



Appropriations Committee

Wednesday, March 20, 2013
4:00 PM – 6:00 PM
212 Knott Building

Meeting Packet

Will Weatherford
Speaker

Seth McKeel
Chair



The Florida House of Representatives Appropriations Committee

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AGENDA

Wednesday, March 20, 2013
212 Knott Building
4:00 PM – 6:00 PM

- I. Call to Order/Roll Call
- II. Opening Remarks by Chair McKeel
- III. Consideration of the following bills:
 - CS/HB 579** Natural Gas Motor Fuel by Energy & Utilities Subcommittee, Ray
 - CS/HB 1033** Public School Classroom Teachers by Choice & Innovation Subcommittee, Fresen
 - CS/HB 1309** Procurement of Commodities and Contractual Services by Government Operations Subcommittee, Albritton
- IV. Consideration of the following proposed committee bill:
 - PCB APC 13-01** -- Funding from the National Mortgage Settlement
- V. Presentation on Information Technology Governance by Committee Staff
- VI. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 579 Natural Gas Motor Fuel
SPONSOR(S): Energy & Utilities Subcommittee; Ray and others
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 560

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	13 Y, 0 N, As CS	Whittier	Collins
2) Finance & Tax Subcommittee	15 Y, 0 N	Flieger	Langston
3) Appropriations Committee		White	Leznoff
4) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill creates Part V of Chapter 206, F.S., consisting of ss. 206.9951-206.998, F.S., and entitles it "Natural Gas Fuel." It repeals the annual decal fee program for motor vehicles powered by alternative fuels effective January 1, 2014, and establishes a fuel tax structure for natural gas used as a motor fuel similar to that for diesel fuel beginning January 1, 2019, thereby exempting natural gas fuel from fuel taxes for five years. The bill also exempts natural gas fuel from state sales and use taxes and expands the definition of "energy efficiency improvement" to include "installation of systems for natural gas fuel" under uses authorized by the Local Government Infrastructure Surtax.

The bill may result in increased savings for drivers utilizing vehicles powered by natural gas fuel, an increase in conversions of vehicle fleets from being powered by traditional fuels to natural gas fuel, and an increase in natural gas refueling infrastructure across the state.

On March 8, 2013, the Revenue Estimating Conference estimated that in FY 2013-14, there will be an insignificant negative impact on revenues to the General Revenue Fund, a (\$0.3) million impact to state trust funds, and no impact to local government. However, in FY 2018-19 net revenue impacts will become more positive on a permanent basis as the new fuel tax system created by the bill takes effect. Consequently, the recurring revenue impacts, expressed in FY 2013-14 dollars reflecting the longer-run perspective, will be \$0.1 million to the General Revenue Fund, (\$0.1) million to state trust funds, and \$0.4 million to local government.

The effective date of this bill is January 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Natural Gas

During the past several years, exploration has uncovered a supply of natural gas in the United States which has resulted in a reduction in the price of natural gas and an increased interest in natural gas powered vehicles and fueling stations. Similar to the dilemma facing electric vehicles, there is much discussion surrounding whether to first increase and/or convert fleets to be powered by natural gas in Florida or to begin with expanding the natural gas fueling infrastructure statewide. Currently, there are 32 natural gas fueling stations in Florida.¹

When compared using equivalent units of measure, natural gas is less expensive than gasoline or diesel fuel. The U.S. Department of Energy reports that in the fall of 2012, the national average price for gasoline was \$3.82, the price for diesel was \$4.13, and for a gasoline gallon equivalent of compressed natural gas ("CNG") was \$2.12.² Although initial savings in fuel costs may be offset by the cost of a natural gas vehicle over a gasoline or diesel-powered vehicle, cost savings may be experienced after a few years.

In a study³ prepared for the Florida Natural Gas Vehicle Coalition ("FNGVC"), the following was noted:

The incremental cost of a standard passenger vehicle powered by CNG, compared to a standard passenger vehicle powered by gasoline, ranges from \$7,000 to \$18,500. Assuming each passenger vehicle consumes 531 gallons per year, and applying a gas-CNG price difference of \$1.74, the payback period ranges from 7.6 years to 20 years. In contrast, the incremental cost of a truck powered by CNG over a diesel-powered truck is \$76,100. Assuming each vehicle consumes 11,706 gallons per year and assuming a price difference of \$1.91, the payback period for conversion of a diesel-powered truck to a CNG-powered truck is only 3.4 years. Further, reduced engine wear and extended service intervals also reduce maintenance costs for CNG-powered vehicles.⁴

Natural gas is touted as the cleanest of the fossil fuels. The Natural Gas Supply Association points out that, "Pollutants emitted in the United States, particularly from the combustion of fossil fuels, have led to the development of many pressing environmental problems. Natural gas, emitting fewer harmful chemicals into the atmosphere than other fossil fuels, can help to mitigate some of these environmental issues." These concerns include:

- Greenhouse Gas Emissions;
- Smog, Air Quality and Acid Rain;
- Industrial and Electric Generation Emissions; and
- Pollution from the Transportation Sector.⁵

¹ Correspondence from the Florida Natural Gas Association, March 1, 2013.

² *Clean Cities Alternative Fuel Price Report*, U.S. Department of Energy, October 2012, p. 3.

³ *Economic Impact of Incentives to Facilitate Compressed Natural Gas Vehicles in Florida*, by Fishkind & Associates, Inc., August 1, 2012.

⁴ *Id.*, pp. 17-18.

⁵ Naturalgas.org website: <http://www.naturalgas.org/environment/naturalgas.asp>.

According to the FNGVC, the following are benefits associated with the use of natural gas for fleet trucks:

- Natural gas vehicles can save a company 30%-50% of its fuel costs.
- Central fuel and maintenance make fleets highly conducive to CNG fueling infrastructure.
- While it is true that Florida currently has relatively few natural gas fueling stations in place, several companies offer no-cost or low-cost options for construction and maintenance of such infrastructure.
- Maintenance on a natural gas vehicle is no more problematic and often easier than traditional diesel trucks.
- The cost of converting to CNG is decreasing. In addition, such costs are offset by savings in direct fuel costs and possible financial incentives for the purchase of natural gas vehicles.⁶

The FNGVC study recommends providing incentives to utilize CNG-powered truck fleets, thereby creating a demand for the re-fueling stations and “producing significant stimulation of Florida’s economy.”

State Gasoline, Diesel, and Alternative Fuel Taxes

Motor Fuel

Section 206.01(9), F.S., defines “motor fuel” or “fuel” to mean “all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle.” Section 206.41(1), F.S., provides for the following taxes on motor fuel:

- An excise or license tax of 2 cents per net gallon of motor fuel, designated as the “constitutional fuel tax.”
- An additional 1 cent per net gallon, designated as the “county fuel tax.”
- An additional 1 cent per net gallon, designated as the “municipal fuel tax.”
- An additional tax of 1 cent per net gallon may be imposed by each county, designated as the “ninth-cent fuel tax.”
- An additional tax of between 1 and 11 cents per net gallon may be imposed by each county, designated as the “local option fuel tax.”
- An additional tax per net gallon of motor fuel is imposed by each county, designated as the State Comprehensive Enhanced Transportation System Tax (“SCETS”), at a rate determined as specified in paragraph (f) of the subsection.
- An additional tax per net gallon is imposed “on the privilege of selling motor fuel,” designated as the “fuel sales tax,” at a rate determined as specified in paragraph (g) of the subsection.

The SCETS tax rate on motor fuel for 2013 is 5.9 cents and the fuel sales tax rate on motor fuel for 2013 is 12.9 cents.⁷

Diesel Fuel

Section 206.86(1), F.S., defines “diesel fuel” to mean “all petroleum distillates commonly known as diesel #2, biodiesel, or any other product blended with diesel or any product placed into the storage supply tank of a diesel-powered motor vehicle.” Section 206.87(1), F.S., provides for the following taxes on diesel fuel:

- An excise tax of 4 cents upon each net gallon of diesel fuel, except for alternative fuels which are subject to the fee imposed by s. 206.877, F.S.

⁶ FNGVC website: <http://www.fuelforjobs.com/wp-content/uploads/2012/03/Executive-Summary-FINAL1.pdf>, p. 6.

⁷ Florida Department of Revenue website: http://dor.myflorida.com/dor/tips/pdf/12b05-02_chart.pdf, 2013 Florida Fuel Tax, Collection Allowance, Refund, and Pollutants Tax Rates, p. 2.

- An additional 1 cent per net gallon by each county, designated as the “ninth-cent fuel tax.”
- An additional 6 cents per net gallon by each county, designated as the “local option fuel tax.”
- An additional tax per net gallon by each county, designated as the State Comprehensive Enhanced Transportation System Tax (SCETS), at a rate determined as specified in paragraph (d) of the subsection.
- An additional tax per net gallon “on the privilege of selling diesel fuel,” designated as the “fuel sales tax,” at a rate determined as specified in paragraph (e) of the subsection.

The SCETS Tax rate on diesel for 2013 is 7.1 cents and the fuel sales tax rate on diesel for 2013 is 12.9 cents.⁸

Section 212.0501(5), F.S., provides that diesel fuel upon which the fuel taxes pursuant to ch. 206, F.S., have been paid is exempt from the tax on sales, use, and other transactions imposed by ch. 212, F.S.

Alternative Fuel

Section 206.86(4), F.S., defines “alternative fuel” to mean “any liquefied petroleum gas product or compressed natural gas product or combination thereof used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas or compressed natural gas.” Section 206.86(5), F.S., defines “natural gasoline” as “a liquid hydrocarbon that is produced by natural gas and must be blended with other liquid petroleum products to produce motor fuel.”

Section 206.877(1)(a), F.S., requires owners or operators of motor vehicles licensed in this state which are powered by alternative fuels to pay, in lieu of the excise tax on diesel fuel (s. 206.87(1)(a)-(d), F.S.), an annual decal fee on each such motor vehicle in accordance with the rate schedule specified in that paragraph.

The Department of Revenue (“DOR”) issues an annual decal to be attached to the upper right corner of the front windshield on the motor vehicle for which the decal is issued, and it is unlawful to operate a vehicle that is required to have this decal unless the vehicle is titled outside the state. Each sale of alternative fuel placed in a motor vehicle displaying a decal must be documented on an invoice that includes the decal number, the motor vehicle license number, and the number of gallons placed into the motor vehicle. Any person who puts or causes to be put liquefied petroleum gas or compressed natural gas into a motor vehicle required to have a decal is guilty of a first degree misdemeanor unless the vehicle has the required attached decal. A state or local governmental agency is not required to obtain a decal and pay the annual decal fee for a motor vehicle powered by alternative fuel which it operates.⁹ The taxes imposed on diesel fuel under s. 206.87, F.S., apply to purchases of alternative fuels by operators of vehicles licensed in other states and other vehicles that do not have the proper decal.

The sale of alternative fuel, as defined in s. 206.86(4), F.S., is also subject to sales and use tax imposed under ch. 212, F.S.¹⁰

Section 206.89, F.S., provides that a person may not act as a retailer of alternative fuel unless he or she holds a valid retailer of alternative fuel license issued by DOR, and any person acting as such who does not hold a license must pay a penalty of 25% of the tax assessed on the total purchases. A filing fee of \$5 and a bond is required at the time of filing an application for a license. Every person who operates as a retailer of alternative fuel, except those licensed under ch. 206, F.S., including a state

⁸ Florida Department of Revenue website: http://dor.myflorida.com/dor/tips/pdf/12b05-02_chart.pdf, 2013 Florida Fuel Tax, Collection Allowance, Refund, and Pollutants Tax Rates, p. 2.

⁹ Section 206.877, F.S.

¹⁰ Rule 12A-1.059, F.A.C.

agency, federal agency, municipality, county, or special district, must report monthly to DOR and pay tax on all fuel purchases.

The revenues from the state alternative fuel fees imposed by s. 206.877, F.S., are deposited into the State Alternative Fuel User Fee Clearing Trust Fund. After deducting specified service charges, the proceeds from state alternative fuel fees are distributed as follows:

- One-half of the proceeds shall be transferred to the State Transportation Trust Fund.
- 50% of the remainder shall be transferred to the State Board of Administration for distribution in accordance with the Florida Constitution.
- 25% of the remainder shall be transferred to the Revenue Sharing Trust Fund for Municipalities.
- 25% of the remainder shall be distributed in accordance with s. 206.60(1), F.S. (to the counties for specified public transportation purposes).¹¹

The revenues from the local alternative fuel fees imposed in lieu of s. 206.87(1)(b) or (c), F.S., are to be deposited into the Local Alternative Fuel User Fee Clearing Trust Fund. After deducting specified service charges, the proceeds are returned monthly to the appropriate county.¹²

Local Discretionary Sales Surtaxes

Local discretionary sales surtaxes, also referred to as local option sales taxes, are authorized under s. 212.055, F.S., and provide potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions that are subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions, pursuant to ch. 212, F.S., and communications services as defined for purposes of ch. 202, F.S. Discretionary sales surtaxes must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to the state's sales and use tax.¹³ The surtax applies to the first \$5,000 of any single taxable item when sold to the same purchaser at the same time.¹⁴

There are eight different types of local discretionary sales surtaxes currently authorized in law:

- Charter County and Regional Transportation System Surtax;
- Local Government Infrastructure Surtax;
- Small County Surtax;
- Indigent Care and Trauma Center Surtax;
- County Public Hospital Surtax;
- School Capital Outlay Surtax;
- Voter-Approved Indigent Care Surtax; and
- Emergency Fire Rescue Services and Facilities Surtax.

The local discretionary sales surtax rate varies from county to county, depending on the particular levies authorized in that jurisdiction.

Local Government Infrastructure Surtax

Section 212.055(2)(a)1., F.S., provides that the Local Government Infrastructure Surtax shall be levied at the rate of 0.5 or 1 percent pursuant to an ordinance enacted by a majority vote of the members of

¹¹ Section 206.879(1), F.S.

¹² Section 206.879(2), F.S.

¹³ 2012 Florida Tax Handbook, p. 207.

¹⁴ Section 212.054(2)(b)1., F.S.

the county's governing body and approved by voters in a countywide referendum.¹⁵ If the proposal to levy the surtax is approved by a majority of the electors, the levy shall take effect. The levy may only be extended by voter approval in a countywide referendum. There is no state-mandated limit on the length of levy for surtax ordinances enacted after July 1, 1993.¹⁶ All counties are eligible to levy this surtax.¹⁷

Pursuant to s. 212.055(2)(d), F.S., school districts, counties,¹⁸ and municipalities may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation, conservation, or protection of natural resources;
- To provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or
- To finance the closure of county-owned or municipally-owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.

For purposes of the Local Government Infrastructure Surtax, s. 212.055(2)(d)2., F.S., defines "energy efficiency improvement" as any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Installation of solar panels;
- Building modifications to increase the use of daylight or shade;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

A local government choosing to expend funds under this provision is required to enact or amend its ordinance pursuant to s. 125.66, F.S., and have the ordinance approved by referendum in a subsequent election.

Effects of Proposed Changes

Natural Gas Fuel Taxes

Chapter 206, F.S., addresses "Motor and Other Fuel Taxes." The bill creates Part V of Chapter 206, F.S., consisting of ss. 206.9951-206.998, and entitles it "Natural Gas Fuel." It repeals the annual decal fee program for motor vehicles powered by alternative fuels and establishes a fuel tax structure for natural gas used as a motor fuel similar to that for diesel fuel beginning January 1, 2019.

¹⁵ In lieu of action by the county's governing body, municipalities representing a majority of the county's population may initiate the surtax through the adoption of uniform resolutions calling for a countywide referendum on the issue.

¹⁶ If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance. If the pre-July 1, 1993, ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years.

¹⁷ The Local Government Infrastructure Surtax is one of four surtaxes subject to a combined rate limitation. A county cannot levy this surtax and the Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax in excess of a combined rate of 1 percent.

¹⁸ Pursuant to s. 212.055(2)(d), F.S., proceeds of the surtax may also be expended within another county in the case of a negotiated joint county agreement.

Section 206.9951, F.S., provides the following definitions:

- "Motor fuel equivalent gallon" means the volume of natural gas fuel it takes to equal the energy content of 1 gallon of motor fuel.
- "Natural gas fuel" means any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle as defined in s. 206.01(23), F.S. This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.
- "Natural gas fuel retailer" means any person who sells natural gas fuel for use in a motor vehicle as defined in s. 206.01(23), F.S.
- "Natural gasoline" is a liquid hydrocarbon that is produced by natural gas and must be blended with other liquid petroleum products to produce motor fuel.
- "Person" means a natural person, corporation, copartnership, firm, company, agency, or association; a state agency; a federal agency; or a political subdivision of the state

The bill requires any person selling natural gas fuel at retail in Florida to obtain a natural gas fuel retailer license from the Department of Revenue. Until December 31, 2018, any person who acts as a natural gas retailer and does not hold a valid license must pay a penalty of \$200 for each month of operation without a license. Beginning January 1, 2019, a penalty of 25 percent of the tax assessed on total purchases is imposed on any person who acts as a natural gas fuel retailer and does not have a valid license.¹⁹ In order to apply for a license from DOR, the applicant must file an application and a bond with the department and pay a license fee of \$5 for deposit into the General Revenue Fund.²⁰

The bill replaces the annual decal and fee originally required in s. 206.877, F.S., with a tax on each motor fuel equivalent gallon of natural gas fuel. The bill provides the motor fuel equivalent gallon rates for compressed natural gas, liquefied natural gas, and liquefied petroleum gas. The person liable for payment of the taxes is the person selling the fuel to the end user for use in the fuel supply tank of a motor vehicle as defined in s. 206.01(23), F.S.²¹

Section 206.9955(2), F.S., provides for the following taxes on natural gas fuel, effective January 1, 2019:

- An excise tax of 4 cents upon each motor fuel equivalent gallon of natural gas fuel.
- An additional tax of 1 cent upon each motor fuel equivalent gallon of natural gas fuel, which is designated as the "ninth-cent fuel tax."
- An additional tax of 6 cents on each motor fuel equivalent gallon of natural gas fuel by each county, which is designated as the "local option fuel tax."
- An additional tax on each motor fuel equivalent gallon of natural gas fuel, which is designated as the "State Comprehensive Enhanced Transportation System Tax," at a rate determined pursuant to paragraph (d) of the subsection.²²

¹⁹ Section 206.9952(3), F.S.

²⁰ Section 206.9952, F.S.

²¹ See ss. 206.9955 and 206.996, F.S., for detailed information on specific calculations.

²² Each calendar year, the department shall determine the tax rate applicable to the sale of natural gas fuel for the following 12-month period beginning January 1, rounded to the nearest tenth of a cent, by adjusting the initially established tax rate of 7.1 cents per gallon by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30.

- An additional tax is imposed on each motor fuel equivalent gallon of natural gas fuel "for the privilege of selling natural gas fuel," designated as the "fuel sales tax," at a rate determined as specified in paragraph (e) of the section.

The bill provides that for the purpose of determining the amount of taxes, beginning with February 2019, each natural gas fuel retailer shall file, no later than the 20th of each month, monthly reports with the DOR providing information on inventory, purchases, nontaxable disposals, and taxable sales in gallons of natural gas fuel for the preceding month. The natural gas fuel retailer is allowed to deduct 0.67 percent of the amount of taxes owed to "compensate it for services rendered and expenses incurred in complying with the requirements..."²³ Upon the filing of the monthly report, the natural gas fuel retailer shall pay the DOR the full amount of fuel taxes for the preceding month, less the amount allowed for services and expenses.

The bill provides exemptions from the tax imposed by chapter 206 when used or purchased for the following:²⁴

- Exclusive use by the United States or its departments or agencies. Exclusive use by the United States or its departments and agencies means the consumption by the United States or its departments or agencies of natural gas fuel in a motor vehicle as defined in s. 206.01(23).
- Use for agricultural purposes as defined in s. 206.41(4)(c).
- Uses as provided in s. 206.874(3) (which addresses dyed diesel fuel).
- Used to propel motor vehicles operated by state and local government agencies.
- Individual use resulting from residential refueling devices located at a person's primary residence.
- Purchases of natural gas fuel between licensed natural gas fuel retailers.²⁵

Section 206.997, F.S., directs that, beginning with the calendar year 2019 and thereafter, revenues from the natural gas fuel tax be deposited into the State Alternative Fuel User Fee Clearing Trust Fund to be distributed as follows:

- One-half of the proceeds shall be transferred to the State Transportation Trust Fund.
- 50% of the remainder shall be transferred to the State Board of Administration for distribution in accordance with the Florida Constitution.
- 25% of the remainder shall be transferred to the Revenue Sharing Trust Fund for Municipalities.
- 25% of the remainder shall be distributed in accordance with s. 206.60(1), F.S. (to the counties for specified public transportation purposes).

The bill repeals the Local Alternative Fuel User Fee Clearing Trust Fund. The bill specifies that existing provisions within part I and part II of chapter 206 shall be applicable to the taxes levied, imposed, and collected unless the provision conflicts with the new part.

Local Government Infrastructure Surtax

As noted in the *Present Situation* section, "energy efficiency improvement" is defined within the Local Government Infrastructure Surtax subsection of s. 212.055, F.S., as any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

²³ Section 206.996(1), F.S.

²⁴ Section 206.9965, F.S.

²⁵ A natural gas fuel retailer that sells tax-paid natural gas fuel to another natural gas fuel retailer may take a credit on its monthly return or may file a claim for refund with the Chief Financial Officer pursuant to s. 215.26, F.S. All sales of natural gas fuel between natural gas fuel retailers must be documented on invoices or other evidence of the sale of such fuel and the seller shall retain a copy of the purchaser's natural gas fuel retailer license.

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Installation of solar panels;
- Building modifications to increase the use of daylight or shade;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

The bill adds "installation of systems for natural gas fuel as defined in s. 206.9951" to the definition of "energy efficiency improvement." This would allow a county to use surtax revenues as loans, grants, or rebates to private property owners who install natural gas fueling systems if a local government ordinance authorizing such use is approved by referendum.²⁶

Sales and Use Tax

The bill exempts natural gas fuel from the state sales and use tax when the fuel is placed into the fuel supply system of a motor vehicle.

B. SECTION DIRECTORY:

Section 1. Amends s. 206.86, F.S.; deletes definitions for the terms "alternative fuel" and "natural gasoline."

Section 2. Amends s. 206.87, F.S.; conforms a cross-reference.

Section 3. Repeals s. 206.877, F.S., relating to the annual decal fee program for motor vehicles powered by alternative fuels.

Section 4. Repeals s. 206.89, F.S., relating to the requirements for alternative fuel retailer licenses.

Section 5. Amends s. 206.91, F.S.; makes grammatical and technical changes.

Section 6. Provides a directive to the Division of Law Revision and Information to create part V of chapter 206, Florida Statutes.

Section 7. Creates s. 206.9951, F.S.; provides definitions.

Section 8. Creates s. 206.9952, F.S.; establishes requirements for natural gas fuel retailer licenses; provides penalties for certain licensure violations.

Section 9. Creates s. 206.9955, F.S.; provides for the levy of the natural gas fuel tax; provides calculations for a motor fuel equivalent gallon; authorizes the Department of Revenue to adopt rules.

Section 10. Creates s. 206.996, F.S.; establishes requirements for monthly reports of natural gas fuel retailers; provides that reports are made under the penalties of perjury; allows natural gas fuel retailers to seek a deduction of the tax levied under specified conditions.

Section 11. Creates s. 206.9965, F.S.; provides exemptions and refunds from the natural gas fuel tax.

Section 12. Transfers and renumbers s. 206.879, F.S., as s. 206.997, F.S., and amends to revise provisions relating to the State Alternative Fuel User Fee Clearing Trust Fund.

²⁶ Section 212.055(2)(d), F.S.
STORAGE NAME: h0579c.APC
DATE: 3/19/2013

Section 13. Terminates the Local Alternative Fuel User Fee Clearing Trust Fund within the Department of Revenue; prescribes procedures for the termination of the trust fund.

Section 14. Creates s. 206.998, F.S.; provides for the applicability of specified sections of parts I and II of ch. 206, F.S.

Section 15. Amends s. 212.055, F.S.; expands the use of the local government infrastructure surtax to include the installation of systems for natural gas fuel.

Section 16. Amends s. 212.08, F.S.; provides an exemption from taxes for natural gas fuel under certain circumstances.

Section 17. Provides an effective date of January 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On March 8, 2013, the Revenue Estimating Conference estimated that in FY 2013-14, there will be an insignificant negative impact on revenues to the General Revenue Fund and a (\$0.3) million impact to state trust funds. However, in FY 2018-19 net revenue impacts will become more positive on a permanent basis as the new fuel tax system created by the bill takes effect. Consequently, the recurring revenue impacts, expressed in FY 2013-14 dollars reflecting the longer-run perspective, will be \$0.1 million to the General Revenue Fund and (\$0.1) million state trust funds.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On March 8, 2013, the Revenue Estimating Conference estimated that in FY 2013-14, there will be no impact to local government and slightly negative impacts in the subsequent four years of (\$0.1) million annually. However, in FY 2018-19 net revenue impacts will become more positive on a permanent basis as the new fuel tax system created by the bill takes effect. Consequently, the recurring revenue impacts, expressed in FY 2013-14 dollars reflecting the longer-run perspective, will be \$0.4 million to local government.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in increased savings for drivers utilizing vehicles powered by natural gas fuel, an increase in conversions of vehicle fleets from being powered by traditional fuels to natural gas fuel, and an increase in natural gas refueling infrastructure across the state.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DOR is authorized to adopt rules and publish forms to administer the fuel sales tax in s. 206.9955, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2013, the Energy & Utilities Subcommittee adopted a Proposed Committee Substitute (PCS) for the bill and passed the bill out as a Committee Substitute. One amendment to the PCS was adopted.

The amended PCS made the following changes to the filed version of the bill:

- Removed Section 4 from the bill. Section 4 created the Natural Gas Fuel Vehicle Investment Program, which directed that certain taxes be deposited into the General Inspection Trust Fund to be used to provide rebates for the incremental cost or purchase of natural gas fuel vehicles.
- Provided that natural gas fuel is exempt from the sales and use tax imposed in chapter 212, F.S.
- Provided for a 5-year exemption of natural gas fuel taxes beginning on January 1, 2014, and ending on December 31, 2018.
- Provided for a \$200 penalty for every month that a person who acts as a natural gas retailer without a valid license is in operation during the five-year tax exemption period.
- Adjusted the State Comprehensive Enhanced Transportation System Tax from being initially established at a tax rate of 6.9 cents per gallon to 7.1 cents per gallon.
- Revised the definitions of "natural gas fuel," "natural gas fuel retailer," and "person" in part V of chapter 206, F.S.

The staff analysis has been updated to reflect the committee substitute.

1 A bill to be entitled
 2 An act relating to natural gas motor fuel; amending s.
 3 206.86, F.S.; deleting definitions for the terms
 4 "alternative fuel" and "natural gasoline"; amending s.
 5 206.87, F.S.; conforming a cross-reference; repealing
 6 s. 206.877, F.S., relating to the annual decal fee
 7 program for motor vehicles powered by alternative
 8 fuels; repealing s. 206.89, F.S., relating to the
 9 requirements for alternative fuel retailer licenses;
 10 amending s. 206.91, F.S.; making grammatical and
 11 technical changes; providing a directive to the
 12 Division of Law Revision and Information; creating s.
 13 206.9951, F.S.; providing definitions; creating s.
 14 206.9952, F.S.; establishing requirements for natural
 15 gas fuel retailer licenses; providing penalties for
 16 certain licensure violations; creating s. 206.9955,
 17 F.S.; providing calculations for a motor fuel
 18 equivalent gallon; providing for the levy of the
 19 natural gas fuel tax; authorizing the Department of
 20 Revenue to adopt rules; creating s. 206.996, F.S.;
 21 establishing requirements for monthly reports of
 22 natural gas fuel retailers; providing that reports are
 23 made under the penalties of perjury; allowing natural
 24 gas fuel retailers to seek a deduction of the tax
 25 levied under specified conditions; creating s.
 26 206.9965, F.S.; providing exemptions and refunds from
 27 the natural gas fuel tax; transferring, renumbering,
 28 and amending s. 206.879, F.S.; revising provisions

29 relating to the State Alternative Fuel User Fee
 30 Clearing Trust Fund; terminating the Local Alternative
 31 Fuel User Fee Clearing Trust Fund within the
 32 Department of Revenue; prescribing procedures for the
 33 termination of the trust fund; creating s. 206.998,
 34 F.S.; providing for the applicability of specified
 35 sections of parts I and II of ch. 206, F.S.; amending
 36 s. 212.055, F.S.; expanding the use of the local
 37 government infrastructure surtax to include the
 38 installation of systems for natural gas fuel; amending
 39 s. 212.08, F.S.; providing an exemption from taxes for
 40 natural gas fuel under certain circumstances;
 41 providing an effective date.

42

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

44

45 Section 1. Section 206.86, Florida Statutes, is amended to
 46 read:

47 206.86 Definitions.—As used in this part:

48 (1) "Diesel fuel" means all petroleum distillates commonly
 49 known as diesel #2, biodiesel, or any other product blended with
 50 diesel or any product placed into the storage supply tank of a
 51 diesel-powered motor vehicle.

52 (2) "Taxable diesel fuel" or "fuel" means any diesel fuel
 53 not held in bulk storage at a terminal ~~and~~ which has not been
 54 dyed for exempt use in accordance with Internal Revenue Code
 55 requirements.

56 (3) "User" includes any person who uses diesel fuels

57 within this state for the propulsion of a motor vehicle on the
 58 public highways of this state, even though the motor is also
 59 used for a purpose other than the propulsion of the vehicle.

60 ~~(4) "Alternative fuel" means any liquefied petroleum gas~~
 61 ~~product or compressed natural gas product or combination thereof~~
 62 ~~used in an internal combustion engine or motor to propel any~~
 63 ~~form of vehicle, machine, or mechanical contrivance. This term~~
 64 ~~includes, but is not limited to, all forms of fuel commonly or~~
 65 ~~commercially known or sold as natural gasoline, butane gas,~~
 66 ~~propane gas, or any other form of liquefied petroleum gas or~~
 67 ~~compressed natural gas.~~

68 ~~(5) "Natural gasoline" is a liquid hydrocarbon that is~~
 69 ~~produced by natural gas and must be blended with other liquid~~
 70 ~~petroleum products to produce motor fuel.~~

71 (4)~~(6)~~ "Removal" means any physical transfer of diesel
 72 fuel and any use of diesel fuel other than as a material in the
 73 production of diesel fuel.

74 (5)~~(7)~~ "Blender" means any person who ~~that~~ produces
 75 blended diesel fuel outside the bulk transfer/terminal system.

76 (6)~~(8)~~ "Colorless marker" means material that is not
 77 perceptible to the senses until the diesel fuel into which it is
 78 introduced is subjected to a scientific test.

79 (7)~~(9)~~ "Dyed diesel fuel" means diesel fuel that is dyed
 80 in accordance with United States Environmental Protection Agency
 81 or Internal Revenue Service requirements for high sulfur diesel
 82 fuel or low sulfur diesel fuel.

83 (8)~~(10)~~ "Ultimate vendor" means a licensee that sells
 84 undyed diesel fuel to the United States or its departments or

85 agencies in bulk lots of not less than 500 gallons in each
 86 delivery or to the user of the diesel fuel for use on a farm for
 87 farming purposes.

88 (9)~~(11)~~ "Local government user of diesel fuel" means any
 89 county, municipality, or school district licensed by the
 90 department to use untaxed diesel fuel in motor vehicles.

91 (10)~~(12)~~ "Mass transit system" means any licensed local
 92 transportation company providing local bus service that is open
 93 to the public and that travels regular routes.

94 (11)~~(13)~~ "Diesel fuel registrant" means anyone required by
 95 this chapter to be licensed to remit diesel fuel taxes,
 96 including, but not limited to, terminal suppliers, importers,
 97 local government users of diesel fuel, and mass transit systems.

98 (12)~~(14)~~ "Biodiesel" means any product made from
 99 nonpetroleum-based oils or fats which is suitable for use in
 100 diesel-powered engines. Biodiesel is also referred to as alkyl
 101 esters.

102 (13)~~(15)~~ "Biodiesel manufacturer" means those industrial
 103 plants, regardless of capacity, where organic products are used
 104 in the production of biodiesel. This includes businesses that
 105 process or blend organic products that are marketed as
 106 biodiesel.

107 Section 2. Paragraph (a) of subsection (1) of section
 108 206.87, Florida Statutes, is amended to read:

109 206.87 Levy of tax.—

110 (1) (a) An excise tax of 4 cents per gallon is ~~hereby~~
 111 imposed upon each net gallon of diesel fuel subject to the tax
 112 under subsection (2), ~~except alternative fuels which are subject~~

113 ~~to the fee imposed by s. 206.877.~~

114 Section 3. Section 206.877, Florida Statutes, is repealed.

115 Section 4. Section 206.89, Florida Statutes, is repealed.

116 Section 5. Subsection (1) of section 206.91, Florida
 117 Statutes, is amended to read:

118 206.91 Tax reports; computation and payment of tax.—

119 (1) For the purpose of determining the amount of taxes
 120 imposed by s. 206.87, each diesel fuel registrant shall, not
 121 later than the 20th day of each calendar month, mail to the
 122 department, on forms prescribed by the department, monthly
 123 reports that provide ~~which shall show such~~ information on
 124 inventories, purchases, nontaxable disposals, and taxable sales
 125 in gallons of diesel fuel ~~and alternative fuel,~~ for the
 126 preceding calendar month ~~as may be~~ required by the department.
 127 However, if the 20th day falls on a Saturday, a Sunday, or a
 128 federal or state legal holiday, returns shall be accepted if
 129 postmarked on the next succeeding workday. The reports must
 130 include, ~~shall contain~~ or be verified by, a written declaration
 131 stating that they are ~~such report is~~ made under the penalties of
 132 perjury. The diesel fuel registrant shall deduct from the amount
 133 of taxes shown by the report to be payable an amount equivalent
 134 to .67 percent of the taxes on diesel fuel imposed by s.
 135 206.87(1)(a) and (e), which deduction is ~~hereby~~ allowed to the
 136 diesel fuel registrant on account of services and expenses in
 137 complying with the provisions of this part. The allowance on
 138 taxable gallons of diesel fuel sold to persons licensed under
 139 this chapter is not ~~shall not be~~ deductible unless the diesel
 140 fuel registrant has allowed 50 percent of the allowance provided

141 | by this section to a purchaser with a valid wholesaler or
 142 | terminal supplier license. This allowance is not ~~shall not be~~
 143 | deductible unless payment of the taxes is made on or before the
 144 | 20th day of the month as ~~herein~~ required in this subsection.
 145 | ~~Nothing in~~ This subsection does not ~~shall be construed to~~
 146 | authorize a deduction from the constitutional fuel tax or fuel
 147 | sales tax.

148 | Section 6. The Division of Law Revision and Information is
 149 | requested to create part V of chapter 206, Florida Statutes,
 150 | consisting of ss. 206.9951-206.998, entitled "NATURAL GAS FUEL."

151 | Section 7. Section 206.9951, Florida Statutes, is created
 152 | to read:

153 | 206.9951 Definitions.—As used in this part, the term:

154 | (1) "Motor fuel equivalent gallon" means the volume of
 155 | natural gas fuel it takes to equal the energy content of 1
 156 | gallon of motor fuel.

157 | (2) "Natural gas fuel" means any liquefied petroleum gas
 158 | product, compressed natural gas product, or combination thereof
 159 | used in a motor vehicle as defined in s. 206.01(23). This term
 160 | includes, but is not limited to, all forms of fuel commonly or
 161 | commercially known or sold as natural gasoline, butane gas,
 162 | propane gas, or any other form of liquefied petroleum gas,
 163 | compressed natural gas, or liquefied natural gas.

164 | (3) "Natural gas fuel retailer" means any person who sells
 165 | natural gas fuel for use in a motor vehicle as defined in s.
 166 | 206.01(23).

167 | (4) "Natural gasoline" is a liquid hydrocarbon that is
 168 | produced by natural gas and must be blended with other liquid

169 | petroleum products to produce motor fuel.

170 | (5) "Person" means a natural person, corporation,
 171 | copartnership, firm, company, agency, or association; a state
 172 | agency; a federal agency; or a political subdivision of the
 173 | state.

174 | Section 8. Section 206.9952, Florida Statutes, is created
 175 | to read:

176 | 206.9952 Application for license as a natural gas fuel
 177 | retailer.-

178 | (1) It is unlawful for any person to engage in business as
 179 | a natural gas fuel retailer within this state unless the person
 180 | is the holder of a valid license issued by the department to
 181 | engage in such business.

182 | (2) A person who has facilities for placing natural gas
 183 | fuel into the supply system of an internal combustion engine
 184 | fueled by individual portable containers of 10 gallons or less
 185 | is not required to be licensed as a natural gas fuel retailer,
 186 | provided that the fuel is only used for exempt purposes.

187 | (3) (a) Any person who acts as a natural gas retailer and
 188 | does not hold a valid natural gas fuel retailer license shall
 189 | pay a penalty of \$200 for each month of operation without a
 190 | license. This paragraph expires December 31, 2018.

191 | (b) Effective January 1, 2019, any person who acts as a
 192 | natural gas fuel retailer and does not hold a valid natural gas
 193 | fuel retailer license shall pay a penalty of 25 percent of the
 194 | tax assessed on the total purchases made during the unlicensed
 195 | period.

196 | (4) To procure a natural gas fuel retailer license, a

197 person shall file an application and a bond with the department
 198 on a form prescribed by the department. The department may not
 199 issue a license upon the receipt of any application unless it is
 200 accompanied by a bond.

201 (5) When a natural gas fuel retailer license application
 202 is filed by a person whose previous license was canceled for
 203 cause by the department or the department believes that such
 204 application was not filed in good faith or is filed by another
 205 person as a subterfuge for the actual person in interest whose
 206 previous license has been canceled, the department may, if
 207 evidence warrants, refuse to issue a license for such an
 208 application.

209 (6) Upon the department's issuance of a natural gas fuel
 210 retailer license, such license remains in effect so long as the
 211 natural gas fuel retailer is in compliance with the requirements
 212 of this part.

213 (7) Such license may not be assigned and is valid only for
 214 the natural gas fuel retailer in whose name the license is
 215 issued. The license shall be displayed conspicuously by the
 216 natural gas fuel retailer in the principal place of business for
 217 which the license was issued.

218 (8) With the exception of a state or federal agency or a
 219 political subdivision licensed under this chapter, each person,
 220 as defined in this part, who operates as a natural gas fuel
 221 retailer shall report monthly to the department and pay a tax on
 222 all natural gas fuel purchases beginning January 1, 2019.

223 (9) The license application requires a license fee of \$5.
 224 Each license shall be renewed annually by submitting a

225 reapplication and the license fee to the department. The license
 226 fee shall be paid to the department for deposit into the General
 227 Revenue Fund.

228 Section 9. Section 206.9955, Florida Statutes, is created
 229 to read:

230 206.9955 Levy of natural gas fuel tax.-

231 (1) The motor fuel equivalent gallon means the following
 232 for:

233 (a) Compressed natural gas gallon: 5.66 pounds, or per
 234 each 126.67 cubic feet.

235 (b) Liquefied natural gas gallon: 6.22 pounds.

236 (c) Liquefied petroleum gas gallon: 1.35 gallons.

237 (2) Effective January 1, 2019, the following taxes shall
 238 be imposed:

239 (a) An excise tax of 4 cents upon each motor fuel
 240 equivalent gallon of natural gas fuel.

241 (b) An additional tax of 1 cent upon each motor fuel
 242 equivalent gallon of natural gas fuel, which is designated as
 243 the "ninth-cent fuel tax."

244 (c) An additional tax of 6 cents on each motor fuel
 245 equivalent gallon of natural gas fuel by each county, which is
 246 designated as the "local option fuel tax."

247 (d) An additional tax on each motor fuel equivalent gallon
 248 of natural gas fuel, which is designated as the "State
 249 Comprehensive Enhanced Transportation System Tax," at a rate
 250 determined pursuant to this paragraph. Each calendar year, the
 251 department shall determine the tax rate applicable to the sale
 252 of natural gas fuel for the following 12-month period beginning

253 January 1, rounded to the nearest tenth of a cent, by adjusting
 254 the initially established tax rate of 7.1 cents per gallon by
 255 the percentage change in the average of the Consumer Price Index
 256 issued by the United States Department of Labor for the most
 257 recent 12-month period ending September 30.

258 (e)1. An additional tax is imposed on each motor fuel
 259 equivalent gallon of natural gas fuel for the privilege of
 260 selling natural gas fuel and is designated as the "fuel sales
 261 tax." Each calendar year, the department shall determine the tax
 262 rate applicable to the sale of natural gas fuel, rounded to the
 263 nearest tenth of a cent, for the following 12-month period
 264 beginning January 1. The tax rate is calculated by adjusting the
 265 initially established tax rate of 12.9 cents per gallon by the
 266 percentage change in the average of the Consumer Price Index
 267 issued by the United States Department of Labor for the most
 268 recent 12-month period ending September 30.

269 2. The department is authorized to adopt rules and publish
 270 forms to administer this paragraph.

271 (3) Unless otherwise provided by this chapter, the taxes
 272 specified in subsection (2) are imposed on natural gas fuel when
 273 it is placed into the fuel supply tank of a motor vehicle as
 274 defined in s. 206.01(23). The person liable for payment of the
 275 taxes imposed by this section is the person selling the fuel to
 276 the end user, for use in the fuel supply tank of a motor vehicle
 277 as defined in s. 206.01(23).

278 Section 10. Section 206.996, Florida Statutes, is created
 279 to read:

280 206.996 Monthly reports by natural gas fuel retailers;

281 | deductions.-

282 | (1) For the purpose of determining the amount of taxes
 283 | imposed by s. 206.9955, each natural gas fuel retailer shall
 284 | file beginning February 2019, and each month thereafter, no
 285 | later than the 20th day of each month, monthly reports
 286 | electronically with the department showing information on
 287 | inventory, purchases, nontaxable disposals, and taxable sales in
 288 | gallons of natural gas fuel for the preceding month. However, if
 289 | the 20th day of the month falls on a Saturday, Sunday, or
 290 | federal or state legal holiday, a return must be accepted if it
 291 | is electronically filed on the next succeeding business day. The
 292 | reports must include, or be verified by, a written declaration
 293 | stating that such report is made under the penalties of perjury.
 294 | The natural gas fuel retailer shall deduct from the amount of
 295 | taxes shown by the report to be payable an amount equivalent to
 296 | 0.67 percent of the taxes on natural gas fuel imposed by s.
 297 | 206.9955(2)(a) and (e), which deduction is allowed to the
 298 | natural gas fuel retailer to compensate it for services rendered
 299 | and expenses incurred in complying with the requirements of this
 300 | part. This allowance is not deductible unless payment of
 301 | applicable taxes is made on or before the 20th day of the month.
 302 | This subsection may not be construed as authorizing a deduction
 303 | from the constitutional fuel tax or the fuel sales tax.

304 | (2) Upon the electronic filing of the monthly report, each
 305 | natural gas fuel retailer shall pay the department the full
 306 | amount of natural gas fuel taxes for the preceding month at the
 307 | rate provided in s. 206.9955, less the amount allowed the
 308 | natural gas fuel retailer for services and expenses as provided

309 in subsection (1).

310 (3) The department may authorize a quarterly return and
 311 payment of taxes when the taxes remitted by the natural gas fuel
 312 retailer for the preceding quarter did not exceed \$100, and the
 313 department may authorize a semiannual return and payment of
 314 taxes when the taxes remitted by the natural gas fuel retailer
 315 for the preceding 6 months did not exceed \$200.

316 (4) In addition to the allowance authorized by subsection
 317 (1), every natural gas fuel retailer is entitled to a deduction
 318 of 1.1 percent of the taxes imposed under s. 206.9955(2)(b) and
 319 (c), on account of services and expenses incurred due to
 320 compliance with the requirements of this part. This allowance
 321 may not be deductible unless payment of the tax is made on or
 322 before the 20th day of the month.

323 Section 11. Section 206.9965, Florida Statutes, is created
 324 to read:

325 206.9965 Exemptions and refunds; natural gas fuel
 326 retailers.—Natural gas fuel may be purchased from natural gas
 327 fuel retailers exempt from the tax imposed by this part when
 328 used or purchased for the following:

329 (1) Exclusive use by the United States or its departments
 330 or agencies. Exclusive use by the United States or its
 331 departments and agencies means the consumption by the United
 332 States or its departments or agencies of the natural gas fuel in
 333 a motor vehicle as defined in s. 206.01(23).

334 (2) Use for agricultural purposes as defined in s.
 335 206.41(4)(c).

336 (3) Uses as provided in s. 206.874(3).

337 (4) Used to propel motor vehicles operated by state and
 338 local government agencies.

339 (5) Individual use resulting from residential refueling
 340 devices located at a person's primary residence.

341 (6) Purchases of natural gas fuel between licensed natural
 342 gas fuel retailers. A natural gas fuel retailer that sells tax-
 343 paid natural gas fuel to another natural gas fuel retailer may
 344 take a credit on its monthly return or may file a claim for
 345 refund with the Chief Financial Officer pursuant to s. 215.26.
 346 All sales of natural gas fuel between natural gas fuel retailers
 347 must be documented on invoices or other evidence of the sale of
 348 such fuel and the seller shall retain a copy of the purchaser's
 349 natural gas fuel retailer license.

350 Section 12. Section 206.879, Florida Statutes, is
 351 transferred and renumbered as section 206.997, Florida Statutes,
 352 and amended to read:

353 206.997 ~~206.879~~ State and local alternative fuel user fee
 354 clearing trust funds; distribution.—

355 ~~(1)~~ Notwithstanding the provisions of s. 206.875, the
 356 revenues from the natural gas fuel tax imposed by s. 206.9955
 357 ~~state alternative fuel fees imposed by s. 206.877~~ shall be
 358 deposited into the State Alternative Fuel User Fee Clearing
 359 Trust Fund, which is hereby created. After deducting the service
 360 charges provided in s. 215.20, the proceeds in this trust fund
 361 shall be distributed as follows: one-half of the proceeds in
 362 calendar year 2019 and ~~one-fifth of the proceeds in calendar~~
 363 ~~year 1991, one-third of the proceeds in calendar year 1992,~~
 364 ~~three-sevenths of the proceeds in calendar year 1993, and one-~~

365 ~~half of the proceeds in each calendar year~~ thereafter shall be
 366 transferred to the State Transportation Trust Fund; the
 367 remainder shall be distributed as follows: 50 percent shall be
 368 transferred to the State Board of Administration for
 369 distribution according to the provisions of s. 16, Art. IX of
 370 the State Constitution of 1885, as amended; 25 percent shall be
 371 transferred to the Revenue Sharing Trust Fund for
 372 Municipalities; and the remaining 25 percent shall be
 373 distributed using the formula contained in s. 206.60(1).

374 ~~(2) Notwithstanding the provisions of s. 206.875, the~~
 375 ~~revenues from the local alternative fuel fees imposed in lieu of~~
 376 ~~s. 206.87(1)(b) or (c) shall be deposited into The Local~~
 377 ~~Alternative Fuel User Fee Clearing Trust Fund, which is hereby~~
 378 ~~created. After deducting the service charges provided in s.~~
 379 ~~215.20, the proceeds in this trust fund shall be returned~~
 380 ~~monthly to the appropriate county.~~

381 Section 13. (1) The Local Alternative Fuel User Fee
 382 Clearing Trust Fund within the Department of Revenue is
 383 terminated.

384 (2) The Department of Revenue shall pay any outstanding
 385 debts or obligations of the terminated fund as soon as
 386 practicable, and the Chief Financial Officer shall close out and
 387 remove the terminated fund from various state accounting systems
 388 using generally accepted accounting principles concerning
 389 warrants outstanding, assets, and liabilities.

390 Section 14. Section 206.998, Florida Statutes, is created
 391 to read:

392 206.998 Applicability of specified sections of parts I and

393 II.—The provisions of ss. 206.01, 206.02, 206.025, 206.026,
 394 206.027, 206.028, 206.03, 206.05, 206.055, 206.06, 206.07,
 395 206.075, 206.09, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15,
 396 206.16, 206.17, 206.175, 206.18, 206.199, 206.20, 206.204,
 397 206.205, 206.21, 206.215, 206.22, 206.23, 206.24, 206.25,
 398 206.27, 206.28, 206.405, 206.406, 206.41, 206.413, 206.43,
 399 206.44, 206.48, 206.485, 206.49, 206.56, 206.59, 206.606,
 400 206.608, and 206.61 of part I of this chapter and ss. 206.86,
 401 206.872, 206.874, 206.8745, 206.88, 206.90, and 206.93 of part
 402 II of this chapter shall, as far as lawful or practicable, be
 403 applicable to the tax levied and imposed and to the collection
 404 thereof as if fully set out in this part. However, any provision
 405 of any such section does not apply if it conflicts with any
 406 provision of this part.

407 Section 15. Paragraph (d) of subsection (2) of section
 408 212.055, Florida Statutes, is amended to read:

409 212.055 Discretionary sales surtaxes; legislative intent;
 410 authorization and use of proceeds.—It is the legislative intent
 411 that any authorization for imposition of a discretionary sales
 412 surtax shall be published in the Florida Statutes as a
 413 subsection of this section, irrespective of the duration of the
 414 levy. Each enactment shall specify the types of counties
 415 authorized to levy; the rate or rates which may be imposed; the
 416 maximum length of time the surtax may be imposed, if any; the
 417 procedure which must be followed to secure voter approval, if
 418 required; the purpose for which the proceeds may be expended;
 419 and such other requirements as the Legislature may provide.
 420 Taxable transactions and administrative procedures shall be as

421 provided in s. 212.054.
 422 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—
 423 (d) The proceeds of the surtax authorized by this
 424 subsection and any accrued interest shall be expended by the
 425 school district, within the county and municipalities within the
 426 county, or, in the case of a negotiated joint county agreement,
 427 within another county, to finance, plan, and construct
 428 infrastructure; to acquire land for public recreation,
 429 conservation, or protection of natural resources; to provide
 430 loans, grants, or rebates to residential or commercial property
 431 owners who make energy efficiency improvements to their
 432 residential or commercial property, if a local government
 433 ordinance authorizing such use is approved by referendum; or to
 434 finance the closure of county-owned or municipally owned solid
 435 waste landfills that have been closed or are required to be
 436 closed by order of the Department of Environmental Protection.
 437 Any use of the proceeds or interest for purposes of landfill
 438 closure before July 1, 1993, is ratified. The proceeds and any
 439 interest may not be used for the operational expenses of
 440 infrastructure, except that a county that has a population of
 441 fewer than 75,000 and that is required to close a landfill may
 442 use the proceeds or interest for long-term maintenance costs
 443 associated with landfill closure. Counties, as defined in s.
 444 125.011, and charter counties may, in addition, use the proceeds
 445 or interest to retire or service indebtedness incurred for bonds
 446 issued before July 1, 1987, for infrastructure purposes, and for
 447 bonds subsequently issued to refund such bonds. Any use of the
 448 proceeds or interest for purposes of retiring or servicing

449 indebtedness incurred for refunding bonds before July 1, 1999,
 450 is ratified.

451 1. For the purposes of this paragraph, the term
 452 "infrastructure" means:

453 a. Any fixed capital expenditure or fixed capital outlay
 454 associated with the construction, reconstruction, or improvement
 455 of public facilities that have a life expectancy of 5 or more
 456 years and any related land acquisition, land improvement,
 457 design, and engineering costs.

458 b. A fire department vehicle, an emergency medical service
 459 vehicle, a sheriff's office vehicle, a police department
 460 vehicle, or any other vehicle, and the equipment necessary to
 461 outfit the vehicle for its official use or equipment that has a
 462 life expectancy of at least 5 years.

463 c. Any expenditure for the construction, lease, or
 464 maintenance of, or provision of utilities or security for,
 465 facilities, as defined in s. 29.008.

466 d. Any fixed capital expenditure or fixed capital outlay
 467 associated with the improvement of private facilities that have
 468 a life expectancy of 5 or more years and that the owner agrees
 469 to make available for use on a temporary basis as needed by a
 470 local government as a public emergency shelter or a staging area
 471 for emergency response equipment during an emergency officially
 472 declared by the state or by the local government under s.
 473 252.38. Such improvements are limited to those necessary to
 474 comply with current standards for public emergency evacuation
 475 shelters. The owner must enter into a written contract with the
 476 local government providing the improvement funding to make the

477 private facility available to the public for purposes of
 478 emergency shelter at no cost to the local government for a
 479 minimum of 10 years after completion of the improvement, with
 480 the provision that the obligation will transfer to any
 481 subsequent owner until the end of the minimum period.

482 e. Any land acquisition expenditure for a residential
 483 housing project in which at least 30 percent of the units are
 484 affordable to individuals or families whose total annual
 485 household income does not exceed 120 percent of the area median
 486 income adjusted for household size, if the land is owned by a
 487 local government or by a special district that enters into a
 488 written agreement with the local government to provide such
 489 housing. The local government or special district may enter into
 490 a ground lease with a public or private person or entity for
 491 nominal or other consideration for the construction of the
 492 residential housing project on land acquired pursuant to this
 493 sub-subparagraph.

494 2. For the purposes of this paragraph, the term "energy
 495 efficiency improvement" means any energy conservation and
 496 efficiency improvement that reduces consumption through
 497 conservation or a more efficient use of electricity, natural
 498 gas, propane, or other forms of energy on the property,
 499 including, but not limited to, air sealing; installation of
 500 insulation; installation of energy-efficient heating, cooling,
 501 or ventilation systems; installation of solar panels; building
 502 modifications to increase the use of daylight or shade;
 503 replacement of windows; installation of energy controls or
 504 energy recovery systems; installation of electric vehicle

505 charging equipment; installation of systems for natural gas fuel
 506 as defined in s. 206.9951; and installation of efficient
 507 lighting equipment.

508 3. Notwithstanding any other provision of this subsection,
 509 a local government infrastructure surtax imposed or extended
 510 after July 1, 1998, may allocate up to 15 percent of the surtax
 511 proceeds for deposit into ~~in~~ a trust fund within the county's
 512 accounts created for the purpose of funding economic development
 513 projects having a general public purpose of improving local
 514 economies, including the funding of operational costs and
 515 incentives related to economic development. The ballot statement
 516 must indicate the intention to make an allocation under the
 517 authority of this subparagraph.

518 Section 16. Subsection (4) of section 212.08, Florida
 519 Statutes, is amended to read:

520 212.08 Sales, rental, use, consumption, distribution, and
 521 storage tax; specified exemptions.—The sale at retail, the
 522 rental, the use, the consumption, the distribution, and the
 523 storage to be used or consumed in this state of the following
 524 are hereby specifically exempt from the tax imposed by this
 525 chapter.

526 (4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES, ETC.—

527 (a) Also exempt are:

528 1. Water delivered to the purchaser through pipes or
 529 conduits or delivered for irrigation purposes. The sale of
 530 drinking water in bottles, cans, or other containers, including
 531 water that contains minerals or carbonation in its natural state
 532 or water to which minerals have been added at a water treatment

533 facility regulated by the Department of Environmental Protection
534 or the Department of Health, is exempt. This exemption does not
535 apply to the sale of drinking water in bottles, cans, or other
536 containers if carbonation or flavorings, except those added at a
537 water treatment facility, have been added. Water that has been
538 enhanced by the addition of minerals and that does not contain
539 any added carbonation or flavorings is also exempt.

540 2. All fuels used by a public or private utility,
541 including any municipal corporation or rural electric
542 cooperative association, in the generation of electric power or
543 energy for sale. Fuel other than motor fuel and diesel fuel is
544 taxable as provided in this chapter with the exception of fuel
545 expressly exempt herein. Natural gas fuel as defined in s.
546 206.9951(2) is exempt from the tax imposed by this chapter when
547 placed into the fuel supply system of a motor vehicle. Motor
548 fuels and diesel fuels are taxable as provided in chapter 206,
549 with the exception of those motor fuels and diesel fuels used by
550 railroad locomotives or vessels to transport persons or property
551 in interstate or foreign commerce, which are taxable under this
552 chapter only to the extent provided herein. The basis of the tax
553 shall be the ratio of intrastate mileage to interstate or
554 foreign mileage traveled by the carrier's railroad locomotives
555 or vessels that were used in interstate or foreign commerce and
556 that had at least some Florida mileage during the previous
557 fiscal year of the carrier, such ratio to be determined at the
558 close of the fiscal year of the carrier. However, during the
559 fiscal year in which the carrier begins its initial operations
560 in this state, the carrier's mileage apportionment factor may be

561 determined on the basis of an estimated ratio of anticipated
 562 miles in this state to anticipated total miles for that year,
 563 and subsequently, additional tax shall be paid on the motor fuel
 564 and diesel fuels, or a refund may be applied for, on the basis
 565 of the actual ratio of the carrier's railroad locomotives' or
 566 vessels' miles in this state to its total miles for that year.
 567 This ratio shall be applied each month to the total Florida
 568 purchases made in this state of motor and diesel fuels to
 569 establish that portion of the total used and consumed in
 570 intrastate movement and subject to tax under this chapter. The
 571 basis for imposition of any discretionary surtax shall be set
 572 forth in s. 212.054. Fuels used exclusively in intrastate
 573 commerce do not qualify for the proration of tax.



574 3. The transmission or wheeling of electricity.

575 (b) Alcoholic beverages and malt beverages are not exempt.
 576 The terms "alcoholic beverages" and "malt beverages" as used in
 577 this paragraph have the same meanings ascribed to them in ss.
 578 561.01(4) and 563.01, respectively. It is determined by the
 579 Legislature that the classification of alcoholic beverages made
 580 in this paragraph for the purpose of extending the tax imposed
 581 by this chapter is reasonable and just, and it is intended that
 582 such tax be separate from, and in addition to, any other tax
 583 imposed on alcoholic beverages.

584 Section 17. This act shall take effect January 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1033 Public School Classroom Teachers
SPONSOR(S): Choice & Innovation Subcommittee, Fresen
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Choice & Innovation Subcommittee	13 Y, 0 N, As CS	Ammel	Fudge
2) Appropriations Committee		Heflin 	Leznoff 
3) Education Committee			

SUMMARY ANALYSIS

The bill renames the Florida Teachers Lead Program to The Florida Teachers Classroom Supply Assistance Program and allows districts flexibility in distributing funds to eligible teachers each year. If a debit card is the mode of distribution, it requires a specific identifier on the front of the debit card. It encourages the Department of Education and district school boards to enter into public-private partnerships in order to generate more funds for the assistance program.

This bill has no fiscal impact on state or local governments.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Teachers Lead Program was established in 1997 to provide eligible classroom teachers with funds to assist teaching and learning in the classroom.¹ The funds are allocated in the General Appropriations Act and may be used to purchase classroom materials and supplies to supplement those otherwise available to classroom teachers. The amount available to each teacher was \$250 for the 1998 school year. Funds may not be used to purchase equipment.² Districts must distribute funds to their classroom teachers by September 30 each year, using any means determined appropriate by the district school board, including, but not limited to, direct deposit, check, debit card, or purchasing card.³ In a recent survey conducted by the Florida Association of District School Superintendents, 2 of the 38 districts that responded indicated that they only used debit cards for their teachers who did not have bank accounts.⁴

Teachers must sign a statement acknowledging receipt of the funds, keep receipts for no less than 4 years to demonstrate compliance with expenditure requirements, and return any unused funds to the district school board at the end of the school year. Funds returned to the district shall be deposited into the school advisory council account of the school at which the classroom teacher returning the funds was employed when the teacher received the funds or deposited into the Florida Teachers Lead Program account of the school district in which a charter school is sponsored, as applicable.⁵

Effect of Proposed Changes

The bill renames the Florida Teachers Lead Program to The Florida Teachers Classroom Supply Assistance Program and continues to allow districts flexibility in distributing funds to teachers. If debit cards are used, the debit cards must have an identifier on the front indicating the card has been issued specifically for this program. It encourages the Department of Education and school districts to enter into public-private partnerships in an effort to generate more funds for the program and removes an obsolete provision in the statute referencing a pilot program to determine the feasibility of managing the program through a centralized electronic system. No districts volunteered to participate in the pilot program.⁶

B. SECTION DIRECTORY:

Section 1. Amends s. 1012.71, F.S., renaming The Florida Teachers Lead Program to the Florida Teachers Classroom Supply Assistance Program; requiring an identifier on debit cards indicating the program for which they are issued; encouraging public-private partnerships to generate additional funds for the program; and deleting an obsolete provision.

Section 2. Amends s. 1012.05, F.S., to conform to the new program name.

Section 3. Provides an effective date of July 1, 2013.

¹ Section 18, ch. 97-384, L.O.F.

² Section 1012.71(2), F.S.

³ Section 1012.71(3), F.S.

⁴ Email, Florida Association of District School Superintendents (Feb. 26, 2013).

⁵ Section 1012.17(4), F.S.

⁶ Email, Florida Department of Education, Office of Funding and Financial Reporting (March 6, 2013).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Choice & Innovation Subcommittee reported the proposed committee substitute to HB 1033 favorably as a committee substitute. The proposed committee substitute reinstated all dissemination options for districts to allow them more flexibility and to minimize costs associated with instituting debit cards. This analysis is drafted to the committee substitute as passed by the Choice & Innovation Subcommittee.

1 A bill to be entitled
 2 An act relating to public school classroom teachers;
 3 amending s. 1012.71, F.S.; renaming the Florida
 4 Teachers Lead Program as the Florida Teachers
 5 Classroom Supply Assistance Program; providing for
 6 local contributions to the program; requiring
 7 identification of debit cards used as a method of
 8 payment to teachers; authorizing public-private
 9 partnerships to increase the total amount of funds
 10 available; deleting obsolete provisions; amending s.
 11 1012.05, F.S.; conforming provisions; providing an
 12 effective date.

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

15
 16 Section 1. Section 1012.71, Florida Statutes, is amended
 17 to read:

18 1012.71 The Florida Teachers Classroom Supply Assistance
 19 ~~Lead~~ Program.—

20 (1) For purposes of the Florida Teachers Classroom Supply
 21 Assistance ~~Lead~~ Program, the term "classroom teacher" means a
 22 certified teacher employed by a public school district or a
 23 public charter school in that district on or before September 1
 24 of each year whose full-time or job-share responsibility is the
 25 classroom instruction of students in prekindergarten through
 26 grade 12, including full-time media specialists and guidance
 27 counselors serving students in prekindergarten through grade 12,
 28 who are funded through the Florida Education Finance Program. A

29 "job-share" classroom teacher is one of two teachers whose
 30 combined full-time equivalent employment for the same teaching
 31 assignment equals one full-time classroom teacher.

32 (2) The Legislature, in the General Appropriations Act,
 33 shall determine funding for the Florida Teachers Classroom
 34 Supply Assistance ~~Lead~~ Program. The funds appropriated are for
 35 classroom teachers to purchase, on behalf of the school district
 36 or charter school, classroom materials and supplies for the
 37 public school students assigned to them and may not be used to
 38 purchase equipment. The funds appropriated shall be used to
 39 supplement the materials and supplies otherwise available to
 40 classroom teachers. From the funds appropriated for the Florida
 41 Teachers Classroom Supply Assistance ~~Lead~~ Program, the
 42 Commissioner of Education shall calculate an amount for each
 43 school district based upon each school district's proportionate
 44 share of the state's total unweighted FTE student enrollment and
 45 shall disburse the funds to the school districts by July 15.

46 (3) From the funds allocated to each school district and
 47 any funds received from local contributions for the Florida
 48 Teachers Classroom Supply Assistance ~~Lead~~ Program, the district
 49 school board shall calculate an identical amount for each
 50 classroom teacher, which is that teacher's proportionate share
 51 of the total amount allocated to the district from state funds
 52 and funds received from local contributions. A job-share
 53 classroom teacher may receive a prorated share of the amount
 54 provided to a full-time classroom teacher. The district school
 55 board and each charter school board shall provide each classroom
 56 teacher with his or her total proportionate share by September

57 | 30 of each year by any means determined appropriate by the
 58 | district school board or charter school board, including, but
 59 | not limited to, direct deposit, check, debit card, or purchasing
 60 | card, ~~notwithstanding any law to the contrary.~~ If a debit card
 61 | is used, an identifier must be placed on the front of the debit
 62 | card which clearly indicates that the card has been issued for
 63 | the Florida Teachers Classroom Supply Assistance Program.

64 | Expenditures under the program are not subject to state or local
 65 | competitive bidding requirements. Funds received by a classroom
 66 | teacher do not affect wages, hours, or terms and conditions of
 67 | employment and, therefore, are not subject to collective
 68 | bargaining. Any classroom teacher may decline receipt of or
 69 | return the funds without explanation or cause. ~~This subsection~~
 70 | ~~shall apply retroactively to July 1, 2007.~~

71 | (4) Each classroom teacher must sign a statement
 72 | acknowledging receipt of the funds, keep receipts for no less
 73 | than 4 years to show that funds expended meet the requirements
 74 | of this section, and return any unused funds to the district
 75 | school board at the end of the regular school year. Any unused
 76 | funds that are returned to the district school board shall be
 77 | deposited into the school advisory council account of the school
 78 | at which the classroom teacher returning the funds was employed
 79 | when that teacher received the funds or deposited into the
 80 | Florida Teachers Classroom Supply Assistance ~~Lead~~ Program
 81 | account of the school district in which a charter school is
 82 | sponsored, as applicable.

83 | (5) The statement must be signed and dated by each
 84 | classroom teacher before receipt of the Florida Teachers

85 Classroom Supply Assistance Lead Program funds and shall include
 86 the wording: "I, ...(name of teacher)..., am employed by the
 87County District School Board or by theCharter School as
 88 a full-time classroom teacher. I acknowledge that Florida
 89 Teachers Classroom Supply Assistance Lead Program funds are
 90 appropriated by the Legislature for the sole purpose of
 91 purchasing classroom materials and supplies to be used in the
 92 instruction of students assigned to me. In accepting custody of
 93 these funds, I agree to keep the receipts for all expenditures
 94 for no less than 4 years. I understand that if I do not keep the
 95 receipts, it will be my personal responsibility to pay any
 96 federal taxes due on these funds. I also agree to return any
 97 unexpended funds to the district school board at the end of the
 98 regular school year for deposit into the school advisory council
 99 account of the school where I was employed at the time I
 100 received the funds or for deposit into the Florida Teachers
 101 Classroom Supply Assistance Lead Program account of the school
 102 district in which the charter school is sponsored, as
 103 applicable."

104 (6) The Department of Education and district school boards
 105 may, and are encouraged to, enter into public-private
 106 partnerships in order to increase the total amount of Florida
 107 Teachers Classroom Supply Assistance Program funds available to
 108 classroom teachers.

109 ~~(6) For the 2009-2010 fiscal year, the Department of~~
 110 ~~Education is authorized to conduct a pilot program to determine~~
 111 ~~the feasibility of managing the Florida Teachers Lead Program~~
 112 ~~through a centralized electronic system. The pilot program must:~~

- 113 ~~(a) Be established through a competitive procurement~~
- 114 ~~process;~~
- 115 ~~(b) Provide the capability for participating teachers to~~
- 116 ~~purchase from online sources;~~
- 117 ~~(c) Provide the capability for participating teachers to~~
- 118 ~~purchase from local vendors by means other than online~~
- 119 ~~purchasing;~~
- 120 ~~(d) Generally comply with the provisions of this section;~~
- 121 ~~(e) Be subject to annual auditing requirements to ensure~~
- 122 ~~accountability for funds received and disbursed; and~~
- 123 ~~(f) Provide for all unused funds to be returned to the~~
- 124 ~~state at the close of each fiscal year.~~

125

126 ~~Any participation in this pilot program by school districts and~~

127 ~~individual teachers must be on a voluntary basis. The department~~

128 ~~may limit the number of participating districts to the number it~~

129 ~~deems feasible to adequately measure the viability of the pilot~~

130 ~~program. The department is not required to implement this pilot~~

131 ~~program if it determines that the number of school districts~~

132 ~~willing to participate is insufficient to adequately measure the~~

133 ~~viability of the pilot program.~~

134 Section 2. Paragraph (p) of subsection (2) of section

135 1012.05, Florida Statutes, is amended to read:

136 1012.05 Teacher recruitment and retention.—

137 (2) The Department of Education shall:

138 (p) ~~The Department of Education shall~~ Notify each teacher,

139 via e-mail, of each item in the General Appropriations Act and

140 legislation that affects teachers, including, but not limited

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2013

141 | to, the Excellent Teaching Program, the Florida Teachers
142 | Classroom Supply Assistance ~~Lead~~ Program, liability insurance
143 | protection for teachers, death benefits for teachers,
144 | substantive legislation, rules of the State Board of Education,
145 | and issues concerning student achievement.

146 | Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1309 Procurement of Commodities and Contractual Services
SPONSOR(S): Government Operations Subcommittee; Albritton
TIED BILLS: HB 1311 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N, As CS	Harrington	Williamson
2) Appropriations Committee		White	Leznoff

SUMMARY ANALYSIS

State procurement of personal property and services is governed by chapter 287, F.S. The Department of Management Services (DMS) is responsible for maintaining uniform rules for and overseeing agency procurement, as well as negotiating statewide contracts to leverage the state's buying power. The Chief Financial Officer (CFO) is responsible for setting and approving accounts against the state and keeping all state funds and securities. The CFO's duties also include contract review, procurement training, and auditing.

Effective July 1, 2013, the bill makes the following revisions to provisions governing state agency procurement and contracting, including, but not limited to:

- Requiring that agencies upload contracts and related information into the Florida Accountability Contract Tracking System;
- Providing for additional provisions to be included in grant agreements;
- Requiring agencies to appoint grant managers;
- Requiring grant managers to receive contract manager certification;
- Renaming chapter 287, F.S., as "Procurement of Commodities and Contractual Services";
- Providing that both DMS and the CFO are jointly responsible for contract management training;
- Requiring that invitations to bid be awarded to the lowest responsive bidder;
- Permitting DMS to lead joint agreements with governmental entities; and
- Removing the requirement that an agency head certify emergency procurement documents.

The bill will likely have a minimal fiscal impact on state government. However, it is anticipated that the provisions of the bill will be handled within existing agency resources. See Fiscal Comments section for further information.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Management Services

The Department of Management Services (DMS) provides administrative and support services to other state agencies and to state employees. DMS's areas of responsibility include, but are not limited to:¹

- Employee benefits (retirement and insurance);
- Human resource management;
- Business operations (real estate development and management, state purchasing, and specialized services);
- Telecommunications; and
- Agency administration.

Section 20.22(2), F.S., establishes the following divisions and programs within DMS:

- Facilities Program;
- Technology Program;
- Workforce Program;
- Support Program;
- Federal Property Assistance Program;
- Administration Program;
- Division of Administrative Hearings;
- Division of Retirement; and
- Division of State Group Insurance.

State Procurement of Contracts for Personal Property and Services

Chapter 287, F.S., regulates state agency² procurement of personal property and services. DMS is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.³ DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.⁴

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:⁵

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and

¹ See the Department of Management Services' website at: <http://www.dms.myflorida.com/> (last visited March 8, 2013).

² Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

³ See ss. 287.032 and 287.042, F.S.

⁴ *Id.*

⁵ See s. 287.057, F.S.

- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process.⁶ Section 287.012(6), F.S., provides that competitive solicitation means “the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.” Specified contractual services and commodities are not subject to competitive solicitation requirements.⁷

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by DMS, a water management district, or certain other agencies.⁸

Agreements Funded with Federal and State Assistance

Current law requires an agency agreement that provides state financial assistance to a recipient or subrecipient,⁹ or that provides federal financial assistance to a subrecipient,¹⁰ to include a provision specifying scope of work that clearly establishes the tasks the recipient or subrecipient is required to perform, and a provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the agency before payment. Each deliverable must be directly related to the scope of work and must specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.¹¹

Qualifications for Contract Managers and Contract Negotiators

For each contractual services contract the agency must designate an employee to function as contract manager who must be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. Current law requires certain contract managers to attend training conducted by the Chief Financial Officer (CFO).¹² It also requires certain contract negotiators to be certified based upon rules adopted by DMS.¹³

State Term Contracts

Using the various procurement methods, DMS negotiates state term contracts and purchasing agreements that are intended to leverage the state’s buying power.¹⁴ Agencies must purchase commodities and contractual services from purchasing agreements and state term contracts procured by DMS; however, all governmental agencies, as defined in s. 163.3164, F.S., may utilize the contracts.¹⁵

MyFloridaMarketPlace

The State’s MyFloridaMarketPlace (MFMP) is a centralized e-procurement system. DMS maintains a list of vendors by classes of commodities within the MFMP system.

Chief Financial Officer and Department of Financial Services

⁶ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

⁷ See s. 287.057(3)(f), F.S.

⁸ See s. 287.042(2)(c), F.S.

⁹ As defined in s. 215.97, F.S.

¹⁰ As defined by applicable United States Office of Management and Budget circulars.

¹¹ See s. 215.971, F.S.

¹² See s. 287.057(14), F.S.

¹³ See s. 287.057(16)(b), F.S.

¹⁴ See s. 287.012(27), F.S.

¹⁵ See s. 287.056(1), F.S.

The CFO is an elected constitutional Cabinet member.¹⁶ The CFO serves as the chief financial officer of the state and is responsible for setting and approving accounts against the state and keeping all state funds and securities.¹⁷ Such responsibilities include, but are not limited to, auditing and adjusting accounts of officers and those indebted to the state,¹⁸ paying state employee salaries,¹⁹ and reporting all disbursements of funds administered by the CFO.²⁰

The CFO also serves as the head of the Department of Financial Services (DFS), which executes the duties of the CFO.²¹ DFS consists of the following divisions:

- The Division of Accounting and Auditing;
- The Division of State Fire Marshall;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agents and Agency Services;
- The Division of Consumer Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Office of Insurance Consumer Advocate;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.²²

The Financial Services Commission; Board of Funeral, Cemetery, and Consumer Services; and Strategic Markets Research and Assessment Unit also are established within DFS.²³

Florida Accountability Contract Tracking System

Section 215.985(16), F.S., requires the CFO to provide public access to a state contract management system that provides information and documents related to contracts procured by governmental entities. The data collected in the system must include the contracting agency, the procurement method, and other pertinent contract information. Each time a major change to an existing contract is made, the agency must update the information in the contracting management system within 30 days. The website is known as the Florida Accountability Contract Tracking System (FACTS).²⁴

Current law also requires each state agency to report to DFS, within three working days of executing a contract, the following information relating to certain contracted activities:²⁵

- The nature of the commodities or services provided;
- The term of the contract;
- The final obligation made by the agency;
- A summary of any time constraints that apply to the procurement;
- The justification for not using the competitive solicitation, including any statutory exemption or exception; and

¹⁶ Art. 4, s. 4(a) and (c) of the State Constitution.

¹⁷ Art. 4, s. 4(c) of the State Constitution, and s. 17.001, F.S.

¹⁸ Section 17.04, F.S.

¹⁹ See s. 17.09, F.S.

²⁰ Section 17.11, F.S.

²¹ See s. 20.121, F.S.

²² Section 20.121(2), F.S.

²³ Sections 20.121(3), (4), and (6), F.S.

²⁴ The FACTS website can be found online at: <http://www.myfloridacfo.com/aadir/statewidecontractreporting.htm> (last visited on March 14, 2013).

²⁵ Agencies must submit the information to DFS for contracts in excess of Category Two (\$35,000) if the goods and services were not purchased by competitive solicitation or from a state term contract. Section 216.0111(2), F.S.

- Other information regarding the contract or the procurement that DFS requires.²⁶

All of the information provided to DFS, however, is not included in FACTS. The contracting agency is not required to upload the contract into FACTS.

Effect of the Bill

Agreements Funded with Federal and State Assistance

The bill requires that agreements funded with federal and state assistance contain additional provisions, which include:

- A provision specifying the financial consequences that apply if the recipient or subrecipient fails to perform the minimum level of service required in the agreement. The provision can be excluded in specified situations;
- A provision specifying that a recipient or subrecipient of federal or state financial assistance may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period;
- A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the state agency;
- A provision specifying that any funds paid in excess of the amount to that the recipient or subrecipient is entitled must be refunded to the state agency; and
- Any additional information required pursuant to s. 215.97, F.S., which is the Florida Single Audit Act.

The bill requires an agency to designate an employee to function as a grant manager for each agreement funded with federal or state financial assistance. The grant manager must complete the training and become a certified contract manager, as provided in s. 287.057(14), F.S.

The bill requires the CFO to establish uniform procedures for grant management to ensure that services have been rendered in accordance with agreement terms before the agency processes an invoice for payment. It requires the grant manager to reconcile and verify all funds received against all funds expended during the grant period and final reconciliation report. It also requires the CFO to perform audits after the grant agreement has been executed.

Florida Accountability Contract Tracking System

The bill requires state agencies²⁷ to upload contracts that have been redacted to exclude confidential or exempt information to the contract management website within 30 days after execution. The agency must provide on the website information pertaining to the contract, including the names of the contracting entities, procurement method, contract dates, nature of the commodities and services purchased, applicable unit prices, total compensation to be paid, all payments made, and applicable contract measures. Agencies must update the information in the system within 30 days of an amendment to the existing contract. Agencies also must post to the system the information required for each existing contract that was executed more than 30 days prior to July 1, 2013.

The bill provides that contracts available on the contract tracking system must not reveal information made confidential or exempt by law. If a party to the contract discovers that an electronic copy of the contract has not been properly redacted, the bill provides a process for the agency to follow, upon being notified or discovering the error. The agency must immediately remove the contract, redact the confidential or exempt information, and republish the contract to the website within seven days. Agencies must notify the CFO upon becoming aware that an electronic copy of a contract posted on the website has not been properly redacted. The contract tracking system must display a notice of the right of an affected party to request redaction of confidential or exempt information.

²⁶ Section 216.0111, F.S.

²⁷ The bill provides that "state agency" has the same meaning as defined in s. 216.011, F.S., excluding the judicial branch, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services. The bill permits those entities to utilize the contract management website.

The bill provides that the CFO, DFS, and any officer, employee, or contractor thereof, is not liable for failure of a state agency to redact confidential or exempt information. It provides that posting the contract on the contract tracking system does not supersede the duty of an agency to respond to a public records request or to a subpoena. The bill provides that the CFO may adopt rules to administer the section. In addition, the bill requires the CFO to use appropriate Internet security measures to ensure that no person has the ability to alter or modify records available on the website.

Chapter Name

The bill renames chapter 287, F.S., as "Procurement of Commodities and Contractual Services." The chapter is currently named "Procurement of Personal Property and Services."

Definitions

The bill provides a definition for "governmental entity", which means a political subdivision or agency of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, nonprofit public university or college, single-purpose or multipurpose special district, single-purpose or multipurpose public authority, metropolitan or consolidated government, separate legal entity or administrative entity, or any agency of the Federal Government.

The bill also amends the definitions for "best value," "commodities," "electronic posting," and "extension."

Term Contracts

The bill provides that when a vendor protests a notice of intent to award a contract to multiple vendors, the intended award may proceed unless the protesting vendor submits to DMS in writing particular facts and circumstances that demonstrate a reasonable basis for protesting the award to the other vendor or vendors. The Secretary of Management Services or his or her designee must determine in writing whether the vendor has demonstrated a sufficient basis for stay of the intended award. If the vendor prevails in the protest, the vendor is added to the contract with the same term and conditions as the other awarded contracts. This will allow DMS to proceed with the award of state term contracts during a vendor bid protest, rather than staying the award of the contract.

Joint Agreements

The bill authorizes DMS to lead, rather than solely enter into, joint agreements with governmental entities for the purchase of commodities or contractual services that can be used by multiple agencies.

Required Agency Agreement Terminology

The bill deletes repetitive language found in s. 287.056, F.S., that also is found in s. 287.058(d) and (e), F.S. The language requires agencies to include in contracts a provision specifying a scope of work that clearly establishes all tasks that the contractor is required to perform, and a provision dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

Invitations to Bid

The bill provides that a contract awarded in a procurement initiated with an invitation to bid must be awarded to the responsible and responsive vendor that submits the lowest responsive bid. This provision was in chapter 287, F.S., until 2010, when it was inadvertently removed.²⁸

Exemptions from Competitive Solicitation

Emergency Action Exception

The bill provides that the agency head must sign a written determination that immediate danger to the public health, safety, or welfare or other substantial loss to the state requires emergency action. The

²⁸ See chapter 2010-151, L.O.F.
STORAGE NAME: h1309b.APC
DATE: 3/19/2013

bill provides that the agency must furnish copies of all written determinations relating to the emergency to DMS and the CFO. The bill removes the requirement that the determination be certified under oath.

Single Source Contracts

The bill deletes provisions that require agencies to submit forms for approval from DMS for specified single source contracts prior to entering into contracts with vendors. According to DMS, these requirements were established to verify that agencies were noticing intent to enter into single source contracts and DMS has never utilized this provision to deny an agency's request to enter into such an agreement.²⁹

Contract Renewals and Extensions

The bill permits a contract extension and renewal to include written amendments signed by the parties. The bill also provides that an agency may negotiate a lower price in solicitations for contract renewals.

Training

The bill requires each contract manager who is responsible for contracts in excess of the threshold amount for Category Two (\$35,000) to be a certified contract manager. DMS is responsible for establishing and disseminating the requirements for certification, which includes completing the training conducted by the CFO for accountability in contracts and grant management.

MyFloridaMarketPlace

Current law requires DMS, in consultation with the Agency for Enterprise Information Technology and the Comptroller, to develop a program for online procurement of commodities and contractual services. The bill inserts a reference to the CFO in place of the Comptroller as the CFO is the state's chief financial officer, and removes a reference to the Agency for Enterprise Information Technology, as the Agency for Enterprise Information Technology has been decommissioned. Because MyFloridaMarketPlace is developed already, the bill provides that DMS and the CFO must maintain, rather than develop, a program for online procurement of commodities and contractual services.

Audits of Executed Contracts

The bill creates s. 287.136, F.S., which requires the CFO to perform audits of executed contract documents and a contract manager's records to ensure that adequate internal controls are in place for complying with the terms and conditions of the contract and for the validation and receipt of goods and services. It provides that the CFO must discuss the audit and potential findings with the official whose office is subject to the audit and that the final audit must be submitted to the agency head. The agency head must submit a written response to the final audit within 30 days.

Effective Date

The bill provides an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1. amends s. 215.971, F.S., providing additional information that must be included in an agency agreement that provides state financial assistance to a recipient or subrecipient; requiring each state agency to designate an employee to function as a grant manager for purposes of the agreements; requiring training for certain grant managers; requiring the CFO to establish and disseminate uniform procedures for grant managers; requiring the grant manager to report certain information; requiring the CFO to perform audits of executed grant agreements.

Section 2. amends s. 215.985, F.S., requiring the CFO to establish and maintain a secure contract tracking system; providing requirements for the system; requiring state agencies to post certain information on the contract tracking system within a specified timeframe; specifying information that must be posted on the contract tracking system; providing that records posted on the system may not contain confidential or exempt information; requiring state agencies to redact confidential or exempt information prior to posting records on the system; providing a process for a party to the contract to request redaction of confidential or exempt information; providing notice requirements; providing that

²⁹ According to a representative from DMS on March 8, 2013.

posting of information on the contract tracking system does not supersede the duty of a state agency to respond to a public record request; providing that a subpoena for certain contract information must be served on the state agency that is party to the contract; authorizing the CFO to adopt rules; defining the term "state agency"; authorizing the judicial branch, Department of Legal Affairs, Department of Agriculture and Consumer Services, and Department of Financial Services to elect to comply with the posting requirements.

Section 3. renames chapter 287, F.S., as "Procurement of Commodities and Contractual Services."

Section 4. amends s. 287.012, F.S., providing and revising definitions.

Section 5. amends s. 287.042, F.S., revising powers, duties, and functions of DMS; providing an additional circumstance under which the department may proceed with a competitive solicitation or contract award process of a term contract as an alternative to the stay of such process pursuant to a formal written protest under the Administrative Procedure Act; authorizing DMS to lead or enter into joint agreements with governmental entities for the purchase of commodities or contractual services that can be used by multiple agencies.

Section 6. amends s. 287.056, F.S., eliminating provisions requiring certain inclusions in agency agreements.

Section 7. amends s. 287.057, F.S., providing that contracts awarded pursuant to an invitation to bid must be awarded to the responsible and responsive vendor that submits the lowest responsive bid; revising exceptions to the requirement that the purchase of specified commodities or contractual services be made only as a result of receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies; revising contractual services and commodities that are not subject to competitive solicitation requirements by virtue of being available only from a single source; providing that a contract for commodities or contractual services may be awarded without competition if the recipient of funds is established during the appropriations process; revising provisions relating to extension of a contract for commodities or contractual services; authorizing an agency to negotiate better pricing upon renewal of a contract; providing training requirements for contract managers responsible for contracts in excess of a specified threshold amount; providing that DMS is responsible for establishing and disseminating the requirements for certification of a contract manager; requiring DMS and the CFO to maintain a program for online procurement of commodities and contractual services.

Section 8. amends s. 287.0571, F.S., revising nonapplicability of a business case to outsource.

Section 9. amends s. 287.058, F.S., defining the term "performance measure"; revising references within provisions relating to purchase orders used in lieu of written agreements for classes of contractual services; revising terminology.

Section 10. amends s. 287.076, F.S., providing that Project Management Professionals training for personnel involved in managing outsourcings and negotiations is subject to annual appropriations.

Section 11. creates s. 287.136, F.S., requiring the CFO to perform audits of executed contracts; creating reporting requirements.

Sections 12. through 22. amend ss. 16.0155, 283.33, 394.457, 402.7305, 409.9132, 427.0135, 445.024, 627.311, 627.351, 765.5155, and 893.055, F.S., conforming cross references.

Section 23. provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See below Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires certain agencies to upload contracts and contract related information on a secure contract management website. The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with the uploading requirements could require training on the system and on public record exemptions. Agencies also could incur costs associated with redacting the confidential or exempt information prior to uploading the documents.

In addition, the bill requires specified employees to receive training and contract manager certification. Providing the certification could create a minimal fiscal impact on DMS and the CFO. The bill could create a minimal fiscal impact on agencies as well because certain agency personnel will be required to attend and obtain certification. However, despite the potential for a minimal fiscal impact, the provisions of the bill are anticipated to be accomplished within existing agency resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the CFO to create rules pertaining to the contract management website and provides a grant of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Government Operations Subcommittee adopted a strike-all amendment and reported HB 1309 favorable with committee substitute. The committee substitute:

- Creates additional contract provisions for grant agreements;
- Requires that agencies appoint grant managers who have obtained contract manager certification;
- Requires agencies to upload redacted contracts and related information into a secure contract management website;
- Requires the CFO to conduct audits on executed contracts and grant agreements;
- Maintains the requirement in current law that DMS utilize a negotiation team with a chief negotiator when negotiating certain information technology contracts; and
- Removes provisions that raised concerns in the bill, including provisions that authorized DMS to delegate the purchase of insurance, provisions that permitted agencies to suspend vendors from the vendor list, provisions that permitted agencies to combine funds for purchases, and provisions that created a direct-support organization.

The analysis reflects the bill as amended.

1 A bill to be entitled
 2 An act relating to the procurement of commodities and
 3 contractual services; amending s. 215.971, F.S.;
 4 providing additional information that must be included
 5 in an agency agreement that provides state financial
 6 assistance to a recipient or subrecipient; requiring
 7 each state agency to designate an employee to function
 8 as a grant manager for purposes of the agreement;
 9 requiring training for certain grant managers;
 10 requiring the Chief Financial Officer to establish and
 11 disseminate uniform procedures for grant management;
 12 requiring the grant manager to report certain
 13 information; requiring the Chief Financial Officer to
 14 perform audits of executed grant agreements; amending
 15 s. 215.985, F.S.; requiring the Chief Financial
 16 Officer to establish and maintain a secure contract
 17 tracking system; providing requirements for the
 18 system; requiring state agencies to post certain
 19 information on the contract tracking system within a
 20 specified timeframe; specifying information that must
 21 be posted on the contract tracking system; providing
 22 that records posted on the system may not contain
 23 confidential or exempt information; requiring state
 24 agencies to redact confidential or exempt information
 25 prior to posting records on the system; providing a
 26 process for a party to the contract to request
 27 redaction of confidential or exempt information;
 28 providing notice requirements; providing that posting

29 of information on the contract tracking system does
 30 not supersede the duty of a state agency to respond to
 31 a public record request; providing that a subpoena for
 32 certain contract information must be served on the
 33 state agency that is party to the contract;
 34 authorizing the Chief Financial Officer to adopt
 35 rules; defining the term "state agency"; authorizing
 36 the judicial branch, Department of Legal Affairs,
 37 Department of Agriculture and Consumer Services, and
 38 Department of Financial Services to elect to comply
 39 with the posting requirements; renaming chapter 287,
 40 F.S.; amending s. 287.012, F.S.; providing and
 41 revising definitions; amending s. 287.042, F.S.;
 42 revising powers, duties, and functions of the
 43 Department of Management Services; providing an
 44 additional circumstance under which the department may
 45 proceed with a competitive solicitation or contract
 46 award process of a term contract as an alternative to
 47 the stay of such process pursuant to a formal written
 48 protest under the Administrative Procedure Act;
 49 authorizing the department to lead or enter into joint
 50 agreements with governmental entities for the purchase
 51 of commodities or contractual services that can be
 52 used by multiple agencies; amending s. 287.056, F.S.;
 53 eliminating provisions requiring certain inclusions in
 54 agency agreements; amending s. 287.057, F.S.;
 55 providing that contracts awarded pursuant to an
 56 invitation to bid shall be awarded to the responsible

57 and responsive vendor that submits the lowest
 58 responsive bid; revising exceptions to the requirement
 59 that the purchase of specified commodities or
 60 contractual services be made only as a result of
 61 receiving competitive sealed bids, competitive sealed
 62 proposals, or competitive sealed replies; revising
 63 contractual services and commodities that are not
 64 subject to competitive solicitation requirements by
 65 virtue of being available only from a single source;
 66 providing that a contract for commodities or
 67 contractual services may be awarded without
 68 competition if the recipient of funds is established
 69 during the appropriations process; revising provisions
 70 relating to extension of a contract for commodities or
 71 contractual services; authorizing an agency to
 72 negotiate better pricing upon renewal of a contract;
 73 providing training requirements for contract managers
 74 responsible for contracts in excess of a specified
 75 threshold amount; providing that the Department of
 76 Management Services is responsible for establishing
 77 and disseminating the requirements for certification
 78 of a contract manager; requiring the department, in
 79 consultation with the Chief Financial Officer to
 80 maintain a program for online procurement of
 81 commodities and contractual services; amending s.
 82 287.0571, F.S.; revising nonapplicability of a
 83 business case to outsource; amending s. 287.058, F.S.;

84 defining the term "performance measure"; revising

85 | references within provisions relating to purchase
 86 | orders used in lieu of written agreements for classes
 87 | of contractual services; revising terminology;
 88 | amending s. 287.076, F.S.; providing that Project
 89 | Management Professionals training for personnel
 90 | involved in managing outsourcings and negotiations is
 91 | subject to annual appropriations; creating s. 287.136,
 92 | F.S.; requiring the Chief Financial Officer to perform
 93 | audits of executed contracts; creating reporting
 94 | requirements; amending ss. 16.0155, 283.33, 394.457,
 95 | 402.7305, 409.9132, 427.0135, 445.024, 627.311,
 96 | 627.351, 765.5155, and 893.055, F.S.; conforming
 97 | cross-references; providing an effective date.

98 |

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

100 |

101 | Section 1. Section 215.971, Florida Statutes, is amended
 102 | to read:

103 | 215.971 Agreements funded with federal and state
 104 | assistance.—

105 | (1) For an agency agreement that provides state financial
 106 | assistance to a recipient or subrecipient, as those terms are
 107 | defined in s. 215.97, or that provides federal financial
 108 | assistance to a subrecipient, as defined by applicable United
 109 | States Office of Management and Budget circulars, the agreement
 110 | must ~~shall~~ include the following:

111 (a) ~~(1)~~ A provision specifying a scope of work that clearly
 112 establishes the tasks that the recipient or subrecipient is
 113 required to perform. ~~and~~

114 (b) ~~(2)~~ A provision dividing the agreement into
 115 quantifiable units of deliverables that must be received and
 116 accepted in writing by the agency before payment. Each
 117 deliverable must be directly related to the scope of work and
 118 ~~must~~ specify the required minimum level of service to be
 119 performed and the criteria for evaluating the successful
 120 completion of each deliverable.

121 (c) A provision specifying the financial consequences that
 122 apply if the recipient or subrecipient fails to perform the
 123 minimum level of service required by the agreement. The
 124 provision can be excluded from the agreement only if financial
 125 consequences are prohibited by the federal agency awarding the
 126 grant. Funds refunded to a state agency from a recipient or
 127 subrecipient for failure to perform as required under the
 128 agreement may be expended only in direct support of the program
 129 from which the agreement originated.

130 (d) A provision specifying that a recipient or
 131 subrecipient of federal or state financial assistance may expend
 132 funds only for allowable costs resulting from obligations
 133 incurred during the specified agreement period.

134 (e) A provision specifying that any balance of unobligated
 135 funds which has been advanced or paid must be refunded to the
 136 state agency.

137 (f) A provision specifying that any funds paid in excess
 138 of the amount to which the recipient or subrecipient is entitled

139 under the terms and conditions of the agreement must be refunded
 140 to the state agency.

141 (g) Any additional information required pursuant to s.
 142 215.97.

143 (2) For each agreement funded with federal or state
 144 financial assistance, the state agency shall designate an
 145 employee to function as a grant manager who shall be responsible
 146 for enforcing performance of the agreement's terms and
 147 conditions and who shall serve as a liaison with the recipient
 148 or subrecipient.

149 (a) Each grant manager who is responsible for agreements
 150 in excess of the threshold amount for CATEGORY TWO under s.
 151 287.017 must complete the training and become a certified
 152 contract manager as provided under s. 287.057(14).

153 (b) The Chief Financial Officer shall establish and
 154 disseminate uniform procedures for grant management pursuant to
 155 s. 17.03(3) to ensure that services have been rendered in
 156 accordance with agreement terms before the agency processes an
 157 invoice for payment. The procedures must include, but need not
 158 be limited to, procedures for monitoring and documenting
 159 recipient or subrecipient performance, reviewing and documenting
 160 all deliverables for which payment is requested by the recipient
 161 or subrecipient, and providing written certification by the
 162 grant manager of the agency's receipt of goods and services.

163 (c) The grant manager shall reconcile and verify all funds
 164 received against all funds expended during the grant agreement
 165 period and produce a final reconciliation report. The final

166 | report must identify any funds paid in excess of the
 167 | expenditures incurred by the recipient or subrecipient.

168 | (3) After the execution of a grant agreement, the Chief
 169 | Financial Officer shall perform audits of the executed state and
 170 | federal grant agreement documents and grant manager's records in
 171 | order to ensure that adequate internal controls are in place for
 172 | complying with the terms and conditions of such agreements and
 173 | for validation and receipt of goods and services.

174 | (a) At the conclusion of the audit, the Chief Financial
 175 | Officer's designee shall discuss the audit and potential
 176 | findings with the official whose office is subject to audit. The
 177 | final audit report shall be submitted to the agency head.

178 | (b) Within 30 days after the receipt of the final audit
 179 | report, the agency head shall submit to the Chief Financial
 180 | Officer or designee, his or her written statement of explanation
 181 | or rebuttal concerning findings requiring corrective action,
 182 | including corrective action to be taken to preclude a
 183 | recurrence.

184 | Section 2. Subsection (16) of section 215.985, Florida
 185 | Statutes, is amended to read:

186 | 215.985 Transparency in government spending.—

187 | (16) The Chief Financial Officer shall establish and
 188 | maintain a secure, contract tracking ~~provide public access to a~~
 189 | ~~state contract management~~ system available for viewing and
 190 | downloading by the public through a secure website. The Chief
 191 | Financial Officer shall use appropriate Internet security
 192 | measures to ensure that no person has the ability to alter or
 193 | modify records available on the website ~~that provides~~

194 ~~information and documentation relating to contracts procured by~~
 195 ~~governmental entities.~~

196 (a) Within 30 calendar days after executing a contract,
 197 each state agency must post the following information relating
 198 to that contract on the contract tracking system:

- 199 1. The names of the contracting entities;
- 200 2. The procurement method;
- 201 3. The contract beginning and ending dates;
- 202 4. The nature or type of the commodities or services
 203 purchased;
- 204 5. Applicable contract unit prices and deliverables;
- 205 6. Total compensation to be paid or received under the
 206 contract;
- 207 7. All payments made to the contractor to date;
- 208 8. Applicable contract performance measures; and
- 209 9. Electronic copies of the contract that have been
 210 redacted to exclude confidential or exempt information ~~The data~~
 211 ~~collected in the system must include, but need not be limited~~
 212 ~~to, the contracting agency; the procurement method; the contract~~
 213 ~~beginning and ending dates; the type of commodity or service;~~
 214 ~~the purpose of the commodity or service; the compensation to be~~
 215 ~~paid; compliance information, such as performance metrics for~~
 216 ~~the service or commodity; contract violations; the number of~~
 217 ~~extensions or renewals; and the statutory authority for~~
 218 ~~providing the service.~~

219 (b) Within 30 days after an amendment ~~a major change~~ to an
 220 existing contract, ~~or the execution of a new contract,~~ agency
 221 ~~procurement staff of the~~ state agency that is a party to the

222 ~~contract must affected state governmental entity shall~~ update
 223 the ~~necessary~~ information described in paragraph (a) in the
 224 ~~state contract tracking management~~ system. An amendment ~~A major~~
 225 ~~change~~ to a contract includes, but is not limited to, a renewal,
 226 termination, or extension of the contract or any modification ~~an~~
 227 ~~amendment~~ to the terms of the contract.

228 (c) By January 1, 2014, each state agency must post to the
 229 contract tracking system the information required in paragraph
 230 (a) for each existing contract that was executed more than 30
 231 calendar days prior to July 1, 2013.

232 (d)1. Records made available on the contract tracking
 233 system may not reveal information made confidential or exempt by
 234 law.

235 2. Each state agency that is a party to a contract must
 236 redact any confidential or exempt information from the contract
 237 before posting an electronic copy on the contract tracking
 238 system. If a state agency that is a party to the contract
 239 becomes aware that an electronic copy of a contract has been
 240 posted that has not been properly redacted, such state agency
 241 must immediately notify the Chief Financial Officer and must
 242 immediately remove the contract from the contract tracking
 243 system. Within seven business days, the state agency must post a
 244 properly redacted copy of the contract on the contract tracking
 245 system.

246 3.a. If a party to a contract, or an authorized
 247 representative thereof, discovers that an electronic copy of a
 248 contract has been posted to the contract tracking system that
 249 has not been properly redacted, the party or representative may

250 request the state agency that is a party to the contract to
 251 redact the confidential or exempt information. Upon receipt of
 252 the request, such state agency shall redact the confidential or
 253 exempt information.

254 b. A request to redact confidential or exempt information
 255 must be made in writing and delivered by mail, facsimile, or
 256 electronic transmission, or in person to the state agency that
 257 is a party to the contract. The request must identify the
 258 specific document, the page numbers that include the
 259 confidential or exempt information, the information that is
 260 confidential or exempt, and the applicable statutory exemption.
 261 A fee may not be charged for a redaction made pursuant to such
 262 request.

263 4. The contract tracking system must display a notice of
 264 the right of an affected party to request redaction of
 265 confidential or exempt information contained on the system.

266 5.a. The Chief Financial Officer, the Department of
 267 Financial Services, or any officer, employee, or contractor
 268 thereof, is not responsible for redacting confidential or exempt
 269 information from an electronic copy of a contract posted by
 270 another state agency on the system.

271 b. The Chief Financial Officer, the Department of
 272 Financial Services, or any officer, employee, or contractor
 273 thereof, is not liable for the failure of a state agency to
 274 redact the confidential or exempt information.

275 (e)1. The posting of information on the contract tracking
 276 system or the provision of contract information on a website for
 277 public viewing and downloading does not supersede the duty of a

278 state agency to respond to a public record request for such
 279 information or to a subpoena for such information.

280 2. A request for a copy of a contract or certified copy of
 281 a contract shall be made to the state agency that is party to
 282 the contract. Such request may not be made to the Chief
 283 Financial Officer or the Department of Financial Services or any
 284 officer, employee, or contractor thereof, unless the Chief
 285 Financial Officer or the department is a party to the contract.

286 3. A subpoena for a copy of a contract or certified copy
 287 of a contract must be served on the state agency that is a party
 288 to the contract and that maintains the original documents. The
 289 Chief Financial Officer or the Department of Financial Services
 290 or any officer, employee, or contractor thereof may not be
 291 served a subpoena for those records unless the Chief Financial
 292 Officer or the department is a party to the contract.

293 (f) The Chief Financial Officer may adopt rules to
 294 administer this subsection.

295 (g) For purposes of this subsection, the term "state
 296 agency" means a state agency as defined in s. 216.011, excluding
 297 the judicial branch, the Department of Legal Affairs, the
 298 Department of Agriculture and Consumer Services, and the
 299 Department of Financial Services. However, the judicial branch,
 300 the Department of Legal Affairs, the Department of Agriculture
 301 and Consumer Services, and the Department of Financial Services
 302 may elect to comply with the provisions of this subsection in
 303 whole or in part.

304 Section 3. Chapter 287, Florida Statutes, is renamed as
 305 "Procurement of Commodities and Contractual Services."

306 Section 4. Subsections (4), (5), (10), and (13) through
 307 (28) of section 287.012, Florida Statutes, are amended to read:

308 287.012 Definitions.—As used in this part, the term:

309 (4) "Best value" means the highest overall value to the
 310 state based on ~~objective~~ factors that include, but are not
 311 limited to, price, quality, design, and workmanship.

312 (5) "Commodity" means any of the various supplies,
 313 materials, goods, merchandise, food, equipment, information
 314 technology, and other personal property, including a mobile
 315 home, trailer, or other portable structure with floor space of
 316 less than 5,000 square feet, purchased, leased, or otherwise
 317 contracted for by the state and its agencies. "Commodity" also
 318 includes interest on deferred-payment commodity contracts
 319 approved pursuant to s. 287.063 entered into by an agency for
 320 the purchase of other commodities. However, commodities
 321 purchased for resale are excluded from this definition. Printing
 322 of publications shall be considered a commodity when procured
 323 ~~let upon contract~~ pursuant to s. 283.33, whether purchased for
 324 resale or not.

325 (10) "Electronic posting" or "electronically post" means
 326 the noticing of solicitations, agency decisions or intended
 327 decisions, or other matters relating to procurement, on a
 328 centralized Internet website designated by the department for
 329 this purpose, in the manner and form required by s.
 330 120.57(3)(a).

331 (13) "Extension" means an increase in the time allowed for
 332 the contract period ~~due to circumstances which, without fault of~~
 333 ~~either party, make performance impracticable or impossible, or~~

334 ~~which prevent a new contract from being executed, with or~~
 335 ~~without a proportional increase in the total dollar amount, with~~
 336 ~~any increase to be based on the method and rate previously~~
 337 ~~established in the contract.~~

338 (14) "Governmental entity" means a political subdivision
 339 or agency of this state or of any state of the United States,
 340 including, but not limited to, state government, county, city,
 341 school district, nonprofit public university or college, single-
 342 purpose or multipurpose special district, single-purpose or
 343 multipurpose public authority, metropolitan or consolidated
 344 government, separate legal entity or administrative entity, or
 345 any agency of the Federal Government.

346 (15)~~(14)~~ "Information technology" has the meaning ascribed
 347 in s. 282.0041.

348 (16)~~(15)~~ "Invitation to bid" means a written or
 349 electronically posted solicitation for competitive sealed bids.

350 (17)~~(16)~~ "Invitation to negotiate" means a written or
 351 electronically posted solicitation for competitive sealed
 352 replies to select one or more vendors with which to commence
 353 negotiations for the procurement of commodities or contractual
 354 services.

355 (18)~~(17)~~ "Minority business enterprise" has the meaning
 356 ascribed in s. 288.703.

357 (19)~~(18)~~ "Office" means the Office of Supplier Diversity
 358 of the Department of Management Services.

359 (20)~~(19)~~ "Outsource" means the process of contracting with
 360 a vendor to provide a service as defined in s. 216.011(1)(f), in
 361 whole or in part, or an activity as defined in s.

362 216.011(1)(rr), while a state agency retains the responsibility
363 and accountability for the service or activity and there is a
364 transfer of management responsibility for the delivery of
365 resources and the performance of those resources.

366 ~~(21)~~(20) "Renewal" means contracting with the same
367 contractor for an additional contract period after the initial
368 contract period, only if pursuant to contract terms specifically
369 providing for such renewal.

370 ~~(22)~~(21) "Request for information" means a written or
371 electronically posted request made by an agency to vendors for
372 information concerning commodities or contractual services.
373 Responses to these requests are not offers and may not be
374 accepted by the agency to form a binding contract.

375 ~~(23)~~(22) "Request for proposals" means a written or
376 electronically posted solicitation for competitive sealed
377 proposals.

378 ~~(24)~~(23) "Request for a quote" means an electronic, oral
379 or written request for written pricing or services information
380 from a state term contract vendor for commodities or contractual
381 services available on a state term contract from that vendor.

382 ~~(25)~~(24) "Responsible vendor" means a vendor who has the
383 capability in all respects to fully perform the contract
384 requirements and the integrity and reliability that will assure
385 good faith performance.

386 ~~(26)~~(25) "Responsive bid," "responsive proposal," or
387 "responsive reply" means a bid, or proposal, or reply submitted
388 by a responsive and responsible vendor that conforms in all
389 material respects to the solicitation.

390 ~~(27)~~~~(26)~~ "Responsive vendor" means a vendor that has
 391 submitted a bid, proposal, or reply that conforms in all
 392 material respects to the solicitation.

393 ~~(28)~~~~(27)~~ "State term contract" means a term contract that
 394 is competitively procured by the department pursuant to s.
 395 287.057 and that is used by agencies and eligible users pursuant
 396 to s. 287.056.

397 ~~(29)~~~~(28)~~ "Term contract" means an indefinite quantity
 398 contract to furnish commodities or contractual services during a
 399 defined period.

400 Section 5. Paragraph (b) of subsection (2), and
 401 subsections (8) and (15) of section 287.042, Florida Statutes,
 402 are amended to read:

403 287.042 Powers, duties, and functions.—The department
 404 shall have the following powers, duties, and functions:

405 (2)

406 (b) As an alternative to any provision in s. 120.57(3)(c),
 407 the department may proceed with the competitive solicitation or
 408 contract award process of a term contract in the following
 409 circumstances:

410 1. When the Secretary of Management Services ~~the~~
 411 ~~department~~ or his or her designee sets forth in writing
 412 particular facts and circumstances that ~~which~~ demonstrate that
 413 the delay incident to staying the solicitation or contract award
 414 process would be detrimental to the interests of the state.
 415 After the award of a contract resulting from a competitive
 416 solicitation in which a timely protest was received and in which

417 the state did not prevail, the contract may be canceled and
 418 reawarded.

419 2. When a vendor protests a notice of intent to award a
 420 contract to multiple vendors, the intended award may proceed
 421 unless the protesting vendor submits to the department in
 422 writing particular facts and circumstances that demonstrate a
 423 reasonable basis for protesting the award to the other vendor or
 424 vendors. The Secretary of Management Services or his or her
 425 designee shall determine in writing whether the vendor has
 426 demonstrated a sufficient basis for stay of the intended award.
 427 If the vendor prevails in the protest, the vendor shall be added
 428 to the contract with the same terms and conditions as the other
 429 awarded vendors.

430 (8) To provide any commodity and contractual service
 431 purchasing rules to the Chief Financial Officer and all agencies
 432 electronically or through an electronic medium or other means.
 433 Agencies may not approve any account or request any payment of
 434 any account for the purchase of any commodity or the procurement
 435 of any contractual service covered by a purchasing or
 436 contractual service rule except as authorized therein. The
 437 department shall furnish copies of rules adopted by the
 438 department to any county, municipality, or other local public
 439 agency requesting them.

440 (15) To lead or enter into joint agreements with
 441 governmental entities agencies, ~~as defined in s. 163.3164, for~~
 442 ~~the purpose of pooling funds~~ for the purchase of commodities or
 443 contractual services ~~information technology~~ that can be used by
 444 multiple agencies.

445 (a) Each agency that has been appropriated or has existing
 446 funds for such purchase, shall, upon contract award by the
 447 department, transfer their portion of the funds into the
 448 department's Operating Trust Fund for payment by the department.
 449 The funds shall be transferred by the Executive Office of the
 450 Governor pursuant to the agency budget amendment request
 451 provisions in chapter 216.

452 (b) Agencies that sign the joint agreements are
 453 financially obligated for their portion of the agreed-upon
 454 funds. If an agency becomes more than 90 days delinquent in
 455 paying the funds, the department shall certify to the Chief
 456 Financial Officer the amount due, and the Chief Financial
 457 Officer shall transfer the amount due to the Operating Trust
 458 Fund of the department from any of the agency's available funds.
 459 The Chief Financial Officer shall report these transfers and the
 460 reasons for the transfers to the Executive Office of the
 461 Governor and the legislative appropriations committees.

462 Section 6. Subsection (1) of section 287.056, Florida
 463 Statutes, is amended to read:

464 287.056 Purchases from purchasing agreements and state
 465 term contracts.—

466 (1) Agencies shall, and eligible users may, purchase
 467 commodities and contractual services from purchasing agreements
 468 established and state term contracts procured, pursuant to s.
 469 287.057, by the department. ~~Each agency agreement made under~~
 470 ~~this subsection shall include:~~

471 ~~(a) A provision specifying a scope of work that clearly~~
 472 ~~establishes all tasks that the contractor is required to~~
 473 ~~perform.~~

474 ~~(b) A provision dividing the contract into quantifiable,~~
 475 ~~measurable, and verifiable units of deliverables that must be~~
 476 ~~received and accepted in writing by the contract manager before~~
 477 ~~payment. Each deliverable must be directly related to the scope~~
 478 ~~of work and specify the required minimum level of service to be~~
 479 ~~performed and the criteria for evaluating the successful~~
 480 ~~completion of each deliverable.~~

481 Section 7. Paragraph (a) of subsection (1) and subsections
 482 (3), (10), (12), (13), (14), (16), and (22) of section 287.057,
 483 Florida Statutes, are amended to read:

484 287.057 Procurement of commodities or contractual
 485 services.-

486 (1) The competitive solicitation processes authorized in
 487 this section shall be used for procurement of commodities or
 488 contractual services in excess of the threshold amount provided
 489 for CATEGORY TWO in s. 287.017. Any competitive solicitation
 490 shall be made available simultaneously to all vendors, must
 491 include the time and date for the receipt of bids, proposals, or
 492 replies and of the public opening, and must include all
 493 contractual terms and conditions applicable to the procurement,
 494 including the criteria to be used in determining acceptability
 495 and relative merit of the bid, proposal, or reply.

496 (a) Invitation to bid.-The invitation to bid shall be used
 497 when the agency is capable of specifically defining the scope of
 498 work for which a contractual service is required or when the

499 agency is capable of establishing precise specifications
 500 defining the actual commodity or group of commodities required.

501 1. All invitations to bid must include:

502 a. A detailed description of the commodities or
 503 contractual services sought; and

504 b. If the agency contemplates renewal of the contract, a
 505 statement to that effect.

506 2. Bids submitted in response to an invitation to bid in
 507 which the agency contemplates renewal of the contract must
 508 include the price for each year for which the contract may be
 509 renewed.

510 3. Evaluation of bids shall include consideration of the
 511 total cost for each year of the contract, including renewal
 512 years, as submitted by the vendor.

513 4. The contract shall be awarded to the responsible and
 514 responsive vendor that submits the lowest responsive bid.

515 (3) When the purchase price of commodities or contractual
 516 services exceeds the threshold amount provided in s. 287.017 for
 517 CATEGORY TWO, no purchase of commodities or contractual services
 518 may be made without receiving competitive sealed bids,
 519 competitive sealed proposals, or competitive sealed replies
 520 unless:

521 (a) The agency head determines in writing that an
 522 immediate danger to the public health, safety, or welfare or
 523 other substantial loss to the state requires emergency action.
 524 After the agency head signs ~~makes such~~ a written determination,
 525 the agency may proceed with the procurement of commodities or
 526 contractual services necessitated by the immediate danger,

527 without receiving competitive sealed bids, competitive sealed
 528 proposals, or competitive sealed replies. However, such
 529 emergency procurement shall be made by obtaining pricing
 530 information from at least two prospective vendors, which must be
 531 retained in the contract file, unless the agency determines in
 532 writing that the time required to obtain pricing information
 533 will increase the immediate danger to the public health, safety,
 534 or welfare or other substantial loss to the state. The agency
 535 shall furnish copies of all written determinations ~~certified~~
 536 ~~under oath~~ and any other documents relating to the emergency
 537 action to the department. A copy of the written statement shall
 538 be furnished to the Chief Financial Officer with the voucher
 539 authorizing payment. The individual purchase of personal
 540 clothing, shelter, or supplies which are needed on an emergency
 541 basis to avoid institutionalization or placement in a more
 542 restrictive setting is an emergency for the purposes of this
 543 paragraph, and the filing with the department of such statement
 544 is not required in such circumstances. In the case of the
 545 emergency purchase of insurance, the period of coverage of such
 546 insurance shall not exceed a period of 30 days, and all such
 547 emergency purchases shall be reported to the department.

548 (b) The purchase is made by an agency from a state term
 549 contract procured~~7~~ pursuant to this section~~7~~ by the department
 550 or by an agency, after receiving approval from the department,
 551 from a contract procured, pursuant to subsection (1), by another
 552 agency.

553 (c) Commodities or contractual services available only
 554 from a single source may be excepted from the competitive-

555 solicitation requirements. When an agency believes that
 556 commodities or contractual services are available only from a
 557 single source, the agency shall electronically post a
 558 description of the commodities or contractual services sought
 559 for a period of at least 7 business days. The description must
 560 include a request that prospective vendors provide information
 561 regarding their ability to supply the commodities or contractual
 562 services described. If it is determined in writing by the
 563 agency, after reviewing any information received from
 564 prospective vendors, that the commodities or contractual
 565 services are available only from a single source, the agency
 566 shall+

567 ~~1. provide notice of its intended decision to enter a~~
 568 ~~single-source purchase contract in the manner specified in s.~~
 569 ~~120.57(3), if the amount of the contract does not exceed the~~
 570 ~~threshold amount provided in s. 287.017 for CATEGORY FOUR.~~

571 ~~2. Request approval from the department for the single-~~
 572 ~~source purchase, if the amount of the contract exceeds the~~
 573 ~~threshold amount provided in s. 287.017 for CATEGORY FOUR. The~~
 574 ~~agency shall initiate its request for approval in a form~~
 575 ~~prescribed by the department, which request may be~~
 576 ~~electronically transmitted. The failure of the department to~~
 577 ~~approve or disapprove the agency's request for approval within~~
 578 ~~21 days after receiving such request shall constitute prior~~
 579 ~~approval of the department. If the department approves the~~
 580 ~~agency's request, the agency shall provide notice of its~~
 581 ~~intended decision to enter a single-source contract in the~~
 582 ~~manner specified in s. 120.57(3).~~

583 ~~(d) When it is in the best interest of the state, the~~
 584 ~~secretary of the department or his or her designee may authorize~~
 585 ~~the Support Program to purchase insurance by negotiation, but~~
 586 ~~such purchase shall be made only under conditions most favorable~~
 587 ~~to the public interest.~~

588 (d)~~(e)~~ Prescriptive assistive devices for the purpose of
 589 medical, developmental, or vocational rehabilitation of clients
 590 are excepted from competitive-solicitation requirements and
 591 shall be procured pursuant to an established fee schedule or by
 592 any other method which ensures the best price for the state,
 593 taking into consideration the needs of the client. Prescriptive
 594 assistive devices include, but are not limited to, prosthetics,
 595 orthotics, and wheelchairs. For purchases made pursuant to this
 596 paragraph, state agencies shall annually file with the
 597 department a description of the purchases and methods of
 598 procurement.

599 (e)~~(f)~~ The following contractual services and commodities
 600 are not subject to the competitive-solicitation requirements of
 601 this section:

602 1. Artistic services. For the purposes of this subsection,
 603 the term "artistic services" does not include advertising or
 604 typesetting. As used in this subparagraph, the term
 605 "advertising" means the making of a representation in any form
 606 in connection with a trade, business, craft, or profession in
 607 order to promote the supply of commodities or services by the
 608 person promoting the commodities or contractual services.

609 2. Academic program reviews if the fee for such services
 610 does not exceed \$50,000.

- 611 3. Lectures by individuals.
- 612 4. Legal services, including attorney, paralegal, expert
613 witness, appraisal, or mediator services.
- 614 5.a. Health services involving examination, diagnosis,
615 treatment, prevention, medical consultation, or administration.
- 616 b. Beginning January 1, 2011, health services, including,
617 but not limited to, substance abuse and mental health services,
618 involving examination, diagnosis, treatment, prevention, or
619 medical consultation, when such services are offered to eligible
620 individuals participating in a specific program that qualifies
621 multiple providers and uses a standard payment methodology.
622 Reimbursement of administrative costs for providers of services
623 purchased in this manner shall also be exempt. For purposes of
624 this sub-subparagraph, "providers" means health professionals,
625 health facilities, or organizations that deliver or arrange for
626 the delivery of health services.
- 627 6. Services provided to persons with mental or physical
628 disabilities by not-for-profit corporations which have obtained
629 exemptions under the provisions of s. 501(c)(3) of the United
630 States Internal Revenue Code or when such services are governed
631 by the provisions of Office of Management and Budget Circular A-
632 122. However, in acquiring such services, the agency shall
633 consider the ability of the vendor, past performance,
634 willingness to meet time requirements, and price.
- 635 7. Medicaid services delivered to an eligible Medicaid
636 recipient unless the agency is directed otherwise in law.
- 637 8. Family placement services.

638 9. Prevention services related to mental health, including
 639 drug abuse prevention programs, child abuse prevention programs,
 640 and shelters for runaways, operated by not-for-profit
 641 corporations. However, in acquiring such services, the agency
 642 shall consider the ability of the vendor, past performance,
 643 willingness to meet time requirements, and price.

644 10. Training and education services provided to injured
 645 employees pursuant to s. 440.491(6).

646 11. Contracts entered into pursuant to s. 337.11.

647 12. Services or commodities provided by governmental
 648 entities ~~agencies~~.

649 13. Statewide public service announcement programs
 650 provided by a Florida statewide nonprofit corporation under s.
 651 501(c)(6) of the Internal Revenue Code, with a guaranteed
 652 documented match of at least \$3 to \$1.

653 (f) ~~(g)~~ Continuing education events or programs that are
 654 offered to the general public and for which fees have been
 655 collected that pay all expenses associated with the event or
 656 program are exempt from requirements for competitive
 657 solicitation.

658 (10) A contract for commodities or contractual services
 659 may be awarded without competition if state or federal law
 660 prescribes with whom the agency must contract or if the rate of
 661 payment or the recipient of the funds is established during the
 662 appropriations process.

663 (12) Extension of a contract for commodities or
 664 contractual services shall be in writing for a period not to
 665 exceed 6 months and shall be subject to the same terms and

666 conditions set forth in the initial contract and any written
667 amendments signed by the parties. There shall be only one
668 extension of a contract unless the failure to meet the criteria
669 set forth in the contract for completion of the contract is due
670 to events beyond the control of the contractor.

671 (13) Contracts for commodities or contractual services may
672 be renewed for a period that may not exceed 3 years or the term
673 of the original contract, whichever period is longer. Renewal of
674 a contract for commodities or contractual services shall be in
675 writing and shall be subject to the same terms and conditions
676 set forth in the initial contract and any written amendments
677 signed by the parties. If the commodity or contractual service
678 is purchased as a result of the solicitation of bids, proposals,
679 or replies, the price of the commodity or contractual service to
680 be renewed shall be specified in the bid, proposal, or reply,
681 except that an agency may negotiate lower pricing. A renewal
682 contract may not include any compensation for costs associated
683 with the renewal. Renewals shall be contingent upon satisfactory
684 performance evaluations by the agency and subject to the
685 availability of funds. Exceptional purchase contracts pursuant
686 to paragraphs (3) (a) and (c) may not be renewed. With the
687 exception of subsection (10)-(12), if a contract amendment
688 results in a longer contract term or increased payments, a state
689 agency may not renew or amend a contract for the outsourcing of
690 a service or activity that has an original term value exceeding
691 the sum of \$10 million before submitting a written report
692 concerning contract performance to the Governor, the President

693 of the Senate, and the Speaker of the House of Representatives
 694 at least 90 days before execution of the renewal or amendment.

695 (14) For each contractual services contract, the agency
 696 shall designate an employee to function as contract manager who
 697 is shall be responsible for enforcing performance of the
 698 contract terms and conditions and serve as a liaison with the
 699 contractor. Each contract manager who is responsible for
 700 contracts in excess of the threshold amount for CATEGORY TWO
 701 established under s. 287.017 must be a certified contract
 702 manager. The Department of Management Services is responsible
 703 for establishing and disseminating the requirements for
 704 certification, which include completing the attend training
 705 conducted by the Chief Financial Officer for accountability in
 706 contracts and grant management. The Chief Financial Officer
 707 shall establish and disseminate uniform procedures pursuant to
 708 s. 17.03(3) to ensure that contractual services have been
 709 rendered in accordance with the contract terms before the agency
 710 processes the invoice for payment. The procedures must shall
 711 include, but need not be limited to, procedures for monitoring
 712 and documenting contractor performance, reviewing and
 713 documenting all deliverables for which payment is requested by
 714 vendors, and providing written certification by contract
 715 managers of the agency's receipt of goods and services.

716 (16) For a contract in excess of the threshold amount
 717 provided in s. 287.017 for CATEGORY FOUR, the agency head shall
 718 appoint:

719 (a) At least three persons to evaluate proposals and
 720 replies who collectively have experience and knowledge in the

721 program areas and service requirements for which commodities or
 722 contractual services are sought.

723 (b) At least three persons to conduct negotiations during
 724 a competitive sealed reply procurement who collectively have
 725 experience and knowledge in negotiating contracts, contract
 726 procurement, and the program areas and service requirements for
 727 which commodities or contractual services are sought.

728 (c) When the value of a contract is in excess of \$1
 729 million in any fiscal year, at least one of the persons
 730 conducting negotiations must be certified as a contract
 731 negotiator based upon rules adopted by the Department of
 732 Management Services in order to ensure that certified contract
 733 negotiators are knowledgeable about effective negotiation
 734 strategies, capable of successfully implementing those
 735 strategies, and involved appropriately in the procurement
 736 process. At a minimum, the rules must address the qualifications
 737 required for certification, the method of certification, and the
 738 procedure for involving the certified negotiator. If the value
 739 of a contract is in excess of \$10 million in any fiscal year, at
 740 least one of the persons conducting negotiations must be a
 741 Project Management Professional, as certified by the Project
 742 Management Institute.

743 (22) The department, in consultation with the Chief
 744 Financial Officer ~~Agency for Enterprise Information Technology~~
 745 ~~and the Comptroller~~, shall maintain ~~develop~~ a program for online
 746 procurement of commodities and contractual services. To enable
 747 the state to promote open competition and to leverage its buying
 748 power, agencies shall participate in the online procurement

749 program, and eligible users may participate in the program. Only
 750 vendors prequalified as meeting mandatory requirements and
 751 qualifications criteria may participate in online procurement.

752 (a) The department, ~~in consultation with the agency,~~ may
 753 contract for equipment and services necessary to develop and
 754 implement online procurement.

755 (b) The department, ~~in consultation with the agency,~~ shall
 756 adopt rules, pursuant to ss. 120.536(1) and 120.54, to
 757 administer the program for online procurement. The rules shall
 758 include, but not be limited to:

759 1. Determining the requirements and qualification criteria
 760 for prequalifying vendors.

761 2. Establishing the procedures for conducting online
 762 procurement.

763 3. Establishing the criteria for eligible commodities and
 764 contractual services.

765 4. Establishing the procedures for providing access to
 766 online procurement.

767 5. Determining the criteria warranting any exceptions to
 768 participation in the online procurement program.

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

771 1. The fees may be imposed on an individual transaction
 772 basis or as a fixed percentage of the cost savings generated. At
 773 a minimum, the fees must be set in an amount sufficient to cover
 774 the projected costs of the services, including administrative
 775 and project service costs in accordance with the policies of the
 776 department.

777 2. If the department contracts with a provider for online
 778 procurement, the department, pursuant to appropriation, shall
 779 compensate the provider from the fees after the department has
 780 satisfied all ongoing costs. The provider shall report
 781 transaction data to the department each month so that the
 782 department may determine the amount due and payable to the
 783 department from each vendor.

784 3. All fees that are due and payable to the state on a
 785 transactional basis or as a fixed percentage of the cost savings
 786 generated are subject to s. 215.31 and must be remitted within
 787 40 days after receipt of payment for which the fees are due. For
 788 fees that are not remitted within 40 days, the vendor shall pay
 789 interest at the rate established under s. 55.03(1) on the unpaid
 790 balance from the expiration of the 40-day period until the fees
 791 are remitted.

792 4. All fees and surcharges collected under this paragraph
 793 shall be deposited in the Operating Trust Fund as provided by
 794 law.

795 Section 8. Paragraph (a) of subsection (3) of section
 796 287.0571, Florida Statutes, is amended to read:

797 287.0571 Business case to outsource; applicability.—

798 (3) This section does not apply to:

799 (a) A procurement of commodities and contractual services
 800 listed in s. 287.057(3)(d) and (e) and (21) ~~287.057(3)(e), (f),~~
 801 ~~and (g) and (21)~~.

802 Section 9. Subsections (1) and (2) of section 287.058,
 803 Florida Statutes, are amended to read:

804 287.058 Contract document.—

805 (1) Every procurement, of contractual services in excess of
 806 the threshold amount provided in s. 287.017 for CATEGORY TWO,
 807 except for the providing of health and mental health services or
 808 drugs in the examination, diagnosis, or treatment of sick or
 809 injured state employees or the providing of other benefits as
 810 required by the provisions of chapter 440, shall be evidenced by
 811 a written agreement embodying all provisions and conditions of
 812 the procurement of such services, which shall, where applicable,
 813 include, but not be limited to, a provision:

814 (a) That bills for fees or other compensation for services
 815 or expenses be submitted in detail sufficient for a proper
 816 preaudit and postaudit thereof.

817 (b) That bills for any travel expenses be submitted in
 818 accordance with s. 112.061. A state agency may establish rates
 819 lower than the maximum provided in s. 112.061.

820 (c) Allowing unilateral cancellation by the agency for
 821 refusal by the contractor to allow public access to all
 822 documents, papers, letters, or other material made or received
 823 by the contractor in conjunction with the contract, unless the
 824 records are exempt from s. 24(a) of Art. I of the State
 825 Constitution and s. 119.07(1).

826 (d) Specifying a scope of work that clearly establishes
 827 all tasks the contractor is required to perform.

828 (e) Dividing the contract into quantifiable, measurable,
 829 and verifiable units of deliverables that must be received and
 830 accepted in writing by the contract manager before payment. Each
 831 deliverable must be directly related to the scope of work and
 832 specify a performance measure. As used in this paragraph,

833 performance measure means the required minimum acceptable level
 834 of service to be performed and criteria for evaluating the
 835 successful completion of each deliverable.

836 (f) Specifying the criteria and the final date by which
 837 such criteria must be met for completion of the contract.

838 (g) Specifying that the contract may be renewed for a
 839 period that may not exceed 3 years or the term of the original
 840 contract, whichever period is longer, specifying the renewal
 841 price for the contractual service as set forth in the bid,
 842 proposal, or reply, specifying that costs for the renewal may
 843 not be charged, and specifying that renewals shall be contingent
 844 upon satisfactory performance evaluations by the agency and
 845 subject to the availability of funds. Exceptional purchase
 846 contracts pursuant to s. 287.057(3)(a) and (c) may not be
 847 renewed.

848 (h) Specifying the financial consequences that the agency
 849 must apply if the contractor fails to perform in accordance with
 850 the contract.

851 (i) Addressing the property rights of any intellectual
 852 property related to the contract and the specific rights of the
 853 state regarding the intellectual property if the contractor
 854 fails to provide the services or is no longer providing
 855 services.

856
 857 In lieu of a written agreement, the agency ~~department~~ may
 858 authorize the use of a purchase order for classes of contractual
 859 services, if the provisions of paragraphs (a)-(i) are included
 860 in the purchase order or solicitation. The purchase order must

861 include, but need not be limited to, an adequate description of
 862 the services, the contract period, and the method of payment. In
 863 lieu of printing the provisions of paragraphs (a)-(c) and (g)
 864 ~~(a)-(i)~~ in the contract document or purchase order, agencies may
 865 incorporate the requirements of paragraphs (a)-(c) and (g) ~~(a)-~~
 866 ~~(i)~~ by reference.

867 (2) The written agreement shall be signed by the agency
 868 head or designee and the contractor before ~~prior to~~ the
 869 rendering of any contractual service the value of which is in
 870 excess of the threshold amount provided in s. 287.017 for
 871 CATEGORY TWO, except in the case of a valid emergency as
 872 certified by the agency head. The written statement
 873 ~~certification~~ of an emergency shall be prepared within 30 days
 874 after the contractor begins rendering the service and shall
 875 state the particular facts and circumstances which precluded the
 876 execution of the written agreement before ~~prior to~~ the rendering
 877 of the service. If the agency fails to have the contract signed
 878 by the agency head or designee and the contractor before ~~prior~~
 879 ~~to~~ rendering the contractual service, and if an emergency does
 880 not exist, the agency head shall, within ~~no later than~~ 30 days
 881 after the contractor begins rendering the service, certify the
 882 specific conditions and circumstances to the department as well
 883 as describe actions taken to prevent recurrence of such
 884 noncompliance. The agency head may delegate the written
 885 statement ~~certification~~ only to other senior management agency
 886 personnel. A copy of the written statement ~~certification~~ shall
 887 be furnished to the Chief Financial Officer with the voucher
 888 authorizing payment. The department shall report repeated

889 instances of noncompliance by an agency to the Auditor General.
 890 Nothing in this subsection shall be deemed to authorize
 891 additional compensation prohibited by s. 215.425. The
 892 procurement of contractual services shall not be divided so as
 893 to avoid the provisions of this section.

894 Section 10. Section 287.076, Florida Statutes, is amended
 895 to read:

896 287.076 Project Management Professionals training for
 897 personnel involved in managing outsourcings and negotiations;
 898 funding.—The Department of Management Services may implement a
 899 program to train state agency employees who are involved in
 900 managing outsourcings as Project Management Professionals, as
 901 certified by the Project Management Institute. Subject to annual
 902 appropriations, For the 2006-2007 fiscal year, the sum of
 903 \$500,000 in recurring funds from the General Revenue Fund is
 904 appropriated to the Department of Management Services to
 905 implement this program. the Department of Management Services,
 906 in consultation with entities subject to this act, shall
 907 identify personnel to participate in this training based on
 908 requested need and ensure that each agency is represented. The
 909 Department of Management Services may remit payment for this
 910 training on behalf of all participating personnel.

911 Section 11. Section 287.136, F.S., is created to read:

912 287.136 Audit of executed contract documents.—

913 (1) After the execution of a contract, the Chief Financial
 914 Officer shall perform audits of the executed contract documents
 915 and contract manager's records to ensure that adequate internal
 916 controls are in place for complying with the terms and

917 | conditions of the contract and for the validation and receipt of
 918 | goods and services.

919 | (2) At the conclusion of the audit, the Chief Financial
 920 | Officer's designee shall discuss the audit and potential
 921 | findings with the official whose office is subject to audit. The
 922 | final audit report shall be submitted to the agency head.

923 | (3) Within 30 days after the receipt of the final audit
 924 | report, the agency head shall submit to the Chief Financial
 925 | Officer or designee, his or her written statement of explanation
 926 | or rebuttal concerning findings requiring corrective action,
 927 | including corrective action to be taken to preclude a
 928 | recurrence.

929 | Section 12. Subsection (3) of section 16.0155, Florida
 930 | Statutes, is amended to read:

931 | 16.0155 Contingency fee agreements.—

932 | (3) If the Attorney General makes the determination
 933 | described in subsection (2), notwithstanding the exemption
 934 | provided in s. 287.057(3)(e) ~~287.057(3)(f)~~, the Attorney General
 935 | shall request proposals from private attorneys to represent the
 936 | department on a contingency-fee basis, unless the Attorney
 937 | General determines in writing that requesting proposals is not
 938 | feasible under the circumstances. The written determination does
 939 | not constitute a final agency action subject to review pursuant
 940 | to ss. 120.569 and 120.57. For purposes of this subsection only,
 941 | the department is exempt from the requirements of s. 120.57(3),
 942 | and neither the request for proposals nor the contract award is
 943 | subject to challenge pursuant to ss. 120.569 and 120.57.

944 Section 13. Subsection (1) of section 283.33, Florida
 945 Statutes, is amended to read:

946 283.33 Printing of publications; lowest bidder awards.—

947 (1) Publications may be printed and prepared in-house, by
 948 another agency or the Legislature, or purchased on bid,
 949 whichever is more economical and practicable as determined by
 950 the agency. An agency may contract for binding separately when
 951 more economical or practicable, whether or not the remainder of
 952 the printing is done in-house. A vendor may subcontract for
 953 binding and still be considered a responsible vendor,
 954 notwithstanding s. 287.012(25) ~~287.012(24)~~.

955 Section 14. Subsection (3) of section 394.457, Florida
 956 Statutes, is amended to read:

957 394.457 Operation and administration.—

958 (3) POWER TO CONTRACT.—The department may contract to
 959 provide, and be provided with, services and facilities in order
 960 to carry out its responsibilities under this part with the
 961 following agencies: public and private hospitals; receiving and
 962 treatment facilities; clinics; laboratories; departments,
 963 divisions, and other units of state government; the state
 964 colleges and universities; the community colleges; private
 965 colleges and universities; counties, municipalities, and any
 966 other governmental unit, including facilities of the United
 967 States Government; and any other public or private entity which
 968 provides or needs facilities or services. Baker Act funds for
 969 community inpatient, crisis stabilization, short-term
 970 residential treatment, and screening services must be allocated
 971 to each county pursuant to the department's funding allocation

972 methodology. Notwithstanding the provisions of s. 287.057(3)(e)
 973 ~~287.057(3)(f)~~, contracts for community-based Baker Act services
 974 for inpatient, crisis stabilization, short-term residential
 975 treatment, and screening provided under this part, other than
 976 those with other units of government, to be provided for the
 977 department must be awarded using competitive sealed bids when
 978 the county commission of the county receiving the services makes
 979 a request to the department's district office by January 15 of
 980 the contracting year. The district shall not enter into a
 981 competitively bid contract under this provision if such action
 982 will result in increases of state or local expenditures for
 983 Baker Act services within the district. Contracts for these
 984 Baker Act services using competitive sealed bids will be
 985 effective for 3 years. The department shall adopt rules
 986 establishing minimum standards for such contracted services and
 987 facilities and shall make periodic audits and inspections to
 988 assure that the contracted services are provided and meet the
 989 standards of the department.

990 Section 15. Paragraph (a) of subsection (2) of section
 991 402.7305, Florida Statutes, is amended to read:

992 402.7305 Department of Children and Family Services;
 993 procurement of contractual services; contract management.—

994 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.—

995 (a) Notwithstanding s. 287.057(3)(e)12. ~~287.057(3)(f)12.~~,
 996 whenever the department intends to contract with a public
 997 postsecondary institution to provide a service, the department
 998 must allow all public postsecondary institutions in this state
 999 that are accredited by the Southern Association of Colleges and

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1000 Schools to bid on the contract. Thereafter, notwithstanding any
 1001 other provision to the contrary, if a public postsecondary
 1002 institution intends to subcontract for any service awarded in
 1003 the contract, the subcontracted service must be procured by
 1004 competitive procedures.

1005 Section 16. Section 409.9132, Florida Statutes, is amended
 1006 to read:

1007 409.9132 Pilot project to monitor home health services.—
 1008 The Agency for Health Care Administration shall expand the home
 1009 health agency monitoring pilot project in Miami-Dade County on a
 1010 statewide basis effective July 1, 2012, except in counties in
 1011 which the program will not be cost-effective, as determined by
 1012 the agency. The agency shall contract with a vendor to verify
 1013 the utilization and delivery of home health services and provide
 1014 an electronic billing interface for home health services. The
 1015 contract must require the creation of a program to submit claims
 1016 electronically for the delivery of home health services. The
 1017 program must verify telephonically visits for the delivery of
 1018 home health services using voice biometrics. The agency may seek
 1019 amendments to the Medicaid state plan and waivers of federal
 1020 laws, as necessary, to implement or expand the pilot project.
 1021 Notwithstanding s. 287.057(3)(e) ~~287.057(3)(f)~~, the agency must
 1022 award the contract through the competitive solicitation process
 1023 and may use the current contract to expand the home health
 1024 agency monitoring pilot project to include additional counties
 1025 as authorized under this section.

1026 Section 17. Subsection (3) of section 427.0135, Florida
 1027 Statutes, is amended to read:

1028 427.0135 Purchasing agencies; duties and
 1029 responsibilities.—Each purchasing agency, in carrying out the
 1030 policies and procedures of the commission, shall:

1031 (3) Not procure transportation disadvantaged services
 1032 without initially negotiating with the commission, as provided
 1033 in s. 287.057(3)(e)12. ~~287.057(3)(f)12.~~, or unless otherwise
 1034 authorized by statute. If the purchasing agency, after
 1035 consultation with the commission, determines that it cannot
 1036 reach mutually acceptable contract terms with the commission,
 1037 the purchasing agency may contract for the same transportation
 1038 services provided in a more cost-effective manner and of
 1039 comparable or higher quality and standards. The Medicaid agency
 1040 shall implement this subsection in a manner consistent with s.
 1041 409.908(18) and as otherwise limited or directed by the General
 1042 Appropriations Act.

1043 Section 18. Paragraph (c) of subsection (5) of section
 1044 445.024, Florida Statutes, is amended to read:

1045 445.024 Work requirements.—

1046 (5) USE OF CONTRACTS.—Regional workforce boards shall
 1047 provide work activities, training, and other services, as
 1048 appropriate, through contracts. In contracting for work
 1049 activities, training, or services, the following applies:

1050 (c) Notwithstanding the exemption from the competitive
 1051 sealed bid requirements provided in s. 287.057(3)(e)
 1052 ~~287.057(3)(f)~~ for certain contractual services, each contract
 1053 awarded under this chapter must be awarded on the basis of a
 1054 competitive sealed bid, except for a contract with a

1055 governmental entity as determined by the regional workforce
 1056 board.

1057 Section 19. Paragraph (c) of subsection (5) of section
 1058 627.311, Florida Statutes, is amended to read:

1059 627.311 Joint underwriters and joint reinsurers; public
 1060 records and public meetings exemptions.—

1061 (5)

1062 (c) The operation of the plan shall be governed by a plan
 1063 of operation that is prepared at the direction of the board of
 1064 governors and approved by order of the office. The plan is
 1065 subject to continuous review by the office. The office may, by
 1066 order, withdraw approval of all or part of a plan if the office
 1067 determines that conditions have changed since approval was
 1068 granted and that the purposes of the plan require changes in the
 1069 plan. The plan of operation shall:

1070 1. Authorize the board to engage in the activities
 1071 necessary to implement this subsection, including, but not
 1072 limited to, borrowing money.

1073 2. Develop criteria for eligibility for coverage by the
 1074 plan, including, but not limited to, documented rejection by at
 1075 least two insurers which reasonably assures that insureds
 1076 covered under the plan are unable to acquire coverage in the
 1077 voluntary market.

1078 3. Require notice from the agent to the insured at the
 1079 time of the application for coverage that the application is for
 1080 coverage with the plan and that coverage may be available
 1081 through an insurer, group self-insurers' fund, commercial self-

1082 insurance fund, or assessable mutual insurer through another
 1083 agent at a lower cost.

1084 4. Establish programs to encourage insurers to provide
 1085 coverage to applicants of the plan in the voluntary market and
 1086 to insureds of the plan, including, but not limited to:

1087 a. Establishing procedures for an insurer to use in
 1088 notifying the plan of the insurer's desire to provide coverage
 1089 to applicants to the plan or existing insureds of the plan and
 1090 in describing the types of risks in which the insurer is
 1091 interested. The description of the desired risks must be on a
 1092 form developed by the plan.

1093 b. Developing forms and procedures that provide an insurer
 1094 with the information necessary to determine whether the insurer
 1095 wants to write particular applicants to the plan or insureds of
 1096 the plan.

1097 c. Developing procedures for notice to the plan and the
 1098 applicant to the plan or insured of the plan that an insurer
 1099 will insure the applicant or the insured of the plan, and notice
 1100 of the cost of the coverage offered; and developing procedures
 1101 for the selection of an insuring entity by the applicant or
 1102 insured of the plan.

1103 d. Provide for a market-assistance plan to assist in the
 1104 placement of employers. All applications for coverage in the
 1105 plan received 45 days before the effective date for coverage
 1106 shall be processed through the market-assistance plan. A market-
 1107 assistance plan specifically designed to serve the needs of
 1108 small, good policyholders as defined by the board must be
 1109 reviewed and updated periodically.

1110 5. Provide for policy and claims services to the insureds
 1111 of the plan of the nature and quality provided for insureds in
 1112 the voluntary market.

1113 6. Provide for the review of applications for coverage
 1114 with the plan for reasonableness and accuracy, using any
 1115 available historic information regarding the insured.

1116 7. Provide for procedures for auditing insureds of the
 1117 plan which are based on reasonable business judgment and are
 1118 designed to maximize the likelihood that the plan will collect
 1119 the appropriate premiums.

1120 8. Authorize the plan to terminate the coverage of and
 1121 refuse future coverage for any insured that submits a fraudulent
 1122 application to the plan or provides fraudulent or grossly
 1123 erroneous records to the plan or to any service provider of the
 1124 plan in conjunction with the activities of the plan.

1125 9. Establish service standards for agents who submit
 1126 business to the plan.

1127 10. Establish criteria and procedures to prohibit any
 1128 agent who does not adhere to the established service standards
 1129 from placing business with the plan or receiving, directly or
 1130 indirectly, any commissions for business placed with the plan.

1131 11. Provide for the establishment of reasonable safety
 1132 programs for all insureds in the plan. All insureds of the plan
 1133 must participate in the safety program.

1134 12. Authorize the plan to terminate the coverage of and
 1135 refuse future coverage to any insured who fails to pay premiums
 1136 or surcharges when due; who, at the time of application, is
 1137 delinquent in payments of workers' compensation or employer's

1138 liability insurance premiums or surcharges owed to an insurer,
 1139 group self-insurers' fund, commercial self-insurance fund, or
 1140 assessable mutual insurer licensed to write such coverage in
 1141 this state; or who refuses to substantially comply with any
 1142 safety programs recommended by the plan.

1143 13. Authorize the board of governors to provide the goods
 1144 and services required by the plan through staff employed by the
 1145 plan, through reasonably compensated service providers who
 1146 contract with the plan to provide services as specified by the
 1147 board of governors, or through a combination of employees and
 1148 service providers.

1149 a. Purchases that equal or exceed \$2,500 but are less than
 1150 or equal to \$25,000, shall be made by receipt of written quotes,
 1151 telephone quotes, or informal bids, whenever practical. The
 1152 procurement of goods or services valued over \$25,000 is subject
 1153 to competitive solicitation, except in situations in which the
 1154 goods or services are provided by a sole source or are deemed an
 1155 emergency purchase, or the services are exempted from
 1156 competitive-solicitation requirements under s. 287.057(3)(e)
 1157 ~~287.057(3)(f)~~. Justification for the sole-sourcing or emergency
 1158 procurement must be documented. Contracts for goods or services
 1159 valued at or over \$100,000 are subject to board approval.

1160 b. The board shall determine whether it is more cost-
 1161 effective and in the best interests of the plan to use legal
 1162 services provided by in-house attorneys employed by the plan
 1163 rather than contracting with outside counsel. In making such
 1164 determination, the board shall document its findings and shall
 1165 consider the expertise needed; whether time commitments exceed

1166 in-house staff resources; whether local representation is
 1167 needed; the travel, lodging, and other costs associated with in-
 1168 house representation; and such other factors that the board
 1169 determines are relevant.

1170 14. Provide for service standards for service providers,
 1171 methods of determining adherence to those service standards,
 1172 incentives and disincentives for service, and procedures for
 1173 terminating contracts for service providers that fail to adhere
 1174 to service standards.

1175 15. Provide procedures for selecting service providers and
 1176 standards for qualification as a service provider that
 1177 reasonably assure that any service provider selected will
 1178 continue to operate as an ongoing concern and is capable of
 1179 providing the specified services in the manner required.

1180 16. Provide for reasonable accounting and data-reporting
 1181 practices.

1182 17. Provide for annual review of costs associated with the
 1183 administration and servicing of the policies issued by the plan
 1184 to determine alternatives by which costs can be reduced.

1185 18. Authorize the acquisition of such excess insurance or
 1186 reinsurance as is consistent with the purposes of the plan.

1187 19. Provide for an annual report to the office on a date
 1188 specified by the office and containing such information as the
 1189 office reasonably requires.

1190 20. Establish multiple rating plans for various
 1191 classifications of risk which reflect risk of loss, hazard
 1192 grade, actual losses, size of premium, and compliance with loss
 1193 control. At least one of such plans must be a preferred-rating

1194 | plan to accommodate small-premium policyholders with good
 1195 | experience as defined in sub-subparagraph 22.a.
 1196 | 21. Establish agent commission schedules.
 1197 | 22. For employers otherwise eligible for coverage under
 1198 | the plan, establish three tiers of employers meeting the
 1199 | criteria and subject to the rate limitations specified in this
 1200 | subparagraph.
 1201 | a. Tier One.—
 1202 | (I) Criteria; rated employers.—An employer that has an
 1203 | experience modification rating shall be included in Tier One if
 1204 | the employer meets all of the following:
 1205 | (A) The experience modification is below 1.00.
 1206 | (B) The employer had no lost-time claims subsequent to the
 1207 | applicable experience modification rating period.
 1208 | (C) The total of the employer's medical-only claims
 1209 | subsequent to the applicable experience modification rating
 1210 | period did not exceed 20 percent of premium.
 1211 | (II) Criteria; non-rated employers.—An employer that does
 1212 | not have an experience modification rating shall be included in
 1213 | Tier One if the employer meets all of the following:
 1214 | (A) The employer had no lost-time claims for the 3-year
 1215 | period immediately preceding the inception date or renewal date
 1216 | of the employer's coverage under the plan.
 1217 | (B) The total of the employer's medical-only claims for
 1218 | the 3-year period immediately preceding the inception date or
 1219 | renewal date of the employer's coverage under the plan did not
 1220 | exceed 20 percent of premium.

1221 (C) The employer has secured workers' compensation
 1222 coverage for the entire 3-year period immediately preceding the
 1223 inception date or renewal date of the employer's coverage under
 1224 the plan.

1225 (D) The employer is able to provide the plan with a loss
 1226 history generated by the employer's prior workers' compensation
 1227 insurer, except if the employer is not able to produce a loss
 1228 history due to the insolvency of an insurer, the receiver shall
 1229 provide to the plan, upon the request of the employer or the
 1230 employer's agent, a copy of the employer's loss history from the
 1231 records of the insolvent insurer if the loss history is
 1232 contained in records of the insurer which are in the possession
 1233 of the receiver. If the receiver is unable to produce the loss
 1234 history, the employer may, in lieu of the loss history, submit
 1235 an affidavit from the employer and the employer's insurance
 1236 agent setting forth the loss history.

1237 (E) The employer is not a new business.

1238 (III) Premiums.—The premiums for Tier One insureds shall
 1239 be set at a premium level 25 percent above the comparable
 1240 voluntary market premiums until the plan has sufficient
 1241 experience as determined by the board to establish an
 1242 actuarially sound rate for Tier One, at which point the board
 1243 shall, subject to paragraph (e), adjust the rates, if necessary,
 1244 to produce actuarially sound rates, provided such rate
 1245 adjustment shall not take effect prior to January 1, 2007.

1246 b. Tier Two.—

1247 (I) Criteria; rated employers.—An employer that has an
 1248 experience modification rating shall be included in Tier Two if
 1249 the employer meets all of the following:

1250 (A) The experience modification is equal to or greater
 1251 than 1.00 but not greater than 1.10.

1252 (B) The employer had no lost-time claims subsequent to the
 1253 applicable experience modification rating period.

1254 (C) The total of the employer's medical-only claims
 1255 subsequent to the applicable experience modification rating
 1256 period did not exceed 20 percent of premium.

1257 (II) Criteria; non-rated employers.—An employer that does
 1258 not have any experience modification rating shall be included in
 1259 Tier Two if the employer is a new business. An employer shall be
 1260 included in Tier Two if the employer has less than 3 years of
 1261 loss experience in the 3-year period immediately preceding the
 1262 inception date or renewal date of the employer's coverage under
 1263 the plan and the employer meets all of the following:

1264 (A) The employer had no lost-time claims for the 3-year
 1265 period immediately preceding the inception date or renewal date
 1266 of the employer's coverage under the plan.

1267 (B) The total of the employer's medical-only claims for
 1268 the 3-year period immediately preceding the inception date or
 1269 renewal date of the employer's coverage under the plan did not
 1270 exceed 20 percent of premium.

1271 (C) The employer is able to provide the plan with a loss
 1272 history generated by the workers' compensation insurer that
 1273 provided coverage for the portion or portions of such period
 1274 during which the employer had secured workers' compensation

1275 coverage, except if the employer is not able to produce a loss
 1276 history due to the insolvency of an insurer, the receiver shall
 1277 provide to the plan, upon the request of the employer or the
 1278 employer's agent, a copy of the employer's loss history from the
 1279 records of the insolvent insurer if the loss history is
 1280 contained in records of the insurer which are in the possession
 1281 of the receiver. If the receiver is unable to produce the loss
 1282 history, the employer may, in lieu of the loss history, submit
 1283 an affidavit from the employer and the employer's insurance
 1284 agent setting forth the loss history.

1285 (III) Premiums.—The premiums for Tier Two insureds shall
 1286 be set at a rate level 50 percent above the comparable voluntary
 1287 market premiums until the plan has sufficient experience as
 1288 determined by the board to establish an actuarially sound rate
 1289 for Tier Two, at which point the board shall, subject to
 1290 paragraph (e), adjust the rates, if necessary, to produce
 1291 actuarially sound rates, provided such rate adjustment shall not
 1292 take effect prior to January 1, 2007.

1293 c. Tier Three.—

1294 (I) Eligibility.—An employer shall be included in Tier
 1295 Three if the employer does not meet the criteria for Tier One or
 1296 Tier Two.

1297 (II) Rates.—The board shall establish, subject to
 1298 paragraph (e), and the plan shall charge, actuarially sound
 1299 rates for Tier Three insureds.

1300 23. For Tier One or Tier Two employers which employ no
 1301 nonexempt employees or which report payroll which is less than
 1302 the minimum wage hourly rate for one full-time employee for 1

1303 year at 40 hours per week, the plan shall establish actuarially
 1304 sound premiums, provided, however, that the premiums may not
 1305 exceed \$2,500. These premiums shall be in addition to the fee
 1306 specified in subparagraph 26. When the plan establishes
 1307 actuarially sound rates for all employers in Tier One and Tier
 1308 Two, the premiums for employers referred to in this paragraph
 1309 are no longer subject to the \$2,500 cap.

- 1310 24. Provide for a depopulation program to reduce the
 1311 number of insureds in the plan. If an employer insured through
 1312 the plan is offered coverage from a voluntary market carrier:
- 1313 a. During the first 30 days of coverage under the plan;
 - 1314 b. Before a policy is issued under the plan;
 - 1315 c. By issuance of a policy upon expiration or cancellation
 1316 of the policy under the plan; or
 - 1317 d. By assumption of the plan's obligation with respect to
 1318 an in-force policy,

1319
 1320 that employer is no longer eligible for coverage through the
 1321 plan. The premium for risks assumed by the voluntary market
 1322 carrier must be no greater than the premium the insured would
 1323 have paid under the plan, and shall be adjusted upon renewal to
 1324 reflect changes in the plan rates and the tier for which the
 1325 insured would qualify as of the time of renewal. The insured may
 1326 be charged such premiums only for the first 3 years of coverage
 1327 in the voluntary market. A premium under this subparagraph is
 1328 deemed approved and is not an excess premium for purposes of s.
 1329 627.171.

1330 25. Require that policies issued and applications must
 1331 include a notice that the policy could be replaced by a policy
 1332 issued from a voluntary market carrier and that, if an offer of
 1333 coverage is obtained from a voluntary market carrier, the
 1334 policyholder is no longer eligible for coverage through the
 1335 plan. The notice must also specify that acceptance of coverage
 1336 under the plan creates a conclusive presumption that the
 1337 applicant or policyholder is aware of this potential.

1338 26. Require that each application for coverage and each
 1339 renewal premium be accompanied by a nonrefundable fee of \$475 to
 1340 cover costs of administration and fraud prevention. The board
 1341 may, with the prior approval of the office, increase the amount
 1342 of the fee pursuant to a rate filing to reflect increased costs
 1343 of administration and fraud prevention. The fee is not subject
 1344 to commission and is fully earned upon commencement of coverage.

1345 Section 20. Paragraph (e) of subsection (6) of section
 1346 627.351, Florida Statutes, is amended to read:

1347 627.351 Insurance risk apportionment plans.—

1348 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

1349 (e) Purchases that equal or exceed \$2,500, but are less
 1350 than \$25,000, shall be made by receipt of written quotes,
 1351 written record of telephone quotes, or informal bids, whenever
 1352 practical. The procurement of goods or services valued at or
 1353 over \$25,000 shall be subject to competitive solicitation,
 1354 except in situations where the goods or services are provided by
 1355 a sole source or are deemed an emergency purchase; the services
 1356 are exempted from competitive solicitation requirements under s.
 1357 287.057(3)(e) ~~287.057(3)(f)~~; or the procurement of services is

1358 subject to s. 627.3513. Justification for the sole-sourcing or
 1359 emergency procurement must be documented. Contracts for goods or
 1360 services valued at or over \$100,000 are subject to approval by
 1361 the board.

1362 Section 21. Subsection (2) of section 765.5155, Florida
 1363 Statutes, is amended to read:

1364 765.5155 Donor registry; education program.—

1365 (2) The agency and the department shall jointly contract
 1366 for the operation of a donor registry and education program. The
 1367 contractor shall be procured by competitive solicitation
 1368 pursuant to chapter 287, notwithstanding any exemption in s.
 1369 287.057(3)(e) ~~287.057(3)(f)~~. When awarding the contract,
 1370 priority shall be given to existing nonprofit groups that are
 1371 based within the state, have expertise working with procurement
 1372 organizations, have expertise in conducting statewide organ and
 1373 tissue donor public education campaigns, and represent the needs
 1374 of the organ and tissue donation community in the state.

1375 Section 22. Subsection (10) of section 893.055, Florida
 1376 Statutes, is amended to read:

1377 893.055 Prescription drug monitoring program.—

1378 (10) All costs incurred by the department in administering
 1379 the prescription drug monitoring program shall be funded through
 1380 federal grants or private funding applied for or received by the
 1381 state. The department may not commit funds for the monitoring
 1382 program without ensuring funding is available. The prescription
 1383 drug monitoring program and the implementation thereof are
 1384 contingent upon receipt of the nonstate funding. The department
 1385 and state government shall cooperate with the direct-support

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1386 organization established pursuant to subsection (11) in seeking
 1387 federal grant funds, other nonstate grant funds, gifts,
 1388 donations, or other private moneys for the department so long as
 1389 the costs of doing so are not considered material. Nonmaterial
 1390 costs for this purpose include, but are not limited to, the
 1391 costs of mailing and personnel assigned to research or apply for
 1392 a grant. Notwithstanding the exemptions to competitive-
 1393 solicitation requirements under s. 287.057(3)(e) ~~287.057(3)(f)~~,
 1394 the department shall comply with the competitive-solicitation
 1395 requirements under s. 287.057 for the procurement of any goods
 1396 or services required by this section. Funds provided, directly
 1397 or indirectly, by prescription drug manufacturers may not be
 1398 used to implement the program.

1399 Section 23. This act shall take effect July 1, 2013.

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: Appropriations Committee
Representative Albritton offered the following:

Amendment (with directory and title amendments)

Between lines 404 and 405, insert:

(1) (a) To canvass all sources of supply, ~~establish and maintain a vendor list,~~ and contract for the purchase, lease, or acquisition, including purchase by installment sales or lease-purchase contracts which may provide for the payment of interest on unpaid portions of the purchase price, of all commodities and contractual services required by any agency under this chapter. Any contract providing for deferred payments and the payment of interest shall be subject to specific rules adopted by the department.

D I R E C T O R Y A M E N D M E N T

Remove line 400 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1309 (2013)

Amendment No. 1

21 Section 5. Paragraph (a) of subsection (1), paragraph (b)
22 of subsection (2), and
23

24

25

26

27

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

28

Remove line 43 and insert:

29

Department of Management Services; eliminating a duty of the
30 department to maintain a vendor list; providing an
31

31

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1309 (2013)

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	_____	

1 Committee/Subcommittee hearing bill: Appropriations Committee
2 Representative Albritton offered the following:

3
4 **Amendment (with title amendment)**

5 Remove line 706 and insert:

6 contracts and grant management. Training will be conducted
7 jointly by the Department of Management Services and the
8 Department of Financial Services to promote best practices and
9 procedures related to negotiating, managing, and ensuring
10 accountability in agency contracts and grant agreements, which
11 must include the use of case studies based upon previous audits,
12 contracts, and grant agreements. The Chief Financial Officer

13
14
15
16 -----
17 **T I T L E A M E N D M E N T**

18 Remove line 78 and insert:

19 of a contract manager; providing that training will be conducted
20 jointly by the Department of Management Services and the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1309 (2013)


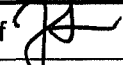
Amendment No. 2

21 | Department of Financial Services; providing training guidelines
22 | and requirements; requiring the department, in

23

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB APC 13-01 Funding from the National Mortgage Settlement
SPONSOR(S): Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee		Proctor 	Leznoff 

SUMMARY ANALYSIS

This bill provides appropriations related to the National Mortgage Settlement. Specifically, the bill:

- Provides funding for the Florida Housing Finance Corporation (FHFC) for Down Payment Assistance for certain teachers, veterans, active military personnel, rural health practitioners, assistant state attorneys, assistant public defenders, and assistant regional conflict counselors.
- Provides funding for the Florida Prepaid Tuition Scholarship Program to purchase two-year dormitory residence advance payment contracts for the certain eligible students.
- Increases funding for the state courts system for technology solutions that expedite foreclosure cases through the judicial process.
- Increases funding for the state courts system for supplemental resources to reduce the backlog of pending foreclosure cases.
- Increases funding for the clerks of the court to assist and support the courts in expediting the processing of backlogged foreclosure cases.
- Provides funding for the Office of the Attorney General to contract with regional legal service providers to provide legal aid services.
- Provides funding for the Department of Children and Families for capital improvement grants to domestic violence centers.
- Provides funding for Habitat for Humanity of Florida for the acquisition and rehabilitation of existing housing stock, or reconstruction of housing stock in blighted areas.
- Provides funding for the State Apartment Incentive Loan program, making reduced rent units available for elderly and extremely-low-income tenants.
- Provides funding for the Office of the Attorney General to establish, coordinate, and promote awareness of housing program opportunities and consumer assistance.

The bill will take effect upon the deposit of \$200,080,474 into the General Revenue Fund from the escrow account created as a result of the consent judgment entered into by the Attorney General on April 4, 2012 in the case of *United States of America, et al v. Bank of America Corp., et al.*, No. 12-0361-RMC, in the United States District Court for the District of Columbia.

The bill will have a \$200 million non-recurring fiscal impact on the General Revenue Fund. However, given the effective date contingency of the \$200 million deposit into the General Revenue Fund, the net effect is zero.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

National Mortgage Settlement

The Attorney General entered into a joint-federal-state agreement with the nation's five largest mortgage servicers over foreclosure abuses and unacceptable nationwide mortgage servicing practices. The agreement provides an estimated \$8.4 billion in relief to Florida to address the mortgage foreclosure crisis by providing services to troubled borrowers with loan modifications, borrowers whose loans are underwater, borrowers who have already lost their homes in foreclosures proceeding and for homeowners to avoid preventable foreclosures, to ameliorate the effects of the foreclosure crisis, to enhance law enforcement efforts to prevent and prosecute financial fraud, or unfair or deceptive acts or practices and to compensate the States for costs resulting from the alleged unlawful conduct of the foreclosures.

Florida received a payment of approximately \$334 million. Pursuant to the settlement agreement, each State Attorney General shall designate the uses of the funds. "To the extent practicable, such funds shall be used for the purposes intended to avoid preventable foreclosures, to ameliorate the effects of the foreclosure crisis, to enhance law enforcement efforts to prevent and prosecute financial fraud, or unfair or deceptive acts or practices and to compensate the States for costs resulting from the alleged unlawful conduct of the Defendants. Such permissible purposes for allocation of the funds include, but are not limited to, supplementing the amounts paid to state homeowners under the Borrower Payment Fund, funding for housing counselors, state and local foreclosure assistance hotlines, state and local foreclosure mediation programs, legal assistance, housing remediation and anti-bligh projects, funding for training and staffing of financial fraud or consumer protections enforcement efforts and civil penalties."

The Attorney General transferred \$74 million to the state's General Revenue Fund in two installments of \$34 million and \$40 million, and requested the distribution of \$60 million (requested by the responsible agency and approved by the Legislative Budget Commission) as provided below:

- \$5 million to contract with legal aid entities within the seven regions of Florida's Regional Legal Services Delivery System to provide legal aid services.
- \$35 million to the FHFC for down payment assistance.
- \$10 million to the FHFC for housing counseling.
- \$5 million to the State Courts System to help with foreclosure related issues.
- \$5 million to reimburse the Office of the Attorney General for legal fees.

Present Situation

Down Payment Assistance Programs

In an effort to assist low- to moderate-income individuals achieve homeownership, the First Time Homebuyer (FTHB) program administered by the Florida Housing Finance Corporation (FHFC)¹ offers borrowers an assortment of down payment assistance options. The assistance comes in the form of a

¹ The Florida Housing Finance Corporation (FHFC) is a public corporation within the Department of Economic Opportunity (DEO). However, the FHFC is a separate budget entity and is not subject to the control, supervision, or direction of DEO.

Section 420.504, Florida Statutes.

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grant, or a 0% interest or low, fixed-rate second mortgage. Only one Florida Housing down payment program can be used by the borrower and only in conjunction with the FTHB program first mortgage products. Two of FHFC's Down Payment Assistance programs are:

- Homeownership Assistance Program (HAP) - Up to \$7,500 is available through the HAP to assist first time homebuyers with down payment and closing costs. HAP loans are 0% interest, non-amortizing second mortgage loans, which means the homebuyer does not make any monthly payments. Instead, the loan is repaid if the homebuyer sells the home, transfers ownership, satisfies or refinances the first mortgage, or ceases to occupy the home. This program targets applicants whose incomes are at or below 100% of the area median income (AMI), adjusted for family size.
- Homeownership Assistance for Moderate Income (HAMI) - Up to \$5,000 is available to assist first time homebuyers with down payment and closing costs through the HAMI program. This program enables borrowers with moderate incomes to receive down payment and closing cost assistance. Unlike the HAP, HAMI is an amortized loan that is offered at a low, fixed interest rate with level monthly payments for a 10-year term. First time homebuyers may be eligible for this loan if their incomes exceed the limits of the HAP, but do not exceed the maximum annual income limits for the FTHB program.

In January 2013, the Legislative Budget Commission approved \$35 million from the National Mortgage Settlement funds to the FHFC to assist homebuyers by reducing the first mortgage interest rate of FTHB loans and/or by making accompanying down payment assistance loans to eligible homebuyers.

Rural Health Practitioners

Section 381.0406, Florida Statutes, defines "rural" as an area with a population density of less than 100 individuals per square mile or an area defined by the most recent U.S. census as rural. Of Florida's 67 counties, 30 counties or 45 percent have been identified as rural based on the definition.²

Mortality rates are a common measure of health outcomes and rural health disparities exist in the U.S. and in Florida. There are disproportionately high mortality rates relative to urban areas for selected diseases and for particular population groups.³ Access to care is a key factor in rural health disparities. The shortage of health care practitioners in rural areas has been recognized in various studies as limiting access to care. Health professional shortages are not limited to physicians. The number of non-physicians providers such as nurses, dentists and mental health professionals are also limited.⁴ Approximately 80 percent of the rural U.S. is in a full or partial primary care health professional shortage area (HPSA), 60 percent are in dental care HPSAs and 87 percent are in mental health care HPSAs.⁵ In Florida, 13 out of the 30 counties defined as "rural" are full county HPSAs and the remaining counties are HPSAs for low income populations.⁶ The ability to attract and retain qualified health practitioners is critical to addressing the problems associated with limited access to care for those residing in rural areas.

School Grades and Personnel Evaluations

² Florida Office of Rural Health. (2012) *List of Rural Counties – 2000 and 2010 US Census*. http://www.doh.state.fl.us/workforce/ruralhealth/PDFs/RURAL_COUNTIES_2000-2010.pdf. Retrieved March 12, 2013.

³ Florida Office of Rural Health. (2008) *Current Rural Health Issue in Florida*. <http://www.doh.state.fl.us/workforce/ruralhealth/ruralhlthissues.htm>. Retrieved March 12, 2013.

⁴ Crosby et al (eds). (2012) *Rural Populations and Health: Determinants, Disparities, and Solutions*. San Francisco, CA: Jossey-Bass.

⁵ RUPRI. (2006). *Demographic and economic profile: Nonmetropolitan America*. Columbia, SC: Author.

⁶ Florida Rural Health Association. (2013) *2013 Legislative Priority Talking Points*. <http://floridaruralhealth.org/gearing-up-for-the-2013-session/>. Retrieved March 12, 2013.

School grades are calculated annually and are based upon student achievement and learning gains on statewide, standardized assessments as well as improvement of the lowest 25th percentile of students in the school in reading and mathematics. Middle school grades also consider student performance and participation in high school level courses. High school grades are more complicated. At least 50 percent of a high school's grade is based upon student achievement and learning gains as well as improvement in the lowest 25th percentile of students; the remainder of the grade is based upon, for example, the high school's graduation rate, including the rate for at-risk students; postsecondary readiness as measured by various assessments; and, performance and participation in, for example, Advanced Placement, International Baccalaureate, and dual enrollment courses.⁷

School grades range from "A" through "F" and the state, through its School Recognition program, provides financial awards to schools receiving an "A" or schools that improve one or more letter grades.⁸

The law provides for school accountability, and instructional personnel and school administrators are held accountable as well through each district's personnel evaluation system. Teacher evaluations must occur at least once a year. At least 50 percent of a teacher's evaluation must be based upon student learning gains, with certain exceptions, and the remainder of the evaluation is based upon instructional practice. In 2011, the state adopted a uniform, statewide system of evaluation that results in teachers being rated as highly effective, effective, needs improvement or developing, and unsatisfactory.⁹

State Attorney and Public Defender Offices

The State Attorney offices and the Public Defender offices throughout the state have experienced turnover rates of approximately 15% in the last few years.¹⁰ Over half of all Assistant State Attorneys and Assistant Public Defenders have less than five years of experience.¹¹ The State Attorney offices, the Public Defender offices, and the Regional Conflict Counsel offices invest substantial resources and years of training to ensure new attorneys have the skills and experience necessary to handle cases and workloads associated with their positions. These attorneys also average \$80,000 to \$100,000 of debt in student loans with starting salaries between \$40,000 and \$50,000.¹² The ability to attract and retain qualified attorneys in a field with substantial turnover, and costly training cycles, is critical to ensure fair and timely representation for those utilizing the judicial system in this state.

Effect of Proposed Changes

The bill provides funding in the amount of \$45 million for FHFC to implement a program providing down payment assistance for a permanent residence to the following eligible applicants:

- A teacher assigned to teach in a public elementary, middle, or high school that is designated a "D" or "F" school as defined in s.1008.34, Florida Statutes, and who has been designated as an effective or highly effective teacher as provided in s.1012.34, Florida Statutes;
- An assistant state attorney, assistant public defender, or assistant regional conflict counsel;
- A veteran as defined in s. 1.01(14), Florida Statutes;
- A uniformed service member on active duty as defined in s. 250.01(1), Florida Statutes; and,

⁷ Section 1008.34, Florida Statutes

⁸ Section 1008.36, Florida Statutes

⁹ Section 1012.34(2), Florida Statutes and Chapter 2011-1, Laws of Florida

¹⁰ (2013) SA Budget and Staffing Presentation, Florida Association of State Attorneys, on file with Appropriations Committee staff.

¹¹ Id.

¹² Id.

- A licensed physician, registered nurse, nurse practitioner, physician assistant, dentist, paramedic, emergency medical technician, pharmacist, psychologist, or clinical social worker, working in a rural area as defined in s. 381.0406, Florida Statute.

The program assistance comes in the form of a \$10,000 grant, what could also be described as a 0% interest forgivable loan, to assist with down payment and closing costs. The homebuyer will be required to certify annually that they continue to meet the eligibility requirements for the down payment assistance for four years. The loan will be forgiven on a prorated basis, with one quarter forgiven at the end of each year following closing. Should a homebuyer no longer meet the eligibility requirements for the down payment prior to the end of the four year period, they will be required to repay the remaining loan balance. Exceptions are made for teachers transferring between certain schools, and active duty military given official relocation orders.

Any repaid loans will be collected by FHFC and deposited in the State Housing Trust Fund within the Department of Economic Opportunity.

The bill provides \$3 million to the FHFC for administrative expenses associated with establishing, coordinating, monitoring compliance and providing down payment assistance.

Present Situation

Florida Prepaid Tuition Scholarship Program.

The Florida Prepaid Tuition Scholarship Program, also known as the Stanley Tate Project STARS Scholarship Program, is administered by the Florida Prepaid Foundation. Currently the State of Florida provides an appropriation each year to match donor pledges to purchase prepaid tuition scholarships. Section 1009.984, Florida Statutes, authorizes the Florida Prepaid Foundation to purchase prepaid tuition scholarships for students certified by the Department of Education who meet minimum economic and school requirements and remain drug free and crime free. Most Project STARS scholarship purchases, 56 awarded to date, are for tuition only.¹³ Donors may purchase scholarships that include a 2-year dormitory component.

Donors purchasing advance payment contracts for Project STARS Scholarships include school districts and their foundations, Florida College System institutions and their foundations, Boys and Girls Clubs, and non-profit organizations such as Take Stock in Children (TSIC).¹⁴ The largest private donor is TSIC, which accounts for nearly 85% of Project STARS donations. Donors such as TSIC, provide mentoring throughout the student's K-12 and college education.

The advance payment contract cost to add a 2-year dormitory component for students in the 11th grade is \$11,745.22. Adjusted for inflation, the cost to add a 2-year dormitory component for 10th graders is \$12,123.03.¹⁵ Project STARS scholarships have already been purchased for 507 students in 10th grade and 910 students in 11th grade. To cover the full number of contracts purchased for these students, the total cost would be \$16,834,526.

Effect of Proposed Changes

The bill provides additional funding in the amount of \$15 million that will allow the Florida Prepaid Foundation to add a 2-year dormitory component to advance payment contracts which have already been purchased for students in 10th and 11th grades during Academic Year 2012-2013. The

¹³ Florida Prepaid. (2011) *2011 Foundation Annual Report*. <http://www.myfloridaprepaid.com/foundation/about-annual-reports.aspx>. Retrieved March 12, 2012.

¹⁴ Florida Prepaid. (2011) *2011 Foundation Annual Report*. <http://www.myfloridaprepaid.com/foundation/about-annual-reports.aspx>. Retrieved March 12, 2013.

¹⁵ Florida Prepaid. (2012) *2012-2013 Plan Prices & Master Covenant*.

<http://www.itppv.com/documents/pdf/prepaid/prepaid-master-covenant.pdf>. Retrieved March 12, 2013.

appropriation would not be subject to the matching requirements set forth in s. 1009.984(2), Florida Statutes.

Present Situation

Foreclosure Crisis Impact on the Judicial Branch

The foreclosure crisis has greatly impacted the economy of the state of Florida. It has also negatively affected the judicial branch, in terms of both funding and caseload. Florida has the largest share of foreclosure inventory of any state in the nation, with 305,766 properties in some stage of foreclosure or bank-owned as of the end of 2012.¹⁶ Seven of the top 10 highest foreclosure markets in the nation are in Florida, with Palm Bay-Melbourne-Titusville having the highest rate of foreclosure of any metro area in the nation.¹⁷

The state court system is struggling with a backlog of foreclosure cases. In 2005, before the housing market crash, there were only 57,106 foreclosure filings statewide. By 2009, the number of filings dramatically increased to 399,118. The courts did not have the resources to quickly and efficiently deal with this high volume of cases. Due to constitutional and statutory requirements to provide speedy trials to criminal defendants, civil filings take the brunt of any caseload backlog.¹⁸

Furthermore, the caseload backlog is not spread evenly across the state. While the statewide average is 11.02% of residential loans in foreclosure, certain areas, particularly those located in South Florida, have a much greater percentage of loans in foreclosure than other circuits. For instance, Miami-Dade has 15.56% of loans in foreclosure compared to only 5.26% in Sumter County.

The 2012 legislature appropriated \$4 million to the State Courts System and \$2 million to the Clerks of the Court in an effort to reduce the number of backlogged foreclosure cases in the system. In January 2013, the Legislative Budget Commission approved \$4,993,500 from the National Mortgage Settlement funds to the State Court System for staffing assistance and technology upgrades to assist in the foreclosure backlog.

As of December 2012, the number of pending foreclosure cases in the trial courts was 371,119. The courts have estimated that approximately 680,000 additional foreclosure cases will be filed between FY 2012-13 and FY 2015-16.¹⁹

Effect of Proposed Changes

The bill increases funding to the State Courts System for staffing assistance (\$13 million) and technological upgrades (\$5.3 million) to assist in the foreclosure backlog. The funds provided for staffing assistance will provide additional senior judge days and temporary case management staff in the trial courts. The funds provided for technology upgrades will improve the flow of foreclosure cases through the judicial process. It will enable judges and staff to use electronic documents when disposing of foreclosure cases, produce orders electronically, provide for electronic calendaring, serve orders through an electronic process, and generate case management reports.

The bill also increases funding to the Clerks of the Court (\$6.7 million) to enhance levels of service to assist and support the courts in expediting the foreclosure backlog process. This would include assigning additional personnel, implementation of electronic filing, and upgrading individual office case

¹⁶ RealtyTrac, 4th quarter data, presented to the Civil Justice Subcommittee by the Legislature's Office of Demographics and Research on January 24, 2013.

¹⁷ Id.

¹⁸ Florida Office of the State Courts Administrator, *Summary Reporting System (SRS)*, August 19, 2011.

¹⁹ (2013) *Foreclosure Backlog Reduction Initiative*, Office of State Courts Administrator, on file with Appropriations Committee staff.

maintenance systems to better determine the backlog status of cases, expedite the process, track the results, report the disposition of the backlog cases and otherwise improve the process.

Present Situation

Legal aid services provide low-income Floridians pro-bono legal help and assistance for issues ranging from Adoption, Child Custody, Dissolution of Marriage, AIDS/HIV, Domestic Violence, Elder Law, Housing, Individual Rights, Termination of Parental Rights, Public Benefits, Employment, Real Estate, Wills, Federal Civil, Bankruptcy, Immigration and Criminal Matters. There are numerous independent legal aid providers throughout the seven regions of the state.

Effect of Proposed Changes

The bill provides \$5 million for the Office of the Attorney General Department of Legal Affairs to contract only with regional legal service providers that will directly provide legal aid services.

Present Situation

The Department of Children and Families (DCF) and the Florida Coalition Against Domestic Violence (FCADV) are responsible for the statewide domestic violence program,²⁰ with services being provided through certified, community-based domestic violence shelters. Minimum services that must be provided by a shelter include:

- Temporary emergency shelter for more than 24 hours;
- Information and referrals and safety planning;
- Counseling and case management;
- A 24 hour emergency hotline;
- Educational services for community awareness;
- Assessment and appropriate referral of resident children; and,
- Training for law enforcement and other professionals.²¹

The 2000 Florida Legislature established the certified domestic violence center capital improvement grant program.²² Subject to an appropriation, domestic violence centers may apply to DCF for a capital improvement grant to construct, acquire, repair, improve, or upgrade systems, facilities, or equipment. DCF and FCADV are instructed to develop a needs assessment as an instrument to evaluate the domestic violence centers' capital improvement needs. The assessment also serves as a mechanism to rank the needs of those centers requesting a capital improvement grant. The 2012-13 Capital Needs Assessment Survey indicated that 38 of the total 42 centers require expansions, renovations, and repairs.²³ In fiscal years 2001-02 through 2008-09, a total of \$22 million in state funds was provided to 42 domestic violence shelters through the capital improvement grant program.

Effect of Proposed Changes

The bill provides \$20 million to the Department of Children and Families for capital improvement grants to certified domestic violence centers to increase bed space and expand the capacity of emergency shelter services.

²⁰ Sections 39.903 and 39.9035, Florida Statutes.

²¹ Section 39.905(1)(c), Florida Statutes.

²² Section 39.9055(2), Florida Statutes.

²³ (2012) 2012-13 Capital Needs Assessment Survey. Florida Coalition Against Domestic Violence, on file with

Present Situation

Habitat for Humanity (Habitat) is an international, non-governmental, and non-profit organization, which was founded in 1976. Habitat has been devoted to building "simple, decent, and affordable" housing, and has addressed the issues of poverty housing all over the world.²⁴

Community-level Habitat offices act in partnership with and on behalf of Habitat for Humanity International. In the United States, these local offices are called Habitat affiliates. Each affiliate office is an independently run, nonprofit organization and coordinates all aspects of Habitat home building in their local area, including fundraising, building site selection, partner family selection and support, house construction, and mortgage servicing. Homes are built using volunteer labor and are sold at no profit.

In Florida there are 58 Habitat affiliates that undertake activities ranging from new home construction, critical home repairs, housing rehabilitation, and neighborhood revitalization. These affiliates have a centralized state support organization called Habitat for Humanity Florida (HFH FL) that provides programs and services designed and developed to meet the needs of Florida's affiliates to help them better accomplish their common goals.

Effect of Proposed Changes

The bill provides funding for the Department of Economic Opportunity (DEO) to grant \$35 million to HFH FL for the acquisition and rehabilitation of existing housing stock, and reconstruct existing stock in blighted areas, to provide affordable housing to low-income residents. HFH FL will be required to form a volunteer committee of at least 6 staff from any of the Florida Habitat affiliates, and establish a request for proposal process in order to evaluate acquisition, rehabilitation, and reconstruction projects submitted from the Florida Habitat affiliates.

Funding for the projects will be on a cost reimbursement basis and no single Florida Habitat affiliate may receive more than 10 percent of the funds provided unless waived under specific circumstances.

HFH FL will be required to submit quarterly progress reports to DEO on their activities, as well as an annual financial audit on the usage of funds. HFH FL will have two years to encumber funds, and any funds not spent shall be repaid to the Department of Financial Services for deposit in the State Housing Trust Fund within the Department of Economic Opportunity.

Present Situation

State Apartment Incentive Loan (SAIL) Program

The SAIL program, created in s. 420.5087, Florida Statutes, authorizes the FHFC to underwrite or make loans or loan guarantees to provide affordable housing to very-low-income persons if:

- The project sponsor uses tax-exempt financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who meet the income eligibility requirements of s. 8 of the United States Housing Act of 1937, as amended;
- The project sponsor uses taxable financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, adjusted to family size; or

²⁴ Habitat for Humanity International. "Habitat for Humanity fact sheet". <http://www.habitat.org/how/factsheet.aspx>.

Retrieved March 13, 2013.

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- The project sponsor uses federal low-income housing tax credits and the project meets the tenant eligibility requirements of s. 42 of the Internal Revenue code.²⁵

According to the FHFC, SAIL funds “serve to bridge the gap between the development’s primary financing and the total cost of the development. SAIL dollars are available to individuals, public entities, not-for-profit or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very low income individuals and families.”²⁶ Under current law, SAIL funds must be reserved for the following tenant groups: commercial fishers and farm workers, families, the elderly, and the homeless.²⁷ Projects that maintain at least 80 percent of their units for commercial fishing workers, farm workers, and the homeless, are eligible to receive loans with interest rates from 0 to 3 percent. All other projects are eligible for loans with interest rates from 1 to 9 percent.²⁸

Effect of Proposed Changes

The bill provides funding to the FHFC to provide reduced rents on new or existing units through the State Apartment Incentive Loan program, specifically reserving funds to serve the elderly (\$25 million) and extremely-low-income tenants (\$25 million).

The bill further provides \$2 million to the Attorney General for coordinating and promoting a marketing campaign to increase awareness of housing assistance opportunities outlined in this act.

Finally, the bill provides that appropriations made in the act are available for two fiscal years, notwithstanding statutory language that generally makes appropriations available for one fiscal year.

The bill will take effect upon the deposit of \$200,080,474 into the General Revenue Fund from the escrow account created as a result of the consent judgment entered into by the Attorney General on April 4, 2012 in the case of *United States of America, et al v. Bank of America Corp., et al.*, No. 12-0361-RMC, in the United States District Court for the District of Columbia.

B. SECTION DIRECTORY:

- Section 1:** Provides \$45,000,000 from the General Revenue Fund to the Florida Housing Finance Corporation for housing Down Payment Assistance.
- Section 2:** Provides \$3,000,000 from the General Revenue Fund to the Florida Housing Finance Corporation for the administration of section 1 of the bill.
- Section 3:** Provides \$15,000,000 from the General Revenue Fund to the Florida Prepaid Tuition Scholarship Program to purchase two-year dormitory residence advance payment contracts.
- Section 4:** Provides \$5,300,000 from the General Revenue Fund to the state courts system for technology solutions that expedite foreclosure cases through the judicial process.
- Section 5:** Provides \$13,000,000 from the General Revenue Fund to the state courts system for supplemental resources to reduce the backlog of pending foreclosure cases.
- Section 6:** Provides \$6,700,000 from the General Revenue Fund to the clerks of the court to assist and support the courts in expediting the processing of backlogged foreclosure cases.
- Section 7:** Provides \$20,000,000 from the General Revenue Fund to the Department of Children and Families for capital improvement grants to domestic violence centers.

²⁵ Section 420.5087(2)(a)-(c), Florida Statutes.

²⁶ The Florida Housing Finance Corporation.

http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=0173. Retrieved March 12, 2013.

²⁷ Section 420.5087(3)(a)-(d), Florida Statutes.

²⁸ Section 420.5087(6)(a), Florida Statutes, *referencing* s. 420.507(22)(a)1. and 3., Florida Statutes.

- Section 8:** Provides \$35,000,000 from the General Revenue Fund to the Department of Economic Opportunity for the acquisition and rehabilitation of existing housing stock.
- Section 9:** Provides \$50,000,000 from the General Revenue Fund to the Florida Housing Finance Corporation to reduce rents through the State Apartment Incentive Loan program for elderly and extremely-low-income tenants.
- Section 10:** Provides \$5,000,000 from the General Revenue Fund to the Office of the Attorney General to contract with regional legal service providers to provide legal aid services.
- Section 11:** Provides \$2,000,000 from the General Revenue Fund to the Office of the Attorney General to establish, coordinate, and promote awareness of housing program opportunities and consumer assistance.
- Section 12:** Provides authority for expenditure of certain funds through fiscal year 2014-2015, and reversion of certain funds at September 30, 2015.
- Section 13:** Provides for an effective date of upon the deposit of \$200,080,474 into the General Revenue Fund from the escrow account created as a result of the consent judgment entered into by the Attorney General on April 4, 2012 in the case of *United States of America, et al v. Bank of America Corp., et al.*, No. 12-0361-RMC, in the United States District Court for the District of Columbia.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. Documentary Stamp Tax collections may see an increase as homes are rehabilitated and sold, and as foreclosed properties move through the legal process quicker for resale.

2. Expenditures:

The bill appropriates \$200 million on a non-recurring basis from the General Revenue Fund. These funds were part of the National Mortgage Settlement entered into by the Attorney General in April 2012.

<u>Issue</u>	<u>Amount (in Millions)</u>
Down Payment Assistance	\$45.0
Florida Housing Finance Corporation Administrative Expenses	\$3.0
Florida Prepaid Tuition Dormitory Residence Contracts	\$15.0
State Court System Technology Solutions	\$5.3
State Court Systems Supplemental Resources	\$13.0
Clerks of the Court Enhanced Level of Service	\$6.7
Legal Aid Services	\$5.0
Department of Children and Families Domestic Violence Centers	\$20.0
Habitat for Humanity of Florida	\$35.0
Florida Housing Finance Corporation State Apartment Incentive Loan program (SAIL)	\$50.0
Promotional Campaign	\$2.0

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. There may be an increase in property taxes collected as homes are purchased or rehabilitated for use as primary residences.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The HFH FL, developers, and any recipient of down payment assistance will be positively impacted.

Funding provided for HFH FL and the SAIL program will provide additional affordable housing for the elderly and extremely-low-income residents of the state.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

29 Revenue Fund to the Department of Economic Opportunity
 30 to provide a grant to Habitat for Humanity of Florida
 31 for certain purposes; providing requirements for
 32 Habitat for Humanity of Florida; providing financial
 33 audit reporting requirements; requiring certain funds
 34 to be repaid by Habitat for Humanity of Florida to the
 35 Department of Financial Services for deposit in the
 36 State Housing Trust Fund; providing an appropriation
 37 from the General Revenue Fund to the Florida Housing
 38 Finance Corporation to provide funding to reduce rents
 39 on new or existing rental units through the State
 40 Apartment Incentive Loan Program; providing an
 41 appropriation from the General Revenue Fund to the
 42 Office of the Attorney General to provide legal aid
 43 services to low-income and moderate-income homeowners
 44 facing foreclosure; authorizing the Office of the
 45 Attorney General to establish, coordinate, and promote
 46 an advertising campaign for certain purposes;
 47 providing an appropriation for such purposes;
 48 providing requirements for the expenditure,
 49 disbursement, and transfer to the State Housing Trust
 50 Fund of certain appropriated funds; providing a
 51 contingent effective date.

52
 53 Be It Enacted by the Legislature of the State of Florida:

54
 55 Section 1. (1) The nonrecurring sum of \$45 million is
 56 appropriated from the General Revenue Fund to the Florida

57 Housing Finance Corporation for the purpose of providing housing
 58 down payment assistance loans as specified in this section.

59 (2) The Florida Housing Finance Corporation shall make
 60 loans available on a first-come, first-served basis to qualified
 61 applicants, providing up to \$10,000 per approved applicant for
 62 down payment assistance for purchasing a Florida property that
 63 will be the applicant's permanent residence. A qualified
 64 applicant must have been a Florida resident for a minimum of 12
 65 consecutive months before closing on the purchased property. All
 66 down payment assistance loans for approved applicants shall be
 67 paid to the closing agent to be applied to the recipient's
 68 closing costs.

69 (3) For a minimum of 48 months after closing on the
 70 purchased property, the recipient of a loan must maintain
 71 residency in the property being purchased. At the time of
 72 closing, and for 48 months after closing on the purchased
 73 property, the recipient must be:

74 (a) A teacher who is assigned to teach in a public
 75 elementary, middle, or high school that has earned a grade of
 76 "D" or "F" as provided in s. 1008.34, Florida Statutes, at the
 77 time the application is submitted and is designated as an
 78 effective or highly effective teacher as provided in s. 1012.34,
 79 Florida Statutes. A recipient under this paragraph who transfers
 80 to another school that has earned a grade of "D" or "F" and who
 81 continues to meet all other applicable qualifications within the
 82 specified time period is not required to repay the loan pursuant
 83 to paragraph (4) (c);

84 (b) An assistant state attorney, assistant public

85 defender, or assistant regional conflict counsel;
86 (c) A veteran as defined in s. 1.01(14), Florida Statutes;
87 (d) A member of a uniformed service on active duty as
88 defined in s. 250.01(1), Florida Statutes. A recipient under
89 this paragraph who is reassigned to a new duty station is not
90 required to repay the loan pursuant to paragraph (4)(c) if he or
91 she provides a certified copy of the permanent change of station
92 order or relocation order to the Florida Housing Finance
93 Corporation; or
94 (e) A health practitioner who is licensed as a physician,
95 registered nurse, nurse practitioner, physician assistant,
96 dentist, paramedic, emergency medical technician, pharmacist,
97 psychologist, or clinical social worker and works in a rural
98 area as defined in s. 381.0406, Florida Statutes.
99 (4) Loans shall be forgiven upon compliance with all
100 requirements of this section.
101 (a) The loan will be forgiven on a pro rata basis, with 25
102 percent of the loan forgiven at the end of each year following
103 closing.
104 (b) Borrowers must, by December 31 of each year following
105 closing, certify compliance with all applicable conditions to
106 the Florida Housing Finance Corporation until the loan has been
107 repaid or completely forgiven. The corporation shall perform any
108 inspections, reviews, or investigations necessary on select
109 compliance certifications to ensure the requirements of this
110 section are met.
111 (c) The loan shall become due upon the failure of the
112 borrower to maintain any of the requirements of this section.

113 (d) Forfeited loan awards shall be collected by the
 114 Florida Housing Finance Corporation and transferred to the
 115 Department of Financial Services for deposit in the State
 116 Housing Trust Fund within the Department of Economic
 117 Opportunity.

118 Section 2. The nonrecurring sum of \$3 million is
 119 appropriated from the General Revenue Fund to the Florida
 120 Housing Finance Corporation for administrative expenses
 121 associated with establishing, coordinating, monitoring
 122 compliance with, and providing down payment assistance loans
 123 pursuant to this act.

124 Section 3. Notwithstanding the funding match provisions in
 125 s. 1009.984(2), Florida Statutes, the nonrecurring sum of \$15
 126 million is appropriated from the General Revenue Fund to the
 127 Florida Prepaid Tuition Scholarship Program as established in s.
 128 1009.984, Florida Statutes, to purchase 2-year dormitory
 129 residence advance payment contracts for eligible students who
 130 are in grades 10 and 11 during the 2012-2013 school year and
 131 have been selected to participate in the scholarship program.

132 Section 4. The nonrecurring sum of \$5.3 million is
 133 appropriated from the General Revenue Fund to the state courts
 134 system to provide technology solutions that expedite foreclosure
 135 cases through the judicial process. Such technology solutions
 136 must enable judges and staff to effectively use electronic
 137 documents when disposing of foreclosure cases, produce orders
 138 electronically, provide for electronic calendaring, serve orders
 139 electronically, and generate case management reports. All
 140 technology enhancements to expedite the mortgage foreclosure

141 cases must be completed in accordance with standards set by the
 142 Florida Court Technology Commission regarding functionality as
 143 outlined in the Case Processing Application Standards.

144 Section 5. The nonrecurring sum of \$13 million is
 145 appropriated from the General Revenue Fund to the state courts
 146 system to provide supplemental resources including, but not
 147 limited to, additional senior judge days and temporary case
 148 management staff in the trial courts to reduce the backlog of
 149 pending foreclosure cases.

150 Section 6. The nonrecurring sum of \$6.7 million is
 151 appropriated from the General Revenue Fund to the clerks of the
 152 court to enhance levels of service to assist and support the
 153 courts in expediting the processing of backlogged foreclosure
 154 cases.

155 Section 7. The nonrecurring sum of \$20 million is
 156 appropriated from the General Revenue Fund in a Fixed Capital
 157 Outlay appropriation category to the Department of Children and
 158 Families for capital improvement grants to certified domestic
 159 violence centers in accordance with s. 39.9055, Florida
 160 Statutes. The Florida Coalition Against Domestic Violence shall
 161 serve as the lead entity to create a competitive request for
 162 proposals with the primary focus of increasing bed space and
 163 expanding capacity of emergency shelter services. Award
 164 decisions shall be completed within 60 days after the effective
 165 date of this act.

166 Section 8. (1) The nonrecurring sum of \$35 million is
 167 appropriated from the General Revenue Fund to the Department of
 168 Economic Opportunity to provide a grant to Habitat for Humanity

169 of Florida for the acquisition and rehabilitation or
 170 reconstruction of existing housing stock to provide affordable
 171 housing to low-income applicants. Habitat for Humanity of
 172 Florida may use up to 1 percent of the grant award for direct
 173 administrative costs.

174 (2) Habitat for Humanity of Florida shall provide
 175 compliance and oversight for the grant award and shall:

176 (a) Provide to the Department of Economic Opportunity the
 177 name and contact information for the Habitat for Humanity of
 178 Florida compliance officer, to be updated within 10 business
 179 days after any change.

180 (b) Develop a request for proposals to be released to the
 181 58 Habitat for Humanity of Florida affiliates no later than 60
 182 days after the effective date of this act. The request for
 183 proposals shall be limited to projects that undertake the
 184 acquisition and rehabilitation or reconstruction of existing
 185 housing stock and provide affordable housing to low-income
 186 applicants.

187 (c) Use the grant award within 2 years, the start date of
 188 which will be 30 days after the request for proposals is
 189 released to the 58 Habitat for Humanity of Florida affiliates.

190 (d) Provide the 58 Habitat for Humanity of Florida
 191 affiliates a minimum of 30 days to respond to the request for
 192 proposals.

193 (e) Establish a volunteer committee of at least six
 194 members from any of the 58 Habitat for Humanity of Florida
 195 affiliates to evaluate and rank project proposals received and
 196 determine project awards based on that evaluation and ranking.

197 1. Project awards shall be provided on a cost-
 198 reimbursement basis for work completed and paid for by the
 199 Habitat for Humanity of Florida affiliate for a qualifying home
 200 that was acquired and rehabilitated or reconstructed for a low-
 201 income applicant.

202 2. The Habitat for Humanity of Florida compliance officer
 203 is responsible for verifying that all project work is completed
 204 and has been paid for by the Habitat for Humanity of Florida
 205 affiliate before a cost reimbursement.

206 3. A Habitat for Humanity of Florida affiliate may not
 207 receive cost reimbursements in excess of 10 percent of the total
 208 appropriation, except that an affiliate may receive cost
 209 reimbursements in excess of 10 percent during the second year if
 210 the only project proposals remaining are from Habitat for
 211 Humanity of Florida affiliates that have reached the 10-percent
 212 cap.

213 (f) Provide technical support and assistance for the use
 214 of grant award funds by the Habitat for Humanity of Florida
 215 affiliates, which shall not exceed 2 percent of the grant award.

216 (g) Submit a quarterly progress report to the Department
 217 of Economic Opportunity within 30 days after the end of each
 218 quarter until all grant award funds have been expended. The
 219 quarterly progress report shall include, but need not be limited
 220 to:

221 1. Events occurring during the quarter, or anticipated to
 222 occur in the near future, that affect the ability of Habitat for
 223 Humanity of Florida to use the grant award for the intended
 224 purpose pursuant to this section.

- 225 2. Action plans for addressing any policy and
 226 administrative issues.
- 227 3. Habitat for Humanity of Florida efforts related to
 228 collecting and verifying data.
- 229 4. Data collected and verified, such as the number of
 230 existing housing stock acquired and rehabilitated or
 231 reconstructed for the quarter and to date, the number of
 232 requests for proposals received, and income data on applicants
 233 who are using the provided housing.
- 234 5. Grant award data disaggregated by recipient and
 235 activity, such as technical support and assistance, direct
 236 administrative costs, housing acquisition, and housing
 237 rehabilitation or reconstruction.
- 238 6. Activities related to technical support and assistance.
- 239 7. The name of each volunteer committee member and his or
 240 her Habitat for Humanity of Florida affiliate.
- 241 8. Progress towards meeting the goal of spending the full
 242 grant award within 2 years, the start date of which will be 30
 243 days after the request for proposals is released to the 58
 244 Habitat for Humanity of Florida affiliates.
- 245 (h) Submit annually by September 1 to the Department of
 246 Economic Opportunity a financial audit performed by an
 247 independent certified public accountant for the most recently
 248 completed fiscal year that establishes that no material
 249 weaknesses or instances of material noncompliance exist.
- 250 (3) The Department of Economic Opportunity shall submit a
 251 copy of each financial audit from Habitat for Humanity of
 252 Florida to the President of the Senate and the Speaker of the

253 House of Representatives within 15 days after its receipt.

254 (4) Any funds that are not expended or encumbered by June
 255 30, 2015, and any funds that were deemed encumbered on June 30,
 256 2015, and not expended by September 30, 2015, shall be repaid by
 257 Habitat for Humanity of Florida to the Department of Financial
 258 Services for deposit in the State Housing Trust Fund within the
 259 Department of Economic Opportunity. A final audit shall be
 260 submitted to the Department of Economic Opportunity by January
 261 30, 2016, for any expenditures made after June 30, 2015.

262 Section 9. The nonrecurring sum of \$50 million is
 263 appropriated from the General Revenue Fund to the Florida
 264 Housing Finance Corporation to provide funding to reduce rents
 265 on new or existing rental units through the State Apartment
 266 Incentive Loan Program created by s. 420.5087, Florida Statutes.
 267 Notwithstanding any provision of s. 420.5087, Florida Statutes,
 268 \$25 million of these funds shall be reserved for rental units
 269 for the elderly as defined in s. 420.0004(8), Florida Statutes,
 270 and \$25 million shall be reserved for rental units for
 271 extremely-low-income persons as defined in s. 420.0004(9),
 272 Florida Statutes.

273 Section 10. The nonrecurring sum of \$5 million is
 274 appropriated from the General Revenue Fund to the Office of the
 275 Attorney General, who will contract directly with regional legal
 276 aid service providers that will provide legal aid services to
 277 low-income and moderate-income homeowners facing foreclosure.
 278 Administrative costs or fees may not be collected or used by the
 279 Office of the Attorney General, any association, or any
 280 foundation for providing such services.

281 Section 11. The Legislature finds that there is a need for
 282 a promotional campaign to increase consumer awareness of
 283 affordable housing availability and housing assistance
 284 opportunities as outlined in this act. To this end, the Office
 285 of the Attorney General may establish, coordinate, and promote
 286 such an advertising campaign, which may include public relations
 287 activities and contracting with media representatives for the
 288 purpose of dispersing promotional materials and opportunities
 289 for consumer assistance. The nonrecurring sum of \$2 million is
 290 appropriated from the General Revenue Fund to the Office of the
 291 Attorney General for this purpose.

292 Section 12. Except as otherwise provided in section 8,
 293 notwithstanding s. 216.301, Florida Statutes, and pursuant to s.
 294 216.351, Florida Statutes, entities to which funds are
 295 appropriated pursuant to this act may expend such funds through
 296 the 2014-2015 fiscal year. Any funds that are encumbered by June
 297 30, 2015, must be disbursed by September 30, 2015. On September
 298 30, 2015, any funds that remain undisbursed must be transferred
 299 to the State Housing Trust Fund within the Department of
 300 Economic Opportunity.

301 Section 13. This act shall take effect upon the deposit of
 302 \$200,080,474 into the General Revenue Fund from the escrow
 303 account created as a result of the consent judgment entered into
 304 by the Attorney General on April 4, 2012, in the case of United
 305 States of America, et al. v. Bank of America Corp., et al., No.
 306 12-0361-RMC, in the United States District Court for the
 307 District of Columbia.

Amendment No. 1

20 Initiatives Partnership program created by s. 420.9072, Florida
21 Statutes.

22

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24

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

27

Remove line 40 and insert:

28

Apartment Incentive Loan Program; providing an

29

appropriation from the General Revenue Fund to the State

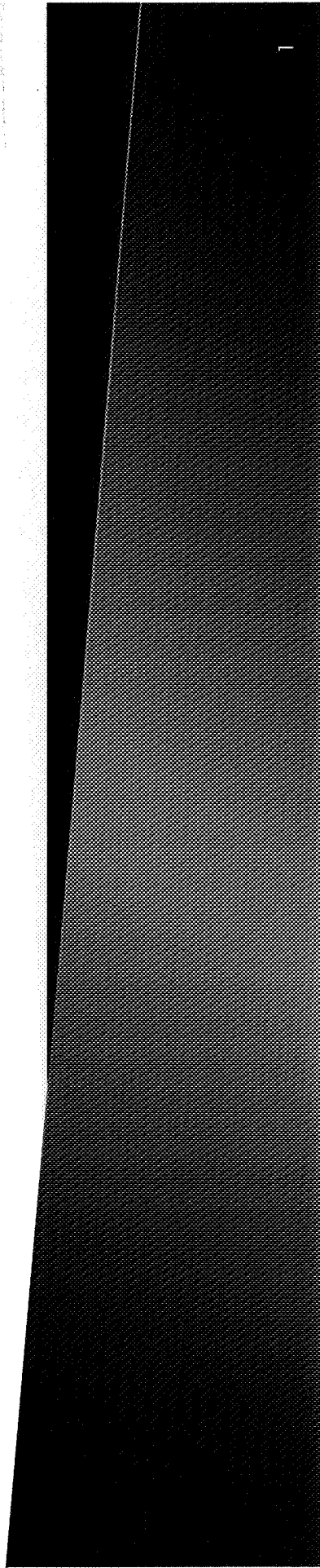
30

Housing Initiatives Partnership program; providing an

31

Information Technology Governance

**House Appropriations Committee
March 20, 2013**



Impact on Government

- ▶ State governments must meet the expectations of connected citizens.
 - Citizens and businesses expect government services to be accessible and convenient.
 - Operate at the speed of “**now**”.
- ▶ Florida is tasked with using technology to more efficiently & effectively operate government & provide services & information to its citizens.
 - Center for Digital Government completes biennial survey that evaluates the digital government practices of all 50 states.
 - 2012 survey results show Florida slipped in its ranking compared to the 2010 survey results.

Technology Funding in State Government

- ▶ Technology is funded in all sections of Florida’s \$59.7 billion budget for FY 2012-13
 - \$847.9 million – \$112.1 million is General Revenue
- ▶ Major IT projects funded:

Agency	IT Project	FY12-13	Total Cost
DOE-OEL	Early Learning Information System (ELIS)	\$5,882,783	\$33M
DEO	Reemployment Assistance System Modernization (Project Connect)	\$20,233,838	\$57M
DCF	FLORIDA Eligibility System Remediation	\$32,525,565	\$41.4M
DCF	Florida Safe Families Network (FSFN) Enhancements	\$12,450,000	\$12.5M

Data Center Consolidation Legislation

- ▶ 2008 study documented that Florida could realize sufficient cost savings/cost avoidance to warrant consolidating all agency data centers into 3 primary data centers (PDC).
- ▶ Legislature enacted law which established state data center system & required all agency data centers to be consolidated into a PDC by **2019**.
- ▶ Since FY 2010-11, 16 agency data centers have consolidated into a PDC.
 - **(\$13 million)** in total cost savings resulting from consolidations.

IT Issues Requiring Resolution

- ▶ Identification of opportunities & strategies for consolidating the purchase of commodity IT services to achieve cost savings for the state.
- ▶ Recommendations for standardizing & consolidating the IT services that support business functions & operations that are common across state agencies.
- ▶ Development of a strategic business plan for implementing a successor financial and cash management system that enables state agencies to decommission the hundreds of agency financial management systems.

IT Issues Requiring Resolution

- ▶ Development & implementation of a plan and process for detecting, reporting, and responding to suspected or confirmed IT security threats or incidents.
- ▶ Establishment of appropriate operating policies and standards for the primary data centers to ensure that all cost savings can be fully realized.
- ▶ Development & implementation of IT project management standards to ensure that all IT projects, especially large-scale IT projects, complete “on-time and within budget and scope.”

Florida's Biggest Challenge in Addressing IT Issues

- ▶ No sustainable IT governance structure
 - Past 16 years, Florida has had 5 different IT governance structures

Time Period	Structure	Overall Responsibility
1997–2000	State Technology Council (Governor, Cabinet, agency heads, & private sector representatives)	Develop statewide vision & policies for IT and resource management
1997–2000	State Technology Office (<i>original version</i>)	Provide support to State Technology Council
2000–2005	State Technology Office (<i>expanded scope version</i>)	Manage consolidation of IT resources for executive branch agencies
2005–2006	State Technology Office (<i>reduced scope version</i>)	Provide strategic planning & policy recommendations
2005–2006	Department of Management Services (DMS)	Transferred certain IT operational responsibilities to DMS
2007–current	Agency for Enterprise Information Technology (AEIT)	Oversee policies for the design, planning, project management, & implementation of enterprise IT services

2012 Legislature

- ▶ To address outstanding operational issues with AEIT & governance issues of the primary data centers:
 - HB 5011 passed both chambers on 3/9/12.
 - Bill established successor agency, *Agency for State Technology*, and assigned it duties that were not as broad as AEIT's duties but more focused on those necessary to:
 - Identify other opportunities for improving the delivery of IT in the state.
 - Ensure the state realized the **full** cost savings & efficiencies associated with data center consolidation

2012 Legislature

- ▶ **HB 5011 also:**
 - Amended governance structure of the primary data centers by transferring their oversight to new agency.
 - Appropriated \$1.8 million in recurring GR & 16 FTE for new agency.
- ▶ **Governor vetoed bill on 4/20/12.**
 - Veto message stated overly prescriptive language regarding management of IT resources & creates inflexible and ineffective landscape discouraging innovative business change.
- ▶ **AEIT exists in statute but is not funded and has no FTE.**

Questions?