciary

Representative(s) Smith offered the following:

Amendment

Remove lines 47-71 and insert:

benefits. Dependent children under the age of 18 are exempt from the drug-testing requirement.

(b) Require that for two-parent families, both parents must comply with the drug-testing requirement.

(c) Require that any teen parent who is not required to live with a parent, legal guardian, or other adult caretaker relative in accordance with s. 414.095(14)(c) must comply with the drug-testing requirement.

(d) Advise each individual to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over-the-counter medication he or she is taking.

(e) Require each individual to be tested to sign a written acknowledgment that he or she has received and understood the notice and advice provided under paragraphs (a) and (c).

(f) Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample.

(g) Specify circumstances under which an individual who fails a drug test has the right to take one or more additional tests.

(h) Inform an individual who tests positive for a controlled substance and is deemed ineligible for TANF benefits that the individual may reapply for those benefits 1 year after the date of the positive drug test. If the individual tests positive again, he or she is ineligible to receive TANF benefits for 3 years after the date of the second positive drug test.

(i) Provide any individual who tests positive with

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 423 Mobile Home Park Lot Tenancies
SPONSOR(S): Civil Justice Subcommittee; Nuñez and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 650

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N, As CS	Woodburn	Bond
2) Business & Consumer Affairs Subcommittee	13 Y, 0 N	Livingston	Creamer
3) Judiciary Committee		Woodburn	Havlicak

SUMMARY ANALYSIS

Mobile home parks are regulated by the state. Current law places various obligations on mobile home park owners including providing notices for eviction in the event of sale, following building codes and maintaining common areas. Due to the cost and difficulty in moving mobile homes, current law requires a mobile home park owner to give tenants at least six months notice before eviction can take place due to a change of land use. A change of land use is where the land the park is on will be redeveloped into something other than a mobile home park.

The bill requires that, at the beginning of the six months eviction period, and if the tenants have created a homeowners' association, the park owner must offer to sell the park to the association. The association has 45 days to agree to the owner's asking price and terms. The bill requires the state or local government to consider the adequacy of parks for relocation when a mobile home park owner gives notice of a change of land use.

Mobile home owners also have obligations by lease and by law that includes the obligation to follow building codes and the obligation to keep their premises sanitary and clean. Mobile home park owners report that they are being cited for offenses that were committed by their tenants. This bill requires a local government, when citing a violation of a local ordinance, to cite only the responsible party.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Change in Land Use

The landlord-tenant relationship between a mobile home park owner and a mobile home owner in a mobile home park is a unique relationship. Traditional landlord-tenant concepts are thought inapplicable where the land is owned by the park and the homes on the property are owned by the home owner. This relationship is impacted by the high cost of moving a mobile home. Chapter 723, F.S, governs the relationship between mobile home park owners and mobile home owners. Section 723.004(1), F.S, provides:

> The Legislature finds that there are factors unique to the relationship between a mobile home owner and a mobile home park owner. Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected.

The Florida Supreme Court, in addressing mobile home park issues, has ruled that:

> A hybrid type of property relationship exists between the mobile home owner and the park owner and that the relationship is not simply one of landowner and tenant. Each has basic property rights which must reciprocally accommodate and harmonize. Separate and distinct mobile home laws are necessary to define the relationships and protect the interests of the persons involved.[1]

Before the current downturn in real estate values, escalating property values, especially in the coastal areas, prompted a number of mobile home park owners to close their parks so that the land can be used for a different purpose (such as retail, office, apartments or condominiums). As the economy recovers, mobile home parks will likely again be slated for redevelopment.

Section 723.061, F.S., provides the grounds for eviction of a mobile home park resident. One ground for eviction is an eviction of all tenants upon a change in land use. A change in land use is intent to redevelop the land into something other than a mobile home park. Tenants evicted under this provision must be given at least six months notice.

Section 723.071, F.S., requires that a mobile home park owner who offers a mobile home park for sale to the general public must notify the homeowners' association (tenant's association) of the price, terms and conditions of sale. The requirement only applies if the tenants have organized a homeowners' association under ch. 723, F.S. The mobile home owners, by and through the homeowners' association, may purchase the park at the price, terms and conditions in the notice if the homeowners execute a purchase contract within 45 days after mailing of the notice. If the park owner later elects to offer the park at a lower price, the home owners have an additional 10 days to meet the price and terms and conditions of the park owner by executing a contract.

[1] *Stewart v. Green*, 300 So.2d 889, 892 (Fla. 1974).

The process in s. 723.071, F.S., gives the homeowners an opportunity to purchase the park in situations where the park owner is selling to a third party. Under current law, however, a park owner may elect to close the park and redevelop the land (a change in land use) without selling the land to a third party. In this situation, s. 723.071, F.S., does not apply, and current law does not require the park owner to give the homeowners an opportunity to purchase the park (and avoid having to move).

Section 723.083, F.S., provides that:

> No agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.

Citations

The unique relationship between the park owner and mobile home owner places various obligations on each party. Section 723.022, F.S., requires a mobile home park owner to:

- Comply with building, housing and health codes.
- Maintain the common areas in a good state of repair.
- Provide access to the common areas.
- Maintain utility connections and systems in proper operating conditions.
- Comply with park rules.

Section 723.023, F.S. requires a mobile home owner to:

- Comply with applicable building, housing and health codes.
- Keep the mobile home lot which he or she occupies clean and sanitary.
- Comply with park rules.

Some confusion may result when local city or county inspectors cite a mobile home park owner for a violation related to an issue that is the responsibility of a mobile home owner pursuant to s. 723.023, F.S. For example, if the mobile home owner does not keep the lot in which he or she occupies clean and sanitary, the local officials may cite the mobile home park owner even though current law provides that it is the mobile home owner's responsibility to keep the lot clean.[2]

Proposed Changes

Change in Land Use

This bill amends the eviction provisions of s. 723.061(1)(d), F.S., to provide mobile home owners with a process for purchase of the mobile home park from which they are to be evicted due to a change in land use. The purchase terms are similar to those in current law related to a park owner offering the park for sale. The park owner may not evict the homeowners from the park due to a change of land use unless the park owner first follows the process set forth in the bill. Specifically:

- If the homeowners have formed a homeowners' association pursuant to ss. 723.075-723.079, F.S., the bill requires the park owner to give written notice to the homeowners' association of the homeowners' right to purchase the mobile home park at the price, terms and conditions set forth in the notice. The park owner sets the price, terms and conditions.

[2] Section 723.023(2), F.S., requires the mobile home owner to "Keep the mobile home lot which he or she occupies clean and sanitary."

- The written notice must be provided to the officers of the homeowners' association. The homeowners' association may then execute and deliver a contract for purchase of the park to the park owner within 45 days after the mailing of the written notice. The contract must be for the same price and terms and conditions set forth in the written notice. The park owner may not sell to another interested party if the association agrees to a contract.

- If the park owner and the homeowners' association do not execute a contract within the 45 day period, the park owner may proceed with the eviction. If during the 6 month notice period prior to eviction the park owner elects to offer or sell the park at a price lower than in the initial notice, the park owner must notify the homeowners association and the association has an additional 10 days to agree to the revised offer terms. At the conclusion of the 6 month notice period, the park owner has no further obligation to the association under the amended s. 723.061(1)(d), F.S., or under s. 723.071, F.S.

Citations

The bill creates s. 723.024, F.S., which provides that if a unit of local government finds a violation of a local code or ordinance, the unit of local government may only cite the responsible party. The bill also provides that a lien, penalty, fine or other administrative or civil proceedings may not be brought against a mobile home park owner for a violation under s. 723.023, F.S., and that a lien, penalty, fine or other administrative or civil proceedings may not be brought against a mobile home owner or mobile home tenant for a violation of s. 723.022, F.S.

The bill also requires local governments to consider the adequacy of parks for relocation, when a mobile home park owner gives notice under s. 723.061, F.S.

B. SECTION DIRECTORY:

Section 1. Creates s. 723.024, F.S., regarding mobile home park owners and mobile home owner's obligations.

Section 2. Amends s. 723.061, F.S., regarding eviction from a mobile home park upon a change in land use.

Section 3. Provides that the bill takes effect upon 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:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There is an argument that the portion of this bill regarding eviction and sale to the tenants may constitute an unreasonable restraint on alienation of real property. The Third District Court of Appeal has found that:

> The basic premise of the public policy rule against unreasonable restraints on alienation, *see* 7 *Thompson On Real Property,* § 3161 (1962); 31 C.J.S. *Estates* 8(b)(2) (1964), is that free alienability of property fosters economic growth and commercial development. *Davis v. Geyer,* 151 Fla. 362, 9 So.2d 727 (1942); *Seagate Condominium Association, Inc. v. Duffy,* 330 So.2d 484. Because "[t]he validity or invalidity of a restraint depends upon its long-term effect on the improvement and marketability of the property," *Iglehart v. Phillips,* 383 So.2d 610, 614 (Fla.1980), where the restraint, for whatever duration, does not impede the improvement of the property or its marketability, it is not illegal. *Id.* at 615. **Accordingly, where a restraint on alienation, no matter how absolute and encompassing, is conditioned upon the restrainer's obligation to purchase the property at the then fair market value, the restraint is valid.** *Id.* at 614-15, and cases collected."[3] *(emphasis added)*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2011, the Civil Justice Subcommittee adopted one amendment. The amendment removes the references to a violation of s.723.022, F.S., and s. 723.023, F.S., to provide that the local government is to cite a violation of the local code or ordinance to the responsible party. The bill was then reported favorably.

[3] *Aquarian Foundation, Inc. v. Sholom House, Inc.*, 448 So.2d 1166 (Fla. 3d DCA 1984).

A bill to be entitled

An act relating to mobile home park lot tenancies; creating s. 723.024, F.S.; providing for citation of the responsible party for a violation of a local code or ordinance; prohibiting liens, penalties, fines, or other administrative or civil proceedings against one party or that party's property for a duty or responsibility of the other party; amending s. 723.061, F.S.; revising provisions relating to grounds and proceedings for eviction; revising procedures for mobile home owners being provided eviction notice due to a change in use of the land comprising the mobile home park or the portion thereof from which mobile homes are to be evicted; providing requirements of the park owner and requirements and rights of an applicable homeowners' association with respect to the sale of the mobile home park under a change in use eviction; deleting a provision relating to governmental action affecting the removal of mobile home owners; providing an effective date.

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

Section 1. Section 723.024, Florida Statutes, is created to read:

723.024 Compliance by mobile home park owners and mobile home owners.—Notwithstanding any other provision of this chapter or of any local law, ordinance, or code:

(1) If a unit of local government finds that a violation of a local code or ordinance has occurred, the unit of local government shall cite the responsible party for the violation and enforce the citation under its local code and ordinance enforcement authority.

(2) A lien, penalty, fine, or other administrative or civil proceeding may not be brought against a mobile home owner or mobile home for any duty or responsibility of the mobile home park owner under s. 723.022 or against a mobile home park owner or mobile home park property for any duty or responsibility of the mobile home owner under s. 723.023.

Section 2. Section 723.061, Florida Statutes, is amended to read:

723.061 Eviction; grounds, proceedings.—

(1) A mobile home park owner may evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home only on one or more of the following grounds: ~~provided in this section.~~

(a) Nonpayment of the lot rental amount. If a mobile home owner or tenant, whichever is responsible, fails to pay the lot rental amount when due and if the default continues for 5 days after delivery of a written demand by the mobile home park owner for payment of the lot rental amount, the park owner may terminate the tenancy. However, if the mobile home owner or tenant, whichever is responsible, pays the lot rental amount due, including any late charges, court costs, and attorney's fees, the court may, for good cause, deny the order of eviction, if ~~provided~~ such nonpayment has not occurred more than twice.

(b) Conviction of a violation of a federal or state law or local ordinance, if the ~~which~~ violation is ~~may be deemed~~ detrimental to the health, safety, or welfare of other residents of the mobile home park. The mobile home owner or mobile home tenant must vacate the premises within ~~will have~~ 7 days after ~~from~~ the date the ~~that~~ notice to vacate is delivered ~~to vacate the premises~~. This paragraph constitutes ~~shall be~~ grounds to deny an initial tenancy of a purchaser of a home under ~~pursuant to~~ paragraph (e) or to evict an unapproved occupant of a home.

(c) Violation of a park rule or regulation, the rental agreement, or this chapter.

1. For the first violation of any properly promulgated rule or regulation, rental agreement provision, or this chapter which is found by any court of competent ~~having~~ jurisdiction ~~thereof~~ to have been an act that ~~which~~ endangered the life, health, safety, or property of the park residents or employees or the peaceful enjoyment of the mobile home park by its residents, the mobile home park owner may terminate the rental agreement, and the mobile home owner, tenant, or occupant must vacate the premises within ~~will have~~ 7 days after ~~from the date that~~ the notice to vacate is delivered ~~to vacate the premises~~.

2. For a second violation of the same properly promulgated rule or regulation, rental agreement provision, or this chapter within 12 months, the mobile home park owner may terminate the tenancy if she or he has given the mobile home owner, tenant, or occupant written notice, within 30 days after ~~of~~ the first violation, which ~~notice~~ specified the actions of the mobile home owner, tenant, or occupant that ~~which~~ caused the violation and

gave the mobile home owner, tenant, or occupant 7 days to correct the noncompliance. The mobile home owner, tenant, or occupant must have received written notice of the ground upon which she or he is to be evicted at least 30 days prior to the date on which she or he is required to vacate. A second violation of a properly promulgated rule or regulation, rental agreement provision, or this chapter within 12 months of the first violation is unequivocally a ground for eviction, and it is not a defense to any eviction proceeding that a violation has been cured after the second violation. Violation of a rule or regulation, rental agreement provision, or this chapter more than ~~after the passage of~~ 1 year after ~~from~~ the first violation of the same rule or regulation, rental agreement provision, or this chapter does not constitute a ground for eviction under this section.

A ~~No~~ properly promulgated rule or regulation may not be arbitrarily applied and used as a ground for eviction.

(d) Change in use of the land comprising the mobile home park, or the portion thereof from which mobile homes are to be evicted, from mobile home lot rentals to some other use, if:

1. The park owner gives written notice to the homeowners' association formed and operating under ss. 723.075-723.079 of its right to purchase the mobile home park, if the land comprising the mobile home park is changing use from mobile home lot rentals to a different use, at the price and under the terms and conditions set forth in the written notice.

a. The notice shall be delivered to the officers of the

homeowners' association by United States mail. Within 45 days after the date of mailing of the notice, the homeowners' association may execute and deliver a contract to the park owner to purchase the mobile home park at the price and under the terms and conditions set forth in the notice. If the contract between the park owner and the homeowners' association is not executed and delivered to the park owner within the 45-day period, the park owner is under no further obligation to the homeowners' association except as provided in sub-subparagraph b.

b. If the park owner elects to offer or sell the mobile home park at a price lower than the price specified in her or his initial notice to the officers of the homeowners' association, the homeowners' association has an additional 10 days to meet the revised price, terms, and conditions of the park owner by executing and delivering a revised contract to the park owner.

c. The park owner is not obligated under this subparagraph or s. 723.071 to give any other notice to, or to further negotiate with, the homeowners' association for the sale of the mobile home park to the homeowners' association after 6 months after the date of the mailing of the initial notice under sub-subparagraph a.

2. The park owner gives the affected mobile home owners and tenants ~~provided all tenants affected are given~~ at least 6 months' notice of the eviction due to the projected change in ~~of~~ use and of their need to secure other accommodations.

a. The notice of eviction due to a change in use of the

land must ~~shall~~ include in a font no smaller than the body of the notice the following statement:

YOU MAY BE ENTITLED TO COMPENSATION FROM THE FLORIDA MOBILE HOME RELOCATION TRUST FUND, ADMINISTERED BY THE FLORIDA MOBILE HOME RELOCATION CORPORATION (FMHRC). FMHRC CONTACT INFORMATION IS AVAILABLE FROM THE FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.

b. The park owner may not give a notice of increase in lot rental amount within 90 days before giving notice of a change in use.

(e) Failure of the purchaser, prospective tenant, or occupant of a mobile home situated in the mobile home park to be qualified as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule. If a purchaser or prospective tenant of a mobile home situated in the mobile home park occupies the mobile home before such approval is granted, the mobile home owner or mobile home tenant must vacate the premises within ~~shall have~~ 7 days after ~~from~~ the date the notice of the failure to be approved for tenancy is delivered ~~to vacate the premises~~.

(2) In the event of eviction for a change in ~~of~~ use, homeowners must object to the change in use by petitioning for administrative or judicial remedies within 90 days after ~~of~~ the date of the notice or they will be barred from taking any subsequent action to contest the change in use. This subsection

does ~~provision shall~~ not ~~be construed to~~ prevent any homeowner from objecting to a zoning change at any time.

~~(3) The provisions of s. 723.083 shall not be applicable to any park where the provisions of this subsection apply.~~

(3)~~(4)~~ A mobile home park owner applying for the removal of a mobile home owner, tenant, or occupant~~,~~ or a mobile home shall file, in the county court in the county where the mobile home lot is situated, a complaint describing the lot and stating the facts that authorize the removal of the mobile home owner, tenant, or occupant~~,~~ or the mobile home. The park owner is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on the calendar.

(4)~~(5)~~ Except for the notice to the officers of the homeowners' association under subparagraph (1)(d)1., any notice required by this section must be in writing, and must be posted on the premises and sent to the mobile home owner and tenant or occupant, as appropriate, by certified or registered mail, return receipt requested, addressed to the mobile home owner and tenant or occupant, as appropriate, at her or his last known address. Delivery of the mailed notice shall be deemed given 5 days after the date of postmark.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 567 Judgment Interest
SPONSOR(S): Hudson
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 866

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Appropriations Subcommittee	13 Y, 0 N	Piscitello	Topp
2) Judiciary Committee		Billmeier LMB	Havlicak RH
3) Appropriations Committee			

SUMMARY ANALYSIS

This bill requires the Chief Financial Officer to adjust the statutory rate of interest payable on judgments or decrees on a quarterly basis by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 300 basis points to the averaged federal discount rate.

Under current law the Chief Financial Officer is required to annually set the rate of interest that is payable on judgments. The rate is calculated by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months and adding 500 basis points to the averaged federal discount rate.

The Department of Financial Services estimates an insignificant fiscal impact to implement the quarterly calculation of the interest payable on judgments or decrees.

The potential revenue loss of interest related to judgments or decrees owed the State of Florida or to a local government based on the reduction in basis points from 500 to 300 is indeterminate.

The bill provides an effective date of July 1, 2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Prejudgment and Post-judgment Interest

Interest can accrue on both prejudgment and post-judgment awards. Prejudgment interest is awarded for the time between the loss of a vested property right and the time that judgment is entered. The purpose is to compensate the prevailing party for loss of use of his or her money from the date that it is determined he or she is entitled to a sum of money to the time when final judgment is entered.[1] Post-judgment interest, on the other hand, is awarded for the period between the final judgment and the time when the entire sum of the money is collected.[2]

The purpose of post-judgment interest is two-fold: to encourage parties to pay damages quickly and to compensate the prevailing party for the inability to use the awarded money while the appeal is pending, which can take years.[3] Prejudgment interest is generally only allowed on liquidated damages (those agreed to ahead of time by the parties).[4] In other cases, the general rule is that interest typically begins to accrue when the judgment is entered.[5] "Prejudgment and post-judgment interest serve exactly the same purpose, albeit for different time periods: they make the plaintiff whole for having been deprived of the use of the principal loss amount."[6]

Judgment Interest Rates

Pursuant to s. 55.03, F.S., on December 1 of each year, the Chief Financial Officer is required to set the rate of interest payable on judgments or decrees for the year beginning January 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding year, then adding 500 basis points to the averaged federal discount rate.[7] A basis point is one one-hundredth of a percentage point, used to express the movement of interest rates or index pricing.[8] Interest rates are adjusted annually to reflect current market conditions, which vary over time.

The interest rate established in statute does not affect a rate of interest established by written contract or obligation.[9] Section 55.03, F.S. provides that in all cases where interest accrues without a special contract for the rate, the statutory rate will be applied.[10] Thus, the statutory interest rate applies to both prejudgment and post-judgment interest absent a different rate previously agreed upon by the parties. Although the interest rate is adjusted annually, the rate at the time the judgment is obtained remains consistent until it is fully paid.[11]

The judgment interest rate for 2011 is 6 percent.[12] Since 1995, the judgment rate has fluctuated as shown in the chart below:[13]

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[1] Jorge A. Lopez, *Prejudgment and Postjudgment Interest: What's in a Name?*, 76 FLORIDA BAR JOURNAL 20 (Mar. 2002) (citing *Alvarado v. Rice*, 614 So. 2d 498 (Fla. 1993); *Becker Holding Corp. v. Becker*, 78 F.3d 514, 516-17 (11th Cir. 1996); *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So. 2d 212 (Fla. 1985); *Kissimmee Util. Auth. v. Better Plastics, Inc.*, 526 So. 2d. 46 (Fla. 1988)).

[2] Lopez, *supra* note 1 (citing *Becker*, 78 F.3d at 516).

[3] *Id.*

[4] Lopez, *supra* note 1 (citing *Hurley v. Slingerland*, 480 So. 2d 104 (Fla. 4th DCA 1985)).

[5] *Haskell v. Forest Land and Timber Co., Inc.*, 426 So. 2d 1251, 1253 (Fla. 1st DCA 1983).

[6] *Becker*, 78 F.3d at 516.

[7] Section 55.03(1), F.S.

[8] Federal Reserve Bank of New York, *Maiden Lane Glossary*, *available at* http://www.newyorkfed.org/markets/ml_glossary.html (last visited Mar. 4, 2011).

[9] Section 55.03(1), F.S.

[10] Section 687.01, F.S.

[11] Section 55.03(3), F.S.

[12] Florida Department of Financial Services, *Statutory Interest Rates Pursuant to Section 55.03, Florida Statutes* (2011), *available at* http://www.myfloridacfo.com/aadir/interest.htm (last visited Mar. 4, 2011).

[13] Between October 1, 1981 and December 31, 1994, the statutory interest rate was 12 percent. See, Ch. 81-113, Laws of Fla. (providing for interest rate of 12 percent); Ch. 94-239 s. 8, Laws of Fla. (requiring calculation of interest rate on annual basis as provided in current law).

PRIOR YEAR RATES

YEAR	PER ANNUM
2010	6%
2009	8%
2008	11%
2007	11%
2006	9%
2005	7%
2004	7%
2003	6%
2002	9%
2001	11%
2000	10%
1999	10%
1998	10%
1997	10%
1996	10%
1995	8%

This bill provides for quarterly adjustments to the statutory judgment interest rate, as opposed to the annual adjustment currently in place. The bill specifies that the rate adjustments will be calculated on January 1, April 1, July 1, and October 1 of each year. This change will result in interest rates reflecting more current market conditions, as conditions will be evaluated more frequently. Additionally, this bill lowers the number of basis points to be added to the averaged federal discount rate from 500 to 300, which may result in lower percentages. This bill also makes a conforming change to s. 717.1341, F.S., regarding invalid claims, recovery of property, and interest penalties. The section currently refers to annual adjustments to the interest rate.

This bill provides an effective date of July 1, 2011

B. SECTION DIRECTORY:

Section 1. Amends s. 55.03, F.S. relating to judgments; rate of interest, generally.

Section 2. Amends s. 717.1341, F.S. relating to invalid claims, recovery of property, interest and penalties.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The potential revenue loss of interest related to judgments or decrees owed the State of Florida based on the reduction in basis points from 500 to 300 is indeterminate.

2. Expenditures:

The Department of Financial Services (DFS or department) will be required to calculate the interest on judgments and decrees quarterly rather than annually. The department reports that the current annual process requires 15 hours of staff time to prepare and review calculations and to mail notifications to approximately 150 clerks of court and circuit judges. A notice must also be placed in the Florida Administrative Weekly. If calculations are done quarterly, DFS expects staff time to increase to 60 hours per year for calculations and mailings along with an additional 250 hours of staff time to make necessary programming changes to the Florida Accounting Information Resource System (FLAIR). There will also be some cost associated with additional postage and mailing materials for notices. The department estimates an insignificant fiscal impact associated with making the quarterly calculation of interest on judgments and decrees.[14]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The potential revenue loss of interest related to judgments or decrees owed local governments based on the reduction in basis points from 500 to 300 is indeterminate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Lower interest rates may potentially be paid by non-prevailing parties on judgments or decrees based on market conditions impacting interest rate fluctuations.

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 spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[14] Department of Financial Services, House Bill 567 Analysis, February 22, 2011, on file with the Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to judgment interest; amending s. 55.03, F.S.; requiring quarterly adjustments to the rate of interest payable on judgments; revising the calculation of the interest rate; amending s. 717.1341, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (1) of section 55.03, Florida Statutes, is amended to read:

55.03 Judgments; rate of interest, generally.—

(1) On December 1 of each year, the Chief Financial Officer shall set the rate of interest that shall be payable on judgments or decrees for the year beginning January 1 and adjust the rate quarterly on April 1, July 1, and October 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months ~~year~~, then adding 300 ~~500~~ basis points to the averaged federal discount rate. The Chief Financial Officer shall inform the clerk of the courts and chief judge for each judicial circuit of the rate that has been established for the upcoming year. The interest rate established by the Chief Financial Officer shall take effect on January 1 of each following year. Judgments obtained on or after January 1, 1995, shall use the previous statutory rate for time periods before January 1, 1995, for which interest is due and shall apply the rate set by the Chief Financial Officer for time

periods after January 1, 1995, for which interest is due. Nothing contained herein shall affect a rate of interest established by written contract or obligation.

Section 2. Subsection (1) of section 717.1341, Florida Statutes, is amended to read:

717.1341 Invalid claims, recovery of property, interest and penalties.—

(1)(a) No person shall receive unclaimed property that the person is not entitled to receive. Any person who receives, or assists another person to receive, unclaimed property that the person is not entitled to receive is strictly, jointly, personally, and severally liable for the unclaimed property and shall immediately return the property, or the reasonable value of the property if the property has been damaged or disposed of, to the department plus interest at the rate set ~~annually~~ in accordance with s. 55.03(1). Assisting another person to receive unclaimed property includes executing a claim form on the person's behalf.

(b)1. In the case of stocks or bonds which have been sold, the proceeds from the sale shall be returned to the department plus any dividends or interest received thereon plus an amount equal to the brokerage fee plus interest at a rate set ~~annually~~ in accordance with s. 55.03(1) on the proceeds from the sale of the stocks or bonds, the dividends or interest received, and the brokerage fee.

2. In the case of stocks or bonds which have not been sold, the stocks or bonds and any dividends or interest received thereon shall be returned to the department, together with

interest on the dividends or interest received, at a rate set ~~annually~~ in accordance with s. 55.03(1) of the value of the property.

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Judiciary
Representative(s) Hudson offered the following:

Amendment

Remove lines 11-31 and insert:

Section 1. Subsections (1), (2), and (3) of section 55.03, Florida Statutes, are amended to read:

55.03 Judgments; rate of interest, generally.—

(1) On December 1, March 1, June 1, and September 1 of each year, the Chief Financial Officer shall set the rate of interest that shall be payable on judgments or decrees for the calendar quarter ~~year~~ beginning January 1, April 1, July 1, and October 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months ~~year~~, then adding 400 ~~500~~ basis points to the averaged federal discount rate. The Chief Financial Officer shall inform the clerk of the courts and chief judge for each judicial circuit of the rate that has been established for the upcoming quarter ~~year~~. The interest rate established by the Chief Financial Officer shall take effect on

Amendment No. 1

the first day ~~January 1~~ of each following calendar quarter ~~year~~. Judgments obtained on or after January 1, 1995, shall use the previous statutory rate for time periods before January 1, 1995, for which interest is due and shall apply the rate set by the Chief Financial Officer for time periods after January 1, 1995, for which interest is due. Nothing contained herein shall affect a rate of interest established by written contract or obligation.

(2) Any judgment for money damages or order for a judicial sale and any process or writ directed to a sheriff for execution shall bear, on its face, the rate of interest that is payable on the judgment. The rate of interest stated in the judgment, as adjusted in subsection (3), accrues on the judgment until it is paid.

(3) The interest rate is established at the time a judgment is obtained and such interest rate shall be adjusted quarterly in accordance with the interest rate set each quarter by the Chief Financial Officer ~~remain the same~~ until the judgment is paid.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 701 Property Rights
SPONSOR(S): Community & Military Affairs, Eisnaugle and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	10 Y, 4 N, As CS	Gibson	Hoagland
2) Judiciary Committee		Thomas	Havlicak
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill amends the Bert J. Harris, Jr., Private Property Rights Protection Act (act), to provide that a moratorium on "development" that is in effect for longer than one year is not a temporary impact to real property for purposes of the act, and therefore, may constitute an "inordinate burden."

The bill separates the definition of "existing use" into two separate parts.

The bill provides that a property owner seeking compensation must present, at least 120 days (rather than the present requirement of 180 days) prior to filing an action under the act, a written claim to the head of the governmental entity and a bona fide, valid appraisal that demonstrates the loss in fair market value to the real property.

The bill adds the "payment of compensation" to the list of remedies that may be offered by a governmental entity in a written settlement offer.

The bill modifies the ripeness provisions to specifically provide that failure to issue the written ripeness decision during the requisite notice period causes the last decision made by the governmental entity to be its final decision on the allowable uses of the property at issue. The issuance or failure to issue a written decision operates as a final decision that has been rejected by the property owner, and as such, allows the civil cause of action to be filed in the circuit court.

The bill clarifies that enacting a law or adopting a regulation does not constitute applying the law or regulation to a property.

The bill specifically states that the state, for itself and for its agencies or political subdivisions, waives sovereign immunity for purposes of the act.

The fiscal impact of the bill on state and local governments is indeterminate.

The bill has an effective date of July 1, 2011, and applies prospectively only.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Private Property Rights

Current Situation

The Fifth Amendment to the United States Constitution guarantees that a citizen's private property may not be taken for public use without just compensation. The "takings" clause of the Fifth Amendment is applicable to the states through the Fourteenth Amendment, which provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

Article I, section 2 of the Florida Constitution also guarantees all natural persons the right to "acquire, possess and protect property" and further provides that no person will be deprived of property without due process of law. Article X, section 6 of the Florida Constitution is complimentary to the Fifth and Fourteenth Amendments to the United States Constitution and prohibits the government's ability to take private property through the power of eminent domain, except for a public purpose and provided that the property owners are fully compensated.[1]

Where a governmental regulation results in permanent physical occupation of a property or deprives an owner of "all economically productive or beneficial uses" of the property, a "per se" taking is deemed to have occurred, thereby requiring full compensation for the property.[2] Regulations that do not substantially advance a legitimate state interest are invalid,[3] and the property owner may recover compensation for the period during which the invalid regulation deprived the owner of complete use of the property.[4]

In other "takings" cases, courts have used a multi-factor, "ad hoc" analysis to determine whether a regulation has adversely affected the property to such an extent as to require government compensation. The factors considered by the courts include:

- the economic impact of the regulation on the property owner;
- the extent to which the regulation interferes with the property owner's investment-backed expectations;
- whether the regulation confers a public benefit or prevents a public harm (the nature of the regulation);
- whether the regulation is arbitrarily and capriciously applied; and
- the history of the property, history of the development, and history of the zoning and regulation.[5]

Bert J. Harris, Jr., Private Property Rights Protection Act

Current Situation

In 1995,[6] the Florida Legislature enacted the Bert J. Harris, Jr., Private Property Rights Protection Act[7] (act) to provide a new cause of action for private property owners whose property has been inordinately

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[1] Chapters 73 and 74, F.S.; Art. X, s. 6, FLA. CONST.

[2] *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

[3] *Nollan v. California Coastal Comm'n,* 483 U.S. 825 (1987).

[4] *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles,* 482 U.S. 304 (1987).

[5] *Reahard v. Lee County,* 968 F.2d 1131, 1136 (11th Cir. 1992); *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470 (1987); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978); *Graham v. Estuary Properties,* 399 So.2d 1374 (Fla. 1981).

[6] Chapter 95-181, L.O.F.; codified as s. 70.001, F.S.

[7] *Id.*

burdened by a specific action[8] of a governmental entity[9] that may not rise to the level of a "taking" under the State or Federal Constitutions.[10] The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.[11]

The act provides[12]:

> "When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this section" (emphasis added).

Prior to the act's adoption, Florida landowners had two judicial remedies available when a property's value or usefulness was destroyed or severely diminished by government regulation. A property owner could proceed against the governmental entity under the doctrine of equitable estoppel to enjoin the government from revoking a permit or attempting to apply a new regulation.[13] This doctrine applies when a property owner, in good faith reliance on a governmental act or omission with respect to governmental regulations, has made a substantial change in position or incurred substantial expenses.[14]

Alternatively, if a regulation directly caused a substantial diminution in value, one which reached the level of a taking of the property, the property owner could file an inverse condemnation claim under the Fifth Amendment of the United States Constitution or Article X, section 6 of the Florida Constitution. However, a property owner would not be entitled to any relief if the government action was not a "taking" or the property owner did not satisfy the equitable estoppel requirements.[15]

Inordinate Burden

Current Situation

The act defines the terms "inordinate burden" or "inordinately burdened" as a government action that "has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large."[16]

The act specifically states that the terms "inordinate burden" or "inordinately burdened" do not include:

- temporary impacts to real property;

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[8] Section 70.001(3)(d), F.S., provides that the "term 'action of a governmental entity' means a specific action of a governmental entity which affects real property, including action on an application or permit."

[9] Section 70.001(3)(c), F.S., provides that the "term 'governmental entity' includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. The term does not include the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority."

[10] Subsections 70.001(1) and (9), F.S.

[11] Section 70.001(2), F.S.

[12] *Id.*

[13] *See* Vivien J. Monaco, Comment, *The Harris Act: What Relief From Government Regulation Does It Provide For Private Property Owners,* 26 Stetson Law Review 861, 867 (1997).

[14] *See id., citing Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So.2d 10, 15-16 (Fla. 1976).

[15] *See id.*

[16] Section 70.001(3)(e), F.S.

- impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or
- impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section.[17]

Effect of the Bill
The bill specifies that a moratorium on development[18] that is in effect for longer than a year is not a temporary impact to real property, and thus, depending upon the particular circumstances, may constitute an "inordinate burden" under the act. The bill clarifies that both "inordinate burden" *and* "inordinately burdened" have the same meaning.

Existing Use

Current Situation
The act provides relief for an existing use that has been inordinately burdened. "Existing use" under the act means:

> "an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property."[19]

In *City of Jacksonville v. Coffield*,[20] a property owner signed a contract and made a deposit to purchase a property with the intention to develop it into eight residential, single family lots.[21] Soon thereafter, the property owner learned that an application had been submitted to the City for closure of a public roadway that was necessary for the property owner's development plans to be feasible.[22] Despite the pending application, the property owner proceeded with his development plans based on what the First District Court of Appeal said was the mistaken belief that the City would not grant the application for road closure.[23] The appellate court held that the city's closure of the public road did not inordinately burden the property owner's existing use or a vested right to use of the property.[24] Further, it was held that the trial court erred, as a matter of law, in finding that the property owner "ever had a vested right to develop the property as eight single-family homes, that development as eight single-family lots was an existing use of the property, and that the City took any action which constituted an inordinate burden or precluded attaining any reasonable, investment-backed expectation."[25]

Effect of the Bill
The bill separates the current language in s. 70.001(3)(b), F.S., into two subparagraphs to clarify that an analysis of whether there is an "existing use" is a dual prong test. An "existing use" can mean either: 1) an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, that nature or type of use; or 2) an activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

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[17] *Id.*
[18] As defined in s. 380.04, F.S.
[19] Section 70.001(3)(b), F.S.
[20] 18 So.3d 589 (Fla. 1st DCA 2009).
[21] *Id.* at 591.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id. at* 599.

Vested Right

Current Situation

The existence of a "vested right" is determined by applying the principles of equitable estoppel or substantive due process under statutory or common law.[26] The common law doctrine of equitable estoppel may be invoked against the government when a property owner (1) relying in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights that the owner has acquired.[27] The First DCA analogized equitable estoppel to the government through an act or omission inviting a citizen "onto a welcome mat" and then "snatch[ing] the mat away to the detriment of the party induced or permitted to stand thereon."[28]

Notice Period and Written Settlement

Current Situation

A property owner seeking compensation under the act must present, at least 180 days prior to filing an action under the act (90 days prior to filing an action for property classified as agricultural by a property appraiser pursuant to s. 193.461, F.S.), a written claim to the head of the governmental entity and a bona fide, valid appraisal that demonstrates the loss in fair market value to the real property.[29]

The governmental entity must provide notice of the claim to parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner's property. The governmental entity shall report the claim to the Department of Legal Affairs within 15 days after the claim is filed.

During the 180-day-notice period (or the 90-day-notice period for land classified as agricultural property), unless extended by agreement of the parties, the governmental entity must make a written settlement offer that may include:

- an adjustment of land development or permit standards or other provisions controlling the development or use of the land;
- increases or modifications in the density, intensity, or use of areas of development;
- the transfer of development rights;
- land swaps or exchanges;
- mitigation, including payments in lieu of on-site mitigation;
- location on the least sensitive portion of the property;
- conditioning the amount of development or use permitted;
- a requirement that issues be addressed on a more comprehensive basis than a single proposed use or development;
- issuance of the development order, a variance, special exception, or other extraordinary relief;
- purchase of the real property, or an interest therein, by an appropriate governmental entity; or
- no changes to the action of the governmental entity.[30]

Effect of the Bill

The bill changes the notice period from 180 days to 120 days for a property owner seeking compensation to present, prior to filing an action under the act, a written claim to the head of the governmental entity and a valid appraisal that demonstrates the loss in fair market value to the real

[26] Section 70.001(3)(a), F.S.
[27] *Verizon Wireless Pers. Commc'ns L.P. v. Sanctuary at Wulfert Point Cmty. Ass'n,* 916 So.2d 850, 856 (Fla. 2d DCA 2002).
[28] *Equity Res. Inc. v. County of Leon,* 643 So.2d 1112, 1120 (Fla. 1st DCA 1994) (quoting *Town of Largo v. Imperial Homes Corp.*, 309 So.2d 571, 573 (Fla. 2d DCA 1975).
[29] Section 70.001(4)(a), F.S.
[30] Section 70.001(4)(c), F.S.

property. The bill does not change the 90-day-notice period for property classified as agricultural by a property appraiser pursuant to s. 193.461, F.S.

The bill also adds "payment of compensation" to the list of items that a government's written settlement offer may include.

Ripeness

Current Situation

Under the ripeness doctrine, a claimant must exhaust administrative remedies prior to seeking judicial relief. Florida courts have adopted the federal ripeness policy that requires a final determination from a governmental entity as to the permissible uses of a property after the adoption of the regulation at issue.[31] The ripeness doctrine has operated to preclude a takings claim when a regulatory agency denies a project application and the landowner fails to resubmit the application with a less intensive use.[32] However, a takings claim becomes ripe when the regulatory agency lacks the discretion to permit any development and the permissible uses of the property are known.[33] The futility exception to the ripeness doctrine, although limited, provides that a takings claim is ripe where the past history of the regulatory agency shows that repeated submissions of an application would be futile and where the agency effectively concedes that any development would be an impermissible use.[34]

The Fourth District Court of Appeal has held that a landowner's failure to request a plan amendment to permit other uses or to submit a meaningful application is fatal to a takings claim.[35] According to the court, the requirement of ripeness serves two important purposes. First, the doctrine requires at least one "meaningful application" which necessitates discussion and possible resolution in an administrative or political forum. Second, the doctrine's final determination requirement enables a court to ascertain if a taking has occurred and, if so, the extent of the taking.[36] Although the plaintiff alleged a regulatory taking and did not file a claim under the act, the court recognized in dicta that the recently enacted Harris Act "altered the ripeness requirement for cases involving governmental regulation of land use."[37]

Under the act, if the property owner accepts the written settlement offer, then the governmental entity may implement the settlement by appropriate development agreement.[38] If the property owner rejects the settlement offer, the governmental entities involved must issue within the 180 day period (or the 90-day-notice period for land classified as agricultural property) a written ripeness decision that identifies the allowable uses to which the affected property may be put.[39] Failure to issue the ripeness decision during the applicable time period is deemed to ripen the prior action of the governmental entity and operates as a ripeness decision that has been rejected by the property owner.[40] The ripeness decision serves as the last prerequisite to judicial review, thereby allowing the landowner to file a claim in circuit court pursuant to the act.[41]

The circuit court is charged with determining if there was an existing use of the property or a vested right to a specific use, and if so, whether the governmental action inordinately burdened the property.[42] If the court finds the governmental action has inordinately burdened the subject property, the court will apportion the percentage of the burden if more than one governmental entity is involved[43] and will

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[31] *Glisson v. Alachua County*, 558 So.2d 1030, 1034 (Fla. 1st DCA 1990).
[32] *Lost Tree Village Corp. v. City of Vero Beach*, 838 So.2d 561 (Fla. 4th DCA 2002).
[33] *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001).
[34] *City of Riviera Beach v. Shillingburg*, 659 So.2d 1174, 1180 (Fla. 4th DCA 1995); *Palazzolo*, 533 U.S. at 622.
[35] *Taylor v. Village of North Palm Beach*, 659 So.2d 1167, 1173 (Fla. 4th DCA 1995).
[36] *Id.*, citing *Tinnerman v. Palm Beach County*, 641 So.2d 523 (Fla. 4th DCA 1994) (stating "[r]ipeness requires a firm delineation of permitted uses so that the extent of the taking can be analyzed").
[37] 659 So.2d at 1173.
[38] Section 70.001(4)(c), F.S.
[39] Section 70.001(5)(a), F.S.
[40] *Id.*
[41] *Id.*
[42] Section 70.001(6)(a), F.S.

impanel a jury to decide the monetary value based upon the loss in fair market value attributable to the governmental action.[44] The prevailing party is entitled to reasonable costs and attorney's fees.[45]

Effect of the Bill
The bill modifies the ripeness provisions to specifically provide that failure to issue the written ripeness decision during the requisite notice period causes the last decision made by the governmental entity to be its final decision on the allowable uses of the property at issue. This final decision then operates as a final decision that has been rejected by the property owner, and as such, allows the civil cause of action to be filed in the circuit court.

Application of Law or Regulation

Current Situation
A cause of action cannot be brought under the act more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue. The First and Fifth District Courts of Appeal have both issued recent opinions characterized by some as contrary interpretations of the same provision within the act.[46]

In *Citrus County v. Halls River Development*,[47] a parcel of property was purchased in 2001, with the intent to develop a multifamily condominium project. The county land development code (LDC) designated the property "Mixed Use" ("MXU"), which permitted a multifamily condominium among other uses. The local government's comprehensive plan is similar to a constitution for future development within the jurisdiction, and the land development regulations (or in this case the LDC) by law must implement and be consistent with the comprehensive plan.[48]

Citrus County, as a result of its evaluation and appraisal report (EAR) conducted in 1996,[49] made changes to its comprehensive plan in 1997 that included changing the property at issue in the case from MXU to Low Intensity Coastal and Lakes ("CL") in its plan and on its future land use map. The CL classification did not permit the building of a multifamily condominium. Citrus County never updated its LDC to reflect the 1997 change in its comprehensive plan.

In 2002, the property owner applied and received approval from the county to build the project with assurance that the development was permissible for the property. The county mistakenly approved the project based upon the LDC and not the comprehensive plan.[50] Later, a citizen challenge was brought against the project's approval as being inconsistent with the comprehensive plan. Litigation proceeded and the property owner as a result was not permitted to proceed with the development. As a result of its reliance on the local government's assurances, the property owner spent $1.5 million readying the property for development.[51]

A Harris Act suit resulted and the Fifth District Court of Appeal held that the property owner's suit was not timely under the act, which requires claims to be brought within one year after a law or regulation is first applied by the governmental entity to the property.[52] The property owner argued that "the mere enactment of a statute, ordinance, or plan of general application such as the Plan and the EAR amendments, should not trigger the accrual of the Harris Act claim."[53] The court stated that if the

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[43] *Id.*
[44] Section 70.001(6)(b), F.S.
[45] Section 70.001(6)(c), F.S.
[46] *See Citrus County v. Halls River Dev.*, 8 So.3d 413 (Fla. 5th DCA 2009) and *M & H Profit, Inc. v. Panama City*, 28 So.3d 71 (Fla. 1st DCA 2009).
[47] 8 So.3d 413 (Fla. 5th DCA 2009).
[48] *See* s. 163.3202(1), F.S.
[49] *See* s. 163.3191, F.S.
[50] 8 So.3d 413 (Fla. 5th DCA 2009).
[51] *Id. at* 419.
[52] Section 70.001(11), F.S.
[53] 8 So.3d 413, 422 (Fla. 5th DCA 2009).

property owner was correct the claim might be timely; however, in a footnote it stated that the court "cannot construe the statute to create rights of action not within the intent of the lawmakers, as reflected by the language employed in the statute."[54]

The court said:

> "We recognize that almost universally, the result of this case will be seen as unduly harsh.... However, by its express terms, the Harris Act requires the court to determine when the new law or regulation, as first applied, unfairly affected the property and requires a claim to be asserted within one year thereafter.... We are not at liberty to modify the statutory scheme of the Legislature created to remediate an unfair regulatory burden, though we recognize the equities clearly favor [the property owner]."

In *M & H Profit, Inc. v. Panama City*,[55] a property owner purchased land with the intention of developing a condominium project, and six weeks later, Panama City passed height and setback ordinances that the intended development could not meet. The property owner brought a Harris Act challenge claiming the enactment of an ordinance imposing height restrictions and additional setbacks on structures in a general commercial zone had created a significant loss of value to the property. The First District Court of Appeal held that the Harris Act was limited to "as-applied" challenges and not facial challenges.[56] Because the property owner had only engaged in informal discussions with the city, statements made by the city about the general restrictions imposed in the zoning district could not constitute an application or an action as to the owner's specific piece of property.[57] The First District declined to comment on the merits of the Fifth District's decision in *Citrus County* and distinguished the facts in its case with the facts in the *Citrus County* case.[58]

Effect of the Bill
The bill clarifies that under the act, "enacting a law or adopting a regulation does not constitute applying the law or regulation to a property."

Sovereign Immunity

Current Situation
The doctrine of sovereign immunity, as derived from the English common law, provides that the government cannot be sued in tort without its consent.[59] This blanket of immunity applies to all subdivisions of the state including its agencies, counties, municipalities, and school boards; however, Article X, section 13 of the Florida Constitution, provides that sovereign immunity may be waived through an enactment of general law.

Public policy concerns in support of sovereign immunity include: (a) protecting public funds from excessive encroachments; (b) insulating the Legislature's authority over budget expenditures from judicial directives to disburse funds; (c) enabling government officials to engage in decision making without risking liability; and (d) ensuring that the efficient administration of government is not jeopardized by the constant threat of suit. Public policy concerns against sovereign immunity include: (a) leaving those who have been injured by governmental negligence without remedy; (b) failing to deter wrongful government conduct; and (c) limiting public knowledge of governmental improprieties.[60]

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[54] *Id. at* FN3.
[55] 28 So.3d 71 (Fla. 1st DCA 2009).
[56] *Id.*
[57] *Id.*
[58] *Id.* at 78.
[59] Wetherington and Pollock, *Tort Suits Against Governmental Entities in Florida*, 44 Fla. L. Rev. 1 (1992).
[60] House of Representatives Committee on Claims, *Sovereign Immunity: A Survey of Florida Law,* at 1-2, January 25, 2001.

The Legislature has expressly waived sovereign immunity in tort actions for claims against its agencies and subdivisions resulting from the negligent or wrongful act or omission of an employee acting within the scope of employment, but established limits on the amount of liability.[61] A claim or judgment by any one person may not exceed $100,000, and may not exceed $200,000 paid by the state or its agencies or subdivisions for claims arising out of the same incident or occurrence.[62] Notwithstanding this limited waiver of sovereign immunity, certain discretionary governmental functions remain immune from tort liability.[63]

The act specifically provides that it does not affect the sovereign immunity of government.[64] In 2003,[65] the Third District Court of Appeal reversed and remanded a trial court's decision[66] finding that the act provides that sovereign immunity still remains effective and serves as a viable defense against liability under the act. The Third District Court of Appeal in its decision found that the act instead:

> "evinces a sufficiently clear legislative intent to waive sovereign immunity as to a private property owner whose property rights are inordinately burdened, restricted, or limited by government actions where the governmental regulation does not rise to the level of a taking under the Florida and United States Constitutions. [citations omitted]. A literal reading of Section 13 [the sovereign immunity provision of the Harris Act] is inconsistent with the clear intent and purpose of the Act, as it would be absurd to interpret Section 13 to undo everything the Act is designed to achieve.
>
> Since it is impossible under the appropriate rules of statutory construction to give Section 13 literal effect within the meaning of the statute, its application must be construed consistent with the general purpose and intent of the Act. [citations omitted].
>
> We therefore hold that Section 13 does not bar a private property rights claim pursuant to the Harris Act, but merely preserves the sovereign immunity benefits the City in the instant case, and governmental entities in general, otherwise enjoy."[67]

Effect of the Bill

The bill clarifies that sovereign immunity is waived for purposes of the act. The bill strikes the provision in the current statute that states that the Act "does not affect the sovereign immunity of government" and replaces it with a provision that states:

> In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or political subdivisions, waives sovereign immunity for causes of action based upon the application of any law, regulation, or ordinance subject to this section, but only to the extent specified in this section.

This added provision is consistent with how the act was interpreted in *Royal World Metropolitan, Inc. v. City of Miami Beach.*[68]

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[61] Section 768.28, F.S.

[62] These amounts increase to $200,000 and $300,000, respectively, on October 1, 2011.

[63] *Commercial Carrier Corp., v. Indian River County,* 371 So.2d 1010, 1019 (Fla. 1979), *citing Evangelical United Brethren Church v. State,* 407 P.2d 440 (1965) (holding "legislative, judicial and purely executive processes" may not be characterized as tortious). *See generally Trianon Park Condominium Assoc., v. City of Hialeah,* 468 So.2d 912, 919 (Fla. 1985) (stating commissions, boards, and city councils, when enacting or failing to enact laws or regulations, are acting pursuant to the basic governmental actions performed by the Legislature).

[64] Section 70.001(13), F.S.

[65] *Royal World Metropolitan, Inc. v. City of Miami Beach,* 863 So.2d 320 (Fla. 3d DCA 2004).

[66] *Royal World Metropolitan, Inc. v. City of Miami Beach,* 11th Judicial Circuit, Miami-Dade County, Case. No. 99-17243-CA-23.

[67] *Royal World Metropolitan, Inc. v. City of Miami Beach,* 863 So.2d 320, 322 (Fla. 3d DCA 2004).

[68] *Id.*

Other Effects of the Bill

- The bill provides a number of whereas clauses stating the reasons for the amendments to the act.
- The bill provides that the amendments made to the act by this bill apply prospectively only and do not apply to any claim or action filed under section 70.001, F.S., which is pending on the effective date of the bill.
- The bill takes effect July 1, 2011.

C. SECTION DIRECTORY:

Section 1: Amends s. 70.001, F.S., relating to private property rights protection.

Section 2: Provides that the bill will apply prospectively only.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   Indeterminate. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
The bill is intended to provide expanded options for private property owners to obtain redress for a government action that unduly burdens real property by specifying that a moratorium on development, as defined in s. 380.04, F.S., that is in effect for more than 1 year is not a temporary impact to real property, and therefore may constitute an inordinate burden on the property.

D. FISCAL COMMENTS:
The fiscal impact of the bill is indeterminate. The act allows civil causes of action to be brought against all Florida governments, both state and local. Because, historically, actions have only been brought pursuant to the act against local governments, it appears the bill has a greater potential fiscal impact on local governments. The bill does not apply to existing claims under the act, therefore, it is unknown what impact this bill will have on future actions under the act.

While a court has already held that the act impliedly waives sovereign immunity, [69] by explicitly waiving sovereign immunity as this bill does for claims under the act, it is possible that governmental entities may be subject to additional damages.

[69] *See Royal World Metropolitan, Inc. v. City of Miami Beach,* 863 So.2d 320 (Fla. 3d DCA 2004).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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

2. Other:
   None.

B. RULE-MAKING AUTHORITY:
   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:
   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On, March 23, 2011, the Community & Military Affairs Subcommittee adopted a title amendment to clarify changes in the law made by the bill.

A bill to be entitled

An act relating to property rights; amending s. 70.001, F.S.; revising a definition; providing a factor that may be considered in determining whether inordinate burden has been imposed on real property; shortening a notice period for certain actions; revising procedures for determining a governmental entity's final decision identifying the allowable uses for a property; providing that enactment of a law or adoption of a regulation does not constitute applying the law or regulation; providing for a waiver of sovereign immunity for liability; providing for prospective application; providing an effective date.

WHEREAS, the Legislature wishes to clarify its original intent with respect to allowing appropriate compensation for unduly burdened real property and to provide a waiver of sovereign immunity under section 70.001, Florida Statutes, the Bert J. Harris, Jr., Private Property Rights Protection Act, to conform statutory language to Royal World Metropolitan, Inc. v. City of Miami Beach, 863 So.2d 320 (Fla. 3rd D.C.A. 2003), and

WHEREAS, the Legislature wishes to emphasize the alternative bases under this act for determining an existing use, and to correct and to clarify that certain determinations under this act are questions of law and fact, considered in City of Jacksonville v. Coffield, 18 So.3d 589 (Fla. 1st D.C.A. 2009), and

WHEREAS, the Legislature wishes to correct and to clarify its original intent with respect to what constitutes the first

application of a law or regulation under the act, considered in Citrus County, Florida v. Halls River Development, Inc., 8 So.3d 413 (Fla. 5th D.C.A. 2009), and M & H Profit, Inc. v. City of Panama City, 28 So.3d 71 (Fla. 1st D.C.A. 2010), and

WHEREAS, the Legislature wishes to make other changes to clarify provisions of this act, NOW, THEREFORE,

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

Section 1. Paragraphs (b) and (e) of subsection (3), paragraphs (a) and (c) of subsection (4), and subsections (5), (6), (11), and (13) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.—

(3) For purposes of this section:

(b) The term "existing use" means:

1. An actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use; or

2. Activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

(e) The terms "inordinate burden" and ~~or~~ "inordinately burdened" mean that an action of one or more governmental

entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large. The terms "inordinate burden" and ~~or~~ "inordinately burdened" do not include temporary impacts to real property; impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section; however, a moratorium on development, as defined in s. 380.04, that is in effect for longer than 1 year is not a temporary impact to real property and, thus, depending upon the particular circumstances, may constitute an "inordinate burden" as provided in this paragraph.

(4)(a) Not less than 120 ~~180~~ days prior to filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity, except that if the property is classified as agricultural pursuant to s. 193.461, the notice period is 90 days. The property owner must submit, along with the claim, a

bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property. If the action of government is the culmination of a process that involves more than one governmental entity, or if a complete resolution of all relevant issues, in the view of the property owner or in the view of a governmental entity to whom a claim is presented, requires the active participation of more than one governmental entity, the property owner shall present the claim as provided in this section to each of the governmental entities.

(c) During the 90-day-notice period or the 120-day-notice ~~180-day-notice~~ period, unless extended by agreement of the parties, the governmental entity shall make a written settlement offer to effectuate:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.

2. Increases or modifications in the density, intensity, or use of areas of development.

3. The transfer of developmental rights.

4. Land swaps or exchanges.

5. Mitigation, including payments in lieu of onsite mitigation.

6. Location on the least sensitive portion of the property.

7. Conditioning the amount of development or use permitted.

8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.

9. Issuance of the development order, a variance, special exception, or other extraordinary relief.

10. Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of compensation.

11. No changes to the action of the governmental entity.

If the property owner accepts the settlement offer, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, special exception, or other extraordinary relief; or by other appropriate method, subject to paragraph (d).

(5)(a) During the 90-day-notice period or the 120-day-notice ~~180-day-notice~~ period, unless a settlement offer is accepted by the property owner, each of the governmental entities provided notice pursuant to paragraph (4)(a) shall issue a written ~~ripeness~~ decision identifying the allowable uses to which the subject property may be put. The failure of the governmental entity to issue such a written ~~ripeness~~ decision during the applicable 90-day-notice period or 120-day-notice ~~180-day-notice~~ period shall cause ~~be deemed to ripen~~ the prior action of the governmental entity to become its final decision, for purposes of this section, identifying the uses for the subject property~~, and shall operate as a ripeness decision that has been rejected by the property owner~~. Whether rendered by submission of a written decision during the 120-day-notice period or by failure to submit such a written decision, the final decision of the governmental entity produced under this

paragraph operates as a final decision that has been rejected by the property owner. This final ~~The ripeness~~ decision, as a matter of law, constitutes the last prerequisite to judicial review on the merits~~, and the matter shall be deemed ripe or final~~ for the purposes of the judicial proceeding created by this section, notwithstanding the availability of other administrative remedies.

(b) If the property owner rejects the settlement offer and the final ~~ripeness~~ decision of the governmental entity or entities, the property owner may file a claim for compensation in the circuit court, a copy of which shall be served contemporaneously on the head of each of the governmental entities that made a settlement offer and a final ~~ripeness~~ decision that was rejected by the property owner. Actions under this section shall be brought only in the county where the real property is located.

(6)(a) The circuit court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether, considering the settlement offer and final ~~ripeness~~ decision, the governmental entity or entities have inordinately burdened the real property. If the actions of more than one governmental entity, considering any settlement offers and final ~~ripeness~~ decisions, are responsible for the action that imposed the inordinate burden on the real property of the property owner, the court shall determine the percentage of responsibility each such governmental entity bears with respect to the inordinate burden. A governmental entity may take an interlocutory appeal

of the court's determination that the action of the governmental entity has resulted in an inordinate burden. An interlocutory appeal does not automatically stay the proceedings; however, the court may stay the proceedings during the pendency of the interlocutory appeal. If the governmental entity does not prevail in the interlocutory appeal, the court shall award to the prevailing property owner the costs and a reasonable attorney fee incurred by the property owner in the interlocutory appeal.

(b) Following its determination of the percentage of responsibility of each governmental entity, and following the resolution of any interlocutory appeal, the court shall impanel a jury to determine the total amount of compensation to the property owner for the loss in value due to the inordinate burden to the real property. The award of compensation shall be determined by calculating the difference in the fair market value of the real property, as it existed at the time of the governmental action at issue, as though the owner had the ability to attain the reasonable investment-backed expectation or was not left with uses that are unreasonable, whichever the case may be, and the fair market value of the real property, as it existed at the time of the governmental action at issue, as inordinately burdened, considering the settlement offer together with the final ~~ripeness~~ decision, of the governmental entity or entities. In determining the award of compensation, consideration may not be given to business damages relative to any development, activity, or use that the action of the governmental entity or entities, considering the settlement

offer together with the final ~~ripeness~~ decision, has restricted, limited, or prohibited. The award of compensation shall include a reasonable award of prejudgment interest from the date the claim was presented to the governmental entity or entities as provided in subsection (4).

(c)1. In any action filed pursuant to this section, the property owner is entitled to recover reasonable costs and attorney fees incurred by the property owner, from the governmental entity or entities, according to their proportionate share as determined by the court, from the date of the filing of the circuit court action, if the property owner prevails in the action and the court determines that the settlement offer, including the final ~~ripeness~~ decision, of the governmental entity or entities did not constitute a bona fide offer to the property owner which reasonably would have resolved the claim, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period or the 120-day-notice ~~180-day-notice~~ period.

2. In any action filed pursuant to this section, the governmental entity or entities are entitled to recover reasonable costs and attorney fees incurred by the governmental entity or entities from the date of the filing of the circuit court action, if the governmental entity or entities prevail in the action and the court determines that the property owner did not accept a bona fide settlement offer, including the final ~~ripeness~~ decision, which reasonably would have resolved the claim fairly to the property owner if the settlement offer had

been accepted by the property owner, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period or the 120-day-notice ~~180-day-notice~~ period.

3. The determination of total reasonable costs and attorney fees pursuant to this paragraph shall be made by the court and not by the jury. Any proposed settlement offer or any proposed ~~ripeness~~ decision, except for the final written settlement offer or the final written ~~ripeness~~ decision, and any negotiations or rejections in regard to the formulation either of the settlement offer or the final ~~ripeness~~ decision, are inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

(d) Within 15 days after the execution of any settlement pursuant to this section, or the issuance of any judgment pursuant to this section, the governmental entity shall provide a copy of the settlement or judgment to the Department of Legal Affairs.

(11) A cause of action may not be commenced under this section if the claim is presented more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue. For purposes of this section, enacting a law or adopting a regulation does not constitute applying the law or regulation to a property. If an owner seeks relief from the governmental action through lawfully available administrative or judicial proceedings, the time for bringing an action under this section is tolled until the conclusion of such proceedings.

(13) In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or political subdivisions, waives sovereign immunity for causes of action based upon the application of any law, regulation, or ordinance subject to this section, but only to the extent specified in this section ~~This section does not affect the sovereign immunity of government~~.

Section 2. The amendments to s. 70.001, Florida Statutes, made by this act apply prospectively only and do not apply to any claim or action filed under s. 70.001, Florida Statutes, which is pending on the effective date of this act.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1029 Interstate Compact for Juveniles
SPONSOR(S): Brodeur
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Williams	Cunningham
2) Rulemaking & Regulation Subcommittee	14 Y, 0 N	Rubottom	Rubottom
3) Judiciary Committee		Williams	Havlicak

SUMMARY ANALYSIS

In the early 1950's, a group of organizations sought to develop a uniform set of procedures to facilitate the return of juveniles who ran away to other states and to create a system in which juvenile offenders could be supervised in other states. This resulted in the enactment of the Interstate Compact on Juveniles (Compact).

In 1999, the Office of Juvenile Justice and Delinquency Prevention conducted a detailed survey of the states, uncovering many contentious issues within the Compact structure, and asked for recommendations to address these growing concerns. In 2003, a revised Compact was drafted to address these issues.

The requirements of the revised Compact are laid out in a series of articles which provide the purposes of the Compact; create the Interstate Commission for Juveniles (Commission) as the governing body for Compact activities; provide for the Commission's authority and responsibilities; provide a financing mechanism for the Commission; require each state to create a State Council for Interstate Juvenile Supervision (State Council); provide for enforcement of the Compact including imposition of fines and fees; and provide for judicial enforcement of the Compact that are binding by state authorities. The revised Compact further specified that it would become effective and binding upon legislative enactment of the Compact into law by no less than 35 states.

In 2005, Florida adopted the revised Compact when it enacted HB 577, entitled "The Interstate Compact for Juveniles," which created ss. 985.502 and 985.5025, F.S., (subsequently renumbered as ss. 985.802 and 985.8025, F.S.). The bill included a sunset provision that the law be repealed two years after the effective date of the Compact unless reviewed and saved from repeal through reenactment by the Legislature.

The Compact became effective on August 26, 2008, when Illinois became the 35th state to adopt the Compact. Since the Compact's enactment, the Florida Legislature has taken no action to reenact ss. 985.802 and 985.8025, F.S. Consequently, these statutes were repealed on August 26, 2010. As a result, Florida is no longer a member of the Compact and the mechanism by which Florida manages the interstate movement of juvenile offenders no longer exists.

HB 1029 reenacts s. 985.802, F.S., relating to Execution of Interstate Compact for Juveniles, and s. 985.8025, F.S., relating to State Council for Interstate Juvenile Offender Supervision. The bill does not include the two year sunset provision language of the repealed statute. As a result, Florida will once again be a member of the Compact which will allow Florida to regulate the interstate movement of juvenile delinquents and offenders in accordance with the Compact's provisions.

The bill does not appear to have a fiscal impact and is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In the early 1950's, *Parade* magazine published a series of articles entitled "Nobody's Children," which depicted the plight of runaways in America. Inspired by these articles and recognizing that action was needed, a group of organizations sought to develop a uniform set of procedures to facilitate the return of juveniles who ran away to other states and to create a system in which juvenile offenders could be supervised in other states.[1] Representatives from the Council of State Governments (CSG), National Council on Crime and Delinquency (formerly the National Probation and Parole Association), National Council of Juvenile and Family Court Judges, American Public Welfare Association, National Association of Attorneys General, and Adult Parole and Probation Compact Administrators Association drafted an Interstate Compact on Juveniles (Compact) to meet these needs.[2] The Compact was approved by these organizations in January 1955 and ratified by all 50 States, the District of Columbia, the Virgin Islands, and Guam by 1986.[3]

In 1999, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) conducted a detailed survey of the states, uncovering many contentious issues within the Compact structure, and asked for recommendations to address these growing concerns.[4] In 2000, a Compact Advisory Group was formed to assist in assessing interstate supervision options and alternatives, and to assist in identifying groups having an interest in effective interstate supervision.[5] They identified a revision of the existing Compact as the only option for long-term change.[6]

In 2001, CSG worked with OJJDP and the Association of Juvenile Compact Administrators (AJCA) to develop and facilitate a drafting team of state officials to begin the design of a revised Compact.[7] In 2002, the Compact language was finalized, and by 2003 the revised Compact was first available for introduction in the states.[8]

The Revised Compact

The requirements of the revised Compact are laid out in a series of articles which provide the purposes of the Compact; create the Interstate Commission for Juveniles (Commission) as the governing body for Compact activities; provide for the Commission's authority and responsibilities; provide a financing mechanism for the Commission; require each state to create a State Council for Interstate Juvenile Supervision (State Council); provide for enforcement of the Compact including imposition of fines and fees; and provide for judicial enforcement of the Compact that are binding by state authorities.[9]

The purpose of the revised Compact, through means of joint and cooperative action among the states participating in the Compact, is to:

- Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

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[1] Office of Juvenile Justice and Delinquency Prevention Fact Sheet, *Interstate Compact on Juveniles*, September 2000 #12 (on file with Criminal Justice Subcommittee staff).
[2] *Id.*
[3] *Id.*
[4] Interstate Commission for Juveniles, *ICJ History*. (http://www.juvenilecompact.org/About/History.aspx) (last accessed March 13, 2011.)
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Interstate Commission for Juveniles. Serving Juveniles While Protecting Communities. *Compact Statute.* (http://www.juvenilecompact.org/LinkClick.aspx?fileticket=b9nFo9GaUco%3d&tabid=654) (last accessed March 11, 2011).

- Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;
- Return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;
- Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;
- Provide for the effective tracking and supervision of juveniles;
- Equitably allocate the costs, benefits and obligations of the compacting states;
- Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;
- Ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;
- Establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;
- Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;
- Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;
- Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and
- Coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise.[10]

The revised Compact further specified that it would become effective and binding upon legislative enactment of the Compact into law by no less than 35 states.[11]

Florida's Adoption of the Revised Compact

In 2003, 12 states adopted the revised compact.[12] In 2004, an additional 10 states adopted the Compact, and in 2005 the Compact was adopted by 7 states, including Florida.[13] Two states adopted in each of the next three years, bringing the total by the end of 2008 to 35, the number of states necessary for the Compact to go into effect.

Florida adopted the Compact when it enacted HB 577 (2005), entitled "The Interstate Compact for Juveniles," which created ss. 985.502 and 985.5025, F.S.[14] In addition to defining the purpose of the Compact and creating the Commission, the bill created the State Council to oversee Florida's participation in the activities of the Commission.[15] The State Council is comprised of eight members, including the Secretary of the Department of Juvenile Justice (or designee), who is to serve as chair of the State Council, the compact administrator (or designee), and the Executive Director of the Department of Law Enforcement (or designee).[16] The remaining five members are to be appointed by

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[10] The Council of State Governments. *Interstate Compact for Juveniles Resource Kit,* (http://www.csg.org/knowledgecenter/docs/ncic/ICJ-ResourceKit.pdf) (last accessed March 13, 2011.)
[11] *Id.*
[12] Interstate Commission for Juveniles, *ICJ History.* (http://www.juvenilecompact.org/About/History.aspx) (last accessed March 13, 2011.)
[13] *Id.*
[14] Ch. 2005-80, L.O.F. (Note: In 2006 ss. 985.502 and 985.5025, F.S., were renumbered as ss. 985.802 and 985.8025, F.S. *See* s.101, Ch. 2006-120, L.O.F.)
[15] *Id.*
[16] *Id.*

the Governor for four-year terms.[17] Currently Florida actively participates in the Commission but has no State Council.[18]

Because enacting the law resulted in the state being bound to rules of the Commission that had not yet been written,[19] the bill included a sunset provision that the law be repealed two years after the effective date of the Compact unless reviewed and saved from repeal through reenactment by the Legislature.[20]

The Compact became effective on August 26, 2008, when Illinois became the 35th state to adopt the Compact.[21] Since the Compact's enactment, the Florida Legislature has taken no action to reenact ss. 985.802 and 985.8025, F.S. Consequently, these statutes were repealed on August 26, 2010. As a result, Florida is no longer a member of the Compact and the mechanism by which Florida manages the interstate movement of juvenile offenders no longer exists.[22]

Rules have been adopted by the Commission to implement the Compact.[23] Notably, the rules purport to vest jurisdiction of interstate disputes in the Federal District Court for the District of Columbia; they also provide for mediation and arbitration of disputes. Also, the rules provide for fines to be assessed against states determined to have violated their Compact obligations.

Effect of the bill

HB 1029 reenacts s. 985.802, F.S., relating to Execution of Interstate Compact for Juveniles, and s. 985.8025, F.S., relating to State Council for Interstate Juvenile Offender Supervision. The bill does not include the two-year sunset provision.

As a result, Florida will once again be a member of the Compact which will allow Florida to regulate the interstate movement of juvenile delinquents and offenders in accordance with the Compact's provisions.

B. SECTION DIRECTORY:

Section 1. Reenact s. 985.802, F.S., relating to execution of interstate compact for juveniles.

Section 2. Reenacts s. 985.8025, F.S., relating to State Council for Interstate Juvenile Offender Supervision.

Section 3. The bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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[17] *Id.*

[18] Department of Juvenile Justice 2011 Analysis of HB 1029 (on file with Criminal Justice Subcommittee Staff).

[19] The Rules and Regulations for Administration of the Interstate Compact on Juveniles were adopted on August 9, 2006. AJCA Policy and Procedure Manual (January 2007.) (http://www.ajca.us/pdf/ajca_final_06_regs_07.pdf) (last accessed March 13, 2011.)

[20] Ch. 2005-80, L.O.F.

[21] Association of Juvenile Compact Administrators. Interstate Compact on Juveniles. September 2008. (http://www.ajca.us/documents/new_compact_092008.pdf) (last accessed March 10, 2011).

[22] Department of Juvenile Justice 2011 Analysis of HB 1029 (on file with Criminal Justice Subcommittee Staff).

[23] The rules can be found at: http://www.juvenilecompact.org/LinkClick.aspx?fileticket=QDbarg6_mEQ%3d&tabid=800 (last accessed March 30, 2011)

2. Expenditures:

The Commission levies and collects annual assessment from each compacting state to cover the cost of internal operation and activities.[24] The annual assessment amount is allocated by a formula based on the population and juvenile movement of each state.[25] When HB 577 was enacted in 2005, the Department of Juvenile Justice (DJJ) estimated there would be a recurring cost of $40,000 per year to cover the dues to the Commission and traveling expenses. DJJ reports HB 1029 will have no fiscal impact since the funds are already allocated for the Commission.[26]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The Florida Constitution strictly limits delegations of Legislative power. By ratifying the Compact, the Legislature delegates some legislative power to the Commission, a body foreign to the State and its Constitution. However, the limits on delegation have not been construed with respect to an interstate compact under the Federal Constitution's compact clause.

The United States Constitution limits the authority of states to enter into interstate compacts:

> No State shall, without the Consent of Congress, ... enter into any Agreement or Compact with another State....

Art. I, § 10, cl. 3. This provision ensures that interstate policies are endorsed by the national legislature. Pursuant to this provision, Congress has enacted 4 U.S.C. § 112 providing:

> § 112 Compacts between States for cooperation in prevention of crime; consent of Congress

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[24] Interstate Compact for Juveniles Resource Kit, *Fiscal Note*, Council of State Government. (http://www.csg.org/knowledgecenter/docs/ncic/ICJ-ResourceKit.pdf) (last accessed March 11, 2011).
[25] *Id.*
[26] March 11, 2011 conversation with DJJ Legislative Affairs Director, Ana Maria Sanchez.

(a) The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts.

(b) For the purpose of this section, the term "States" means the several States and Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia.

This statute appears to authorize the Compact. But given that the Compact itself authorizes rulemaking and such rules were not before Congress when consent was given, it is unclear whether the provisions of 4 U.S.C. § 112 constitute consent to the enforcement of the rules.

B. RULE-MAKING AUTHORITY:

The Compact authorizes rulemaking by the Commission. According to the Compact, rules adopted under the Compact are binding as general law in the jurisdiction of member States.

While the Compact adopts the Model Administrative Procedures Act to regulate administrative rulemaking, the Commission retains discretion to select alternate procedures consistent with the minimal requirements of due process. Thus, there is no guarantee that proposed rules are made reasonably available for review by anyone other than the members of the Commission, that proposed rules be subject to amendment, or are otherwise subject to full deliberation by elected officials in the affected jurisdictions. Discussions with DJJ staff indicate that they are willing to submit proposed rules to House, Senate and Executive policy and budget offices prior to the Florida Commissioner's participating in adoption of any rules amendments. Yet rules binding in Florida may be adopted over Florida's objection. Thus, the option to withdraw from the Compact on six months notice is the only real protection from the imposition of unfriendly rules binding in the State of Florida.

Because Rules of Compact Administration are presently in effect, enactment of this bill will have the effect of ratifying those rules, making them binding on the people, officials and judges of this State.[27]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[27] The rules can be found at: http://www.juvenilecompact.org/LinkClick.aspx?fileticket=QDbarg6_mEQ%3d&tabid=800 (last accessed March 30, 2011)

A bill to be entitled

An act relating to the Interstate Compact for Juveniles; reenacting s. 985.802, F.S.; providing purpose of the compact; providing definitions; providing for an Interstate Commission for Juveniles; providing for the appointment of commissioners; providing for an executive committee; providing for meetings; providing powers and duties of the Interstate Commission; providing for its organization and operation; providing for bylaws, officers, and staff; providing for qualified immunity from liability for the commissioners, the executive director, and employees; requiring the Interstate Commission to adopt rules; providing for oversight, enforcement, and dispute resolution by the Interstate Commission; providing for the activities of the Interstate Commission to be financed by an annual assessment from each compacting state; requiring member states to create a State Council for Interstate Juvenile Supervision; providing for the effective date of the compact and amendments thereto; providing for a state's withdrawal from and reinstatement to the compact; providing for assistance, certain penalties, suspension, or termination following default by a state; providing for judicial enforcement; providing for dissolution of the compact; providing for severability and construction of the compact; providing for the effect of the compact with respect to other laws and for its binding effect; reenacting s. 985.8025, F.S.; creating the State Council for Interstate Juvenile Offender Supervision to

oversee state participation in the compact; providing membership; providing for records and open meetings; prescribing procedures if the council is abolished; providing an effective date.

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

Section 1. Notwithstanding the repeal of this section by section 4 of chapter 2005-80, Laws of Florida, effective 2 years after the effective date of the act, section 985.802, Florida Statutes, is reenacted to read:

985.802 Execution of interstate compact for juveniles.—The Governor is authorized and directed to execute a compact on behalf of this state with any other state or states legally joining thereto in the form substantially as follows. This compact does not interfere with this state's authority to determine policy regarding juvenile offenders and nonoffenders within this state.

THE INTERSTATE COMPACT FOR JUVENILES

ARTICLE I

PURPOSE.—

(1) The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is

responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. s. 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(2) It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (B) ensure that the public safety interests of the public, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (C) return juveniles who have run away, absconded, or escaped from supervision or control or who have been accused of an offense to the state requesting their return; (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles; (F) equitably allocate the costs, benefits, and obligations of the compacting states; (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders; (H) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate

across state lines; (I) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact; (J) establish a system of uniform data collection of information pertaining to juveniles subject to this compact which allows access by authorized juvenile justice and criminal justice officials, and regular reporting of activities under this compact to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; (L) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (M) coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision, and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created in this compact are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of the compact. The provisions of the compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II

DEFINITIONS.—As used in this compact, unless the context clearly requires a different construction:

(1) "Bylaws" means those bylaws established by the Interstate Commission for its governance or for directing or controlling its actions or conduct.

(2) "Compact administrator" means the individual in each compacting state, appointed pursuant to the terms of this compact, who is responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and the policies adopted by the state council under this compact.

(3) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(4) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of the compact who is responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and the policies adopted by the state council under this compact.

(7) "Interstate Commission" means the Interstate Commission for Juveniles created by Article III of this compact.

(8) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(a) Accused delinquent - a person charged with an offense that, if committed by an adult, would be a criminal offense;

(b) Adjudicated delinquent - a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(c) Accused status offender - a person charged with an offense that would not be a criminal offense if committed by an adult;

(d) Adjudicated status offender - a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(e) Nonoffender - a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(9) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(10) "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(11) "Rule" means a written statement by the Interstate Commission adopted pursuant to Article VI of this compact which is of general applicability and implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the

commission; has the force and effect of statutory law in a compacting state; and includes the amendment, repeal, or suspension of an existing rule.

(12) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

ARTICLE III

INTERSTATE COMMISSION FOR JUVENILES.—

(1) The compacting states hereby create the "Interstate Commission for Juveniles." The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers, and duties set forth in this compact, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(2) The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

(3) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall

include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organization of governors, legislatures, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio, nonvoting members. The Interstate Commission may provide in its bylaws for such additional ex officio, nonvoting members, including members of other national organizations, in such numbers as shall be determined by the Interstate Commission.

(4) Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(5) The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact, which shall be managed by an executive director and Interstate Commission staff. The executive committee shall administer enforcement and

compliance with the provisions of the compact, its bylaws, and rules, and shall perform other duties as directed by the Interstate Commission or set forth in the bylaws.

(6) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and may not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(7) The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules, which shall specify the data to be collected, the means of collection and data exchange, and reporting requirements. Such methods of data collection, exchange, and reporting shall, insofar as is reasonably possible, conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV

POWERS AND DUTIES OF THE INTERSTATE COMMISSION.—The Interstate Commission shall have the following powers and duties:

(1) To provide for dispute resolution among compacting states.

(2) To adopt rules to effect the purposes and obligations as enumerated in this compact, and which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws and rules adopted by the Interstate Commission.

(4) To enforce compliance with the compact provisions, the rules adopted by the Interstate Commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(5) To establish and maintain offices that are located within one or more of the compacting states.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, hire, or contract for services of personnel.

(8) To establish and appoint committees and hire staff that it deems necessary for carrying out its functions, including, but not limited to, an executive committee as required in Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants; to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates

of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, use, and dispose of such donations and grants.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

(14) To sue and to be sued.

(15) To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

(19) To establish uniform standards of the reporting, collecting, and exchanging of data.

(20) To maintain its corporate books and records in accordance with the bylaws.

ARTICLE V

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.—

Section A. Bylaws.—The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee and such other committees as may be necessary;

(3) Providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

(4) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each such meeting;

(5) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(6) Providing a mechanism for concluding the operation of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving all of its debts and obligations;

(7) Providing start-up rules for initial administration of the compact; and

(8) Establishing standards and procedures for compliance

and technical assistance in carrying out the compact.

Section B. Officers and staff.—

(1) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

(2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the Interstate Commission deems appropriate. The executive director shall serve as secretary to the Interstate Commission, but may not be a member, and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

Section C. Qualified immunity, defense, and indemnification.—

(1) The Interstate Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil

liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities; provided that any such person is not protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(3) The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within

the scope of Interstate Commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) The Interstate Commission shall indemnify and hold the commissioner of a compacting state or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION.—

(1) The Interstate Commission shall adopt and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(2) Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedures act as the Interstate Commission

deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Interstate Commission.

(3) When adopting a rule, the Interstate Commission shall, at a minimum:

(a) Publish the proposed rule's entire text stating the reason for that proposed rule;

(b) Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record and made publicly available;

(c) Provide an opportunity for an informal hearing if petitioned by 10 or more persons; and

(d) Adopt a final rule and its effective date, if appropriate, based on input from state or local officials or interested parties.

(4) Allow, not later than 60 days after a rule is adopted, any interested person to file a petition in the United States District Court for the District of Columbia, or in the Federal District Court where the Interstate Commission's principal office is located, for judicial review of such rule. If the court finds that the Interstate Commission's actions are not supported by the substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State

Administrative Procedures Act.

(5) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

(6) The existing rules governing the operation of the Interstate Compact on Juveniles superseded by this act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

(7) Upon determination by the Interstate Commission that a state of emergency exists, it may adopt an emergency rule that shall become effective immediately upon adoption; provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

ARTICLE VII

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION.—

Section A. Oversight.—

(1) The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting

state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules adopted hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, the commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute resolution.—

(1) The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(2) The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of

this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII

FINANCE.—

(1) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state, and the Interstate Commission shall adopt a rule that is binding upon all compacting states governing the assessment.

(3) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same, nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(4) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its

bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX

THE STATE COUNCIL.—Each member shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government; at least one representative of victims groups; a parent of a youth who is not currently in the juvenile justice system; and the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council may advise and exercise oversight and advocacy concerning that state's participation in the activities of the Interstate Commission and other duties as may be determined by that state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X

COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT.—

(1) Any state, including the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, as defined in Article II of this compact, is eligible

to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2005, or upon enactment into law by the 35th jurisdiction. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(3) The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI

WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT.—

Section A. Withdrawal.—

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days after its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations the performance of which extends beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state's reenacting the compact or upon such later date as determined by the Interstate Commission.

Section B. Technical assistance, fines, suspension, termination, and default.—

(1) If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly adopted rules, the Interstate Commission may impose any or all of the following penalties:

(a) Remedial training and technical assistance as directed by the Interstate Commission;

(b) Alternative dispute resolution;

(c) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; or

(d) Suspension or termination of membership in the

compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and the minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly adopted rules and any other ground designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Within 60 days after the effective date of termination of a defaulting state, the Interstate Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

(4) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(5) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

Section C. Judicial enforcement.—The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact and its duly adopted rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

Section D. Dissolution of compact.—

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of the compact, the compact

becomes null and void and shall be of no further force or effect, the business and affairs of the Interstate Commission shall be concluded, and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII

SEVERABILITY AND CONSTRUCTION.—

(1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII

BINDING EFFECT OF COMPACT AND OTHER LAWS.—

Section A. Other laws.—

(1) Nothing herein prevents the enforcement of any other law of a compacting state which is not inconsistent with this compact.

(2) All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding effect of the compact.—

(1) All lawful actions of the Interstate Commission, including all rules and bylaws adopted by the Interstate Commission, are binding upon the compacting states.

(2) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Section 2. Notwithstanding the repeal of this section by section 4 of chapter 2005-80, Laws of Florida, effective 2 years after the effective date of the act, section 985.8025, Florida Statutes, is reenacted to read:

985.8025 State Council for Interstate Juvenile Offender Supervision.—

(1) Pursuant to Article IX of the Interstate Compact for Juveniles in s. 985.802, the State Council for Interstate Juvenile Offender Supervision is created. The purpose of the council is to oversee state participation in the activities of the Interstate Commission for Juveniles.

(2) The council shall consist of seven members and the secretary of the Department of Juvenile Justice or his or her designee, who shall serve as the chair of the council and may

vote only to break a tie. The compact administrator or his or her designee and the executive director of the Department of Law Enforcement or his or her designee shall serve as members of the council. The remaining members shall be appointed by the Governor for terms of 4 years; however, the Governor may, in writing and on an individual basis for each appointee, delegate the power of appointment to the Secretary of Juvenile Justice. Of the initial appointees, one shall be appointed for a term of 1 year, one shall be appointed for a term of 2 years, one shall be appointed for a term of 3 years, and two shall be appointed for terms of 4 years each.

(3) Appointees shall be selected from individuals with personal or professional experience in the juvenile justice system and may include a victim's advocate, employees of the Department of Children and Family Services, employees of the Department of Law Enforcement who work with missing and exploited children, and a parent who, at the time of appointment, does not have a child involved in the juvenile justice system.

(4) Council members shall serve without compensation, but they are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061.

(5) The provisions of s. 24, Art. I of the State Constitution and of chapter 119 and s. 286.011 apply to proceedings and records of the council. Minutes, including a record of all votes cast, must be maintained for all meetings.

(6) If the council is abolished, its records must be appropriately stored, within 30 days after the effective date of

its abolition, by the Department of Juvenile Justice or its successor agency. Any property assigned to the council must be reclaimed by the department or its successor agency. The council may not perform any activities after the effective date of its abolition.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4159 State Attorneys
SPONSOR(S): Ray
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1092

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Krol	Cunningham
2) Judiciary Committee		Krol TK	Havlicak RH

SUMMARY ANALYSIS

Current law requires state attorneys to document in the case file why a defendant did not receive the minimum mandatory sentence pursuant to various criminal statutes and, in some cases, report to the Legislature, Governor, and the Florida Prosecuting Attorneys Association about such deviations.

HB 4159:

- Removes the requirement that state attorneys submit a quarterly report to the Florida Prosecuting Attorneys Association regarding defendants who do not receive a minimum mandatory sentence pursuant to the "10-20-Life" statute;
- Removes the requirement that state attorneys submit an annual report to the Legislature and the Governor regarding the prosecution and sentencing of defendants pursuant to the "10-20-Life" statute;
- Removes the requirement that state attorneys report information to the Florida Prosecuting Attorneys Association regarding "prison releasee reoffenders" who do not receive a minimum mandatory sentence;
- Repeals a statute requiring state attorneys to adopt uniform criteria when deciding to pursue habitual felony offender, habitual violent felony offender, or violent career criminal sanctions and to report such criteria to the Florida Prosecuting Attorneys Association; and
- Repeals a statute that requires state attorneys to develop written policies and guidelines to govern determinations for filing an information on a juvenile and submit those guidelines to the Legislature and the Governor.

Sentencing deviation information required by ss. 27.366 and 775.087, F.S., will still be documented in a defendant's case file and will still be available to the public.

Current law also authorizes courts to assess prosecution and investigative costs against convicted defendants.

The bill eliminates the requirement that an investigating law enforcement agency request authorized costs of investigation. The bill also eliminates the requirement that a defendant prove his or her financial need if a dispute over the assessment of these costs arises.

This bill may have a positive fiscal impact on state attorneys and is effective on July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Explanation and Reporting Requirements for State Attorneys

In certain criminal prosecutions, if mandatory or enhanced sentences are not pursued, the state attorney must document why that decision was made and report those decisions. For example, s. 27.366, F.S., sets forth the Legislature's intent that defendants eligible for enhanced minimum mandatory sentences receive them under subsections 775.087(2) and (3), F.S., commonly known as the "10-20-Life" law.[1] In each case in which a defendant qualified for the minimum mandatory sentences under the "10-20-Life" law but did not receive the sentence, prosecutors are required to write memoranda explaining the sentencing deviation.[2] Section 27.366 ,F.S., requires that the memorandum be kept in the defendant's file and requires the state attorney to submit the memorandum quarterly to the Florida Prosecuting Attorneys Association, Inc. (Association) with a copy being retained for 10 years by the Association, and made available to the public upon request.[3] State attorneys are also required to report to the Legislature and the Governor regarding the prosecution and sentencing of defendants pursuant to the "10-20-Life" statute.[4]

The same statutory requirements to keep sentencing deviation memoranda in a defendant's case file and submit such memorandums to the Association exists in cases where the defendant meets the criteria for being sentenced as a "prison releasee reoffender"[5] under s. 775.082(9), F.S. In those cases, the memoranda are forwarded from the prosecutors to the Association on an annual basis.[6] The Association must also retain these records for 10 years and make these documents available to the public.[7]

Effect of the Bill

This bill amends ss. 27.366 and 775.087, F.S., to eliminate the requirements that state attorneys report sentencing deviations from minimum mandatory sentences related to the "10-20-Life" law on a quarterly basis to the Association and report on an annual basis to the Legislature and the Governor information regarding the prosecution and sentencing of defendants pursuant to "10-20-Life."

The bill also eliminates the annual reporting requirement to the Association regarding defendants who meet the criteria as a "prison releasee reoffender."

Sentencing deviation information required by ss. 27.366 and 775.087, F.S., will no longer be retained by the Association for 10 years; however, it will still be documented in a defendant's case file and available to the public.[8]

Habitual Offender Requirements

Section 775.08401, F.S., requires state attorneys to adopt criteria to be used by the state attorney's office when deciding whether to pursue the enhanced sanctions provided in s. 775.084(4), F.S., for defendants who meet the statutory criteria for sentencing as "habitual felony offenders" and "habitual

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[1] *See* s. 775.087(5), F.S.
[2] Section 775.087(5), F.S.
[3] Section 27.366(1), F.S.
[4] Section 27.366(2), F.S.
[5] Sections 775.082 (9)(a)1. and 2., F.S., defines "prison release reoffender" "as any defendant who commits or attempts to commit certain crimes, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state, within 3 years after being released from prison or within 3 years after being released from a prison of another state; or while the defendant was serving a prison sentence or on escape status from prison in Florida or another state."
[6] Section 775.082(9)(d)2., F.S.
[7] *Id.*
[8] Representatives of the Association state that such information will continue to be available to the public as the bill only eliminates the necessity of creating reports. E-mail from Bill Cervone, Florida Prosecuting Attorneys Association, March 16, 2010. (On file with Criminal Justice Subcommittee staff.)

violent felony offenders."[9] The statute specifies that the criteria be designed to ensure fair and impartial application of those sentencing enhancements. Deviations from the criteria are to be memorialized for the case files.[10]

Effect of the Bill
This bill repeals s. 775.08401, F.S., and amends s. 775.0843, F.S., to remove a reference to this repealed statute.

Juvenile Cases in Adult Court
Subsection 985.557(4), F.S., requires the state attorneys to develop policies and guidelines for filing juvenile cases in adult court. It further requires that the state attorneys submit these policies and guidelines to the Legislature and the Governor no later than January 1 of each year.[11]

Effect of the Bill
This bill repeals subsection 985.557(4), F.S.

Collection of Prosecution and Investigative Costs
Courts are authorized to assess costs against convicted defendants.[12] In all criminal and violation of probation or community control cases, convicted persons are liable for payment of the costs of prosecution, including any investigative costs incurred by a law enforcement agency, fire department, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission.[13] Costs of prosecution may be imposed at the rate of $50 in misdemeanor cases and $100 in felony cases unless the prosecutor proves that costs are higher in the particular case before the court.[14] However, investigative costs must be separately and specifically requested by the investigating agency.[15] Ultimately the costs of prosecution and investigative costs are deposited into state attorney and agency trust funds, respectively.[16]

If a dispute arises as to the proper amount or type of the costs of prosecution or the investigative costs, the court must resolve the dispute by a preponderance of the evidence.[17] The burden of demonstrating the amount of costs incurred is on the state attorney. The defendant bears the burden of demonstrating his or her financial resources, as well as financial need.[18] The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.[19]

Effect of the Bill
The bill eliminates the requirement that the investigating agency must specifically request the recovery of investigative costs. However, current law does not provide a "default" amount of investigative costs to be recovered as it does with costs of prosecutions. Therefore, it is unclear what amount a court would assess as investigative costs without a request from an agency for a specific amount.

The bill eliminates the requirement that the defendant prove his or her financial need and resources if costs become a disputed issue. The bill also eliminates language in current law providing that the burden of proving other matters related to the assessment of these costs is upon the party designated by the court.

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[9] Section 775.08401, F.S. The criteria for designation as a "habitual felony offender" and a "habitual violent felony offender" are set forth in s. 775.084(1)(a) and (b), F.S.
[10] Section 775.08401(3), F.S.
[11] Section 985.557(4), F.S.
[12] Part IV of ch. 938, F.S.
[13] Section 938.27(1), F.S.
[14] Section 938.27(8), F.S.
[15] Section 938.27(1), F.S.
[16] Section 938.27(7) and (8), F.S.
[17] Section 938.27(4), F.S.
[18] *Id.*
[19] *Id.*

B. SECTION DIRECTORY:

Section 1. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 2. Repeals s. 775.08401, F.S., relating to habitual offenders and habitual violent felony offenders; violent career criminals; eligibility criteria.

Section 3. Amends s. 775.087, F.S., relating to possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.

Section 4. Amends s. 938.27, F.S., relating to judgment for costs on conviction.

Section 5. Amends s. 985.557, F.S., relating to direct filing of an information; discretionary and mandatory criteria.

Section 6. Amends s. 775.0843, F.S., relating to policies to be adopted for career criminal cases.

Section 7. Provides effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill would relieve the state attorneys of duties relating to preparing reports and documenting some charging and sentencing information in the file. The fiscal impact, if any, of this change is not known.

   In addition, the operating budgets (grants and donations trust funds) of the state attorneys offices may see an increase due to increased collection of investigative costs.

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:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to state attorneys; amending s. 775.082, F.S.; deleting provisions requiring each state attorney to submit certain deviation memoranda to the president of the association and requiring the association to maintain such information for a specified period; repealing s. 775.08401, F.S., relating to criteria to be used when state attorneys decide to pursue habitual felony offenders, habitual violent felony offenders, or violent career criminals; amending s. 775.087, F.S.; deleting provisions requiring each state attorney to report why a case-qualified defendant did not receive the mandatory minimum prison sentence in cases involving certain offenses; transferring, renumbering, and amending s. 27.366, F.S.; deleting a provision requiring each state attorney to submit certain deviation memoranda to the President of the Florida Prosecuting Attorneys Association, Inc., and to report annually to the Governor and Legislature; deleting a provision requiring the association to maintain such information for a specified period; transferring provisions relating to the intent of s. 775.087, F.S., to that section; amending s. 938.27, F.S.; providing that convicted persons are liable for certain costs of prosecution; deleting provisions regarding the burden of establishing financial resources of the defendant and demonstrating other matters; amending s. 985.557, F.S.; deleing provisions relating to direct-file policies and guidelines for juveniles; amending s.

775.0843, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (d) of subsection (9) of section 775.082, Florida Statutes, is amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(9)

(d)1. It is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.

2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney. ~~On an annual basis, each state attorney shall submit copies of deviation memoranda regarding offenses committed on or after the effective date of this subsection, to the president of the Florida Prosecuting Attorneys Association, Inc. The association must maintain such~~

~~information, and make such information available to the public upon request, for at least a 10-year period.~~

Section 2. Section 775.08401, Florida Statutes, is repealed.

Section 3. Present subsections (5) and (6) of section 775.087, Florida Statutes, are amended, and section 27.366, Florida Statutes, is transferred, renumbered as a new subsection (6) of that section and amended, to read:

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

~~(5) In every case in which a law enforcement agency based a criminal charge on facts demonstrating that the defendant met the criteria in subparagraph (2)(a)1., subparagraph (2)(a)2., or subparagraph (2)(a)3. or subparagraph (3)(a)1., subparagraph (3)(a)2., or subparagraph (3)(a)3. and in which the defendant did not receive the mandatory penalty, the state attorney must place in the court file a memorandum explaining why the minimum mandatory penalty was not imposed.~~

(5)~~(6)~~ This section does not apply to law enforcement officers or to United States military personnel who are performing their lawful duties or who are traveling to or from their places of employment or assignment to perform their lawful duties.

~~27.366 Legislative intent and policy in cases meeting criteria of s. 775.087(2) and (3); report.—~~

(6)~~(1)~~ It is the intent of the Legislature that convicted criminal offenders who meet the criteria in subsections ~~s. 775.087~~(2) and (3) be sentenced to the minimum mandatory prison

terms provided in this section ~~herein~~. It is the intent of the Legislature to establish zero tolerance of criminals who use, threaten to use, or avail themselves of firearms in order to commit crimes and thereby demonstrate their lack of value for human life. It is also the intent of the Legislature that prosecutors should appropriately exercise their discretion in those cases in which the offenders' possession of the firearm is incidental to the commission of a crime and not used in furtherance of the crime, used in order to commit the crime, or used in preparation to commit the crime. For every case in which the offender meets the criteria in subsections (2) and (3) ~~this act~~ and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney. ~~On a quarterly basis, each state attorney shall submit copies of deviation memoranda regarding offenses committed on or after the effective date of this act to the President of the Florida Prosecuting Attorneys Association, Inc. The association must maintain such information and make such information available to the public upon request for at least a 10-year period.~~

~~(2) Effective July 1, 2000, each state attorney shall annually report to the Speaker of the House of Representatives, the President of the Senate, and the Executive Office of the Governor regarding the prosecution and sentencing of offenders who met the criteria in s. 775.087(2) and (3). The report must categorize the defendants by age, gender, race, and ethnicity. Cases in which a final disposition has not yet been reached~~

~~shall be reported in a subsequent annual report.~~

Section 4. Subsections (1) and (4) of section 938.27, Florida Statutes, are amended to read:

938.27 Judgment for costs on conviction.—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission~~, if requested by such agencies~~. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(4) Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. ~~The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.~~

Section 5. Subsection (5) of section 985.557, Florida Statutes, is renumbered as subsection (4), and present subsection (4) of that section is amended to read:

985.557 Direct filing of an information; discretionary and mandatory criteria.—

~~(4) DIRECT-FILE POLICIES AND GUIDELINES.—Each state attorney shall develop written policies and guidelines to govern determinations for filing an information on a juvenile, to be submitted to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives not later than January 1 of each year.~~

Section 6. Subsection (5) of section 775.0843, Florida Statutes, is amended to read:

775.0843 Policies to be adopted for career criminal cases.—

(5) Each career criminal apprehension program shall concentrate on the identification and arrest of career criminals and the support of subsequent prosecution. The determination of which suspected felony offenders shall be the subject of career criminal apprehension efforts shall be made in accordance with written target selection criteria selected by the individual law enforcement agency and state attorney consistent with the provisions of this section and s. ~~ss. 775.08401 and~~ 775.0842.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7127 PCB CRJS 11-01 Prison Diversion Programs
SPONSOR(S): Criminal Justice Subcommittee, Julien
TIED BILLS: None **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Krol	Cunningham
1) Judiciary Committee		Krol TK	Havlicak RH

SUMMARY ANALYSIS

In 2009, the Legislature enacted HB 1722, which created s. 921.00241, F.S., entitled "Prison Diversion Program." The section was created in an effort to reduce state costs, and save prison beds for more serious offenders by allowing judges to divert nonviolent, prison-bound offenders to a non-state prison sanction.

The Legislature has appropriated $1.4 million over the last two years to the Department of Corrections to fund pilot prison diversion programs. The Department of Corrections established two pilot prison diversion programs in the 6th and 13th Judicial Circuits.

In December 2010, the Office of Program Policy Analysis and Government Accountability (OPPAGA) provided a research memorandum to the Legislature regarding the status of the prison diversion program. OPPAGA found that one program was serving offenders who may not have been prison bound. The other program had ceased operation due to a lack of referrals.

The bill adopts recommendations made by OPPAGA to increase judicial referrals to the programs.

Specifically, the bill:

- Expands program eligibility criteria by raising the upper threshold of the allowed Criminal Punishment Code score from 48 to 60 points (or 66 points where 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new law violation.)
- Gives judges the discretion to sentence offenders to a 90-day jail term as part of the program.
- Allows the program to require electronic monitoring to enhance oversight of offenders placed in the program.

The bill may have a positive fiscal impact on the state and is effective on July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sentencing

The Criminal Punishment Code applies to defendants whose non-capital felony offenses were committed on or after October 1, 1998.[1] Each non-capital felony offense is assigned a level ranking that reflects its seriousness.[2] There are ten levels, and Level 10 is the most serious level.[3] The primary offense, additional offenses and prior offenses are assigned level rankings.[4] Points accrue based on the offense level, with higher level accruing a greater number of points. The primary offense is worth more points than additional or prior offense of the same felony degree. Points may also accrue or be multiplied based on other aggravating factors such as whether the offense resulted in victim injury and the legal status of the defendant.[5]

The total sentence points scored is entered into a mathematical computation that determines the lowest permissible sentence:

- If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction.[6]
- If the sentence point total exceeds 44 points, a prison sentence is the lowest permissible sentence.[7]

Prison Diversion Program

In 2009, the Legislature enacted HB 1722, which created s. 921.00241, F.S., entitled "Prison Diversion Program." The section was created in an effort to reduce state costs, and save prison beds for more serious offenders by allowing judges to divert nonviolent, prison-bound offenders to a non-state prison sanction.[8]

Section 921.00241(1), F.S., provides an offender is eligible for the program if he or she meets all of the following criteria:

- The offense(s) occurred on or after July 1, 2009.
- The primary offense is a third degree felony.
- The Criminal Punishment Code score is not more than 48 points (or 54 points where 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new violation of law).
- The offender has not been convicted or previously convicted of a forcible felony.[9]
- The offender's primary offense does not require a minimum mandatory sentence.[10]

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[1] Section 921.002, F.S.

[2] The level ranking is assigned either by specifically listing the offense in the appropriate level in the offense severity ranking chart of the Code, s. 921.0022, F.S., or, if unlisted, being assigned a level ranking pursuant to s. 921.0023, F.S., based on the felony degree of the offense.

[3] Section 921.0022, F.S.

[4] Section 921.0024, F.S.

[5] *Id.*

[6] Unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. Section 924.0024(2), F.S.

[7] Section 924.0024(2), F.S.

[8] "Prison Diversion Programs." Research Memorandum. Office of Program Policy Analysis and Government Accountability. December 15, 2001.

[9] As defined in s. 776.08, F.S., but excluding any third degree felony violation under ch. 810, F.S.

[10] Section 921.00241(1), F.S.

The court may sentence such an offender to a term of probation,[11] community control,[12] or community supervision with mandatory participation in a prison diversion program if such program is funded and exists in the sentencing judicial circuit.[13]
The prison diversion program may include:

- Residential, non-residential, or day-reporting requirements;
- Substance abuse treatment;
- Employment;
- Restitution;
- Academic, or vocational opportunities; or
- Community service work.[14]

The judge that sentences a defendant to the program must make written findings that the defendant meets the eligibility criteria and may order the offender to pay all or a portion of the program costs related to the prison diversion program if the offender has the ability to pay.[15]

The Legislature has appropriated $1.4 million over the last two years to the Department of Corrections to fund pilot prison diversion programs. The appropriation was intended to eliminate the need for 184 new prison beds for Fiscal Year 2009-10. At an average cost of $19,000 a year to fund a prison bed, it was anticipated that the diversion programs would save approximately $3.5 million in prison bed costs the first year.[16]

The Department of Corrections established two pilot prison diversion programs in the 6th and 13th Judicial Circuits[17].[18] The programs began in October 2009 and November 2009, respectively.[19]

OPPAGA's Prison Diversion Program Research Memorandum

In December 2010, the Office of Program Policy Analysis and Government Accountability (OPPAGA) provided a research memorandum to the Legislature regarding the status of the prison diversion program.

OPPAGA reports that the program in the 13th Judicial Circuit is fully operational, but is serving many offenders whose sentencing scores suggest they were not prison-bound.[20] The program in the 6th Judicial Circuit ceased operation in August 2010 due to a lack of referrals. Program staff, and other stakeholders, including the state attorney and circuit court judge, stated the statutory sentencing guideline point range was too narrow.[21] In addition, OPPAGA found that court officials may be more likely to use the diversion program if it included a short jail term or electronic monitoring.[22]

OPPAGA made the following recommendations to increase judicial referrals to the programs:

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[11] Section 948.001(5), F.S., defines "probation" as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.
[12] Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.
[13] Section 924.00241(2), F.S.
[14] *Id.*
[15] Section 924.00241(3), F.S.
[16] *Supra* Research Memorandum.
[17] Pinellas and Pasco counties, and Hillsborough county, respectively.
[18] *Supra* Research Memorandum.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*

- Raise the upper threshold of the allowed Criminal Punishment Code score from 54 to 60 or 65 points to expand the pool of eligible offenders.
- Give judges the discretion to sentence offenders to a 90-day jail term as part of the program.
- Allow the program to require electronic monitoring to enhance oversight of offenders placed in the program.
- Create pilot programs in judicial circuits that do not have operating drug courts to eliminate the competition for program participants.[23]

Effect of the Bill

The bill adopts the above described recommendations made by the Office of Program Policy Analysis and Government Accountability. Specifically the bill:

- Expands program eligibility criteria by raising the upper threshold of the allowed Criminal Punishment Code score from 48 to 60 points (or 66 points where 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a new law violation.)
- Gives judges the discretion to sentence offenders to a 90-day jail term as part of the program.
- Allows the program to require electronic monitoring to enhance oversight of offenders placed in the program.

B. SECTION DIRECTORY:

Section 1. Amends s. 921.00241, F.S., relating to prison diversion program.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Because admission into the program is based on judicial discretion and the availability of a funded prison diversion program within the circuit, it is difficult to estimate the fiscal impact of this bill. However, at an average cost of $19,000 a year to fund a prison bed, any offenders diverted from prison would result in cost savings to the state.

2. Expenditures:

   Including electronic monitoring as part of the prison diversion program may result in an increased fiscal cost to the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Allowing judges the discretion to sentence offenders to a 90-day jail term as part of the prison diversion program may have a negative fiscal impact to the counties.

[23] *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Local community treatment providers in participating circuits that contract with the Department of Corrections to provide services to prison diversion participants may see an increase in revenue.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

V. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to prison diversion programs; amending s. 921.00241, F.S.; increasing the number of Criminal Punishment Code scoresheet total sentence points that an offender may have and be eligible for a prison diversion program; authorizing the court to sentence an offender in a prison diversion program to serve a jail term not to exceed 90 days; providing that a prison diversion program may require electronic monitoring; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) and subsection (2) of section 921.00241, Florida Statutes, are amended to read:

921.00241 Prison diversion program.—

(1) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, a court may divert from the state correctional system an offender who would otherwise be sentenced to a state facility by sentencing the offender to a nonstate prison sanction as provided in subsection (2). An offender may be sentenced to a nonstate prison sanction if the offender meets all of the following criteria:

(b) The offender's total sentence points score, as provided in s. 921.0024, is not more than 60 ~~48~~ points, or the offender's total sentence points score is 66 ~~54~~ points and 6 of those points are for a violation of probation, community control, or other community supervision, and do not involve a

new violation of law.

(2) If the court elects to impose a sentence as provided in this section, the court shall sentence the offender to a term of imprisonment in a jail not to exceed 90 days, probation, community control, or community supervision with mandatory participation in a prison diversion program of the Department of Corrections if such program is funded and exists in the judicial circuit in which the offender is sentenced. The prison diversion program shall be designed to meet the unique needs of each judicial circuit and of the offender population of that circuit. The program may require electronic monitoring, residential, nonresidential, or day-reporting requirements; substance abuse treatment; employment; restitution; academic or vocational opportunities; or community service work.

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Judiciary Committee
Representative Julien offered the following:

Amendment (with title amendment)

Remove lines 30-42 and insert:

(2) If the court elects to impose a sentence as provided in this section, the court shall sentence the offender to a term of probation, community control, or community supervision with mandatory participation in a prison diversion program of the Department of Corrections if such program is funded and exists in the judicial circuit in which the offender is sentenced. The prison diversion program shall be designed to meet the unique needs of each judicial circuit and of the offender population of that circuit. The program may require a term of imprisonment in jail not to exceed 90 days; electronic monitoring; residential, nonresidential, or day-reporting requirements; substance abuse treatment; employment; restitution; academic or vocational opportunities; or community service work.

Amendment No. 1

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

Remove lines 6-9 and insert:

program; providing that a prison diversion program may require a jail term not to exceed 90 days or electronic monitoring; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7135 PCB CRJS 11-04 Cotton or Leaf Tobacco
SPONSOR(S): Criminal Justice Subcommittee, Trujillo
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Krol	Cunningham
1) Judiciary Committee		Krol TK	Havlicak RH

SUMMARY ANALYSIS

Section 865.08, F.S., makes it a second degree misdemeanor for a person to trade, traffic, or buy any unpackaged cotton or leaf tobacco without written authorization from the producer of such crops.

Since 2000, the Florida Department of Law Enforcement has reported that there have been no arrests associated with this section of statute.

The bill repeals s. 865.08, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 865.08, F.S., was created in 1866.[1] It provides that it is a second degree misdemeanor[2] if a person does not trade, traffic, or buy cotton or leaf tobacco from a producer or a producer's authorized agent, unless the cotton or leaf tobacco is baled or boxed in the usual manner or exhibits evidence in writing that the producer has parted with his or her interest therein.

Section 865.08, F.S., has not been amended in a substantive way since its creation. It was amended in 1971[3] to update the associated penalty to a second degree misdemeanor from its original penalty of up to six months imprisonment or up to a $1,000 fine. Later in 1997,[4] the statute was amended again to remove gender-specific references.

Since 2000, the Florida Department of Law Enforcement has reported that there have been no arrests associated with this section of statute.

Effect of the Bill

The bill repeals s. 865.08, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 865.08, F.S., relating to purchase of cotton or leaf tobacco.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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[1] Section 11, ch. 1466, 1866; RS 2711; GS 3707; RGS 5658; CGL 7861.
[2] A second degree misdemeanor is punishable by up to 60 days imprisonment and a $500 fine. Sections 775.082 and 775.083, F.S.
[3] Section 1120, ch. 71-136, L.O.F.
[4] Section 1396, ch. 97-102, L.O.F.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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 cotton or leaf tobacco; repealing s. 865.08, F.S., relating to the purchase of cotton or leaf tobacco; repealing provisions prohibiting a person from trading, trafficking for, or buying, except from the producer or the producer's authorized agent, cotton or leaf tobacco unless it is baled or boxed in the usual manner or written evidence that the producer has parted with her or his interest is exhibited; providing an effective date.

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

Section 1. Section 865.08, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7139 PCB CRJS 11-06 Levying War Against People of the State
SPONSOR(S): Criminal Justice Subcommittee, Grant
TIED BILLS: None **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	14 Y, 0 N	Williams	Cunningham
1) Judiciary Committee		Williams	Havlicak

SUMMARY ANALYSIS

Section 876.35, F.S., makes it a third degree felony for two or more persons to combine to levy war against any part of a people of this state, or to remove them forcibly out of this state, or to remove them from their habitations to any other part of the state by force.

Since 2000, the Florida Department of Law Enforcement reported that there have been no arrests associated with this section of statute.

The bill repeals s. 876.35, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 876.35, F.S., was created in 1868.[1] The statute makes it a third degree felony[2] for two or more persons to combine to levy war against any part of a people of this state, or to remove them forcibly out of this state, to remove them from their habitations to any other part of the state by force, or assemble for such purposes.

Section 876.35, F.S., has not been amended in a substantive way since its creation. It was amended in 1971[3] to update the associated penalty to a third degree felony from its original penalty of imprisonment not exceeding five years, or fines not exceeding $1,000. In 1974,[4] the statute was renumbered.

Since 2000, the Florida Department of Law Enforcement has reported that there have been no arrests associated with this section of statute.

Effect of the Bill

The bill repeals s. 876.35, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 876.35, F.S., relating to combination against part of the people of the state.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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[1] Section 6, ch. 1637, 1868; RS 2375; GS 3200; RGS 5030; CGL 7132.
[2] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[3] Section 705, ch. 71-136, L.O.F.
[4] Section 65, ch. 74-383, L.O.F.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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 levying war against people of the state; repealing s. 876.35, F.S., relating to a prohibition on combinations against part of the people of the state for certain purposes; providing an effective date.

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

Section 1. Section 876.35, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7145 PCB CRJS 11-09 Unlawful Use of Insignia
SPONSOR(S): Criminal Justice Subcommittee, Van Zant
TIED BILLS: None **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	14 Y, 0 N	Williams	Cunningham
1) Judiciary Committee		Williams	Havlicak

SUMMARY ANALYSIS

Section 817.31, F.S., makes it a second degree misdemeanor for a person who is not a member of the American Legion to wear the badge, button or other insignia of the American Legion.

Since 2000, the Florida Department of Law Enforcement has reported that there has been one arrest associated with this section of statute.

The bill repeals s. 817.31, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background
Section 817.30, F.S., currently provides the following:

> Any person who willfully wears the badge or button of the Grand Army of the Republic, the insignia, badge or rosette of the Military Order of the Loyal Legion of the United States, or of the Military Order of Foreign Wars of the United States, or of the Patrons of Husbandry, or the Benevolent and Protective Order of Elks of the United States of America, or of the Woodmen of the World, or of any society, order or organization of 5 years' standing in the state, or uses the same to obtain aid or assistance within this state, or willfully uses the name of such society, order or organization, the titles of its officers, or its insignia, ritual or ceremonies, unless entitled to use or wear the same under the constitution and bylaws, rules and regulations of such order or of such society, order or organization, is guilty of a misdemeanor of the second degree.[1]

Section 817.31, F.S., created in 1921,[2] contains a similar provision that makes it a misdemeanor of the second degree for a person who is not a member of the American Legion to wear the badge, button or other insignia of the American Legion.

Section 817.31, F.S., has not been amended in a substantive way since its creation. It was amended in 1971[3] to update the associated penalty to a second degree misdemeanor from its original penalty of up to six months imprisonment or up to a $1,000 fine.

Since 2000, the Florida Department of Law Enforcement has reported that there has been one arrest associated with this section of statute.

Effect of the Bill
The bill repeals s. 817.31, F.S. Unauthorized persons who wear the badge, button or other insignia of the American Legion would likely still be able to be penalized pursuant to s. 817.30, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 817.31, F.S., relating to unlawful use of insignia of American Legion; penalty.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[1] A second degree misdemeanor is punishable by up to 60 days imprisonment and a $500 fine. Sections 775.082 and 775.083, F.S.
[2] Section 1, ch. 8464, 1921; CGL 7301.
[3] Section 861, ch. 71-136, L.O.F.

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:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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 unlawful use of insignia; repealing s. 817.31, F.S., relating to unlawful use of the insignia of the American Legion by a nonmember; providing an effective date.

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

Section 1. Section 817.31, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7147 PCB CRJS 11-11 Correctional Policy Advisory Council
SPONSOR(S): Criminal Justice Subcommittee, Harrell
TIED BILLS: None **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 1 N	Cunningham	Cunningham
1) Judiciary Committee		Cunningham	Havlicak RH

SUMMARY ANALYSIS

In 2008, Senate Bill 2000 was enacted, which created s. 921.0019, F.S. The statute creates a 10-member Correctional Policy Advisory Council (Council) within the Legislature to evaluate correctional policies, justice reinvestment initiatives, and laws affecting or applicable to corrections. The statute requires the Council to meet quarterly and to report its findings and recommendations on an annual basis to the Governor, President of the Senate, and Speaker of the House of Representatives. Since its creation, the Council has not met.

The bill repeals s. 921.0019, F.S.

The bill does not have a fiscal impact and is effective on July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation
In 2008, Senate Bill 2000 was enacted, which created s. 921.0019, F.S. The statute creates a 10-member Correctional Policy Advisory Council (Council) within the Legislature to evaluate correctional policies, justice reinvestment initiatives, and laws affecting or applicable to corrections. The statute requires the Council to meet quarterly and to report its findings and recommendations on an annual basis to the Governor, President of the Senate, and Speaker of the House of Representatives. The statute requires any recommendations to be consistent with specified goals.

The statute also contains provisions relevant to membership of the Council, selection of its chair, staffing, reimbursement for per diem and travel expenses, and required meetings. The Laws of Florida[1] contain a provision specifying that the Council will be abolished on July 1, 2011. Since its creation, the Council has not met.

Effect of the Bill
The bill repeals s. 921.0019, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 921.0019, F.S., relating to Correctional Policy Advisory Council.

Section 2. The bill takes effect July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
None.

D. FISCAL COMMENTS:
None.

[1] Ch. 2008-54, L.O.F.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Correctional Policy Advisory Council; repealing s. 921.0019, F.S., relating to creation, membership, and duties of the Correctional Policy Advisory Council; providing an effective date.

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

Section 1. Section 921.0019, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7149 PCB CRJS 11-10 Water Hyacinths
SPONSOR(S): Criminal Justice Subcommittee, Perry
TIED BILLS: None **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	14 Y, 0 N	Krol	Cunningham
1) Judiciary Committee		Krol TK	Havlicak RH

SUMMARY ANALYSIS

Section 861.04, F.S., makes it a second degree misdemeanor to place water hyacinths in any state streams or waters.

Since 2000, the Florida Department of Law Enforcement has reported that there have been no arrests associated with this section of statute.

The bill repeals s. 861.04, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 369.25, F.S., authorizes the Department of Agriculture and Consumer Services (DACS) to establish, by rule, a list of aquatic plants that can only be possessed if a permit is obtained. Currently Administrative Rule 5B-64.011 lists water hyacinth as a "Class I Prohibited Aquatic Plant," which under no circumstances may a person possess, collect, transport, cultivate, and import except when a permit is obtained through DACS.

Section 369.25, F.S., further states that no permit shall be issued until DACS determines that the proposed activity poses no threat or danger to the waters, wildlife, natural resources, or environment of the state.[1] Permit applications are evaluated and issued on the following standards and criteria:

- The ability of native aquatic vegetation in wild collection sites in sovereignty lands to maintain self-sustaining growth.
- No adverse impacts upon fish and wildlife resources including endangered species, threatened species, non-game species, species of special concern, and their habitat.
- No impairment of the public's access to, or use of, the waterbody.
- No adverse cumulative impacts upon the natural resources or the environment of the state.[2]

Any person who violates the above provisions commits a misdemeanor of the second degree[3].[4]

DACS reported that since 2003 there have been six forced destructions of water hyacinths at businesses.[5]

Section 861.04, F.S., was created in 1899.[6] It makes it a second degree misdemeanor[7] for any person to willfully place or cause to be placed any water hyacinths in any of the territorial waters of the state whether navigable or nonnavigable.

Section 861.04, F.S., has not been amended in a substantive way since its creation. It was amended in 1971[8] to update the associated penalty to a second degree misdemeanor from its original penalty of up to 90 days imprisonment or up to a $200 fine.

Since 2000, the Florida Department of Law Enforcement has reported that there have been no arrests associated with this section of statute.

The Effect of the Bill

The bill repeals s. 861.04, F.S. Persons who place water hyacinths in any state streams or waters would likely still be able to be penalized pursuant to s. 369.25, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals s. 861.04, F.S., relating to placing water hyacinths in any of the streams or waters of the state.

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[1] Section 369.25(2), F.S.

[2] Department of Agriculture and Consumer Services, Administrative Rule 5B-64.003.

[3] Punishable as provided in ss. 775.082 or 775.083, F.S.

[4] Section 369.25(5)(b), F.S., provides that all law enforcement officers of the state and its agencies with power to make arrests for violations of state law are responsible for enforcing the provisions of this section.

[5] E-mail from Wayne Dixon, Division of Plant Industry, Florida of Department of Agriculture and Consumer Services. March 16, 2011. (On file with Criminal Justice Subcommittee staff.)

[6] Section 1, ch. 4752, 1899; GS 3667; RGS 5610; CGL 7799.

[7] A second degree misdemeanor is punishable by up to 60 days imprisonment and a $500 fine. Sections 775.082 and 775.083, F.S.

[8] Section 1103, ch. 71-136, L.O.F.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   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:

   This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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 water hyacinths; repealing s. 861.04, F.S., relating to a prohibition on placement of water hyacinths in any of the streams or waters of the state; providing an effective date.

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

Section 1. Section 861.04, Florida Statutes, is repealed.

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