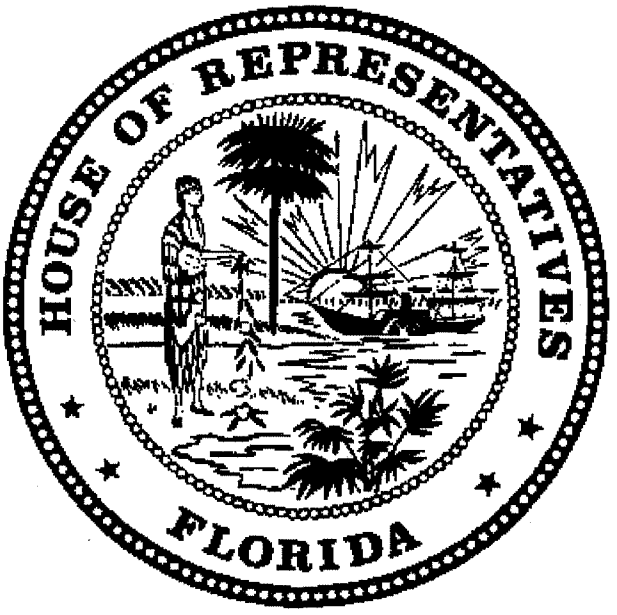

Insurance & Banking Subcommittee

Wednesday, March 9, 2011
8:00 AM - 10:00 AM
404 HOB

Dean Cannon
Speaker

Bryan Nelson
Chair

The Florida House of Representatives

Economic Affairs Committee

Insurance & Banking Subcommittee

Dean Cannon
Speaker

Bryan Nelson
Chair

AGENDA

March 9, 2011
404 House Office Building
8:00 a.m. – 10:00 a.m.

I. Introductory Remarks

II. CS/HB 257 Financial Responsibility for Medical Expenses of Arrestees, Pretrail Detainees, or Sentenced Inmates *by Criminal Justice Subcommittee and Rep. Hooper and others*

III. HB 469 Individual Retirement Accounts *by Rep. Stargel and others*

IV. HB 599 Uniform Prudent Management of Institutional Funds *by Rep. Passidomo*

V. HB 4181 Prohibited Activities of Citizens Property Insurance Corporation *by Rep. Davis*

VI. Adjournment

204 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850)414-7365 Fax: (850)414-5048

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 257 Financial Responsibility for Medical Expenses of Pretrial Detainees or Sentenced Inmates
SPONSOR(S): Criminal Justice Subcommittee; Hooper and Baxley
TIED BILLS: **IDEN./SIM. BILLS:** SB 490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Krol	Cunningham
2) Insurance & Banking Subcommittee		Barnum	Cooper
3) Health & Human Services Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides for recovery of expenses for medical care, treatment, hospitalization, and transportation (medical care) associated with arrestees for violating state law, or a county or municipal ordinance. A medical services provider is reimbursed by the insurance of the individual, the person, or in accordance with a financial settlement agreement. Absent these sources, the cost of medical care is paid from the general fund of the county in which the person was arrested or from the general fund of the municipality if the arrest was for a violation of a municipal ordinance. The rates medical service providers can charge local governments are not capped.

A county or municipal detention facility may seek reimbursement for the medical expenses of a pretrial detainee or prisoner from the individual, or an insurance company, health care corporation or other source, if the individual is covered by an insurance policy.

CS/HB 257 allows a county or municipality to pay the medical costs of an arrestee, pretrial detainee, or sentenced inmate at 110 percent of the Medicare allowable rate if no formal written agreement exists between the county or municipality and the third-party medical care provider. However, if the provider reports an operating loss to the Agency for Health Care Administration, they will be paid at 125 percent of the Medicare allowable rate. The bill exempts payments to physicians for emergency services provided within a hospital emergency department from the maximum allowable rate.

Medical costs include medical care, treatment, hospitalization, and transportation.

The bill requires that before a third-party provider can seek reimbursement from a county or municipal's general fund, it must show that a "good faith effort" was made to collect payment for medical care expenses from an arrestee, pretrial detainee, or sentenced inmate.

The bill may have a positive fiscal impact on local governments but may have a negative impact on medical care providers. See "Fiscal Comments."

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Financial Responsibility for Medical Expenses of Arrestees

Section 901.35, F.S., provides that a medical services provider shall recover the expenses of medical care, treatment, hospitalization, and transportation (hereinafter referred to simply as "medical care") for a person ill, wounded, or otherwise injured during or at the time of arrest[1] for any violation of state law or a county or municipal ordinance from the following sources in the following order:

(1) Insurance of the person receiving the medical care;
(2) The person receiving medical care; or
(3) A financial settlement for the medical care.[2]

When reimbursement from these sources is unavailable, the cost of medical care is paid from the general fund of the county in which the person was arrested or from the general fund of the municipality if the arrest was for a violation of a municipal ordinance.[3] The rates medical service providers can charge local governments are not capped.[4]

The responsibility for payment of medical costs exists until the arrested person is released from the custody of the arresting agency.[5] If an arrested person has health insurance, subscribes to a health care corporation, or receives health care benefits from any other source, he or she must assign those benefits to the health care provider.[6]

Financial Responsibility for Medical Expenses of County and Municipal Prisoners

Section 951.032, F.S., articulates a local government's rights to reimbursement from a prisoner or person[7] seeking medical attention. A county or municipal detention facility incurring expenses for providing medical care may seek reimbursement for the expenses from the following sources in the following order:

(1) From the prisoner or person receiving medical care by deducting the cost from the prisoner's cash account on deposit with the detention facility or placing a lien on the prisoner's cash account or other personal property;[8] or
(2) From an insurance company, health care corporation or other source if the prisoner or person is covered by an insurance policy.

If the prisoner refuses to cooperate with the reimbursement efforts of the detention facility, he or she may not receive gain-time as provided by s. 951.21, F.S.

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[1] The injury or illness need not be caused by the arrest. Fla. Op. Atty. Gen. 85-6, (Feb. 4, 1985). "[S]ection 901.35 seems to impose tertiary responsibility on the general fund for any medical expenses incurred for the treatment of persons ill or injured at the time of arrest, regardless of whether the person's condition arises from or is attributable to the circumstances of the arrest."

[2] Section 901.35, F.S.

[3] *Id.*

[4] Joseph G. Jarret, *The High Cost of Arrestee Medical Treatment: The Effects of F.S. § 901.35 on Local Government Coffers*, 78 FLA. B.J. 46 (Nov. 2004).

[5] 901.35, F.S. *See Comeau v. State*, 611 So. 2d 68 (Fla. 1st DCA 1992)(stating that the county, as a custodian of a prisoner charged with violating a state law or county ordinance, has a duty to provide medical care for its prisoner.)

[6] *Id.*

[7] *See Williams v. Ergle*, 698 So.2d 1294 (5th DCA 1997) (stating that pretrial detainees are prisoners for the purposes of state statutes allowing recovery of certain medical expenses from prisoners).

[8] Section 951.032(1)(a), F.S., provides that any existing lien may be carried over to future incarceration of the same prisoner as long as the future incarceration takes place within the county originating the lien and takes place within 3 years of the date the lien was placed against the prisoner's account or other personal property.

Medicare Rates

The Social Security Act, 42 U.S.C. § 1395, addresses Medicare. Medicare consists of Part A (hospital insurance), Part B (medical insurance), and Part D (prescription drug coverage) as health insurance for:

- people age 65 or older,
- people under age 65 with certain disabilities, and
- people of any age with End-Stage Renal Disease (ESRD) (permanent kidney failure requiring dialysis or a kidney transplant).[9]

Medicare reimburses providers based on the type of service they provide. The Centers for Medicare and Medicaid Services (CMS) develops annual fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies.[10] Other Medicare providers are paid via a prospective payment system (PPS). The PPS is a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, diagnosis-related groups for inpatient hospital services). The CMS uses separate PPSs for reimbursement to acute inpatient hospitals, home health agencies, hospices, hospital outpatient departments, inpatient psychiatric facilities, inpatient rehabilitation facilities, long-term care hospitals, and skilled nursing facilities.[11]

The Department of Corrections and Medical Payment Caps

In 2008, the General Appropriations Implementing Bill, chapter 2008-153, Laws of Florida, capped medical payment rates the Department of Corrections (department) could pay to a hospital, or a health care provider providing services at a hospital. Payments were capped at 110 percent of the Medicare allowable rate for inmate medical care when no contract existed between the department and a hospital, or a health care provider providing services at a hospital. However, hospitals reporting an operating loss to the Agency for Health Care Administration were capped at 125 percent of the Medicare allowable rate.

In 2009, s. 945.6041, F.S., created by chapter 2009-63, Laws of Florida, codified the payment caps and made other medical service providers, defined in s. 766.105, F.S., and medical transportation services subject to the medical payment cap. The department has reported savings of over $63 million since the payment caps were implemented.[12] The department's community hospital expenditures, which include inpatient and outpatient hospital charges, outpatient surgery and emergency room visits, totaled nearly $70 million in FY 2009-10.[13]

Effect of the Bill

CS/HB 257 modifies s. 901.35(1), F.S., to specify that a person is responsible for paying any medical care expenses if he or she is ill, wounded, or otherwise injured during or *as a result of* an arrest for any state law or county or municipal ordinance. This specification, "as a result of an arrest," replaces current language, "at the time of an arrest." The bill removes all language regarding how a medical care service provider can recover medical care expenses from arrestees from s. 901.35(2), F.S., and adds it to s. 951.032, F.S., (which relates to how county and municipal detention facilities recover medical costs from prisoners.) The bill allows for a provider of medical care services to seek reimbursement in accordance with s. 951.032, F.S.

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[9] "Medicare Program – General Information," The Centers for Medicare and Medicaid Services, http://www.cms.gov/MedicareGenInfo/ (Last visited on February 11, 2011)

[10] "Fee Schedules – General Information," The Centers for Medicare and Medicaid Services, http://www.cms.gov/FeeScheduleGenInfo/ (Last visited on February 11, 2011)

[11] "Perspective Payment System – General Information," The Centers for Medicare and Medicaid Services, http://www.cms.gov/ProspMedicareFeeSvcPmtGen/ (Last visited on February 11, 2011)

[12] Savings from FY 2008- December 2010. Correspondence with the Department of Corrections. On file with the Criminal Justice Subcommittee.

[13] *Id.*

The bill amends s. 951.032, F.S., by replacing each use of the term "prisoner" with the term "pretrial detainee or sentenced inmate." However, the process by which county and municipal facilities recover medical care expenses from such persons remains unchanged.

As noted above, the bill moves language regarding how a medical care service provider can recover medical care expenses from s. 901.35, F.S., to s. 951.032, F.S. This language specifies that a third-party provider shall recover the expenses of medical care from an arrestee, pretrial detainee, or sentenced inmate from the following sources in the following order:

(1) Insurance of the person receiving the medical care;
(2) The person receiving medical care; or
(3) A financial settlement for the medical care.

The bill requires the third-party provider to make a "good faith effort" to recover the payment before it can seek reimbursement from the general fund of a county or municipality. A "good faith effort" is described as one that is consistent with that provider's usual policies and procedures related to the collection of fees from indigent patients who are not in the custody of a county or municipal detention facility.

The bill provides that, if the third-party provider has not received payment after making a "good faith effort" to collect medical care expenses from the parties listed above, medical care expenses will be paid to the provider:

- From the county general fund if the person who receives such services:
  - During or as a result of an arrest for a violation of a state law or county ordinance; or
  - While detained in a county detention facility.
- From the municipal general fund if the person who receives such services:
  - During or as a result of an arrest for a violation of a municipal ordinance; or
  - While detained in a municipal detention facility.

The bill requires that, in the absence of a formal written agreement, payments made from county or municipal general funds for an arrestee, pretrial detainee, or sentenced inmate's medical care will be made at 110 percent of the Medicare allowable rate. However, payments can be increased to 125 percent of the Medicare allowable rate if the third-party provider reports a negative operating margin for the previous year to the Agency of Health Care Administration through hospital-audited financial data.

The bill exempts payments to physicians licensed under ch. 458, F.S., or ch. 459, F.S., for emergency services provided within a hospital emergency department from the maximum allowable rate.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 901.35, F.S., relating to financial responsibility for medical expenses.

Section 2. Amends s. 951.032, F.S., relating to financial responsibility for medical expenses.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Providers of medical care, treatment, hospitalization, and transportation may receive decreased revenue when providing services to arrestees, pretrial detainees, and sentenced inmates when the person receiving the services cannot provide for payment of the costs and the provider does not have a formal written agreement with the county or municipality.

D. FISCAL COMMENTS:

This bill may be a cost savings measure for counties and municipalities, when no written agreement exists, because it caps the cost of medical services provided to arrestees, pretrial detainees, and sentenced inmates at 110 percent of the Medicare allowable rate, or in some cases, at 125 percent of the Medicare allowable rate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2011, the Criminal Justice Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute. The strike-all amendment:

- Clarified the exception in section 1 of the bill to allow third-party providers to recoup medical care expenses in accordance with s. 951.032, F.S.

- Removed "in-custody" from all instances of the term "in-custody pretrial detainee" and added the term "arrestee" to the necessary subsections of the statute.
- Lines 51-55 have been reworded for clarification purposes.
- Clarified when a payment to a third-party provider is made from a county or municipal general fund.
- Fixed a drafting error on line 149 to refer to the correct subsection.
- Replaced the term "governmental body" with "county or municipality."

This analysis is drafted to the Committee Substitute.

A bill to be entitled

An act relating to financial responsibility for medical expenses of arrestees, pretrial detainees, or sentenced inmates; amending s. 901.35, F.S.; providing that the responsibility for paying the expenses of medical care, treatment, hospitalization, and transportation for a person who is ill, wounded, or otherwise injured during or as a result of an arrest for a violation of a state law or a county or municipal ordinance is the responsibility of the person receiving the medical care, treatment, hospitalization, or transportation; deleting provisions establishing the order by which medical providers receive reimbursement for the expenses incurred in providing the medical services; amending s. 951.032, F.S.; setting forth the order by which a county or municipal detention facility may seek reimbursement for the expenses incurred during the course of treating pretrial detainees or sentenced inmates; requiring each pretrial detainee or sentenced inmate who receives medical care or other services to cooperate with the county or municipal detention facility in seeking reimbursement for the expenses incurred by the facility and providing for certain liens against pretrial detainees or sentenced inmates; setting forth the order of fiscal resources from which a third-party provider of medical services may seek reimbursement for the expenses the provider incurred in providing medical care; requiring each arrestee, pretrial detainee, or sentenced inmate who has health insurance,

subscribes to a health care corporation, or receives health care benefits from any other source to assign such benefits to the health care provider; requiring assignment of health insurance or health care benefits to providers by arrestees, detainees, or inmates who have such insurance or benefits; providing an effective date.

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

Section 1. Section 901.35, Florida Statutes, is amended to read:

901.35 Financial responsibility for medical expenses.—

~~(1)~~ Notwithstanding any other provision of law, the responsibility for paying the expenses of medical care, treatment, hospitalization, and transportation for any person ill, wounded, or otherwise injured during or as a result ~~at the time~~ of an arrest for any violation of a state law or a county or municipal ordinance is the responsibility of the person receiving such care, treatment, hospitalization, and transportation. The provider of such services shall seek reimbursement in accordance with s. 951.032. ~~The provider of such services shall seek reimbursement for the expenses incurred in providing medical care, treatment, hospitalization, and transportation from the following sources in the following order:~~

~~(a) From an insurance company, health care corporation, or other source, if the prisoner is covered by an insurance policy or subscribes to a health care corporation or other source for~~

~~those expenses.~~

~~(b) From the person receiving the medical care, treatment, hospitalization, or transportation.~~

~~(c) From a financial settlement for the medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.~~

~~(2) Upon a showing that reimbursement from the sources listed in subsection (1) is not available, the costs of medical care, treatment, hospitalization, and transportation shall be paid:~~

~~(a) From the general fund of the county in which the person was arrested, if the arrest was for violation of a state law or county ordinance; or~~

~~(b) From the municipal general fund, if the arrest was for violation of a municipal ordinance.~~

~~The responsibility for payment of such medical costs shall exist until such time as an arrested person is released from the custody of the arresting agency.~~

~~(3) An arrested person who has health insurance, subscribes to a health care corporation, or receives health care benefits from any other source shall assign such benefits to the health care provider.~~

Section 2. Section 951.032, Florida Statutes, is amended to read:

951.032 Financial responsibility for medical expenses.—

(1) A county detention facility or municipal detention facility incurring expenses for providing medical care,

treatment, hospitalization, or transportation to pretrial detainees or sentenced inmates may seek reimbursement for the expenses incurred in the following order:

(a) From the pretrial detainee or sentenced inmate ~~prisoner or person~~ receiving medical care, treatment, hospitalization, or transportation by deducting the cost from the pretrial detainee's or sentenced inmate's ~~prisoner's~~ cash account on deposit with the detention facility. If the pretrial detainee's or sentenced inmate's ~~prisoner's~~ cash account does not contain sufficient funds to cover medical care, treatment, hospitalization, or transportation, ~~then~~ the detention facility may place a lien against the pretrial detainee's or sentenced inmate's ~~prisoner's~~ cash account or other personal property, to provide payment in the event sufficient funds become available at a later time. Any existing lien may be carried over to future incarceration of the same detainee or inmate ~~prisoner~~ as long as the future incarceration takes place within the county originating the lien and the future incarceration takes place within 3 years after ~~of~~ the date the lien was placed against the pretrial detainee's or sentenced inmate's ~~prisoner's~~ account or other personal property.

(b) From an insurance company, health care corporation, or other source if the pretrial detainee or sentenced inmate ~~prisoner or person~~ is covered by an insurance policy or subscribes to a health care corporation or other source for those expenses.

(2) A pretrial detainee or sentenced inmate ~~prisoner~~ who receives medical care, treatment, hospitalization, or

transportation from a county or municipal detention facility shall cooperate with that ~~the county detention~~ facility ~~or municipal detention facility~~ in seeking reimbursement under paragraphs (1)(a) and (b) for expenses incurred by the facility for the pretrial detainee or sentenced inmate ~~prisoner~~. A pretrial detainee or sentenced inmate ~~prisoner~~ who willfully refuses to cooperate with the reimbursement efforts of the detention facility may have a lien placed against his or her ~~the prisoner's~~ cash account or other personal property and may not receive gain-time as provided by s. 951.21.

(3) A third-party provider of medical care, treatment, hospitalization, or transportation for arrestees, pretrial detainees, or sentenced inmates of a county or municipal detention facility shall seek reimbursement for the expenses incurred in providing medical care, treatment, hospitalization, and transportation to such arrestees, pretrial detainees, or sentenced inmates from the following sources in the following order:

(a) From an insurance company, health care corporation, or other source, if the arrestee, pretrial detainee, or sentenced inmate is covered by an insurance policy or subscribes to a health care corporation or other source for those expenses.

(b) From the arrestee, pretrial detainee, or sentenced inmate receiving the medical care, treatment, hospitalization, or transportation.

(c) From a financial settlement for the medical care, treatment, hospitalization, or transportation payable or accruing to the injured arrestee, pretrial detainee, or

sentenced inmate.

(4) Upon a showing by the third-party provider that a good faith effort was made, consistent with that provider's usual policies and procedures related to the collection of fees from indigent patients outside the custody of a county or municipal detention facility, to obtain reimbursement from the sources listed in subsection (3), but that such reimbursement is not available, the costs of medical care, treatment, hospitalization, and transportation shall be paid:

(a) For a person who receives such services during or as a result of an arrest:

1. From the general fund of the county in which the person was arrested, if the arrest was for violation of a state law or county ordinance; or

2. From the municipal general fund, if the arrest was for violation of a municipal ordinance.

(b) For a person who receives such services while detained in a county detention facility, from the county general fund.

(c) For a person who receives such services while detained in a municipal detention facility, from the municipal general fund.

Absent a written agreement between the third-party provider and the county or municipality, remuneration made pursuant to paragraph (a), paragraph (b), or paragraph (c) shall be billed by the third-party provider and paid by the county or municipality at a rate not to exceed 110 percent of the Medicare allowable rate for such services. Compensation to a third-party

provider may not exceed 125 percent of the Medicare allowable rate if there is no written agreement between the third-party provider and the county or municipality, and the third-party provider reported a negative operating margin for the previous year to the Agency for Health Care Administration through hospital-audited financial data. However, these maximum allowable rates do not apply to amounts billed and paid for physicians licensed under chapter 458 or chapter 459 for emergency services provided within a hospital emergency department. The responsibility of the county or municipality for payment of any in-custody medical costs shall cease upon release of the arrestee, pretrial detainee, or sentenced inmate.

(5) An arrestee, pretrial detainee, or sentenced inmate who has health insurance, subscribes to a health care corporation, or receives health care benefits from any other source shall assign such benefits to the health care provider.

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

INSURANCE & BANKING SUBCOMMITTEE

CS/HB 257 by Rep. Hooper
Financial Responsibility for Medical Expenses of Arrestees, Pretrial Detainees, or Sentenced Inmates

AMENDMENT SUMMARY
March 9, 2011

Amendment 1 by Rep. Hooper (Lines 184-185):

- Provides a definition for "pretrial detainee" and "sentenced inmate".
- Assigns responsibility for restricting the personal freedom of certain individuals under a specific circumstance.

Amendment No.

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative(s) Hooper offered the following:

Amendment (with title amendment)

Between lines 184 and 185, insert:

(6) For purposes of this section, pretrial detainee or sentenced inmate is a person brought for treatment by or on behalf of law enforcement or the county or municipal jail, and whose physical freedom is restricted by a certified law enforcement officer or county/municipal certified correctional officer pending adjudication and disposition of an arrest or pending completion of an adjudicated county sentence. Included within this definition is a person who is furloughed by the Court for the express purpose of receiving medical treatment where a condition of such furlough is the immediate return to the custody of a county or municipal jail following completion of such treatment.

(7) Law enforcement or the county or municipal jail shall be responsible for restricting the personal freedom of pretrial detainees or sentenced inmates brought for treatment under this section.

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

Remove line 34 and insert:
insurance or benefits; providing a definition; assigning responsibility for restricting personal freedom of certain individuals in certain circumstances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 469 Individual Retirement Accounts
SPONSOR(S): Stargel and Ford
TIED BILLS: None **IDEN./SIM. BILLS:** SB 978

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Woodburn	Bond
2) Insurance & Banking Subcommittee		Philpot	Cooper
3) Judiciary Committee			

SUMMARY ANALYSIS

An Individual Retirement Account (IRA) is a form of retirement savings account that provides tax benefits to the owner of the account. The account is primarily used as a means of saving for retirement. When the owner of an IRA account dies the account may be transferred to a named beneficiary. When transferred to a beneficiary it is known as an Inherited IRA.

Florida law provides for protection of various assets from creditors, which protection also extends to bankruptcy proceedings. Under current Florida law, a regular IRA is exempt from creditor claims whereas an Inherited IRA is not.

The bill provides that an Inherited IRA retains the same protection from creditors that the original IRA enjoyed.

The bill takes effect upon becoming law and applies retroactively.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Introduction

In *Robertson v. Deeb*, the Florida 2nd District Court of Appeal held that s. 222.21(2)(a), F.S., does not exempt Inherited Individual Retirement Accounts (IRAs) from creditor judgments.[1] The court reasoned that the statute only protects the original IRA and when the IRA is transferred to the beneficiary, the account loses its tax status and thus is no longer exempt under the statutory scheme. The decision was further applied in *In Re: Ard* by the Federal Bankruptcy Court for the Middle District of Florida allowing a trustee to include the debtors inherited IRA in the bankruptcy estate.[2] The two decisions allow a creditor to garnish an Inherited IRA to satisfy a judgment and also prevent the Inherited IRA from being exempted during bankruptcy proceedings. The bill provides that the exemption from creditors that applies in s. 222.21(2)(a), F.S., for the original owner of an IRA will continue to apply after the IRA has been passed to the beneficiary.

Individual Retirement Account

An Individual Retirement Arrangement is a tax deferred or tax advantage retirement savings plan.[3] The Individual Retirement Account (IRA) is a form of retirement savings account that is established in accordance with I.R.C. §408 or §408A.[4] An IRA is defined as, "...a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries,"[5] and must also meet the following criteria:

- The trustee or custodian must be a bank, a federally insured credit union, a savings and loan association, or an entity approved by the IRS to act as trustee or custodian.
- The trustee or custodian generally cannot accept contributions of more than the deductible amount for the year. However, rollover contributions and employer contributions to a simplified employee pension can be more than this amount.
- Contributions, except rollover contributions, must be in cash.
- The owner must have a non-forfeitable right to the amount at all times.
- Money in the account cannot be used to buy a life insurance policy.
- Assets in the account cannot be combined with other property, except in a common trust fund or common investment fund.
- The owner must start receiving distributions at the age of 70 1/2 years.[6]

There are different types of IRA's, including the traditional IRA and the Roth IRA. The traditional IRA allows the owner of the account to make tax deductable contributions to the account and defer paying taxes on the income until withdrawals are made from the IRA after retirement.[7] The Roth IRA[8] allows an owner of the account to make non-tax deductible contributions into the account and make tax free withdrawals from the account upon retirement.[9]

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[1] *Robertson v. Deeb*, 16 So.3d 936 (Fla. 2nd DCA 2009).
[2] *In re: Ard*, 435 B.R. 719 (Bkrtcy. M.D. Fla. 2010).
[3] *See Internal Revenue Publication, Publication 590, Individual Retirement Arrangements (IRA)* at 3 (2010).
[4] Lynch and Griffin, "The *Robertson* Case: A Beneficiary by Any Other Name is Still a Beneficiary," The Florida Bar Journal, April 2010, Vol. 84, No.4.
[5] 26 U.S.C. §408(a).
[6] *IRS Publication 590* at 9.
[7] *Id.* at 7.
[8] A Roth IRA also differs from a traditional IRA in that the owner can open one at any age and does not have to take deductions at age 70 1/2.
[9] *IRS Publication 590* at 57.

IRAs have become increasing important since their creation in 1974.[10] At the end of 2009, IRAs held $4.3 trillion, or more than one quarter of the $16.1 trillion in estimated total U.S. retirement assets and make up almost ten percent of U.S. households' total assets.[11] It is estimated that 41.4 percent of U.S. households owned one or more types of IRAs.[12]

When the owner of an IRA dies, the IRA may be left to a named beneficiary.[13] If the beneficiary is someone other than the owner's spouse,[14] the IRA is considered an Inherited IRA.[15] The beneficiary has two options when inheriting an IRA:

1. The beneficiary must withdraw all of the funds from the original IRA within five years of the original owner's death, or

2. The beneficiary must transfer the funds to an inherited IRA and take annual distributions over the remaining lifespan of the beneficiary.[16]

The beneficiary of an inherited IRA may not make contributions to the account, must make withdrawals regardless of his or her age and, unlike the original IRA, there is no penalty for early withdrawals from the account.

IRA Asset Protection

A creditor can collect money owed to it by filing an action for a judgment in state court. A judgment is an order of the court creating an obligation, such as a debt. The creditor may then use that judgment to collect assets from the debtors by way of garnishment to satisfy the debt. Florida law protects various assets from creditor garnishments including retirement accounts. Individual Retirement Accounts are afforded such protection in s. 222.21(2)(a)1. and 2., F.S., which provides that:

> Except as provided in paragraph (d), any money or other assets payable to an owner, a participant, or a beneficiary from, or any interest of any owner, participant, or beneficiary in, a fund or account is exempt from all claims of creditors of the owner, beneficiary, or participant if the fund or account is:
>
> 1. Maintained in accordance with a master plan, volume submitter plan, prototype plan, or any other plan or governing instrument that has been preapproved by the Internal Revenue Service as exempt from taxation under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, unless it has been subsequently determined that the plan or governing instrument is not exempt from taxation in a proceeding that has become final and nonappealable;
>
> 2. Maintained in accordance with a plan or governing instrument that has been determined by the Internal Revenue Service to be exempt from taxation under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, unless it has been subsequently determined that the plan or governing instrument is not exempt from taxation in a proceeding that has become final and nonappealable;

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[10] The IRA was created by the passage of the Employee Retirement and Security Act (ERISA) in 1974.
[11] *The IRA Investor Profile: Traditional IRA Investors' Rollover Activity, 2007 and 2008.* ICI Investment Company Institute www.ici.org. Last visited February 17, 2011.
[12] *Id.* at 3.
[13] 26 U.S.C. §408(d)(3)(C)(ii).
[14] An IRA inherited by a spouse is not considered an inherited IRA and is treated the same as the original account.
[15] 26 U.S.C. §408(d)(3)(C)(ii).
[16] 26 U.S.C. §401(a)(9).

The application of s. 222.21(2)(a), F.S., protects an owner's IRA from a creditor so long as the IRA follows IRS guidelines and retains its tax exempt status. Section 222.21(2)(a), F.S., applies to creditors in state court and in Federal bankruptcy court.[17]

The 2nd DCA recently declined to extend the protection in s. 222.21(2)(a), F.S., to inherited IRAs in *Robertson v. Deeb*.[18]

Robertson v. Deeb & In Re: Ard

In *Robertson*, a creditor had obtained a judgment against Robertson and served a writ of garnishment on the trustee of Robertson's Inherited IRA. Robertson had been named beneficiary of his late father's IRA and upon his father's death, was given the option of keeping the IRA in his father's name and withdrawing all the proceeds from the IRA over the next five years or transferring the IRA into an Inherited IRA and take annual withdrawals from the account for the remainder of his life expectancy. Robertson chose the latter. Robertson claimed that his beneficial interest in the IRA was exempt from garnishment pursuant to s. 222.21(2)(a), F.S., "because he is a 'beneficiary' of the 'fund or account' that qualified as an IRA when his father was alive."[19] The court ruled that section 222.21(2)(a), F.S., does not apply to Inherited IRAs,

> ...because the plain language of that section references only the original 'fund or account' and the tax consequences of inherited IRAs render them completely separate funds or accounts.[20]

The Court reasoned that since the Inherited IRA was not the original IRA[21] and the tax status was different,[22] the exception in s. 222.21(2)(a), F.S., did not apply since the exception was conditioned on the tax status of the original account.

The decision in *Robertson* has been further applied in Federal bankruptcy court in *In Re: Ard*.[23] In *In Re: Ard*, the debtor had an Inherited IRA similar to that in *Robertson*. The court noted the outcomes involving inherited IRAs "turned on the particular language of each state's law applicable to the exemption of IRAs."[24] The bankruptcy court, pursuant to the decision in *Robertson*, ruled that s. 222.21(2)(a), F.S., did not apply to an inherited IRA and thus not exempt in Federal bankruptcy proceedings.[25] The debtor was therefore required to turn the IRA over to the bankruptcy trustee.

Effect of Proposed Changes

The bill contains "whereas" clauses to express the Legislature's intent that Inherited IRAs, as defined in s. 402(c) of the Internal Revenue Code, were intended to be exempt from the claims of creditors and that the decisions in *Robertson* and *In re: Ard* are contrary to the Legislature's intent.

The bill amends s. 222.21(2)(c), F.S., to provide that an IRA exempt from creditors under s. 222..21(2)(a), F.S., would continue to be exempt if the original IRA is transferred to an Inherited IRA. Under the proposed changes, when an owner of an IRA passes away, his or her named beneficiary would continue to enjoy the protection from creditors that the original owner enjoyed under s. 222.21(2)(a), F.S. This protection would most likely extend to protection in bankruptcy proceedings, as well.

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[17] 11 U.S.C. s. 522(b) (Federal Bankruptcy law allows a debtor to exempt certain property from bankruptcy proceedings according to state law).
[18] *Robertson,* at 937.
[19] *Id.* at 938.
[20] *Id.* at 938.
[21] The court reasoned that the IRA ceased to be the original IRA when it was passed to a beneficiary.
[22] The court noted that Inherited IRAs do not have a penalty for early withdrawals, distributions must be made, and Inherited IRAs are not entitled to contributions or rollovers into existing IRAs to point out the inconsistencies with the original IRA.
[23] *In re: Ard,* at 719.
[24] *Id.* at 722.
[25] *Id.*

The bill contains language indicating that its provisions are clarifying and apply retroactively.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1 amends s. 222.21(2)(c), F.S., relating to exemption of an IRA from claims of creditors.

Section 2 provides that the bill becomes effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

This bill provides that it is intended to be clarifying and remedial and shall apply retroactively. Retroactive application of legislation can implicate the due process provisions of the Constitution.[26] As a general matter, statutes which do not alter vested rights but relate only to remedies or procedure can be applied retroactively.[27]

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[26] *See State Department of Transportation v. Knowles*, 402 So.2d 1155 (Fla. 1981).

[27] *See Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So.2d. 494 (Fla. 1999).

The Florida Supreme Court has ruled that statutes enacted soon after a controversy over the meaning of legislation may be considered a legislative interpretation of the original law and not substantive change:

> When, as occurred here, an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof. This Court has recognized the propriety of considering subsequent legislation in arriving at the proper interpretation of the prior statute.[28]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[28] *Lowry v. Parole and Probation Commission*, 473 So.2d 1248, 1250 (Fla. 1985)(internal citations omitted).

A bill to be entitled

An act relating to individual retirement accounts; amending s. 222.21, F.S.; clarifying the exemption of inherited individual retirement accounts from legal processes; providing intent; providing for retroactive application; providing an effective date.

WHEREAS, many residents of this state have individual retirement accounts, relying upon the Legislature's intent that individual retirement accounts be exempt from claims of creditors, and

WHEREAS, the Legislature clearly intended in s. 222.21(2)(c), Florida Statutes, that inherited individual retirement accounts included in s. 402(c) of the Internal Revenue Code of 1986, as amended, be exempt from claims of creditors of the owner, beneficiary, or participant of the inherited individual retirement account, and

WHEREAS, in Robertson v. Deeb, 16 So. 3d 936 (Fla. 2d DCA 2009) the appellate court, contrary to the Legislature's intent, held that an inherited individual retirement account was not exempt from the beneficiaries' creditors because such an account was not included in property described in s. 222.21, Florida Statutes, a decision that was followed in the Bankruptcy Court of the Middle District of Florida, In re: Ard, 435 B.R. 719 (Bkrtcy. M.D. Fla. 2010), NOW, THEREFORE,

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

Section 1. Paragraph (c) of subsection (2) of section 222.21, Florida Statutes, is amended to read:

222.21 Exemption of pension money and certain tax-exempt funds or accounts from legal processes.—

(2)

(c) Any money or other assets or any interest in any fund or account that is ~~are~~ exempt from claims of creditors of the owner, beneficiary, or participant under paragraph (a) does ~~do~~ not cease to be exempt after the owner's death ~~to qualify for exemption~~ by reason of a direct transfer or eligible rollover that is excluded from gross income under ~~s. 402(c) of~~ the Internal Revenue Code of 1986, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in s. 408(d)(3) of the Internal Revenue Code of 1986, as amended. This paragraph is intended to clarify existing law, is remedial in nature, and shall have retroactive application to all inherited individual retirement accounts without regard to the date an account was created.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 599 Uniform Prudent Management of Institutional Funds
SPONSOR(S): Passidomo
TIED BILLS: **IDEN./SIM. BILLS:** SB 952

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Barnum	Cooper
2) Civil Justice Subcommittee			
3) Appropriations Committee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The Florida Uniform Management of Institutional Funds Act became law in 1990 and was updated in 2003. It is based upon the Uniform Management of Institutional Funds Act promulgated by the National Conference of Commissioners on Uniform State Laws.

The Florida Uniform Management of Institutional Funds Act:

- Only applies to an institution organized and operated exclusively for educational purposes, or a governmental entity holding funds exclusively for educational purposes.
- Provides standards of conduct for a governing board.
- Delineates factors a governing board shall consider when expending endowment funds.

University direct-support organizations operate in accordance with the Florida Uniform Management of Institutional Funds Act. Community college direct-support organizations are incorporated, organized and operated in a similar manner. Direct-support organizations are incorporated under the provisions of Chapter 617, F.S., and approved by the Department of State.

In addition to universities and community colleges, the law provides that several other governmental entities may/shall establish, create, or contract with a direct-support organization.

House Bill 599 creates the Uniform Prudent Management of Institutional Funds Act in Chapter 617, Florida Statutes - Corporations Not for Profit, replacing the Florida Uniform Management of Institutional Funds Act found in the K-20 Education Code. Among its key provisions, the bill:

- Makes significant enhancements to provisions currently contained in the Florida Uniform Management of Institutional Funds Act.
- Expands provisions in current law and makes them applicable to charitable institutions other than just those associated exclusively with educational purposes.
- Expands the types of assets which can be in a charitable organization's portfolio.
- Allows pooling of institutional funds for purposes of managing and investing.
- Delineates factors to be considered prior to expenditure of funds.
- Provides new procedures for releasing restrictions on small institutional funds.
- Provides for modification of restrictions on the use of endowment funds.

The provisions contained in HB 599 would apply to a non-educational direct-support organization only if it held a fund exclusively for charitable purposes.

HB 599 makes Florida's not-for-profit law consistent with national standards for the management of endowment funds which have already been adopted by 47 other states.

The fiscal impact is indeterminate.

The bill provides for a July 1, 2011 effective date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Prior to 1972, charities generally made investment and spending decisions based upon trust law guidance, which allowed for expenditure of income such as interest and dividends. Most charitable institutions invested endowment funds primarily for current income. They limited spending to a portion of dividends, interest, rents, and royalties earned. Thus, investments were predominantly made in bonds and high-yield stocks, while growth investments were avoided. The focus was on income and not capital gains. Investments were evaluated individually, rather than considering the total performance of the portfolio. At that time, trust law did not allow for delegation of investment authority.

Recognizing that charitable institutions needed guidelines separate from trust law, in 1972, the Uniform Management of Institutional Funds Act (UMIFA) was promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission).[1] The UMIFA allowed for investing in any kind of asset, pooling endowment funds for investment purposes, and delegating investment management to professional advisors. It specified that, when delegating investment management to others, a charity's governing board was required to exercise ordinary business care and prudence. UMIFA codified the first prudent investing rules. The two guiding principles were: (1) assets should be invested prudently in diversified investments that sought growth as well as income; and, (2) appreciation of assets could prudently be spent for the purposes of any endowment fund held by a charitable institution. Use of these guiding principles allowed charitable institutions to focus on the best investment strategy and distribution policy for the overall long and short-term health of the institution.

The Florida Uniform Management of Institutional Funds Act (Act) became law as a result of 1990 legislative action.[2] It was based upon the UMIFA. However, the State's version of UMIFA was only applicable to an institution organized and operated exclusively for educational purposes, or a governmental entity holding funds exclusively for educational purposes. The Act provided definitions and allowed for the expenditure of endowment funds by a governing board. It codified investment authority and the delegation of investment management. Consistent with UMIFA, the Act allowed for expenditure of net appreciation over the "historic dollar value"[3] of the fund.

During the 2002 re-writing of the K-20 Education Code, the Act was omitted in error.[4] When it was restored in law,[5] the Act was updated based upon a revised draft of UMIFA issued by the Uniform Law Commission. This version provided new guidelines in response to the market situation at that time when many gifts designated for endowment had fallen below their historical market value. In that case, once an endowment had dropped below its historic gift value, all spending from the fund was stopped.

The new 2003 language in the Florida Uniform Management of Institutional Funds Act allows public and private institutions to continue to conserve the long term value of endowments while also continuing distributions consistent with the donor's wishes. The law provides guidelines for educational institutions in executing their fiduciary responsibilities by expanding and delineating factors which the governing board should consider when expending endowment funds.[6] These include:

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[1] The organization comprises more than 300 lawyers, judges and law professors, appointed by the states as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands, to draft proposals for uniform and model laws on subjects where uniformity is desirable and practicable.

[2] s. 1, ch. 90-297, L.O.F.

[3] Per statutory definition at that time, "Historic dollar value" means the aggregate fair value in dollars of an endowment fund at the time it became an endowment fund, each subsequent donation to the fund at the time it is made, and each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

[4] Education K-20 Committee HB 319 w/CS Bill Analysis, page 3, dated April 8, 2003.

[5] s. 13, ch. 2003-399, L.O.F.

[6] s. 1010.10(3), F.S.

- The purpose of the institution.
- The intent of the donors.
- The long and short term needs of the institution.
- The general economic conditions.
- The possible effect of inflation or deflation.

Conserving the purchasing power of the endowment fund continues to be a primary goal.

The law also provides specific standards of conduct for a governing board. In addition, it identifies activities where reasonable care, skill and caution are required when delegating investment management.

The law provides additional details regarding release of restrictions placed on the use of the gift instrument or investment by the donor in the absence of the donor's written consent. The governing board is permitted to release a restriction if consent can not be obtained because of the donor's death, disability, unavailability, or impossibility of identification, if the total value was less than $100,000 and the value was insufficient to justify separate administration. In similar circumstances, but with a value greater than $100,000, the governing board can apply to the circuit court of the county in which the institution was located for release. In doing so, the Attorney General is required to be notified of the application and given an opportunity to be heard. The Act addresses release of restrictions, but makes no provisions for modifying a restriction.

Currently, university direct-support organizations[7] operate in accordance with the Florida Uniform Management of Institutional Funds Act.[8] Community college direct-support organizations are incorporated, organized and operated in a similar manner.[9]

Direct-support organizations are incorporated under the provisions of Chapter 617, F.S., and approved by the Department of State.[10] In addition to university and community college direct-support organizations, the law provides that other entities, including the following, may or shall establish, create, or contract with a direct-support organization:

- Department of Elder Affairs[11]
- Department of Juvenile Justice[12]
- Department of Legal Affairs[13]
- Department of Military Affairs[14]
- Department of Veterans' Affairs[15]
- Division of Blind Services[16]
- Statewide Guardian Ad Litem Office[17]
- Statewide Public Guardianship Office[18]

The Florida Uniform Management of Institutional Funds Act is not applicable to any existing direct-support organizations associated with these entities. The Act is only applicable to an institution organized and operated exclusively for educational purposes, or a governmental entity holding funds exclusively for educational purposes.

In July 2006, the Uniform Law Commission adopted the Uniform Prudent Management of Institutional Funds Act (UPMIFA), which replaced the Uniform Management of Institutional Funds Act. UPMIFA

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[7] A university direct-support organization is a not-for-profit corporation organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university in Florida.
[8] State University System of Florida Board of Governors Legislative Bill Analysis dated February 24, 2011, on file with the Insurance & Banking Subcommittee.
[9] s. 1004.70, F.S.
[10] s. 1004.28, F.S.
[11] s. 430.82, F.S.
[12] s. 985.672, F.S
[13] s. 16.616, F.S.
[14] s. 250.115, F.S.
[15] s. 292.055, F.S.
[16] s. 413.0111, F.S.
[17] s. 39.8298, F.S.
[18] s. 744.7082, F.S.

emphasizes the portfolio approach to investing trust assets, taking into account the tradeoff between risk and return. It provides guidance and authority to charitable organizations concerning the management and investment of funds held by those organizations. UPMIFA expands the governing board's authority to delegate investment and management decisions, while clearly identifying safeguards to be observed. It applies rules on investment decision making and duties to charities organized as charitable trusts, as nonprofit corporations, or in some other manner. However, it does not apply to trusts managed by fiduciaries who are not themselves charities.

UPMIFA modernizes the rules governing expenditures from endowment funds, both to provide stricter guidelines on spending from endowment funds, and to give institutions the ability to cope more easily with fluctuations in the value of the endowment. The historic-dollar value limitation on spending from an endowment fund is replaced with rules allowing for expenditure of the principal, while requiring the board to be prudent when considering the facts and circumstances surrounding such a decision. It spells out more of the factors a charity should consider in making investment decisions,

UPMIFA updates the provisions governing the release and modification of restrictions on charitable funds to permit more efficient management of these funds. It authorizes a modification that a court determines to be in accordance with the donor's probable intention. If the charity asks for court approval of a modification, the charity must notify the state's chief charitable regulator and the regulator may participate in the proceeding.

Florida is one of only three states which have not enacted UPMIFA in some form.[19, 20]

Effect of the bill:

HB 599 deletes the Florida Uniform Management of Institutional Funds Act from the Educational Codes and creates the Uniform Prudent Management of Institutional Funds Act in Chapter 617, Florida Statutes - Corporations Not for Profit. In so doing, it expands the earlier application to include charitable institutions other than those associated exclusively with educational purposes.[21] The bill applies to any Florida not-for-profit entity meeting the definition of an "institution", which holds "institutional funds", as defined. "Institution" is defined as:

- A person, other than an individual, organized and operated exclusively for charitable purposes.
- A government or governmental subdivision, agency, or instrumentality to the extent that it holds funds exclusively for a charitable purpose.
- A trust that had both charitable and noncharitable interests after all noncharitable interests have terminated.

The bill adds new definitions and modifies others. "Charitable purpose", which is not defined in the context of Chapter 617, means "the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose, the achievement of which is beneficial to the community." The definitions of "institution" and "institutional fund" previously found in the Florida Uniform Management of Institutional Funds Act, are expanded to be more encompassing and precise.

The bill makes significant enhancements to provisions previously contained in the Florida Uniform Management of Institutional Funds Act. Among its key provisions, HB 599:

- Expands the types of assets which can be in a charitable organizations portfolio, to include any kind of property or type of investment consistent with the new statutes.
- Specifies that management and investment of institutional funds are to be accomplished with the care an ordinarily prudent person would exercise.
- Requires an institution to make a reasonable effort to verify relevant facts.

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[19] *Spending and Management of Endowments under UPMIFA,* Findings of a 2010 Survey of Colleges, Universities, and Institutionally Related Foundations Conducted by AGB in partnership with Commonfund Institute, available at http://www.agb.org/reports/2010/spending-and-management-endowments-under-upmifa

[20] Lexology - http://www.lexology.com/library/detail.aspx?g=f9da48c5-2fb4-45be-8f1c-4eba1eb08e05 (Last visited on March 7, 2011)

[21] As of March 7, 2011, Department of Juvenile Justice and Department of Veterans' Affairs have reported that they currently have no endowment funds. Department of Elder Affairs has reported that the proposed legislation would have no effect on the agency.

- Allows pooling of institutional funds for purposes of managing and investing.
- Makes reference to an overall investment strategy for the first time.
- Obliges a person with special relevant skills or expertise, to use those skills or that expertise in managing and investing institutional funds.
- Delineates factors to be considered prior to expenditure of funds.

Whereas current law makes no provision for modifying a restriction, and limits a governing board's ability to release restrictions without petitioning the court, HB 599 provides for more flexibility, while protecting the donor's interest and intent. In addition to seeking release because a restriction is unlawful, impractical, or wasteful, the new procedures allow for modification or release of a restriction because of circumstances not anticipated by the donor. For funds with a value of $100,000 or less, notification of the Attorney General is still required. In those situations where the institutional fund subject to the restriction has a total value of $100,000 to $250,000, and more than 20 years has elapsed since the fund was established, the governing board must receive written approval from the Attorney General for modification or release of the restriction.

The rules and guidelines contained in HB 599 apply to future decisions or actions taken on institutional funds already held and all new funds established after the effective date of the bill. This conforms to national standards.

The bill provides for an exception to the Electronic Signatures in Global and National Commerce Act (ESIGN), 15 U.S.C. § 7001.[22] Per 15 U.S.C. § 7002, in some cases exceptions are permissible if a state has enacted the Uniform Electronic Transactions Act, which Florida did in 2000.[23] The exception does not result in any loss of the consumer protections contained in the ESIGN. The bill's language regarding the relation to ESIGN is consistent with that found in the UPMIFA and incorporated in similar laws of other states.

HB 599 makes Florida's not-for-profit law consistent with national standards for the management of endowment funds already adopted by 47 other states.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 617.2104, F.S., the Uniform Prudent Management of Institutional Funds Act.

Section 2: Repeals s. 1010.10, F.S.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[22] This section provides that a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. It also provides consumer protections.

[23] s. 1, ch. 2000-164, L.O.F.

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

The Office of the Attorney General has indicated that, as drafted, there may be an increase in the Office's workload, with associated costs. However, the Office is unable, at this time, to estimate the magnitude of any increase.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Regarding release or modification of restrictions, lines 210 and 225 make reference to "the court" without further clarification. Language addressing the same subject in the statute being repealed reflects "the circuit court of the county in which the institution is located".
- The State Board of Administration (SBA) has expressed concern that the definitions of "charitable purpose", "institution", and "institutional fund", found in the bill could be interpreted to require compliance by the SBA.[24]
- The Office of the Attorney General is in discussion with the bill sponsor about its concern regarding the potential fiscal impact to the Office.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[24] State Board of Administration Legislative Bill Analysis dated February 22, 2011, on file with the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to uniform prudent management of institutional funds; creating s. 617.2104, F.S.; creating a short title; providing definitions; providing requirements for the management of funds held by an institution exclusively for charitable purposes; providing standards of conduct in managing and investing institutional funds; providing requirements for appropriation for expenditure or accumulation of an endowment fund by an institution; authorizing an institution to delegate to an external agent the management and investment of an institutional fund; authorizing the release or modification of a restriction on management, investment, or purpose of an institutional fund; providing for determination of compliance; providing for application to existing or newly established institutional funds; providing relationship to federal law; providing requirements for uniformity of application and construction of the act; repealing s. 1010.10, F.S., relating to the Florida Uniform Management of Institutional Funds Act; providing an effective date.

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

Section 1. Section 617.2104, Florida Statutes, is created to read:

617.2104 Uniform Prudent Management of Institutional Funds Act.—

(1) SHORT TITLE.—This section may be cited as the "Uniform Prudent Management of Institutional Funds Act."

(2) DEFINITIONS.—For purposes of this section:

(a) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(b) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(c) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(d) "Institution" means:

1. A person, other than an individual, organized and operated exclusively for charitable purposes;

2. A government or governmental subdivision, agency, or instrumentality to the extent that it holds funds exclusively for a charitable purpose; or

3. A trust that had both charitable and noncharitable interests after all noncharitable interests have terminated.

(e) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

1. Program-related assets;

2. A fund held for an institution by a trustee that is not an institution; or

3. A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(f) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(g) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(h) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(3) STANDARD OF CONDUCT IN MANAGING AND INVESTING INSTITUTIONAL FUND.—

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this section, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

1. May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution.

2. Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

1. In managing and investing an institutional fund, the following factors, if relevant, must be considered:

a. General economic conditions.

b. The possible effect of inflation or deflation.

c. The expected tax consequences, if any, of investment decisions or strategies.

d. The role that each investment or course of action plays within the overall investment portfolio of the fund.

e. The expected total return from income and the appreciation of investments.

f. Other resources of the institution.

g. The needs of the institution and the fund to make distributions and to preserve capital.

h. An asset's special relationship or special value, if any, to the charitable purposes of the institution.

2. Management and investment decisions about an individual asset must be made not in isolation but rather in the context of

the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

3. Except as otherwise provided by law other than this section, an institution may invest in any kind of property or type of investment consistent with this section.

4. An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

5. Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this section.

6. A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

(4) APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION.—

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or

accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith with the care that an ordinarily prudent person in a like position would exercise under similar circumstances and shall consider, if relevant, the following factors:

1. The duration and preservation of the endowment fund.

2. The purposes of the institution and the endowment fund.

3. General economic conditions.

4. The possible effect of inflation or deflation.

5. The expected total return from income and the appreciation of investments.

6. Other resources of the institution.

7. The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under paragraph (a), a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

1. Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund.

2. Do not otherwise limit the authority to appropriate for expenditure or accumulate under paragraph (a).

(5) DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.—

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this section, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

1. Selecting an agent.

2. Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund.

3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with paragraph (a) is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law other than this section.

(6) RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE.—

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

(d) If consent of the donor in a record cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, a governing board may modify a restriction contained in a gift instrument regarding the management, investment, or purpose of an institutional fund if the fund has a total value of $100,000 or less and the restriction has become impracticable or wasteful, impairs the management, investment, or use of the fund or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund.

(e) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after obtaining written approval from the Attorney General, may release or modify the restriction, in whole or part, if:

1. The institutional fund subject to the restriction has a total value of at least $100,000 and not more than $250,000;

2. More than 20 years have elapsed since the fund was established; and

3. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(7) REVIEWING COMPLIANCE.—Compliance with this section is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

(8) APPLICATION TO EXISTING INSTITUTIONAL FUNDS.—This section applies to institutional funds existing on or established after the effective date of this section. As applied to institutional funds existing on the effective date of this section, this section governs only decisions made or actions taken on or after that date.

(9) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.—This section modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7001(b).

(10) UNIFORMITY OF APPLICATION AND CONSTRUCTION.—In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 2. Section 1010.10, Florida Statutes, is repealed.

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

INSURANCE & BANKING SUBCOMMITTEE

HB 599 by Rep. Passidomo
Uniform Prudent Management of Institutional Funds

AMENDMENT SUMMARY
March 9, 2011

Amendment 1 by Rep. Passidomo (Lines 61-62): Provides an exemption for funds administered by the State Board of Administration.

Amendment 2 by Rep. Passidomo (Lines 210-235): Clarifies which court will handle requests for changes to restrictions and addresses fiscal impact concerns expressed by the Office of the Attorney General.

Amendment 3 by Rep. Passidomo (Lines 244-245): Removes the requirement for the Attorney General to approve requests to release or modify restrictions for certain funds.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative(s) Passidomo offered the following:

Amendment

Between lines 61 and 62, insert:

4. A fund managed or administered by the State Board of Administration pursuant to its constitutional or statutory authority.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 599 (2011)

Amendment No. 2

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Passidomo offered the following:

Amendment

Remove lines 210-235 and insert:

(b) The circuit court for the circuit in which an institution is located, upon application of that institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional

fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the circuit court for the circuit in which an institution is located, upon application of that institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application.

(d) If consent of the donor in a record cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, a governing board may modify a restriction contained in a gift instrument regarding the management, investment, or use of an institutional fund if

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 599 (2011)

Amendment No. 3

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Passidomo offered the following:

Amendment

Remove lines 244-245 and insert:

impossible to achieve, or wasteful, the institution, after providing written notice to the Attorney General, may

INSURANCE & BANKING SUBCOMMITTEE

HB 599 by Rep. Passidomo
Uniform Prudent Management of Institutional Funds

AMENDMENT SUMMARY
March 9, 2011

Amendment 4 by Rep. Passidomo (Line 276): Provides for an effective date of July 1, 2012.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 599 (2011)

Amendment No.

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Passidomo offered the following:

Amendment

Remove line 276 and insert:

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

INSURANCE & BANKING SUBCOMMITTEE

HB 599 by Rep. Passidomo
Uniform Prudent Management of Institutional Funds

AMENDMENT SUMMARY
March 9, 2011

Amendment 5 by Rep. Passidomo (Line 276): Provides for an effective date of January 1, 2012.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 599 (2011)

Amendment No.

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Passidomo offered the following:

Amendment

Remove line 276 and insert:

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4181 Prohibited Activities of Citizens Property Insurance Corporation
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 634

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Callaway	Cooper
2) Economic Affairs Committee			

SUMMARY ANALYSIS

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program (Capital Build-Up Program or program) within the State Board of Administration (SBA) to provide insurance companies a low-cost source of capital to write additional residential property insurance. The program's goal was to increase the availability of residential property insurance covering the risk of hurricanes and to ease residential property insurance premium increases. To accomplish its goal, the program loaned state funds in the form of surplus notes to new or existing authorized residential property insurers under specified conditions. The insurers, in turn, agreed to write additional residential property insurance in Florida and to contribute new capital to their company.

The Legislature appropriated $250 million non-recurring funds from the General Revenue Fund to the program at its inception in 2006. Any unexpended balance reverted back to the General Revenue Fund on June 30, 2007.

As of June 28, 2007, the program issued $247,500,000 in funds to thirteen qualifying insurers. Administrative expenses for the program totaled $2,500,000. Thus, by June 2007 the entire 2006 legislative appropriation for the program was exhausted ($247.5 million in loans, and $2.5 million in administrative costs) and no funds reverted back to the General Revenue Fund.

CS/CS/SB 2860, enacted in 2008, required the Citizens Property Insurance Corporation (Citizens) to transfer $250 million to the General Revenue Fund by December 15, 2008. The 2008 General Appropriations Act (GAA) contained a contingent appropriation of $250 million to the SBA for additional funding for the Capital Build-Up Program. The appropriation was contingent upon Citizens transferring $250 million to the General Revenue Fund. Citizens never transferred any money to the General Revenue Fund because Governor Crist line item vetoed the transfer.

One provision in CS/CS/SB 2860, enacted in 2008 (s. 215.55951, F.S.), precluded Citizens from increasing rates or assessments due to the $250 million transfer from Citizens to the Capital Build-Up Program. Another provision precluded Citizens from increasing rates or assessments due to changes to the program made by the bill. These provisions were not vetoed by Governor Crist. The bill repeals s. 215.55951, F.S. which precludes Citizens from increasing rates or assessments due to the $250 million transfer of funds to the Capital Build-Up Program in 2008 or due to changes to the program contained in CS/CS/SB 2860.

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

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program (Capital Build-Up Program or program) within the State Board of Administration (SBA) to provide insurance companies a low-cost source of capital to write additional residential property insurance. The program's goal was to increase the availability of residential property insurance covering the risk of hurricanes and to ease residential property insurance premium increases.

To accomplish its goal, the program loaned state funds in the form of surplus notes to new or existing authorized residential property insurers under specified conditions. The insurers, in turn, agreed to write additional residential property insurance in Florida and to contribute new capital to their company. The maximum dollar amount of a surplus note was $25 million. The surplus note was repayable to the state, with a 20 year term, at the 10-year Treasury Bond interest rate (with interest only payments the first three years). The Legislature appropriated $250 million non-recurring funds from the General Revenue Fund to fund the program at its inception in 2006. Any unexpended balance reverted back to the General Revenue Fund on June 30, 2007.

As of June 28, 2007, the program issued $247,500,000 in funds to thirteen qualifying insurers. Administrative expenses for the program totaled $2,500,000. Thus, by June 2007 the entire 2006 legislative appropriation for the program was exhausted ($247.5 million in loans, and $2.5 million in administrative costs) and no funds reverted back to the General Revenue Fund.[1]

CS/CS/SB 2860, enacted in 2008, required the Citizens Property Insurance Corporation (Citizens) to transfer $250 million to the General Revenue Fund by December 15, 2008.[2] The 2008 General Appropriations Act (GAA) contained a contingent appropriation of $250 million to the SBA for additional funding for the Capital Build-Up Program. The appropriation was contingent upon Citizens transferring $250 million to the General Revenue Fund.

The transfer of $250 million from Citizens for use in the Capital Build-Up Program was line item vetoed by Governor Crist, so Citizens never transferred the money to the SBA.[3] In his veto message Governor Crist stated: "[w]hile I believe the program is well intended and has had the net effect of removing nearly 200,000 policies from the Citizens Property Insurance Corporation and has kept an additional estimated 480,000 policies out of Citizens, the funding source is inappropriate. The original funding for the program came from the General Revenue Fund during the 05/06 fiscal year; however, the additional funding for the program provided in this legislation comes from policyholders' premiums paid to Citizens, which is used to pay claims in the event of a catastrophic hurricane. ...Taking $250 million away from Citizens' ability to pay claims will substantially increase the likelihood of assessments for Floridians across the state."[4]

One provision in CS/CS/SB 2860, enacted in 2008 (s. 215.55951, F.S.), precluded Citizens from increasing rates or assessments due to the $250 million transfer from Citizens to the Capital Build-Up Program. Another provision precluded Citizens from increasing rates or assessments due to changes to the program made by the bill. These provisions were not vetoed by Governor Crist.

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[1] Information obtained from the Final Report of the Insurance Capital Build-Up Incentive Program available at http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=TYIOUbPBbDM%3d&tabid=975&mid=2692 (last viewed February 1, 2011).

[2] Section 16, Ch. 2008-66, L.O.F.

[3] Section 16 of CS/CS/SB 2860 which required the $250 million transfer from Citizens to the General Revenue Fund for use in the Capital Build Up Program was vetoed on May 28, 2008. CS/HB 5057 also required the $250 million transfer and this bill was vetoed on June 10, 2008. (Letter to Secretary Kurt S. Browning, Secretary of State, from Governor Charlie Crist dated June 10, 2008, on file with staff of the Insurance & Banking Subcommittee).

[4] Letter to Secretary Kurt S. Browning, Secretary of State, from Governor Charlie Crist dated May 28, 2008, on file with staff of the Insurance & Banking Subcommittee.

Effect of Bill

The bill repeals s. 215.55951, F.S., which precludes Citizens from increasing rates or assessments due to the $250 million transfer of funds to the Capital Build-Up Program in 2008 or due to changes to the program contained in CS/CS/SB 2860.

B. SECTION DIRECTORY:

Section 1: Repeals s. 215.55951, F.S., relating to the ability of Citizens to increase rates or assessments due to a transfer of funds from Citizens to the Capital Build-Up Program or for other statutory changes.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None,

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The repeal of s. 215.55951, F.S., will not result in rate or assessment increases by Citizens. The impetus of section 215.55951, F.S., was to ensure Citizens would not raise rates or assessments due to the $250 million depletion of surplus required by CS/CS/SB 2860 and CS/HB 5057. No provision in s. 215.5595, F.S., the statute governing the Capital Build-Up Program, could be the legal basis for Citizens to raise rates or assessments.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill and none repealed by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to prohibited activities of Citizens Property Insurance Corporation; repealing s. 215.55951, F.S., relating to an obsolete prohibition against Citizens Property Insurance Corporation's use of certain amendments or transfers of funds for rate or assessment increase purposes; providing an effective date.

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

Section 1. Section 215.55951, Florida Statutes, is repealed.

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