



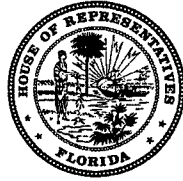
Government Operations Appropriations Subcommittee

**Tuesday, March 22, 2011
12:00 PM – 3:00 PM
Morris Hall**

Meeting Packet

**Dean Cannon
Speaker**

**Ed Hooper
Chair**



The Florida House of Representatives

Appropriations Committee

Government Operations Appropriations Subcommittee

Dean Cannon
Speaker

Ed Hooper
Chair

March 22, 2011

AGENDA
12:00 PM – 3:00 PM
Morris Hall

- I. Call to Order/Roll Call**
- II. Consideration of Bills**
 - HB 567 Judgment Interest – Rep. Hudson**
 - CS/HB 883 Public Lodging Establishments – Rep. Horner**
 - PCB GOAS 11-06 Public Employees Relations Commission**
 - PCB GOAS 11-07 Department of Management Services**
 - PCB GOAS 11-08 Department of Financial Services**
- III. Budget Workshop**
- IV. Adjourn**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 567 Judgment Interest
SPONSOR(S): Hudson
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 866

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Appropriations Subcommittee		Piscitello TK	Topp BDT
2) Judiciary Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The 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

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%

The 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, the 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. The 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.

The 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

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

1 A bill to be entitled
 2 An act relating to judgment interest; amending s. 55.03,
 3 F.S.; requiring quarterly adjustments to the rate of
 4 interest payable on judgments; revising the calculation of
 5 the interest rate; amending s. 717.1341, F.S.; conforming
 6 provisions to changes made by the act; providing an
 7 effective date.

8

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

10

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

13

55.03 Judgments; rate of interest, generally.—

14

(1) On December 1 of each year, the Chief Financial
 15 Officer shall set the rate of interest that shall be payable on
 16 judgments or decrees for the year beginning January 1 and adjust
 17 the rate quarterly on April 1, July 1, and October 1 by
 18 averaging the discount rate of the Federal Reserve Bank of New
 19 York for the preceding 12 months ~~year~~, then adding 300 ~~500~~ basis
 20 points to the averaged federal discount rate. The Chief
 21 Financial Officer shall inform the clerk of the courts and chief
 22 judge for each judicial circuit of the rate that has been
 23 established for the upcoming year. The interest rate established
 24 by the Chief Financial Officer shall take effect on January 1 of
 25 each following year. Judgments obtained on or after January 1,
 26 1995, shall use the previous statutory rate for time periods
 27 before January 1, 1995, for which interest is due and shall
 28 apply the rate set by the Chief Financial Officer for time

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

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

34 717.1341 Invalid claims, recovery of property, interest
 35 and penalties.—

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 883 Public Lodging Establishments
SPONSOR(S): Business & Consumer Affairs Subcommittee, Horner
TIED BILLS: IDEN./SIM. BILLS: SB 476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	14 Y, 0 N, As CS	Morton	Creamer
2) Government Operations Appropriations Subcommittee		Topp <i>BDT</i>	Topp <i>BDT</i>
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill combines the classifications in chapter 509, F.S., of resort condominiums and resort dwellings as 'vacation rentals.' 'Vacation Rental' is defined as "any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family dwelling house or dwelling unit that is also a transient public lodging establishment."

The bill provides that vacation rentals are deemed residential property and prohibits local governments from prohibiting vacation rentals or treating them differently from other residential property based on their classification, use, or occupancy. This would remove authority for local governments to ban or restrict vacation rentals.

The bill also revises the membership of the advisory council for the Division of Hotels and Restaurant of the Department of Business and Professional Regulation (DBPR).

The bill has no fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Vacation rentals are properties generally designed for residential purposes, such as single- and multi-family homes which are rented out to tourists on vacation. In Florida, they are divided into two main categories: resort condominiums and resort dwellings and are regulated as transient public lodging establishments.

Public lodging establishments are overseen by the Division of Hotels and Restaurants within the Department of Business and Professional Regulation pursuant to chapter 509, F.S. Regulation of public lodging establishments is pre-empted to the state.

The chapter divides public lodging establishments first by the length of time they are rented, and then by their use.

Occupancy is 'transient' if the parties intend it to be temporary. If the unit is not the guest's primary residence, there is a rebuttable presumption that occupancy is transient. Likewise, occupancy is nontransient if the operator intends the unit to be the guest's primary residence.

Public lodging establishments that are rented more than three times a year for periods of less than a month are deemed transient. Nontransient public lodging establishments are rented for periods of more than a month. If an establishment is advertised for rent, it is also considered a public lodging establishment and classified as transient or nontransient based on the advertised rental term.

Public lodging establishments are further classified based on use, as follows:

Hotel:	Accommodations for 25 or more guests and provides services generally provided by a hotel and recognized as such by the community or industry (i.e. Hilton).
Motel:	At least six rental units with an exit to outside, off-street parking, and a bathroom, onsite central office, which is recognized as a motel in the community or the industry (i.e. Motel 6)
Bed and breakfast inn:	Modified family home providing accommodation and meal services generally offered by a bed and breakfast inn, and recognized as such in the community or the hospitality industry.
Nontransient apartment or roominghouse:	Rental accommodations intended to be used as primary residences. (75 percent or more nontransient).
Transient apartment or roominghouse:	Rental accommodations with a substantial portion of units held for transient guests (more than 25 percent transient).
Roominghouse:	Any public lodging establishment not otherwise classified.
Resort dwelling:	Individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit which is rented more than three times in a calendar year for periods of less than 1 month or which is advertised as such.
Resort condominium:	Any unit or group of units in a condominium, cooperative, or timeshare plan which is rented more than three times a year for periods of less than 1 month or is advertised as such.

All public lodging establishments are licensed, but the degree of inspections and the relevant fees differ based on the type of establishment.

The Division inspects resort condominiums and resort dwellings on receiving complaints only. The Division receives about three complaints of unlicensed resort condominiums or resort dwellings each year.

For resort dwellings and resort condominiums, licenses are issued under three categories:

1. Single – Individual owner, may include multiple units
2. Group – Licensed agent for all units rented
3. Collective – Licensed agent for up to 75 units separately located throughout a district

Operators of resort dwellings and resort condominiums pay a base fee of \$150, a Hospitality Education Program fee of \$10 and a unit fee. Unit fees on single and group licensees are incremental based on the total number of rental units. Collective licensees pay \$10 per unit.

The total fees licensees pay range from \$170-\$350 for single and group licensees, and are capped for collective licensees at \$910.

The regulation of public lodging establishments is preempted to the state. Local governments can conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code. However, some local governments have been prohibiting or restricting transient resort condominiums and dwellings by ordinance.¹

Section 509.291, F.S., establishes an advisory council currently consists of 10 members. The Secretary of the DBPR appoints seven members, with the remaining three being statutory members representing the Florida Restaurant and Lodging Association, the Florida Apartment Association, and the Florida Association of Realtors.

The advisory council does not currently have a representative specifically from the resort condominium or resort dwelling industry. However, the Division reports that the council does have appointed members who work for licensees that own resort condominium properties, in addition to other types of public lodging or public food service establishments.

Proposed Changes

The bill reclassifies resort condominiums and resort dwellings as 'vacation rentals,' a new classification combining the two previous classes. 'Vacation Rental' is defined as "any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family dwelling house or dwelling unit that is also a transient public lodging establishment."

The bill provides that vacation rentals are deemed residential property and prohibits local governments from prohibiting vacation rentals or treating them differently from other residential property based on their classification, use, or occupancy. This would remove authority for local governments to ban or restrict vacation rentals.

¹ See, e.g., Kim Hackett, "Property owners fight with Venice again on rental ban," Sarasota Herald Tribune (February 8, 2011), available at <http://www.heraldtribune.com/article/20110208/ARTICLE/102081021>; Scott Wyman, "Possible Fort Lauderdale Restrictions On Short-Term Rentals Draw Opposition," Sun-Sentinel (February 24, 2011), available at http://weblogs.sun-sentinel.com/news/politics/broward/blog/2011/02/possible_fort_lauderdale_restr.html.

The bill revises the membership of the advisory council for the Division of Hotels and Restaurant by reducing the number of members appointed by the Secretary of DBPR from seven to six and adding one representative from the Florida Vacation Rental Managers Association.

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

B. SECTION DIRECTORY:

Section 1 amends s. 509.032, F.S., to provide that vacation rentals are residential property for purposes of provisions related to the treatment of such properties.

Section 2 amends s. 509.221, F.S., to conform changes by the bill related to facilities or units classified as vacation rentals.

Section 3 amends s. 509.241, F.S., to conform to changes by the bill.

Section 4 amends s. 509.242, F.S., to provide that public lodging establishments formerly classified as resort condominiums and resort dwellings are classified as vacation rentals and defines that term.

Section 5 amends s. 509.251, F.S., to conform to changes by the bill.

Section 6 amends s. 509.291, F.S., to increase the membership of an advisory council and provide for the Florida Vacation Rental Managers Association to appoint a member.

Section 7 amends ss. 381.008, F.S., to conform to changes by the bill.

Section 8 amends s. 386.203, F.S., to conform to changes to definitions by the bill.

Section 9 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public lodging establishments; amending
 3 s. 509.032, F.S.; conforming provisions to changes made by
 4 the act; providing that vacation rentals are residential
 5 property for purposes of provisions related to the
 6 treatment of such properties; amending ss. 509.221 and
 7 509.241, F.S.; conforming provisions to changes made by
 8 the act; amending s. 509.242, F.S.; providing that public
 9 lodging establishments formerly classified as resort
 10 condominiums and resort dwellings are classified as
 11 vacation rentals; defining the term "vacation rental";
 12 amending s. 509.251, F.S.; conforming provisions to
 13 changes made by the act; amending s. 509.291, F.S.;
 14 revising membership of the advisory council of the
 15 Division of Hotels and Restaurants of the Department of
 16 Business and Professional Regulation; requiring the
 17 Florida Vacation Rental Managers Association to designate
 18 a member to serve on the advisory council; amending ss.
 19 381.008 and 386.203, F.S.; conforming provisions to
 20 changes made by the act; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

- 23
 24 Section 1. Paragraph (a) of subsection (2) and subsection
 25 (7) of section 509.032, Florida Statutes, are amended to read:
 26 509.032 Duties.—
 27 (2) INSPECTION OF PREMISES.—
 28 (a) The division has responsibility and jurisdiction for

29 all inspections required by this chapter. The division has
 30 responsibility for quality assurance. Each licensed
 31 establishment shall be inspected at least biannually, except for
 32 transient and nontransient apartments, which shall be inspected
 33 at least annually, and shall be inspected at such other times as
 34 the division determines is necessary to ensure the public's
 35 health, safety, and welfare. The division shall establish a
 36 system to determine inspection frequency. Public lodging units
 37 classified as vacation rentals ~~resort condominiums or resort~~
 38 ~~dwellings~~ are not subject to this requirement, but shall be made
 39 available to the division upon request. If, during the
 40 inspection of a public lodging establishment classified for
 41 renting to transient or nontransient tenants, an inspector
 42 identifies vulnerable adults who appear to be victims of
 43 neglect, as defined in s. 415.102, or, in the case of a building
 44 that is not equipped with automatic sprinkler systems, tenants
 45 or clients who may be unable to self-preserve in an emergency,
 46 the division shall convene meetings with the following agencies
 47 as appropriate to the individual situation: the Department of
 48 Health, the Department of Elderly Affairs, the area agency on
 49 aging, the local fire marshal, the landlord and affected tenants
 50 and clients, and other relevant organizations, to develop a plan
 51 which improves the prospects for safety of affected residents
 52 and, if necessary, identifies alternative living arrangements
 53 such as facilities licensed under part II of chapter 400 or
 54 under chapter 429.

55 (7) PREEMPTION AUTHORITY.—

56 (a) The regulation of public lodging establishments and

57 public food service establishments, including, but not limited
 58 to, the inspection of public lodging establishments and public
 59 food service establishments for compliance with the sanitation
 60 standards adopted under this section, and the regulation of food
 61 safety protection standards for required training and testing of
 62 food service establishment personnel are preempted to the state.
 63 This paragraph ~~subsection~~ does not preempt the authority of a
 64 local government or local enforcement district to conduct
 65 inspections of public lodging and public food service
 66 establishments for compliance with the Florida Building Code and
 67 the Florida Fire Prevention Code, pursuant to ss. 553.80 and
 68 633.022.

69 (b) Notwithstanding any local law, ordinance, or
 70 regulation, a vacation rental, as described in s. 509.242(1)(c),
 71 is deemed residential property and may not be prohibited or
 72 treated differently than other residential property based solely
 73 on its classification, use, or occupancy.

74 Section 2. Subsection (9) of section 509.221, Florida
 75 Statutes, is amended to read:

76 509.221 Sanitary regulations.—

77 (9) Subsections (2), (5), and (6) do not apply to any
 78 facility or unit classified as a vacation rental or ~~resort~~
 79 ~~condominium~~, nontransient apartment, ~~or resort dwelling~~ as
 80 described in s. 509.242(1)(c) and, (d), ~~and~~ (g).

81 Section 3. Subsection (2) of section 509.241, Florida
 82 Statutes, is amended to read:

83 509.241 Licenses required; exceptions.—

84 (2) APPLICATION FOR LICENSE.—Each person who plans to open

85 | a public lodging establishment or a public food service
 86 | establishment shall apply for and receive a license from the
 87 | division prior to the commencement of operation. A condominium
 88 | association, as defined in s. 718.103, which does not own any
 89 | units classified as vacation rentals ~~resort condominiums~~ under
 90 | s. 509.242(1)(c) is ~~shall~~ not be required to apply for or
 91 | receive a public lodging establishment license.

92 | Section 4. Subsection (1) of section 509.242, Florida
 93 | Statutes, is amended to read:

94 | 509.242 Public lodging establishments; classifications.-

95 | (1) A public lodging establishment shall be classified as
 96 | a hotel, motel, ~~resort condominium~~, nontransient apartment,
 97 | transient apartment, roominghouse, bed and breakfast inn, or
 98 | vacation rental ~~resort dwelling~~ if the establishment satisfies
 99 | the following criteria:

100 | (a) Hotel.-A hotel is any public lodging establishment
 101 | containing sleeping room accommodations for 25 or more guests
 102 | and providing the services generally provided by a hotel and
 103 | recognized as a hotel in the community in which it is situated
 104 | or by the industry.

105 | (b) Motel.-A motel is any public lodging establishment
 106 | which offers rental units with an exit to the outside of each
 107 | rental unit, daily or weekly rates, offstreet parking for each
 108 | unit, a central office on the property with specified hours of
 109 | operation, a bathroom or connecting bathroom for each rental
 110 | unit, and at least six rental units, and which is recognized as
 111 | a motel in the community in which it is situated or by the
 112 | industry.

113 (c) Vacation rental ~~Resort condominium.~~—A vacation rental
 114 ~~resort condominium~~ is any unit or group of units in a
 115 condominium, cooperative, or timeshare plan or any individually
 116 or collectively owned single-family, two-family, or four-family
 117 house or dwelling unit that is also a transient public lodging
 118 establishment ~~which is rented more than three times in a~~
 119 ~~calendar year for periods of less than 30 days or 1 calendar~~
 120 ~~month, whichever is less, or which is advertised or held out to~~
 121 ~~the public as a place regularly rented for periods of less than~~
 122 ~~30 days or 1 calendar month, whichever is less.~~

123 (d) Nontransient apartment or roominghouse.—A nontransient
 124 apartment or roominghouse is a building or complex of buildings
 125 in which 75 percent or more of the units are available for rent
 126 to nontransient tenants.

127 (e) Transient apartment or roominghouse.—A transient
 128 apartment or roominghouse is a building or complex of buildings
 129 in which more than 25 percent of the units are advertised or
 130 held out to the public as available for transient occupancy.

131 (f) Roominghouse.—A roominghouse is any public lodging
 132 establishment that may not be classified as a hotel, motel,
 133 ~~resort condominium,~~ nontransient apartment, bed and breakfast
 134 inn, vacation rental, or transient apartment under this section.
 135 A roominghouse includes, but is not limited to, a boardinghouse.

136 ~~(g) Resort dwelling. A resort dwelling is any individually~~
 137 ~~or collectively owned one-family, two-family, three-family, or~~
 138 ~~four-family dwelling house or dwelling unit which is rented more~~
 139 ~~than three times in a calendar year for periods of less than 30~~
 140 ~~days or 1 calendar month, whichever is less, or which is~~

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141 ~~advertised or held out to the public as a place regularly rented~~
 142 ~~for periods of less than 30 days or 1 calendar month, whichever~~
 143 ~~is less.~~

144 (g) ~~(h)~~ Bed and breakfast inn.—A bed and breakfast inn is a
 145 family home structure, with no more than 15 sleeping rooms,
 146 which has been modified to serve as a transient public lodging
 147 establishment, which provides the accommodation and meal
 148 services generally offered by a bed and breakfast inn, and which
 149 is recognized as a bed and breakfast inn in the community in
 150 which it is situated or by the hospitality industry.

151 Section 5. Subsection (1) of section 509.251, Florida
 152 Statutes, is amended to read:

153 509.251 License fees.—

154 (1) The division shall adopt, by rule, a schedule of fees
 155 to be paid by each public lodging establishment as a
 156 prerequisite to issuance or renewal of a license. Such fees
 157 shall be based on the number of rental units in the
 158 establishment. The aggregate fee per establishment charged any
 159 public lodging establishment shall not exceed \$1,000; however,
 160 the fees described in paragraphs (a) and (b) may not be included
 161 as part of the aggregate fee subject to this cap. Vacation
 162 rental ~~Resort condominium~~ units within separate buildings or at
 163 separate locations but managed by one licensed agent may be
 164 combined in a single license application, and the division shall
 165 charge a license fee as if all units in the application are in a
 166 single licensed establishment. ~~Resort dwelling units may be~~
 167 ~~licensed in the same manner as condominium units.~~ The fee
 168 schedule shall require an establishment which applies for an

169 initial license to pay the full license fee if application is
 170 made during the annual renewal period or more than 6 months
 171 prior to the next such renewal period and one-half of the fee if
 172 application is made 6 months or less prior to such period. The
 173 fee schedule shall include fees collected for the purpose of
 174 funding the Hospitality Education Program, pursuant to s.
 175 509.302, which are payable in full for each application
 176 regardless of when the application is submitted.

177 (a) Upon making initial application or an application for
 178 change of ownership, the applicant shall pay to the division a
 179 fee as prescribed by rule, not to exceed \$50, in addition to any
 180 other fees required by law, which shall cover all costs
 181 associated with initiating regulation of the establishment.

182 (b) A license renewal filed with the division within 30
 183 days after the expiration date shall be accompanied by a
 184 delinquent fee as prescribed by rule, not to exceed \$50, in
 185 addition to the renewal fee and any other fees required by law.
 186 A license renewal filed with the division more than 30 but not
 187 more than 60 days after the expiration date shall be accompanied
 188 by a delinquent fee as prescribed by rule, not to exceed \$100,
 189 in addition to the renewal fee and any other fees required by
 190 law.

191 Section 6. Subsection (1) of section 509.291, Florida
 192 Statutes, is amended to read:

193 509.291 Advisory council.—

194 (1) There is created a 10-member advisory council.

195 (a) The Secretary of Business and Professional Regulation
 196 shall appoint six ~~seven~~ voting members to the advisory council.

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197 Each member appointed by the secretary must be an operator of an
 198 establishment licensed under this chapter and shall represent
 199 the industries regulated by the division, except that one member
 200 appointed by the secretary must be a layperson representing the
 201 general public and one member must be a hospitality education
 202 administrator from an institution of higher education of this
 203 state. Such members of the council shall serve staggered terms
 204 of 4 years.

205 (b) The Florida Restaurant and Lodging Association shall
 206 designate one representative to serve as a voting member of the
 207 council. The Florida Vacation Rental Managers Association shall
 208 designate one representative to serve as a voting member of the
 209 council. The Florida Apartment Association and the Florida
 210 Association of Realtors shall each designate one representative
 211 to serve as a voting member of the council.

212 (c) Any member who fails to attend three consecutive
 213 council meetings without good cause may be removed from the
 214 council by the secretary.

215 Section 7. Paragraph (c) of subsection (8) of section
 216 381.008, Florida Statutes, is amended to read:

217 381.008 Definitions of terms used in ss. 381.008-
 218 381.00897.—As used in ss. 381.008-381.00897, the following words
 219 and phrases mean:

220 (8) "Residential migrant housing"—A building, structure,
 221 mobile home, barracks, or dormitory, and any combination thereof
 222 on adjacent property which is under the same ownership,
 223 management, or control, and the land appertaining thereto, that
 224 is rented or reserved for occupancy by five or more seasonal or

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225 migrant farmworkers, except:

226 (c) A hotel, or motel, ~~or resort condominium~~, as described
 227 ~~defined~~ in chapter 509, that is furnished for transient
 228 occupancy.

229 Section 8. Subsection (4) of section 386.203, Florida
 230 Statutes, is amended to read:

231 386.203 Definitions.—As used in this part:

232 (4) "Designated smoking guest rooms at public lodging
 233 establishments" means the sleeping rooms and directly associated
 234 private areas, such as bathrooms, living rooms, and kitchen
 235 areas, if any, rented to guests for their exclusive transient
 236 occupancy in public lodging establishments, including hotels,
 237 motels, vacation rentals ~~resort condominiums~~, transient
 238 apartments, transient lodging establishments, rooming houses,
 239 boarding houses, ~~resort dwellings~~, bed and breakfast inns, and
 240 the like; and designated by the person or persons having
 241 management authority over such public lodging establishment as
 242 rooms in which smoking may be permitted.

243 Section 9. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 883 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
2 Appropriations Subcommittee
3 Representative(s) Horner offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 55-73 and insert:

7 (7) PREEMPTION AUTHORITY.—

8 (a) The regulation of public lodging establishments and
9 public food service establishments, including, but not limited
10 to, ~~the inspection of public lodging establishments and public~~
11 ~~food service establishments for compliance with the sanitation~~
12 ~~standards, inspections, adopted under this section, and the~~
13 ~~regulation of food safety protection standards for required~~
14 ~~training, and testing of food service establishment personnel,~~
15 and matters related to the nutritional content and marketing of
16 foods offered in such establishments, are preempted to the
17 state. This paragraph subsection does not preempt the authority
18 of a local government or local enforcement district to conduct
19 inspections of public lodging and public food service

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 883 (2011)

Amendment No. 1

20 establishments for compliance with the Florida Building Code and
21 the Florida Fire Prevention Code, pursuant to ss. 553.80 and
22 633.022.

23 (b) Notwithstanding any local law, ordinance, or
24 regulation, a vacation rental, as described in s. 509.242(1)(c),
25 is deemed residential property and may not be prohibited or
26 treated differently than other residential property based solely
27 on its classification, use, or occupancy.

28 Section 2. Paragraph (b) of subsection (1) of section
29 509.261, Florida Statutes, is amended to read:

30 509.261 Revocation or suspension of licenses; fines;
31 procedure.-

32 (1) Any public lodging establishment or public food
33 service establishment that has operated or is operating in
34 violation of this chapter or the rules of the division,
35 operating without a license, or operating with a suspended or
36 revoked license may be subject by the division to:

37 (b) Mandatory completion attendance, at personal expense,
38 of a remedial at-an educational program administered sponsored
39 by a food safety training program provider whose program has
40 been approved by the division, as provided in s.509.049 the
41 Hospitality Education Program; and

42

43

44

45

46

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

Remove line 13 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT



Bill No. CS/HB 883 (2011)

Amendment No. 1

47 changes made by the act; amending s. 509.261, F.S.; revising
48 requirements; amending s. 509.291, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee		Dykes 	Topp 

SUMMARY ANALYSIS

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

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

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

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

This bill takes effect on July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

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

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

Effect of Proposed Changes

The bill changes the composition of the Commission to consist of a chair and two part-time members, which will result in operating cost savings for the Commission due to the corresponding reduction in the Salaries & Benefits appropriation category of \$125,534 in general revenue funding. The salaries of the Commission members are fixed by law¹ and are set forth in the General Appropriations Act.

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

B. SECTION DIRECTORY:

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

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

¹ Section 447.205(2), F.S.
STORAGE NAME: pcb06.GOAS.DOCX
DATE: 3/18/2011

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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

The salaries of the Commission members are fixed by law² and are set forth in the General Appropriations Act. Changing the two full time Commission members to part-time status will result in operating cost savings for the Commission due to corresponding reductions in the Salaries & Benefits appropriation category.

Salaries & Benefits Appropriation Category

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

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

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

² Section 447.205(2), F.S.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

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

17 447.205 Public Employees Relations Commission.—

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GOAS 11-07 Department of Management Services

SPONSOR(S): Government Operations Appropriations Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee		<i>B/Dykes</i>	Topp <i>BDT</i>

SUMMARY ANALYSIS

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

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

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

This bill takes effect on July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Bill:

Florida State Employees' Charitable Campaign

Background:

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

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

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

Effect of Bill:

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

Electronic Procurement System Transaction Fees Collected by the Department

Background:

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

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

¹ Department of Management Services' analysis is on file with the Government Operations Appropriations Subcommittee.
STORAGE NAME: pcb07.GOAS.DOCX
DATE: 3/18/2011

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

Effect of Bill:

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

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

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

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

Executive Aircraft Pool

Background:

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

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

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

Effect of Bill:

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

B. SECTION DIRECTORY:

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

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

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

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments" section.

2. Expenditures:

Executive Aircraft Pool

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

See "Fiscal Comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Florida State Employees' Charitable Campaign

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

Electronic Procurement System Transaction Fees Collected by the Department

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

PCB GOAS 11-07

ORIGINAL

2011

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

27
28 Be It Enacted by the Legislature of the State of Florida:

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

V

29
 30 Section 1. Paragraph (b) of subsection (2) of section
 31 110.181, Florida Statutes, is amended to read:
 32 110.181 Florida State Employees' Charitable Campaign.—
 33 (2) SELECTION OF FISCAL AGENTS; COST.—
 34 (b) The fiscal agent shall withhold the reasonable costs
 35 for conducting the campaign and for accounting and distribution
 36 to the participating organizations and shall reimburse the
 37 department the actual cost, ~~not to exceed 1 percent of gross~~
 38 ~~pledges,~~ for coordinating the campaign in accordance with the
 39 rules of the department. In any fiscal year in which the
 40 Legislature specifically appropriates to the department its
 41 total costs for coordinating the campaign from the General
 42 Revenue Fund, the fiscal agent is not required to reimburse such
 43 costs to the department under this subsection. Otherwise,
 44 reimbursement will be the difference between actual costs and
 45 the amount appropriated.

46 Section 2. Paragraph (h) of subsection (1) of section
 47 287.042, Florida Statutes, is amended to read:
 48 287.042 Powers, duties, and functions.—The department
 49 shall have the following powers, duties, and functions:
 50 (1)
 51 (h)1. The department may collect fees for the use of its
 52 electronic information services. The fees may be imposed on an
 53 individual transaction basis or as a fixed subscription for a
 54 designated period of time. At a minimum, the fees shall be
 55 determined in an amount sufficient to cover the department's
 56 projected costs of the services, including overhead in

57 | accordance with the policies of the Department of Management
 58 | Services for computing its administrative assessment. All fees
 59 | collected under this paragraph shall be deposited in the
 60 | Operating Trust Fund for disbursement as provided by law.

61 | 2. The department shall transfer funds generated by fees
 62 | collected for the use of the department's electronic information
 63 | services from the Purchasing Oversight Account in the Operating
 64 | Trust Fund to the Administrative Trust Fund in the Department of
 65 | Financial Services to support statewide purchasing operations.
 66 | The amount of transfer shall be established each year in the
 67 | department's nonoperating budget based upon the estimated cost
 68 | of statewide purchasing operations provided by the Department of
 69 | Financial Services and may not exceed \$1 million.

70 | 3. The department shall calculate by June 5 each year the
 71 | amount of fees collected pursuant to subparagraph 1. remaining
 72 | in the Operating Trust Fund after satisfaction of all
 73 | obligations and encumbrances to cover the costs of providing
 74 | services pursuant to subparagraph 1. and shall transfer the
 75 | excess revenue to the General Revenue Fund before June 30 of
 76 | each year. The cash balance in the Operating Trust Fund on June
 77 | 30 of each year may not exceed \$1.25 million.

78 | Section 3. Paragraph (c) of subsection (22) of section
 79 | 287.057, Florida Statutes, is amended to read:

80 | 287.057 Procurement of commodities or contractual
 81 | services.—

82 | (22) The department, in consultation with the Agency for
 83 | Enterprise Information Technology and the Comptroller, shall
 84 | develop a program for online procurement of commodities and

85 contractual services. To enable the state to promote open
 86 competition and to leverage its buying power, agencies shall
 87 participate in the online procurement program, and eligible
 88 users may participate in the program. Only vendors prequalified
 89 as meeting mandatory requirements and qualifications criteria
 90 may participate in online procurement.

91 (c) The department may impose and shall collect all fees
 92 for the use of the online procurement systems.

93 1. The fees may be imposed on an individual transaction
 94 basis or as a fixed percentage of the cost savings generated. At
 95 a minimum, the fees must be set in an amount sufficient to cover
 96 the projected costs of the services, including administrative
 97 and project service costs in accordance with the policies of the
 98 department.

99 2. If the department contracts with a provider for online
 100 procurement, the department, pursuant to appropriation, shall
 101 compensate the provider from the fees after the department has
 102 satisfied all ongoing costs. The provider shall report
 103 transaction data to the department each month so that the
 104 department may determine the amount due and payable to the
 105 department from each vendor.

106 3. All fees that are due and payable to the state on a
 107 transactional basis or as a fixed percentage of the cost savings
 108 generated are subject to s. 215.31 and must be remitted within
 109 40 days after receipt of payment for which the fees are due. For
 110 fees that are not remitted within 40 days, the vendor shall pay
 111 interest at the rate established under s. 55.03(1) on the unpaid
 112 balance from the expiration of the 40-day period until the fees

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113 are remitted.

114 4. All fees and surcharges collected under this paragraph
115 shall be deposited in the Operating Trust Fund for disbursement
116 as provided by law.

117 5. The department shall transfer funds generated by fees
118 collected for the use of the department's online procurement
119 systems from the Purchasing Oversight Account in the Operating
120 Trust Fund to the Administrative Trust Fund in the Department of
121 Financial Services to support statewide purchasing operations.
122 The amount of transfer shall be established each year in the
123 department's nonoperating budget based upon the estimated cost
124 of statewide purchasing operations provided by the Department of
125 Financial Services and may not exceed \$1 million.

126 6. The department shall calculate by June 5 each year the
127 amount of fees collected pursuant to subparagraph 1. remaining
128 in the Operating Trust Fund after satisfaction of all
129 obligations and encumbrances to cover the costs of providing
130 services pursuant to subparagraph 1. and shall transfer the
131 excess revenue to the General Revenue Fund before June 30 of
132 each year. The cash balance in the Operating Trust Fund on June
133 30 of each year may not exceed \$1.25 million.

134 Section 4. Subsection (10) of section 287.16, Florida
135 Statutes, is amended, and subsections (11) and (12) of that
136 section are renumbered as subsections (10) and (11),
137 respectively, to read:

138 287.16 Powers and duties of department.—The Department of
139 Management Services shall have the following powers, duties, and
140 responsibilities:

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141 ~~(10) To provide the Legislature annual reports at the end~~
 142 ~~of each calendar year concerning the utilization of all aircraft~~
 143 ~~in the executive pool.~~

144 Section 5. Section 287.161, Florida Statutes, is repealed.

145 Section 6. (1) The Bureau of Aircraft Trust Fund within
 146 the Department of Management Services, FLAIR number 72-2-066, is
 147 terminated on November 1, 2011.

148 (2) All current balances remaining in, and all revenues
 149 of, the Bureau of Aircraft Trust Fund on the date of termination
 150 shall be transferred to the General Revenue Fund.

151 (3) The Department of Management Services shall pay any
 152 outstanding debts and obligations of the terminated fund as soon
 153 as practicable, and the Chief Financial Officer shall close out
 154 and remove the terminated fund from various state accounting
 155 systems using generally accepted accounting principles
 156 concerning warrants outstanding, assets, and liabilities.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GOAS 11-08 Department of Financial Services
SPONSOR(S): Government Operations Appropriations Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee		Fox <i>MA</i>	Topp <i>BDT</i>

SUMMARY ANALYSIS

The Department of Financial Services (DFS) manages and oversees several major functions of state government, including the Treasury, State Fire Marshall, Insurance Fraud, State Accounting and Auditing, Workers' Compensation, Risk Management and Funeral, Cemetery and Consumer Services. This bill amends the statutes related to Risk Management and Workers' Compensation to achieve efficiencies and cost savings measures linked to the proposed House of Representatives' General Appropriations Act for Fiscal Year 2011-2012. The bill also revises language related to consumer services. Specifically, the bill includes the following provisions:

Amends s. 20.121, F.S., to codify the transfer of responsibilities related to consumer complaints from the Department of Financial Services to the Office of Financial Regulation.

Amends s. 284.50, F.S., by requiring the Department of Financial Services and all state agencies and state universities with more than 3,500 employees who are provided insurance coverage from the Division of Risk Management (Division) to establish and maintain a return-to-work program for injured state workers. Presently, each agency and state university with more than 3,500 employees, with the exception of Florida International University (FIU), has some form of a return-to-work program. However, DFS indicates that FIU will begin implementation of a return-to-work program in April, 2011.

The Fiscal Year 2010-2011 General Appropriations Act included a nonrecurring appropriation of \$17.1 million (section 112) to address the deficit in the Risk Management Trust Fund for Fiscal Year 2009-2010. In addition, the Fiscal Year 2010-2011 General Appropriations Act included a recurring \$39.1 million appropriation (Specific Appropriation 2180) to cover the Fiscal Year 2010-2011 estimated short-fall. The deficits for the previous and the current fiscal years are primarily attributable to the rising costs of workers' compensation. This bill implements a statewide return-to-work program with the goal of reducing the state's workers' compensation expenditures. The DFS has estimated the savings from the implementation of a return-to-work program to be approximately \$1.0 million annually to the Risk Management Trust Fund. The bill amends s. 440.50, F.S., to require that funds that are transferred from the Workers' Compensation Administration Trust Fund (WCATF) to other agencies (that by statute are to be funded from the WCATF) that remain unencumbered as of June 30 or undisbursed as of September 30 each year, shall revert back to the Workers' Compensation Administration Trust Fund. This change in statute is necessary to insure that sufficient cash balance will be available in the WCATF to fund the various appropriations made by the Legislature in support of the administration of the workers' compensation provisions in law and to avoid increases in the assessment on workers' compensation premiums as provided for in s. 440.51(1), F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Office of Financial Regulation/Consumer Services: Presently, the Department of Financial Services provides for consumer assistance and complaint processing for functions and programs regulated by the department as well as providing the same functions for the Office of Insurance Regulation. The Office of Financial Regulation currently handles all functions related to consumer assistance and complaint intake for the programs and regulatory functions it has oversight thereof. However, ch. 20, F.S. indicates that the Department of Financial Services will be responsible for consumer assistance for “offices” (Office of Insurance Regulation and Office of Financial Regulation) of the Financial Services Commission.

Division of Risk Management: The State of Florida through the Division of Risk Management provides insurance coverage to 48 state agencies and state universities. Specifically, the Division of Risk Management provides insurance coverage in the areas of workers’ compensation, general liability, federal civil rights, automobile liability, and property insurance. The Division is funded with premiums paid by each agency and state university based on their respective loss history. The premiums are deposited in to the State Risk Management Trust Fund.

The Division’s mission is three-fold: 1) provide agencies and state universities with cost-effective insurance coverage either through the state’s self insurance program or purchasing commercial insurance; 2) to administer claims; and 3) to provide loss prevention program assistance and training.

Within the organizational structure of the Division of Risk Management is the Bureau of Loss Prevention, which provides professional safety training, quality evaluation tools along with other loss prevention and cost control programs for the agencies and state universities. Section 216.251(2)(b)(2), F.S., authorizes agencies and state universities to maintain return-to-work programs. However, the statute does not require them to do so.

Currently, state agency participants in the state’s self insurance program have no responsibility to engage in loss prevention activities, including return-to-work programs. Additionally, there is no accountability or evaluation of such programs. While lost time workers’ compensation claims account for only 10% of the state’s self insurance program, those claims account for 80% of workers’ compensation claims cost. Current law provides agencies no incentive to reduce claims cost or return injured workers to work.¹ The primary goal of a return-to-work program is to enable injured workers to remain at work or return to work to perform job duties within the physical and mental functional limitations and restrictions established by the treating physician.

In recent years, the Division has seen a rapid increase in the cost of workers’ compensation. In Fiscal Year 2004-2005, the workers’ compensation expenditures to the State Risk Management Trust Fund were \$91.3 million.² In Fiscal Year 2009-2010, the workers’ compensation expenditures totaled \$131.6 million – a 44% increase in five years.³

¹ Department of Financial Services - Division of Risk Management Bill Analysis and Fiscal Impact Statement dated March 8, 2010 on file with the Government Operations Appropriation Subcommittee.

² Department of Financial Services Risk Management – Non-operating Budget FY 2005-2009, on file with the Government Operations Appropriations Subcommittee.

³ Risk Management Trust Fund Revenue Estimating Conference data, dated March 1, 2011.

The DFS reports that other states such as Texas and Georgia have actively required all state agencies to maintain return-to-work programs. In fact, Georgia mandates that an agency loses the position of an injured worker, if they do not provide alternative or modified duties for injured workers to return to work.⁴

Workers' Compensation Administration Trust Fund: The Workers' Compensation Administration Trust Fund (WCATF) within Department of Financial Services has the purpose of providing for the payment of expenses in respect to the administration of the workers' compensation program in the state.⁵ Additionally, each fiscal year, funds are appropriated from the Workers' Compensation Administration Trust Fund to be transferred to other agencies to support related programs. Specifically, funds from the WCATF are transferred annually to the following agencies: Department of Education, Agency for Health Care Administration, Department of Business and Professional Regulation, Department of Management Services/Division of Administrative Hearings, First District Court of Appeal, and Justice Administration Commission (for use by the State Attorney in the 11th Judicial Circuit for the prosecution of workers' compensation fraud).

The major revenue source (other than fines imposed by the Division of Workers' Compensation) for the WCATF are assessments on workers' compensation insurance premiums as provided for in s. 440.51(1), F.S. Each year, by July 1st the department is required to notify insurance carriers and self-insurers of the assessment rate necessary for the enforcement of ch. 440, F.S. The assessment rate is effective the following January 1st.

Presently, at the conclusion of each fiscal year there is no statutory requirement or mechanism by which the agencies to which WCATF cash has been transferred and which remains unobligated and unspent must be returned to the WCATF. At the conclusion of Fiscal Year 2008-2009, an estimated \$2.5 million in WCATF cash remained unobligated and unspent in the agencies to which it had been transferred.

In recent years, the cash balance of the WCATF has declined considerably, with expenditures exceeding revenues. In Fiscal Year 2008-2009, expenditures exceeded revenues by \$41.1 million. In Fiscal Year 2009-2010, revenues fell short of expenditures by \$35.6 million. The forecast for Fiscal Year 2010-2011, indicates yet another year where expenditures will exceed revenues by \$51.1 million.⁶ With the decline in revenues and the need to fund the programs that had been appropriated, the Chief Financial Officer on June 26, 2009, ordered an increase in the assessment on worker's compensation insurers and self-insurers premiums from one-quarter of one percent (0.25) to eight-tenths of one percent (0.80%) to insure that sufficient cash would be available to fund the appropriations set by the Legislature in the Fiscal Year 2009-2010 General Appropriations Act.⁷ Due to the continuing decline in the trust fund balance, effective January 1, 2011, the assessment rate for the Workers' Compensation Administration Trust Fund was increased to ninety-eight hundredths of one percent (.98%) based on an order signed by the Chief Financial Officer June 17, 2010.⁸

Effects of Proposed Changes

Office of Financial Regulation / Consumer Assistance: The bill amends s. 20.121, F.S., to update the statute to reflect that the Department of Financial Services will provide consumer assistance and compliant intake for programs and regulatory functions for which the department has oversight as well as for programs and functions under the Office of Insurance Regulation. The Office of Financial Regulation will continue to handle consumer assistance and compliant intake for programs and functions for which it has oversight responsibilities. The proposed House of Representatives General Appropriations Act for Fiscal Year 2011-2012, reflects appropriations for positions and budget in accordance with the proposed changes to s. 20.121, F.S.

⁴ Division of Risk Management Presentation to the House Government Appropriations Subcommittee, dated February 10, 2010.

⁵ Section 440.50, F.S.

⁶ Department of Financial Services, Updated Schedule I of the Workers' Compensation Administration Trust Fund - submitted January 24, 2011.

⁷ Department of Financial Services, Assessment Rate Order for Worker's Compensation Administration Trust Fund, June 26, 2009 (Case No. 105011-09-WC).

⁸ Department of Financial Services, Assessment Rate Order for Workers' Compensation Administration Trust Fund, June 17, 2010

Division of Risk Management: The bill amends s. 284.50, F.S., by requiring the Department of Financial Services and all state agencies and state universities with 3,500 or more employees who are provided insurance coverage from the Division to establish and maintain a return-to-work program for injured state workers. Presently, each of the impacted agencies and state universities, with the exception of FIU, has some form of a return-to-work program. However, DFS indicates that FIU will begin implementation of a return-to-work program in April, 2011.⁹ The impacted agencies and state universities include: Department of Corrections, University of Florida, Department of Health, Department of Children and Families, Florida State University, Agency for Workforce Innovation, University of South Florida, Department of Transportation, University of Central Florida, State Attorneys, Florida International University, Department of Revenue, Florida Atlantic University, Department of Juvenile Justice, Department of Highway Safety and Motor Vehicles, Department of Environmental Protection, State Court Systems, Agency for Persons with Disabilities, and Department of Agriculture and Consumer Services.

The return-to-work program will have the primary goal of enabling injured state workers to remain at work or return to work to perform job duties within the physical and mental functional limitations and restrictions established by the treating physician.

The bill also provides that the Division will evaluate each agency's return-to-work and loss prevention program at least once every 5 years. The Division's evaluation report on any recommended corrective action of an agency's return-to-work or loss prevention program will be submitted to the agency head, the Chief Financial Officer, and the Director of the Division of Risk Management. The affected agency head must provide a response to the Division within 45 days with a plan to implement corrective action. If the agency disagrees with the Division's final report recommendations or fails to take corrective action, the Division's final report recommendations will be submitted to the chairs of the legislative appropriations committees.

The bill amends s. 284.42, F.S., to clarify that the Division's annual report will be due each year (based on the prior fiscal year) on or before January 1st to the Governor, President of the Senate, and Speaker of the House of Representatives. Additionally, the annual report must include, beginning January 1, 2013, an analysis of return-to-work efforts by agency. The return-to-work analysis must include specific benchmarks to indicate the measurable outcomes and change from year to year by agency of return-to-work efforts.

The bill also amends ss. 284.01 and 284.36, F.S., to include that agency Risk Management premiums will be calculated and charged based on loss prevention results as well as actual losses as they currently are calculated and charged.

The DFS indicates that the benefits of a return-to-work program will have a positive impact by reducing costs and returning injured state workers to the workplace faster and keeping them at work. Further, the DFS estimates that there will be an indirect cost savings to the agencies by having increased productivity from reducing the loss of workers over an extended period of time along with producing lower rehiring and training costs.¹⁰

The Fiscal Year 2010-2011 General Appropriations Act, included a nonrecurring appropriation of \$17.1 million (section 112) to address the projected deficit in the Risk Management Trust Fund for Fiscal Year 2009-2010. In addition, the GAA included a recurring \$39.1 million appropriation (Specific Appropriation 2180) to cover the Fiscal Year 2010-2011 estimated short-fall. The projected deficits for

⁹ Correspondence with R.J. Castellanos, Director of Division of Risk Management, dated March 14, 2011, on file with the House Government Operations Appropriations Subcommittee.

¹⁰ Division of Risk Management Presentation to the House Government Operations Appropriations Subcommittee dated Feb.10, 2010.

the previous and the current fiscal years are primarily attributable to the rising costs of workers' compensation. This bill implements a statewide return-to-work program with the goal of reducing the state's workers' compensation expenditures.¹¹ The DFS estimates the savings from the implementation of a return-to-work program to be approximately \$1.0 million annually.¹²

The Legislature appropriated three positions and \$298,478, in the Fiscal Year 2010-2011 General Appropriations Act, to begin implementation of a state return-to-work program. However, without specific authority to require agencies to proactively engage in return-to-work activities the potential cost savings are not likely to be realized. The return-to-work program conforms to the proposed House General Appropriations Act by providing the Risk Management Program with additional authority to implement a statewide return-to-work program in all agencies and universities with 3,500 or more employees with the potential to reduce costs thereby achieve cost savings to the Risk Management Trust Fund.

Workers' Compensation Administration Trust Fund: The bill amends s. 440.50, F.S., to require that funds transferred from the WCATF to the various agencies (that by statute are to be funded from the WCATF) that remain unencumbered as of June 30 or undisbursed as of September 30 each year, shall revert to the Workers' Compensation Administration Trust Fund.

The language in this section of the bill conforms to the House Proposed General Appropriations Act for Fiscal Year 2011-2012, by insuring that a potentially larger trust fund balance will be considered by the Chief Financial Officer when determining the rate of assessment on insurance carriers to support the appropriations made by the Legislature for administration of the workers' compensation laws as provided for in section 440.51(1), F.S.

B. SECTION DIRECTORY:

Section 1 Amends s. 20.121, F.S., to codify the transfer of responsibilities related to consumer complaints for the Office of Financial Regulation from the Department of Financial Services to the Office of Financial Regulation.

Section 2 Amends s. 284.01, F.S., to provide that the Division of Risk Management shall include loss prevention results in premium charges.

Section 3 Amends s. 284.36, F.S., to provide that the Division of Risk Management will include loss prevention results in computing premium charges for all agencies.

Section 4 Amends s. 284.42, F.S., to provide that the annual Risk Management Report is due on or before January 1 of each year. In addition, beginning January 1, 2013, the annual report shall include an analysis of return-to-work efforts by agency.

Section 5 Amends s. 284.50, F.S., to provide that the Department of Financial Services and all agencies employing more than 3,500 employees must have a return-to-work program for employees receiving workers' compensation benefits.

Section 6 Amends s. 440.50, F.S., to provide that funds appropriated from the Workers' Compensation Administration Trust Fund by operating or nonoperating transfer to other agencies that remain unencumbered on June 30 or undisbursed on September 30 shall revert to the Workers' Compensation Administration Trust Fund.

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

¹¹ Division of Risk Management Presentation to the House Government Operations Appropriations Subcommittee dated Feb. 8, 2011.

¹² Correspondence with R.J. Castellanos, Director of Division of Risk Management, dated March 15, 2011, on file with the House Government Operations Appropriations Subcommittee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See fiscal comments.
2. Expenditures:
See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 6 requires agencies that receive funding from the Workers' Compensation Administration Trust Fund to return the cash, if remaining unobligated and unspent at the end of the fiscal year. With increased cash flow (with the reverted cash being returned) in the WCATF, the Chief Financial Officer may be able to set lower assessment rates on insurance carriers as provided for in s. 440.51(1), F.S. for the administration of the state's workers' compensation provisions contained in ch. 440, F.S.

D. FISCAL COMMENTS:

The bill will likely have a positive fiscal impact on state government and the Department of Financial Services, more specifically:

The bill will likely achieve cost savings in the Risk Management Trust Fund with the implementation of a return-to-work program. In recent years the state has seen a dramatic increase in workers' compensation costs within the state's Risk Management Program. The Legislature appropriated in the Fiscal Year 2010-2011 General Appropriations Act a total of \$56.1 million for projected deficits (\$17.1 million for Fiscal Year 2009-2010 and \$39.1 million for Fiscal Year 2010-2011) in the Risk Management Trust Fund primarily due to the rise in workers' compensation costs. The DFS has estimated that a return-to-work program could potentially save \$1.0 million annually.¹³

Section 6 of the bill requires that agencies that receive cash transfers from the Workers' Compensation Administration Trust Fund to fund related workers' compensation activities must return unobligated and unspent cash at the conclusion of each fiscal year. This provision may allow the Chief Financial Officer to take into consider a potentially larger trust fund balance when determining the rate assessment on insurance carriers to support the appropriations made by the Legislature for administration of the workers' compensation laws.

¹³ Correspondence with R.J. Castellanos, Director of Division of Risk Management, dated March 15, 2011, on file with the House Government Operations Appropriations Subcommittee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The primary contents of this bill (return-to-work) were included in House Bill 5603, which was passed by the Legislature during the 2010 Session. However, House Bill 5603 was amended during the Budget Conference to include language limiting the amount that may be charged for repackaged drugs provided to workers' compensation claimants. Governor Crist vetoed House Bill 5603. In his veto message the governor stated that while he supported the provisions in the bill, "that would help control the state's risk management and workers' compensation costs," he did not support the drug repackaging provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the Department of Financial Services;
 3 amending s. 20.121, F.S.; revising duties of the Division
 4 of Consumer Services; amending ss. 284.01 and 284.36,
 5 F.S.; revising criteria for premiums charged to agencies
 6 and departments for purposes of the State Risk Management
 7 Trust Fund; amending s. 284.42, F.S.; revising reporting
 8 requirements on the state insurance program; requiring the
 9 Division of Risk Management to analyze and report on
 10 certain agency return-to-work programs and activities;
 11 amending s. 284.50, F.S.; requiring certain agencies to
 12 establish and maintain return-to-work programs for certain
 13 employees; providing program goals; requiring the Division
 14 of Risk Management to evaluate agency risk management
 15 programs; requiring reports; requiring agencies to respond
 16 to the division's evaluation and recommendations;
 17 requiring the division to submit a report of an evaluation
 18 to the appropriations committees of the Legislature under
 19 certain circumstances; amending s. 440.50, F.S.; providing
 20 for reversion of certain unencumbered and undisbursed
 21 funds to the Workers' Compensation Administration Trust
 22 Fund; providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Paragraph (h) of subsection (2) of section
 27 20.121, Florida Statutes, is amended to read:
 28 20.121 Department of Financial Services.—There is created

29 a Department of Financial Services.

30 (2) DIVISIONS.—The Department of Financial Services shall
 31 consist of the following divisions:

32 (h) The Division of Consumer Services.

33 1. The Division of Consumer Services shall perform the
 34 following functions concerning products or services regulated by
 35 the department ~~of Financial Services~~ or by either ~~office~~ of the
 36 Office of Insurance Regulation ~~Financial Services Commission~~:

37 a. Receive inquiries and complaints from consumers.

38 b. Prepare and disseminate such information as the
 39 department deems appropriate to inform or assist consumers.

40 c. Provide direct assistance and advocacy for consumers
 41 who request such assistance or advocacy.

42 d. With respect to apparent or potential violations of law
 43 or applicable rules by a person or entity licensed by the
 44 department or office ~~by either office of the commission~~, report
 45 ~~such~~ apparent or potential violations ~~violation~~ to the office or
 46 the appropriate division of the department ~~or office of the~~
 47 ~~commission~~, which may take such further action as it deems
 48 appropriate.

49 e. Designate an employee of the division as primary
 50 contact for consumers on issues relating to sinkholes.

51 2. Any person licensed or issued a certificate of
 52 authority by the department or by the Office of Insurance
 53 Regulation shall respond, in writing, to the Division of
 54 Consumer Services within 20 days after receipt of a written
 55 request for information from the division concerning a consumer
 56 complaint. The response must address the issues and allegations

57 raised in the ~~this~~ complaint. The division may, ~~in its~~
 58 ~~discretion,~~ impose an administrative penalty for failure to
 59 comply with this subparagraph of ~~in an amount~~ up to \$2,500 per
 60 violation upon any entity licensed by the department or the
 61 office ~~of Insurance Regulation~~ and \$250 for the first violation,
 62 \$500 for the second violation, and up to \$1,000 per violation
 63 thereafter upon any individual licensed by the department or the
 64 office ~~of Insurance Regulation~~.

65 3. The department may adopt rules to implement the
 66 provisions of this paragraph.

67 4. The powers, duties, and responsibilities expressed or
 68 granted in this paragraph do ~~shall~~ not limit the powers, duties,
 69 and responsibilities of the department ~~of Financial Services,~~
 70 the Financial Services Commission, the Office of Insurance
 71 Regulation, or the Office of Financial Regulation set forth
 72 elsewhere in the Florida Statutes.

73 Section 2. Subsection (5) of section 284.01, Florida
 74 Statutes, is amended to read:

75 284.01 State Risk Management Trust Fund; coverages to be
 76 provided.—

77 (5) Premiums charged to agencies for coverage shall be
 78 adopted ~~promulgated~~ on a retrospective rating arrangement based
 79 upon actual losses accruing to the fund and loss prevention
 80 results, taking into account reasonable expectations,
 81 maintenance, and stability of the fund and cost of reinsurance.

82 Section 3. Section 284.36, Florida Statutes, is amended to
 83 read:

84 284.36 Appropriation deposits; premium payment.—Premiums
 85 for coverage by the State Risk Management Trust Fund as
 86 calculated on all coverages shall be billed and charged to each
 87 state agency according to coverages obtained by the fund for
 88 their benefit, and such obligations shall be paid promptly by
 89 each agency from its operating budget upon presentation of a
 90 bill therefor. After the first year of operation, premiums to be
 91 charged to all departments of the state are to be computed on a
 92 retrospective rating arrangement based upon actual losses
 93 accruing to the fund and loss prevention results, taking into
 94 account reasonable expectations, the maintenance and stability
 95 of the fund, and the cost of insurance.

96 Section 4. Subsection (1) of section 284.42, Florida
 97 Statutes, is amended to read:

98 284.42 Reports on state insurance program.—

99 (1) (a) The Department of Financial Services, with the
 100 Department of Management Services, shall conduct ~~make~~ an
 101 analysis of the state insurance program each year and, on or
 102 before January 1, submit a report containing the results of the
 103 analysis to the Governor, the President of the Senate, and the
 104 Speaker of the House of Representatives annually, which shall
 105 include:

106 1.-(a) Complete underwriting information as to the nature
 107 of the risks accepted for self-insurance and those risks that
 108 are transferred to the insurance market.

109 2.-(b) The funds allocated to the Florida Casualty Risk
 110 Management Trust Fund and premiums paid for insurance through
 111 the market.

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112 3.~~(e)~~ The method of handling legal matters and the cost
 113 allocated.

114 4.~~(d)~~ The method and cost of handling inspection and
 115 engineering of risks.

116 5.~~(e)~~ The cost of risk management service purchased.

117 6.~~(f)~~ The cost of managing the State Insurance Program by
 118 the Department of Financial Services and the Department of
 119 Management Services.

120 (b) Beginning January 1, 2013, the Division of Risk
 121 Management must include in its annual report an analysis of
 122 agency return-to-work efforts, including, but not limited to,
 123 agency return-to-work program performance metrics and a status
 124 report on participating return-to-work programs. The report must
 125 specify benchmarks, including, but not limited to, the average
 126 lost-time claims per year for each agency; the total number of
 127 lost claims; and specific agency measurable outcomes indicating
 128 the change in performance from year to year.

129 Section 5. Subsections (3) and (4) are added to section
 130 284.50, Florida Statutes, to read:

131 284.50 Loss prevention program; safety coordinators;
 132 Interagency Advisory Council on Loss Prevention; employee
 133 recognition program.—

134 (3) The Department of Financial Services and all agencies
 135 that employ more than 3,500 full-time employees and are provided
 136 workers' compensation insurance coverage by the State Risk
 137 Management Trust Fund shall establish and maintain return-to-
 138 work programs for employees who are receiving workers'
 139 compensation benefits. The primary goal of such programs is to

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140 enable injured workers to remain at work or return to work to
 141 perform job duties within the physical or mental functional
 142 limitations and restrictions established by the workers'
 143 treating physicians. If limitations or restrictions are not
 144 established in writing by a worker's treating physician, the
 145 worker is deemed fully able to perform the same work duties he
 146 or she performed before the injury.

147 (4) The Division of Risk Management must evaluate each
 148 agency's risk management programs, including, but not limited
 149 to, return-to-work, safety, and loss prevention programs, at
 150 least once every 5 years. A report, including, but not limited
 151 to, any recommended corrective action, that results from an
 152 evaluation must be provided to the head of the agency being
 153 evaluated, the Chief Financial Officer, and the Director of the
 154 Division of Risk Management. The agency head must provide to the
 155 Division of Risk Management a response to all recommendations in
 156 the report within 45 days after receipt of the report and a plan
 157 for implementing any corrective action the agency intends to
 158 take in response to the report. If the agency disagrees with any
 159 final recommendations in the report, including, but not limited
 160 to, any recommended corrective action or the agency fails to
 161 implement any recommended corrective action within a reasonable
 162 time, the division must submit a report of the evaluation to the
 163 appropriations committees of the Legislature.

164 Section 6. Subsection (5) is added to section 440.50,
 165 Florida Statutes, to read:

166 440.50 Workers' Compensation Administration Trust Fund.—

167 (5) Funds appropriated by operating appropriation or
 168 nonoperating transfer from the Workers' Compensation
 169 Administration Trust Fund to the Department of Education, the
 170 Agency for Health Care Administration, the Department of
 171 Business and Professional Regulation, the Department of
 172 Management Services, the First District Court of Appeal, and the
 173 Justice Administrative Commission remaining unencumbered on June
 174 30 or undisbursed on September 30 each year revert to the
 175 Workers' Compensation Administration Trust Fund.

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