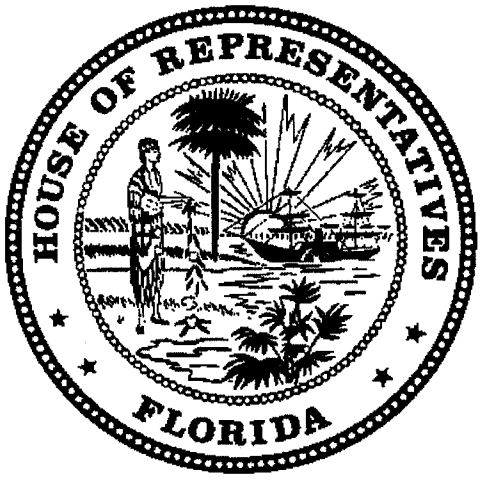

Appropriations Committee

Wednesday, April 10, 2013
3:30 PM – 6:30 PM
212 Knott Building

Meeting Packet

Will Weatherford
Speaker

Seth McKeel
Chair

The Florida House of Representatives

Appropriations Committee

Will Weatherford
Speaker

Seth McKeel
Chair

AGENDA
Wednesday, April 10, 2013
212 Knott Building
3:30 PM – 6:30 PM

I. Call to Order/Roll Call

II. Opening Remarks by Chair McKeel

III. Consideration of the following bills:

CS/HB 495 Certified Audit Program by Finance & Tax Subcommittee, Raulerson

CS/CS/HB 519 Military Affairs by Veteran & Military Affairs Subcommittee, Government Operations Subcommittee, Moraitis

CS/HB 599 Publicly-Funded Defined Benefit Retirement Plans by Government Operations Subcommittee, Caldwell

CS/HB 639 Practitioners by Health Quality Subcommittee, Harrell

CS/HB 905 Family Law by Judiciary Committee, Steube

CS/HB 1017 State Procurement by Government Operations Subcommittee, Fresen

CS/HB 1093 Volunteer Health Services by Health Quality Subcommittee, Hudson

CS/HB 1245 Building Construction by Business & Professional Regulation Subcommittee, Davis

CS/CS/HB 1295 Discretionary Sales Surtaxes by Education Committee, Finance & Tax Subcommittee, Fresen

CS/HB 1357 Guaranteed Energy, Water, & Wastewater Performance Savings Contracting Act by Energy & Utilities Subcommittee, Cummings

CS/HB 1399 Firefighter and Police Officer Pension Plans by Government Operations Subcommittee, Rooney

IV. Closing Remarks and Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4810 Fax: (850) 488-9633

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 495 Certified Audit Program
SPONSOR(S): Finance & Tax Subcommittee; Raulerson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 866

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee	15 Y, 0 N, As CS	Flieger	Langston
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	White CCW	Topp
3) Appropriations Committee		White CCW	Leznoff

SUMMARY ANALYSIS

Section 213.285, Florida Statutes, F.S., establishes a Certified Audit Program as a cooperative effort between the Department of Revenue and the Florida Institute of Certified Public Accountants. The program allows taxpayers to hire qualified CPA firms to review their tax compliance for the tourist development taxes imposed by ss. 125.0104 and 125.0108, F.S, and the sales and use tax imposed by ch. 212, F.S.

To encourage participation in the program, taxpayers who undergo a certified audit receive a statutorily guaranteed waiver of all penalties, abatement of the first $25,000 of interest, and an additional 25 percent of any interest liability in excess of the first $25,000 if that audit reveals additional liability.

A taxpayer may not currently participate in the certified audit program if they are currently under audit or have received a written notice of intent to audit.

The bill allows taxpayers to participate in the certified audit program after they have received a notice of intent to audit. The amount of interest abated for such taxpayers is reduced to the first $15,000 and 15 percent of any amount over $15,000. It also increases the amount of interest that is abated for participating taxpayers who have not received a notice of intent to audit to an abatement of the first $50,000 of interest plus 50 percent of any amount over $50,000.

On March 16, 2013, the Revenue Estimating Conference estimated that allowing taxpayers to enter the certified audit program after receiving a notice of intent to audit would have a recurring impact of -$2.4 million to the state and a recurring impact of -$0.5 million to local governments. Impacts will not begin until FY 2014-15. The interest abatement changes for the current program will have an indeterminate negative fiscal impact.

The effective date is July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Department of Revenue ("DOR") routinely audits businesses in this state to determine if state taxes were collected, reported, and paid correctly. DOR begins the audit process by mailing a taxpayer a Notification of Intent to Audit Books and Records ("notice of intent").[1] This notice identifies the audit period and taxes to be examined. The types of records needed may include, but are not limited to: federal income tax returns, Florida tax returns, depreciation schedules, general ledgers and journals, property records, cash receipt and disbursement journals, purchase and sales journals, sales tax exemption or resale certificates, and documentation to verify amounts entered on tax returns. An audit may extend back three years.[2]

To encourage voluntarily compliance, s. 213.285, Florida Statutes, F.S., establishes a Certified Audit Program as a cooperative effort between DOR and the Florida Institute of Certified Public Accountants ("FICPA"). The program allows taxpayers to hire qualified CPA firms to review their tax compliance for the tourist development taxes imposed by ss. 125.0104 and 125.0108, F.S, and the sales and use tax imposed by ch. 212, F.S.[3]

To encourage participation in the program, taxpayers who undergo a certified audit receive a statutorily guaranteed waiver of all penalties, abatement of the first $25,000 of interest, and an additional 25 percent of any interest liability in excess of the first $25,000 in cases where the audit reveals additional liability.[4] These incentives are not available where tax was collected but not remitted to the state. Additionally, except in cases of fraud or misrepresentation, DOR will not audit a taxpayer who uses the program for the same tax years that the certified audit reviewed.

A taxpayer may not participate in the certified audit program if they are currently under audit or have received a written notice of intent to audit from DOR.

To conduct a certified audit a CPA must possess an active Florida CPA license, attend a 2.5-day training seminar, and pass an examination to be certified. For a firm to be eligible to conduct certified audits, several additional requirements must be met. The firm must be a licensed audit firm with the Florida Board of Accountancy, have received a timely on-site peer review, and must conduct the audits using agreed-upon procedures. A staff member of the firm must have completed DOR-provided training on Florida multi-tax software.[5]

To be eligible to provide a certified audit service to a taxpayer, the qualified CPA firm must also be independent with respect to that taxpayer, pursuant to the guidelines established by Florida Board of Accountancy.[6]

When the certified audit project was authorized by the Legislature in 1998, a sunset provision was included of July 1, 2002. This was subsequently extended to July 1, 2006,[7] and then repealed entirely.[8]

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[1] Form DR-840 or CA-I
[2] Section 95.091, F.S.
[3] Rule 12-25.0305, F.A.C.
[4] Section 213.21(8), F.S.
[5] Rule 12-25.033, F.A.C.
[6] http://www.ficpa.org/Content/CPAResources/Professional/Audit/Issues.aspx (last accessed 3/15/13)
[7] Section 36, ch. 2002-218, L.O.F.
[8] Section 40, ch. 2003-254, L.O.F.

Proposed Changes

The bill allows taxpayers to participate in the certified audit program after they have received a notice of intent to audit from DOR. The time limits for administering a certified audit in that situation are modified, giving the taxpayer an additional 30 days to submit a proposed audit plan. Within 90 days after the proposed audit plan, the department shall designate the agreed-upon procedures for that audit. The certified auditor has 285 days from the date of the notice of intent to audit to timely complete the audit.

The amount of interest that is abated for such taxpayers is $15,000 plus 15 percent of any amount over $15,000.

It also increases the amount of interest that is abated for participating taxpayers who have not received a notice of intent to audit, increasing the abatement to the first $50,000 of interest plus 50 percent of any amount over $50,000.

The bill codifies into statute the current rule[9] that the certified audit program only applies to the sales and use tax and the tourist development tax.

B. SECTION DIRECTORY:

Section 1. Amends s. 213.21, F.S., to adjust the amount of interest abated.

Section 2. Amends s. 213.285, F.S., to allow taxpayers who have received a notice of intent to audit to participate in the certified audit program, providing procedures for such participation, codifying the applicable taxes.

Section 3. Amends s. 213.053, F.S., conforming changes.

Section 4. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On March 16, 2013, the Revenue Estimating Conference estimated that allowing taxpayers to enter the certified audit program after receiving a notice of intent to audit would have a recurring impact of -$2.4 million to the state. Impacts will not begin until FY 2014-15. The interest abatement changes for the current program will have an indeterminate negative fiscal impact.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   On March 16, 2013, the Revenue Estimating Conference estimated that allowing taxpayers to enter the certified audit program after receiving a notice of intent to audit would have a recurring impact of -$0.5 million to local governments. Impacts will not begin until FY 2014-15. The interest abatement changes for the current program will have an indeterminate negative fiscal impact.

[9] Rule 12-25.0305, F.A.C.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers who take advantage of the certified audit program may see their tax liability decrease due to the abatement of interest and waiver of penalties. CPAs who are certified by DOR to conduct such audits will see additional demand for their services should the expanded eligibility lead to more participation.

D. FISCAL COMMENTS:

Increased participation in the certified audit program should free up resources to allow DOR to conduct more audits and collect additional taxes from noncompliant taxpayers whose liability would have otherwise gone undetected.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may cause local governments to receive lower collections from local option sales taxes; however the impact should be below the threshold for an insignificant impact exemption.

2. Other:

None

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2013, the Finance and Tax Subcommittee adopted three amendments. The above analysis reflects these changes:

- Added language that codifies a currently existing rule limiting the eligible taxes
- Reduced interest abatement for taxpayers who had received a notice of intent
- Extended deadline for DOR to agree to procedures for a certified audit

A bill to be entitled

An act relating to the certified audit program; amending s. 213.21, F.S.; revising the amounts of interest liability that the Department of Revenue may abate for taxpayers participating in the certified audit program; authorizing a taxpayer to participate in the certified audit program after the department has issued notice of intent to conduct an audit of the taxpayer; amending s. 213.285, F.S.; conforming provisions; authorizing the department to initiate a certified audit program for specified taxes administered by the department; revising procedures, deadlines, and notice requirements for certified audits; authorizing the department to adopt rules prohibiting a qualified practitioner from representing a taxpayer in informal conference procedures under certain circumstances; amending s. 213.053, F.S.; conforming terminology; providing an effective date.

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

Section 1. Subsection (8) of section 213.21, Florida Statutes, is amended to read:

213.21 Informal conferences; compromises.—

(8) In order to determine whether certified audits are an effective tool in the overall state tax collection effort, the executive director of the department or the executive director's designee shall settle or compromise penalty liabilities of

taxpayers who participate in the certified audit program ~~audits project~~. As further incentive for participating in the program, the department shall:

(a) For a taxpayer who requests to participate in the program before the department has issued the taxpayer a written notice of intent to conduct an audit, abate the first $50,000 of any interest liability and 50 percent of any interest due in excess of the first $50,000; or

(b) For a taxpayer who requests to participate in the program after the department has issued the taxpayer a written notice of intent to conduct an audit, abate the first $15,000 ~~$25,000~~ of any interest liability and 15 ~~25~~ percent of any interest due in excess of the first $15,000 ~~$25,000~~.

A settlement or compromise of penalties or interest pursuant to this subsection shall not be subject to ~~the provisions of~~ paragraph (3)(a), except for the requirement relating to confidentiality of records. The department may consider an additional compromise of tax or interest pursuant to ~~the provisions of~~ paragraph (3)(a). This subsection does not apply to any liability related to taxes collected but not remitted to the department.

Section 2. Section 213.285, Florida Statutes, is amended to read:

213.285 Certified audits.—

(1) As used in this section, the term:

(a) "Certification program" means an instructional curriculum, examination, and process for certification,

recertification, and revocation of certification of certified public accountants that ~~which~~ is administered by an independent provider and that ~~which~~ is officially approved by the department to ensure that a certified public accountant possesses the necessary skills and abilities to successfully perform an attestation engagement for tax compliance review in the ~~a~~ certified audit program ~~audits project~~.

(b) "Department" means the Department of Revenue.

(c) "Participating taxpayer" means any person subject to the revenue laws administered by the department who enters into an engagement with a qualified practitioner for tax compliance review and who is approved by the department under the certified audit program ~~audits project~~.

(d) "Qualified practitioner" means a certified public accountant who is licensed to practice in Florida and who has completed the certification program.

(2)(a) The department may ~~is authorized to~~ initiate a certified audit program for sales and use taxes imposed under chapter 212 and local option taxes imposed under ss. 125.0104 and 125.0108 and administered by the department ~~audits project~~ to further enhance tax compliance reviews performed by qualified practitioners and ~~to~~ encourage taxpayers to hire qualified practitioners at their own expense to review and report on their tax compliance. The nature of certified audit work performed by qualified practitioners shall be agreed-upon procedures in which the department is the specified user of the resulting report.

(b) As an incentive for taxpayers to incur the costs of a certified audit, the department shall compromise penalties and

abate interest due on any tax liabilities revealed by the ~~a~~ certified audit:

1. For a taxpayer who requests to participate in the certified audit program before the department has issued the taxpayer a written notice of intent to conduct an audit, as provided in s. 213.21(8)(a); or

2. For a taxpayer who requests to participate in the certified audit program after the department has issued the taxpayer a written notice of intent to conduct an audit, as provided in s. 213.21(8)(b) ~~213.21~~.

The ~~This~~ authority to compromise penalties or abate interest under this paragraph does ~~shall~~ not apply to any liability for taxes ~~that were~~ collected by the participating taxpayer but ~~that were~~ not remitted to the department.

(3) Any practitioner responsible for planning, directing, or conducting a certified audit or reporting on a participating taxpayer's tax compliance in a certified audit must be a qualified practitioner. For the purposes of this subsection, a practitioner is considered responsible for:

(a) "Planning" in a certified audit when performing work that involves determining the objectives, scope, and methodology of the certified audit, when establishing criteria to evaluate matters subject to the review as part of the certified audit, when gathering information used in planning the certified audit, or when coordinating the certified audit with the department.

(b) "Directing" in a certified audit when the work involves supervising the efforts of others who are involved or

when reviewing the work to determine whether it is properly accomplished and complete.

(c) "Conducting" a certified audit when performing tests and procedures or field audit work necessary to accomplish the audit objectives in accordance with applicable standards.

(d) "Reporting" on a participating taxpayer's tax compliance in a certified audit when determining report contents and substance or reviewing reports for technical content and substance before ~~prior to~~ issuance.

(4)(a) A ~~The~~ qualified practitioner shall notify the department of an engagement to perform a certified audit and shall provide the department with the information that the department deems necessary to identify the taxpayer, to confirm whether ~~that~~ the taxpayer is ~~not~~ already under audit by the department, and to establish the basic nature of the taxpayer's business and the taxpayer's potential exposure to the ~~Florida~~ revenue laws administered by the department. Once the department has issued a taxpayer a written notice of intent to conduct an audit, if the taxpayer requests to participate in the certified audit program, the qualified practitioner or the taxpayer, within 30 days after the notice of intent to conduct the audit was issued to the taxpayer, must notify the department of the engagement to perform the certified audit.

(b) The information provided in the notification shall include the taxpayer's name, federal employer identification number or social security number, state tax account number, mailing address, and business location~~,~~ and the specific taxes and period proposed to be covered by the engagement for the

certified audit. In addition, the notice shall include the name, address, identification number, contact person, e-mail address, and telephone number of the engaged firm.

(c) ~~(b)~~ Upon the department's receipt of the engagement ~~If the taxpayer has not been issued a written~~ notice ~~of intent to conduct an audit~~, the taxpayer becomes ~~shall be~~ a participating taxpayer, and the department shall so advise the qualified practitioner in writing within 10 days after receipt of the engagement notice. However, the department may exclude a taxpayer from a certified audit or may limit the taxes or periods subject to the certified audit on the basis that the department has previously conducted an audit or~~, that it~~ is in the process of conducting an investigation or other examination of the taxpayer's records~~,~~ or for just cause determined solely by the department.

(d) ~~(c)~~ Notice of the qualification of a taxpayer for a certified audit shall toll the statute of limitations provided in s. 95.091 with respect to the taxpayer for the tax and periods covered by the engagement.

(e) ~~(d) Within 30 days after receipt of the notice of qualification from the department,~~ The qualified practitioner shall contact the department and, within the following periods, shall submit a proposed audit plan and procedures for review and agreement by the department:

1. For a taxpayer who requests to participate in the certified audit program before the department has issued the taxpayer a written notice of intent to conduct an audit, within 30 days after receipt of the notice of qualification from the

department; or

2. For a taxpayer who requests to participate in the certified audit program after the department has issued the taxpayer a written notice of intent to conduct an audit, within 60 days after the department issued the taxpayer the notice of intent to conduct the audit.

The department may extend the time for submission of the plan and procedures for reasonable cause. The qualified practitioner shall initiate action to advise the department that amendment or modification of the plan and procedures is necessary in the event that the qualified practitioner's inspection reveals that the taxpayer's circumstances or exposure to the revenue laws is substantially different than as described in the engagement notice.

(f) If the taxpayer has been issued a written notice of intent to conduct an audit but submits a proposed audit plan and procedures in accordance with subparagraph (e)2., within 90 days after the notice of intent to conduct the audit was issued to the taxpayer, the department shall designate the agreed-upon procedures to be followed by the qualified practitioner in the certified audit.

(5) Upon the department's designation of the agreed-upon procedures to be followed by the practitioner in the certified audit, the qualified practitioner shall perform the engagement and shall timely submit a completed report to the department. The report shall affirm completion of the agreed-upon procedures and shall provide any required disclosures. For a certified

audit completed pursuant to agreed-upon procedures designated by the department under paragraph (4)(f), the completed report is considered timely only if submitted to the department within 285 days after the notice of intent to conduct the audit was issued to the taxpayer.

(6) The department shall review the report of the certified audit and shall accept it when it is determined to be complete. Once the report is accepted by the department, the department shall issue a notice of proposed assessment reflecting the determination of any additional liability reflected in the report and shall provide the taxpayer with all the normal payment, protest, and appeal rights with respect to the liability. In cases where the report indicates an overpayment has been made, the taxpayer shall submit a properly executed application for refund to the department. Otherwise, the certified audit report is a final and conclusive determination with respect to the tax and period covered. An ~~No~~ additional assessment may not be made by the department for the specific taxes and period referenced in the report, except upon a showing of fraud or misrepresentation of material facts and except for adjustments made under s. 198.16 or s. 220.23. This determination does ~~shall~~ not prevent the department from collecting liabilities not covered by the report or from conducting an audit or investigation and making an assessment for additional tax, penalty, or interest for any tax or period not covered by the report.

(7) To implement the certified audit program ~~audits project~~, the department may ~~shall have authority to~~ adopt rules

relating to:

(a) The availability of the certification program required for participation in the certified audit program ~~project~~;

(b) The requirements and basis for establishing just cause for approval or rejection of participation by taxpayers;

(c) Procedures for assessment, collection, and payment of liabilities or refund of overpayments and provisions for taxpayers to obtain informal and formal review of certified audit results;

(d) The nature, frequency, and basis for the department's review of certified audits conducted by qualified practitioners, including the requirements for documentation, work-paper retention and access, and reporting; ~~and~~

(e) Requirements for conducting certified audits and for review of agreed-upon procedures; and

(f) Circumstances under which a qualified practitioner who conducts a certified audit for a taxpayer after the department has issued the taxpayer a written notice of intent to conduct the audit is prohibited from representing the taxpayer in informal conference procedures established pursuant to s. 213.21.

Section 3. Paragraph (m) of subsection (8) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

(8) Notwithstanding any other provision of this section, the department may provide:

(m) Information contained in returns, reports, accounts, or declarations to the Board of Accountancy in connection with a

disciplinary proceeding conducted pursuant to chapter 473 when related to a certified public accountant participating in the certified audit program ~~audits project~~, or to the court in connection with a civil proceeding brought by the department relating to a claim for recovery of taxes due to negligence on the part of a certified public accountant participating in the certified audit program ~~audits project~~. In any judicial proceeding brought by the department, upon motion for protective order, the court shall limit disclosure of tax information when necessary to effectuate the purposes of this section.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 4. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 519 Military Affairs
SPONSOR(S): Veteran & Military Affairs Subcommittee; Moraitis, Jr., and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N, As CS	Stramski	Williamson
2) Veteran & Military Affairs Subcommittee	11 Y, 0 N, As CS	Thompson	De La Paz
3) Appropriations Committee		Delaney	Leznoff
4) State Affairs Committee			

SUMMARY ANALYSIS

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide up to 12 weeks of unpaid leave to eligible employees who are family members of a servicemember deployed on covered active duty, in certain circumstances. In addition, eligible employees who are family members of a covered servicemember may take up to 26 weeks of FMLA leave to care for the servicemember who is undergoing medical treatment for a serious injury or illness incurred or aggravated in the line of duty on active duty.

The FMLA generally applies to employees of state and local governments, as well as private employers.

The bill provides that an employee entitled to overtime protection under the federal Fair Labor Standards Act, of the state or any county, municipality, or other political subdivision who is the spouse of a servicemember of the United States Armed Forces may not be compelled by his or her employing authority to work overtime or extended hours during a period in which his or her spouse is deployed on active duty military service. The bill prohibits an employing authority from imposing a sanction or penalty upon such employee for failure or refusal to work overtime or extended work hours during a period in which his or her spouse is deployed on active duty military service.

The bill requires an employing authority to grant a request by an employee who is a spouse of a servicemember of the United States Armed Forces deployed on active duty military service for unpaid leave not to exceed four working days for the purpose of attending to matters directly related to the implementation of deployment orders of the spouse.

The bill provides a finding of an important state interest.

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

The bill may have an indeterminate, but likely insignificant, negative fiscal impact on state and local governments. *See* Fiscal Comments section for further details.

The bill may be a county or municipal mandate. *See* Section III.A.1. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Family and Medical Leave Act

The federal Family and Medical Leave Act (FMLA)[1] contains two leave entitlements that benefit families of servicemembers in the United States Armed Forces, qualifying exigency leave and military caregiver leave.

For qualifying exigency leave, eligible employees who are the spouse, son, daughter, or parent of a military member may take up to 12 weeks of FMLA leave during any 12-month period to address the most common issues that arise when a military member is deployed to a foreign country, such as attending military sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare.[2] For military caregiver leave, eligible employees who are the spouse, son, daughter, parent or next of kin of a covered servicemember may take up to 26 weeks of FMLA leave during a single 12-month period to care for the servicemember who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred or aggravated in the line of duty on active duty.[3] These provisions apply to the families of members of both the active duty and reserve components of the Armed Forces.

An employer may require that an employee seeking leave under the FMLA provide certification to substantiate the reason for taking leave.[4]

In order to be considered an "eligible employee", the employee must have at least 12 months of service with the employer and have worked at least 1,250 hours within the previous 12 months.[5] Employers subject to the FMLA include all state and local public agencies and private employers with more than 50 employees.[6]

Covered active duty under the FMLA is defined by rule as follows:

- Covered active duty or call to covered active duty status in the case of a member of the Regular Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country. The active duty orders of a member of the Armed Forces will generally specify if the member is deployed to a foreign country.
- Covered active duty or call to covered active duty status in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.[7]

Overtime, Extended Work Hours, and Public Employees

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[1] 29 U.S.C. s. 2601, *et seq.*
[2] 29 U.S.C. s. 2612(a)(1)(E).
[3] *See* 29 C.F.R. s. 825.126(b) for a more detailed list of exigent circumstances that entitle an eligible employee to FMLA military leave.
[4] 29 U.S.C. s. 2613.
[5] 29 U.S.C. ss. 2611(2)(A).
[6] 29 U.S.C. s. 2611(4)(A)(iii), defining "public agency" by cross-reference to 29 U.S.C. s. 203(x) .
[7] *See* 29 C.F.R. s. 825.126(a).

The federal Fair Labor Standards Act (FLSA)[8] provides that covered employees[9] of public agencies[10] who work in excess of the standard amount of hours in a given work period are entitled to either overtime pay or, if there is an applicable agreement, to special compensatory leave.[11]

Florida law governing compensation and work hours of state employees is controlled by the requirements of the FLSA. Career service employees are entitled to special compensatory leave for overtime hours worked; however, senior management service and selected exempt service employees are expected to work the hours necessary to complete their tasks, and generally are not entitled to overtime pay.[12] Counties, municipalities, or other political subdivisions likewise are bound by the FLSA. Counties, municipalities, or other political subdivisions may require executive and professional workers to work extended hours as necessary absent an agreement or ordinance to the contrary.

Chapter 115, F.S.

Chapter 115, F.S., provides certain leave protections for state and local employees who are called to active military service. Current law, however, does not provide special considerations in working conditions for an employee of the state or local government who is the spouse of a servicemember of the United States Armed Forces if the servicemember is deployed on active duty military service.

Effect of Bill

This bill provides that an employee entitled to overtime protection under FLSA of the state or any county, municipality, or other political subdivision who is the spouse of a servicemember of the United States Armed Forces may not be compelled by his or her employing authority to work overtime or extended hours during a period in which his or her spouse is deployed on active duty military service. It prohibits an employing authority from imposing a sanction or penalty upon such for failure or refusal to work overtime or extended work hours during a period in which his or her spouse is deployed on active duty military service.

The bill requires an employing authority to grant a request by an employee who is a spouse of a servicemember of the United States Armed Forces deployed on active duty military service for unpaid leave not to exceed four working days for the purpose of attending to matters directly related to the implementation of deployment orders of his or her spouse.

The bill also provides that the act fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1: Creates s. 115.135, F.S; relating to overtime and leave considerations; spouses of military servicemembers on active duty.

Section 2: Provides a finding of an important state interest.

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

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[8] 29 U.S.C. s. 201, *et seq.*

[9] Certain classes of employees, such as those working in executive and professional capacities, are excluded from the wage and hour provisions of the FLSA. 29 U.S.C. s. 213.

[10] 29 U.S.C. s. 203(x), defining "public agency" as "the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State; or any interstate governmental agency."

[11] 29 U.S.C. s. 207.

[12] Rule 60L-34.0031(3), Fla. Admin. Code.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Prohibiting state and local governments from requiring a spouse of a deployed service member from working extended or overtime hours and having to provide up to a maximum of 4 days of leave without pay may have an indeterminate, but likely insignificant, fiscal impact.

According to the Department of Military Affairs, due to the lack of data regarding the pool of spouses who would be eligible under the bill, the economic impact cannot be estimated at this time.[13] However, due to the relatively small number of individuals currently deployed (5,268), which is reduced further by those who are not married or whose spouse does not work for a public employer, it is unlikely that any individual public employer will be significantly impacted.

According to the Department of Management Services, agencies will need to establish procedures for identifying and tracking the spouses who are deployed on active duty military service, which may increase administrative work.[14] However, as the FMLA currently provides for up to 12 weeks for similar situations, it is likely much of this work is currently being done.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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[13] According to the Department of Military Affairs, there are 5,268 men and women residing in Florida from all active and reserve service components who are currently deployed. The marital status of these servicemembers is unknown, as is the number of spouses who are employed by the state or a county, municipality, or other political subdivision. (HB 519 Analysis by the Florida Department of Military Affairs, on file with the Government Operations Subcommittee.)

[14] Department of Management Services Bill Analysis of HB 519, January 30, 2013, at 2 (on file with the Government Operations Subcommittee).

The mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill could cause counties and municipalities to incur additional expenses associated with the requirement that employers provide four days of unpaid leave to employees who are spouses of servicemembers of the United States Armed Forces deployed on active duty military service. In addition, counties and municipalities may incur additional expenses being unable to require certain employees to work extra hours or overtime. However, an exemption to the mandate may apply if the bill results in an insignificant fiscal impact to county or municipal governments. Given the relatively small number of deployed personnel, it appears the exemption may apply. If an exemption does not apply, an exception may still apply if the bill articulates a finding of serving an important state interest and if the bill applies to all persons similarly situated. The bill articulates a finding of serving an important state interest and it applies to all state and local government employers. Therefore, an exception appears to apply.

2. Other:

Federal Preemption

Pursuant to the Supremacy Clause of United States Constitution, state laws that are contrary to valid federal laws are preempted.[15]

Currently, the federal FMLA entitles eligible employees who are the spouse, son, daughter, or parent of a military member to take up to 12 weeks of FMLA leave during any 12-month period to address the most common issues that arise when a military member is deployed to a foreign country. This bill sets the limit on the amount of job protected leave to only four days. In order to avoid any conflict with federal law, this provision would have to be implemented as an additional benefit, over and above what the federal law requires.[16]

B. RULE-MAKING AUTHORITY:

The bill does not provide for rule-making authority. Rule-making authority may be necessary to specify procedures to be followed by employees and employers in order to secure the protections provided for in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Applicability of the FMLA to State and Local Governments

While all FMLA leave provisions purport to apply to state and local governments, Congress is limited in its ability to subject state and local governments to potential litigation.

The United States Supreme Court recently clarified that the power of the federal government to abrogate state sovereign immunity through the FMLA, by way of Congress' power under the Fourteenth Amendment to enact prophylactic anti-discriminatory legislation, is limited to those instances where Congress can identify a pattern of constitutional violations and tailor a remedy that is congruent and proportional to the harm addressed.[17] While the United States Supreme Court has held that the family care leave provision, as applicable to the states, is valid under this analysis because there is sufficient evidence that state family care leave policies historically have detrimentally affected women,[18] the Court held that states could not be forced to comply with the self-care provision because it was not directed at an identified pattern of gender-based discrimination. In other words, there was not sufficient evidence that self-care sick leave policies of state and local government employers historically affected one gender more so than the other. As a result, the application of the self-care sick leave provision to the states was not found to be congruent and proportional to any pattern of sex-based discrimination

[15] Art VI, cl.2, U.S. Const.; *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963).

[16] Department of Management Services Bill Analysis of HB 519, January 30, 2013, at 3 (on file with the Government Operations Subcommittee).

[17] *Nevada Dep't of Human Resources v. Hibbs*, 538 U.S. 721, 728 (2003); *Coleman v. Maryland Court of Appeals*, -- U.S.--, 132 S.Ct. 1327, 1338 (2012) (plurality opinion).

[18] *Hibbs*, supra at fn. 8.

demonstrated by the states, and was found to be unconstitutional to the extent it purports to apply to the states.[19]

The FMLA provisions that apply to spouses of servicemembers of the Armed Forces have not been challenged by any state. Therefore, it is unclear if these provisions are directed at an identified pattern of gender-based discrimination and if they are sufficiently congruent and proportional to a pattern of sex-discrimination as to survive constitutional scrutiny.

Other Comments: Department of Management Services

The Department of Management Services provided the following comments regarding the bill:

> Proposed section 115.135(2) provides job protected leave, not to exceed four days, for the purpose of attending to matters directly related to the implementation of deployment orders for his or her spouse. While this provision would not deviate from current practice for employees covered by FMLA leave, since the number of job protected days under FMLA actually exceeds the proposed benefit, the practical effect of this provision would be to extend job protected leave to employees not eligible for FMLA leave (i.e., employees that do not have 12 months of service with the employer or employees that have not worked 1,250 hours in the previous 12 months) and to extend the benefits of FMLA eligible employees by another four days.[20]

Other Comments: Procedure for Securing Leave

The bill does not specify a procedure by which a spouse of a servicemember of the United States Armed Forces must notify an employer that his or her spouse is deployed on active duty military service. The bill does not provide any rulemaking authority for employers to specify what procedures must be followed in order to secure leave or notify an employer that the employer may not require the employee to work overtime or extended work hours.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Government Operations Subcommittee adopted an amendment and reported House Bill 519 favorably with committee substitute. The amendment provides that the act fulfills an important state interest.

On March 27, 2013, the Veteran & Military Affairs Subcommittee adopted an amendment and reported House Bill 519 favorably with committee substitute. The amendment restricts the overtime prohibition in the bill to only apply to employees entitled to overtime protection under the federal Fair Labor Standards Act, thereby excluding senior management service and selected exempt service employees, and thus, continues their requirement to work the hours necessary to complete their tasks. The amendment conforms the finding of important state interest to reflect this change.

[19] *Coleman*, supra at fn. 9.

[20] Department of Management Services Bill Analysis of HB 519, January 30, 2013, at 2 (on file with the Government Operations Subcommittee).

A bill to be entitled

An act relating to military affairs; creating s. 115.135, F.S.; providing that an employee of the state or any county, municipality, or other political subdivision who is the spouse of a military servicemember may not be compelled to work overtime or extended work hours during active duty deployment of his or her spouse; prohibiting the imposition of a sanction or penalty upon such employee for failure or refusal to work overtime or extended work hours during the period of his or her spouse's active duty deployment; providing for applicability; requiring an employing authority to grant a request by such employee for unpaid leave for specified purposes during the active duty deployment; providing a limitation on such unpaid leave; providing that the act fulfills an important state interest; providing an effective date.

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

Section 1. Section 115.135, Florida Statutes, is created to read:

115.135 Overtime and leave considerations; spouses of military servicemembers on active duty.—

(1)(a) An employee of the state or any county, municipality, or other political subdivision who is the spouse of a servicemember of the United States Armed Forces may not be

compelled by his or her employing authority to work overtime or extended work hours during a period in which his or her spouse is deployed on active duty military service.

(b) An employing authority may not impose a sanction or penalty upon an employee who is the spouse of a servicemember of the United States Armed Forces for failure or refusal to work overtime or extended work hours during a period in which his or her spouse is deployed on active duty military service.

(c) This subsection applies exclusively to employees entitled to overtime protection under the federal Fair Labor Standards Act, 29 U.S.C. ss. 201 et seq.

(2) An employing authority shall grant a request by an employee who is the spouse of a servicemember of the United States Armed Forces deployed on active duty military service for unpaid leave not to exceed 4 working days for the purpose of attending to matters directly related to the implementation of deployment orders of his or her spouse.

Section 2. To support members of the United States Armed Forces and their families, the Legislature finds that a proper and legitimate state purpose is served by prohibiting the state or any county, municipality, or other political subdivision from requiring an employee entitled to overtime protection under the federal Fair Labor Standards Act whose spouse is deployed on active duty military service from working overtime or extended hours. To support members of the United States Armed Forces and their families, the Legislature also finds that a proper and legitimate state purpose is served by permitting any employee of the state or any county, municipality, or other political

subdivision whose spouse is deployed on active duty military service to take unpaid leave to attend to matters directly related to the implementation of the deployment orders. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 599 Publicly-Funded Defined Benefit Retirement Plans
SPONSOR(S): Government Operations Subcommittee, Caldwell and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	8 Y, 3 N, As CS	Harrington	Williamson
2) Appropriations Committee		Delaney	Leznoff
3) State Affairs Committee			

SUMMARY ANALYSIS

Publicly-funded defined benefit retirement plans are provided through both the Florida Retirement System (FRS) and through local government pension plans. The Florida Protection of Public Employee Retirement Benefits Act requires the plan administrators for all publicly-funded pension plans to submit an actuarial report at least every three years. In addition to the triennial actuarial reporting requirements, local firefighter and police officer pension plans have actuarial reporting requirements in chapters 175 and 185, F.S. The Florida Retirement System Act also provides that the Florida Retirement System must complete an annual actuarial report.

The bill provides that the state is not liable for shortfalls in local government retirement systems or plans.

The bill increases the reporting requirements of both the FRS and local plans. Effective July 1, 2013, it requires each defined benefit system or plan to report the following information to the Department of Management Services within 180 days of the close of the plan year, and at least once every three years thereafter:

- The long-term funded ratio, including the market value of its assets, the value of its actuarial liabilities, and the amount of its unfunded accrued liability, if any;
- The dollar value of the unfunded accrued liability of the plan, if any;
- The number of months or years for which the current market value of assets are adequate to sustain the payment of expected retirement benefits; and
- The recommended contributions to the plan stated as an annual dollar value and a percentage of valuation payroll.

The bill provides for increased standardization of assumptions and methodology for purposes of calculating the required information.

The defined benefit plan sponsor is required to publish the reported information, as well as the funded ratio of the plan as determined in the most recent actuarial valuation, on any website that contains budget or actuarial information relating to the plan. Local government plans also must provide the information on any municipal website when tentative budgets are published. The bill directs the Executive Office of the Governor to publish the and the funded ratio relating to the FRS on the Internet.

The bill provides that if the plan sponsor fails to submit the required information, the plan will be in noncompliance with the law and subject to withholding of funds payable to the plan sponsor.

The bill has a potential negative, but insignificant fiscal impact on state and local governments. *See* Fiscal Analysis and Economic Impact Statement section for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution Requirements

Section 14, Art. X of the State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis.

The Florida Protection of Public Employee Retirement Benefits Act

Part VII of chapter 112, F.S., the Florida Protection of Public Employee Retirement Benefits Act (act) was adopted by the Legislature to implement the provisions of s. 14, Art. X of the State Constitution. The act establishes minimum standards for operating and funding public employee retirement systems and plans. It is applicable to all units of state, county, special district, and municipal governments participating in, operating, or administering a retirement system for public employees, which is funded in whole or in part by public funds.[1] Responsibility for administration of the act has been assigned primarily to the Florida Department of Management Services, Division of Retirement (division).

A unit of local government may not agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system and furnished a copy of such statement to the division.[2] In addition, the statement is required to indicate whether the proposed changes are in compliance with s. 14, Art. X of the State Constitution and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

Municipal Firefighters' Pension Trust Fund and Police Officers' Retirement Trust Fund

The Marvin B. Clayton Firefighters' and Police Officers' Pension Trust Fund Acts[3] declare a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers. All municipal and special district firefighters and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds.[4]

Local firefighter pension plans are governed by chapter 175, F.S., which is known as the Marvin B. Clayton Firefighters Pension Trust Fund Act. Chapter 175, F.S., was originally enacted in 1939 to provide an incentive--access to premium tax revenues--to encourage the establishment of firefighter retirement plans by cities. Fourteen years later, the Legislature enacted chapter 185, F.S., the Marvin B. Clayton Police Officers' Pension Trust Fund Act, which provides a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under chapter 175, F.S., in 1993.

The acts set forth the minimum benefits or minimum standards for pensions for municipal firefighters and police officers. The benefits provided in the acts may not be reduced by municipalities; however, the benefits provided in a local plan may vary from the provisions in that act so long as the minimum standards are met.

[1] Section 112.62, F.S.
[2] *See* s. 112.63, F.S.
[3] *See* chapters 175 and 185, F.S.
[4] *See* ss. 175.021(1) and 185.01(1), F.S.

Funding for these pension plans comes from four sources:

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax);
- Employee contributions;
- Other revenue sources; and
- Mandatory payments by the city to fund the normal cost and any unfunded actuarial liabilities of the plan.

The Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or district.[5] The Police Officers' Retirement Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality.[6] The excise tax is payable by the insurers to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division.[7]

To qualify for insurance premium tax dollars, plans must meet requirements found in chapters 175 and 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees. The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., or s. 185.06, F.S., as applicable, unless specifically authorized to vary from the law.

If the division deems that a firefighter or police officer pension plan, created pursuant to these chapters, is not in compliance, the sponsoring municipality may be denied its insurance premium tax revenues until it comes into compliance.

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the pension plan, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.[8] The FRS is a contributory system, with all members contributing 3 percent of their salaries.

The FRS is governed by the Florida Retirement System Act.[9] The FRS, which is a multi-employer, contributory plan, provides retirement income benefits to 623,011 active members,[10] 334,682 retired members and beneficiaries, and 40,556 members of the Deferred Retirement Option Program.[11] It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for

[5] Section 175.101, F.S.
[6] Section 185.08, F.S.
[7] In 2011, premium tax distributions to municipalities and special fire districts from the Firefighters' Pension Trust Fund amounted to $71.7 million, and premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to $59.6 million. A copy of the 2011 Premium Tax Distribution report is available online at: http://www.dms.myflorida.com/human_resource_support/retirement/local_retirement_plans/municipal_police_and_fire_plans.
[8] *The Florida Retirement System Annual Report*, July 1, 2010 – June 30, 2011, at 38. A copy of the report can be found online at: http://www.dms.myflorida.com/human_resource_support/retirement/publications/system_information/annual_reports.
[9] Chapter 121, F.S.
[10] As of June 30, 2012, the FRS defined benefit plan, also known as the pension plan, had 517,756 members, and the defined contribution plan, also known as the investment plan, had 105,255 members. Email from staff of the Division of Retirement, Department of Management Services, October 16, 2012 (on file with the Government Operations Subcommittee).
[11] *Id*.

participating employees of the 185 cities and 257 independent hospitals and special districts that have elected to join the system.[12]

Reporting Requirements for Publicly-Funded Retirement Plans

Triennial Report

To help ensure that each retirement system or plan maintains funding of retirement systems at an appropriate level, governmental entities are required to submit regularly scheduled actuarial reports to the division for its review and approval.[13]

Section 112.63, F.S., requires the plan administrators for all publicly-funded pension plans to submit an actuarial report at least every three years and requires the actuarial reports to consist of, but not be limited to, the following information:

- Adequacy of employer and employee contribution rates in meeting levels of employee benefits and changes, if any, needed in such rates to achieve or preserve a level of funding deemed adequate to enable payment through an indefinite future;
- A plan to amortize any unfunded liability pursuant to s. 112.64, F.S., and a description of actions taken to reduce the unfunded liability;
- A description and explanation of actuarial assumptions;
- A schedule illustrating the amortization of unfunded liabilities, if any;
- A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports;
- A disclosure of the present value of the plan's accrued vested, nonvested, and total benefits, as adopted by the Financial Accounting Standards Board, using the Florida Retirement System's assumed rate of return, in order to promote the comparability of actuarial data between local plans; and
- A statement by the enrolled actuary that the report is complete and accurate and that, in his or her opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of the act.

Section 112.63(1), F.S., provides that the actuarial cost methods for determining the annual actuarial normal costs to support the promised benefits must only be those methods approved by the Employee Retirement Income Security Act of 1974, and as permitted under the regulations prescribed by the Secretary of the Treasury. In addition, s. 112.64, F.S., provides guidelines for the amortization of unfunded liabilities.

If the governmental entity does not submit complete and adequate data necessary for the division to perform its statutory functions, the division must request additional information.[14] The division, upon completing a review, may notify the governmental entity about concerns it has regarding the actuarial soundness of the plan. If after a reasonable period of time, a satisfactory adjustment has not been made, the Department of Management Services may notify the Department of Revenue and the Department of Financial Services of the noncompliance and those agencies may withhold any funds not pledged for satisfaction of bonds until such adjustment is made to the report.[15] If the entity failing to make the adjustment is a special district, the Department of Management Services also must notify the

[12] Florida Retirement System Participating Employers for Plan Year 2012-13, prepared by the Department of Management Services, Division of Retirement, Revised September 2012, at 8. A copy of the document can be found online at: http://www.dms.myflorida.com/human_resource_support/retirement/publications/informational_booklets.

[13] Section 112.63(1), F.S., requires an enrolled actuary to certify the scheduled actuarial reports.

[14] Section 112.63(4)(a), F.S.

[15] Section 112.63(4)(b), F.S.

Department of Economic Opportunity.[16] The affected governmental entity may petition the Department of Management Services for a hearing.[17]

Annual Report for Chapter 175 and Chapter 185 Plans
Chapters 175 and 185, F.S., require every chapter plan and local law plan to submit an annual report to the division, which must include either an independent audit by a certified public accountant or certified statement of accounting, showing a detailed listing of assets and methods used to value them and a statement of all income and disbursements during the year; statistical information about the members in the plan, including ineligible members, disabled members, and retired members; a statement of the amount contributed to the retirement fund; and information pertaining to whether any benefits are insured with a commercial insurance company.[18] This report is in addition to the reporting requirements in s. 112.63, F.S.

Annual Report of the Florida Retirement System
Section 121.031, F.S., requires an actuarial study of the FRS to be made at least annually. The actuarial study is required to conform to the requirements in s. 112.63, F.S., with specific exceptions and additions that are specifically provided in law. The Governor, Chief Financial Officer, and Attorney General, sitting as the Board of Trustees of the State Board of Administration, review the actuarial valuation report and the process by which FRS contribution rates are determined.[19] The valuations also are reviewed by the Office of Program Policy Analysis and Government Accountability.[20]

Department of Management Services Oversight of Local Plans
The Department of Management Services (department) is required to gather, catalog, and maintain complete, computerized data information on all public employee retirement systems or plans in the state,[21] based upon a review of audits, reports, and other data pertaining to the systems or plans.[22] The department must receive and comment on the actuarial reviews maintained by units of local government, as well as cooperate with local retirement systems or plans on matters of mutual concern, and provide technical assistance to units of local government in the assessment and revision of retirement systems or plans.[23] In addition, the department must provide a fact sheet for each participating local government defined benefit pension plan summarizing the plan's actuarial status. The fact sheet must include a brief explanation of each element in order to maximize the transparency of the local government plans.[24]

Effect of the Bill

The bill contains multiple whereas clauses. It appears that the clauses have been partially drawn from the department's 2012 annual report, *Florida Local Government Retirement Systems*, and from the Public Employee Pension Transparency Act, H.R. 567, 112th Congress (2011).

The bill provides that the state is not liable for any obligation relating to any current or future shortfall in any local government retirement system or plan.[25]

[16] Section 112.63(4)(d), F.S.
[17] Section 112.63(4)(c), F.S.
[18] Sections 175.261 and 185.221, F.S.
[19] Section 121.0312, F.S.
[20] Section 112.658, F.S., directs the Office of Program Policy Analysis and Government Accountability to review the actuarial valuation of the FRS Pension Plan to determine whether the valuation complies with the Florida Protection of Public Employee Retirement Benefits Act.
[21] According to the department, there are currently 492 local government defined benefit pension plans with 111,267 active participants.
[22] Section 112.665(1), F.S.
[23] *Id*.
[24] *Id*.
[25] Sections 175.051 and 185.04, F.S., provide that the state is not liable for actuarial deficits arising under those chapters.

The bill creates additional reporting standards for defined benefit retirement plans or systems. Each defined benefit retirement system or plan, including the Florida Retirement System, must electronically report the following information to the department:

- The long-term funded ratio, calculated in a manner similar to the Government Accounting Standards Board's Statement No. 67,[26] including the market value of its assets, the value of its actuarial liabilities, and the amount of its unfunded accrued liability, if any;
- The dollar value of the unfunded accrued liability of the plan, if any;
- The number of months or years for which the current market value of assets is adequate to sustain the payment of expected retirement benefits; and
- Using the same formula to calculate the long-term funded ratio, the recommended contributions to the plan stated as an annual dollar value and a percentage of valuation payroll.

The above information must be submitted to the department within 180 days after the close of the first plan year that ends on or after June 30, 2013. After the initial reporting period, each defined benefit retirement system or plan is required to submit the report in each year required under s. 112.63(2), F.S.[27]

The bill requires all pension plans in the state to use a standardized method for submitting the required information. It requires each defined benefit retirement system or plan to use the following assumptions and methods in calculating the required information.

- The actuarial cost method, which is the Entry Age Normal method;
- The assumed rate of return on investments and the assumed discount rate, which are the adjusted 24-month average corporate bond segment rates determined under s. 430(h)(2)(C)(iv) of the Internal Revenue Code;
- Preretirement mortality calculated using the RP-2000 Mortality Tables for male and female employees, and postretirement mortality calculated using the RP-2000 Mortality Tables for healthy white-collar employees as projected from the year 2000 to the valuation year using Projection Scale AA;
- The asset valuation method, which is the market value less the value of any deferred retirement option program accounts;
- The actuarial accrued liabilities, excluding the value of any deferred retirement option program accounts; and
- All other assumptions and methods used by the system or plan in its latest valuation.

In addition to the previously discussed report, each defined benefit retirement system or plan must provide the most recent actuarial valuation. Both must be included as part of the disclosures required under s. 166.241(3), F.S.,[28] and on any website that contains budget information relating to the plan sponsor or actuarial or performance information related to the system or plan. In addition, the Executive Office of the Governor must publish the information related to the FRS, on the website described in s. 215.985, F.S.,[29] which contains state financial information.

The bill provides that any plan that fails to submit the required information to the department within 180 days after the close of the plan year is in noncompliance. The department may notify the Department of Revenue and the Department of Financial Services of the noncompliance, and the Department of Revenue and the Department of Financial Services must withhold any funds not pledged for the satisfaction of bond debt service until the information is provided to the department. The bill requires

[26] The Government Accounting Standards Board (GASB) is the independent organization that establishes and improves standards of accounting and financial reporting for U.S. state and local governments. More information about GASB can be found online at www.gasb.org.

[27] Section 112.63(2), F.S., refers to the triennial reporting requirements for all defined benefit retirement systems or plans.

[28] Section 166.241(3), F.S., requires municipalities to upload tentative budgets to the municipal website at least two days prior to any budget hearing.

[29] Section 215.985, F.S., the Transparency Florida Act, requires the Executive Office of the Governor to maintain a single website, directly accessible through the state's official internet portal, which provides information relating to state financial appropriations.

the department to provide the Department of Revenue, the Department of Financial Services, and the plan sponsor with at least a 30 day notice before withholding can begin. The plan sponsor may petition the department for a hearing under ss. 120.569 and 120.57, F.S., within 21 days after receipt of the notice of the withholding.

The bill requires the department to include information from the new reporting requirement in the local government fact sheets reported by the department.

The bill provides a statement of important state interest.

The bill provides that the act takes effect on July 1, 2013.

B. SECTION DIRECTORY:

Section 1 amends s. 112.66, F.S., providing that the state is not liable for shortfalls in local government retirement systems or plans.

Section 2 creates s. 112.664, F.S., requiring a defined benefit system or plan to report certain information to the department and specifying the assumptions and methods to be used in determining the information submitted; requiring the plan sponsor to make information available on certain websites; providing consequences for failure to timely submit the required information; providing a method for a plan sponsor to request a hearing to contest such consequences for failure to submit the required information.

Section 3 amends s. 112.665, F.S., requiring the department to provide a fact sheet specifying certain information.

Section 4 provides a declaration of important state interest.

Section 5 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:

According to the Department of Management Services (department), the bill will increase administrative costs to the Division of Retirement (division), including staff and actuarial work, to comply with the reporting requirements in the bill. According to the department's bill analysis, it estimates that the fiscal impact is as follows:[30]

> The new disclosure requirements do not affect the actuarial contributions for funding purposes for the FRS; however, there will be an administrative cost associated with preparing the new disclosures. The consulting actuary estimates that the additional reporting requirement would cost about $20,000 in the first year and $10,000 in each subsequent year, payable from trust funds.

Expenditures	FY 2013-14	FY 2014-15	FY 2015-16

[30] Department of Management Services, Bill Analysis 2013, HB 599, dated February 8, 2013 (on file with the Government Operations Subcommittee).

	Amount/FTE	Amount/FTE	Amount/FTE
Recurring	$20,000	$10,000	$10,000
Non-recurring	-	-	-

In addition, the department states that one additional government analyst position would be required to insure that implementing and maintaining the actuarial database with these additional disclosure items does not negatively impact the timely accomplishment of current statutory responsibilities. However, despite the department's request, the additional workload may not justify an additional FTE.

Additionally, the actuarial costs for the 17 chapter plans under chapters 175 and 185, F.S., are paid for from the police and firefighter's trust fund.[31] The bill creates an additional annual expenditure requirement for reporting in order to qualify for premium tax distributions.

Expenditures	FY 2013-14 Amount/FTE	FY 2014-15 Amount/FTE	FY 2015-16 Amount/FTE
Recurring	$30,000	$20,000	$20,000
Non-recurring	-	-	-

The department estimated that the total recurring fiscal impact on the state would be approximately $90,000 of which an indeterminate and varying amount would be paid from General Revenue, depending on availability of trust funds. However, if accomplished with existing resources (no additional FTE) the estimated cost is $50,000 for fiscal year 2013-2014.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The additional reporting requirements may require additional expenditures to comply with the reporting requirements pertaining to local defined benefit retirement plans. According to the League of Cities, a very preliminary and broad estimate of the fiscal impact for each reporting cycle (which range from one to three years) may fall between $500,000 and $2.5 million on a state-wide basis.[32] The cost per public entity would likely be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The website posting requirements will have an indeterminate fiscal impact on state and local governments, as technical sophistication varies widely among public entities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[31] The division conducts the actuarial valuations of chapter plans. *See* ss. 175.032(2) and 185.02(3), F.S.

[32] The estimated costs are based on approximately 500 plans with the cost of compliance ranging from $1,000 to $5,000 per plan report, per year.

The mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill requires cities and counties to spend money or take an action that requires the expenditure of money; however, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. The exceptions to the mandates provision of Art. VII, s. 18 of the State Constitution also apply because the Legislature has determined that this bill satisfies an important state interest and similarly situated persons are all required to comply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The constitutional separation of powers doctrine prevents the Legislature from delegating its constitutional duties. Because legislative power involves the exercise of policy-related discretion over the content of law, any discretion given an agency to implement a law must be "pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program."[33] The bill requires the Department of Management Services to implement certain provisions of the bill, and s. 112.665, F.S., grants rulemaking authority to the department for such implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Comments of the Department of Management Services
According to the Department of Management Services, the bill "creates a disclosure requirement that will provide a funded ratio different than what is determined for the plan's funding requirement, the GASB Statement 25 (which will be replaced by GASB Statement 67) requirement, or the disclosures determined under the standards for Moody's or Standard and Poors."[34] This may create confusion among users of the information.

Other Comments: Florida Retirement System
The bill specifies that the new reporting requirements also apply to the Florida Retirement System; however, this appears unnecessary as part VII of chapter 112, F.S., already applies to the FRS unless stated otherwise. As noted above, an additional funded ratio will be reported and may provide unnecessary confusion among interested parties.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2013, the Government Operations Subcommittee adopted a strike-all amendment and reported HB 599 favorably with committee substitute. The committee substitute:

- Corrects a drafting error in the title of the bill, changing the word "direct" to "defined".
- Corrects inconsistencies in the bill regarding the initial reporting period by providing that the report is due within 180 days after the close of the first plan year that ends on or after June 30, 2013, rather than October 1, 2013, for certain plans.
- Provides that after the initial report, the report is due in the same intervals as the report that is due under s. 112.63, F.S., which requires a report to be submitted to the department at least once every three years, rather than every two years as provided in the bill.
- Corrects inconsistencies in the bill regarding computing the valuation of a defined benefit retirement plan by also excluding the liabilities of any deferred retirement option program from the calculation of the actuarial accrued liabilities. The bill only excluded the assets associated with the deferred retirement option program accounts.
- Clarifies that the Internet publishing requirements apply to both local plans and the Florida Retirement System, by requiring the Executive Office of the Governor to make the report and the funded ratio for the FRS available on the website described in s. 215.985, F.S.

[33] *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla. 1978).
[34] *Supra* note 30, at 7.

- Creates a uniform penalty for violations of the reporting requirements, rather than providing separate penalties for plans regulated by chapters 175 and 185, F.S., as provided in the bill;
- Requires the department to include information from the new report in the defined benefit fact sheets that the department creates; and
- Includes a declaration of important state interest.

A bill to be entitled

An act relating to publicly-funded defined benefit retirement plans; amending s. 112.66, F.S.; providing that the state is not liable for shortfalls in local government retirement systems or plans; creating s. 112.664, F.S.; requiring a defined benefit retirement system or plan to report certain information to the Department of Management Services by a certain date and specifying the assumptions and methods to be used in determining the information submitted; requiring the plan sponsor to make the information available on certain websites; providing consequences for failure to timely submit the required information; providing a method for a plan sponsor to request a hearing to contest such consequences; amending s. 112.665, F.S.; requiring the department to provide a fact sheet specifying certain information; providing a declaration of important state interest; providing an effective date.

WHEREAS, in 2012, there were 492 local government employee-defined benefit pension plans in Florida, providing pension benefits to approximately 79,000 retirees. The interests of participants in many of these plans may have property rights implications under state law, and

WHEREAS, local government employee-defined benefit pension plans are becoming a large financial burden on certain local governments and have already resulted in tax increases and the

reduction of services, and

WHEREAS, the 2012 Florida Local Government Retirement Systems Annual Report published by the Department of Management Services specifies the total unfunded actuarial accrued liability of all local government employee-defined benefit pension plans at approximately $10 billion, and

WHEREAS, some economists and observers have stated that the extent to which state or local government employee-defined benefit pension plans are underfunded is obscured by governmental accounting rules and practices, particularly as they relate to the valuation of plan assets and liabilities. This results in a misstatement of the value of plan assets and an understatement of plan liabilities, a situation that poses a significant threat to the soundness of state and local budgets, and

WHEREAS, there is currently a lack of meaningful disclosure regarding the value of state or local government employee-defined benefit pension plan assets and liabilities. This lack of meaningful disclosure poses a direct and serious threat to the financial stability of such plans and their sponsoring governments, impairs the ability of state and local government taxpayers and officials to understand the financial obligations of their government, and reduces the likelihood that state and local government processes will be effective in assuring the prudent management of their plans, and

WHEREAS, the financial health of state or local government employee-defined benefit pension plans can have statewide public repercussions, and the meaningful disclosure of the value of

their assets and liabilities is necessary and desirable in order to adequately protect plan participants and their beneficiaries as well as the general public and to further efforts to provide for the general welfare and the free flow of commerce, NOW, THEREFORE,

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

Section 1. Subsection (14) is added to section 112.66, Florida Statutes, to read:

112.66 General provisions.—The following general provisions relating to the operation and administration of any retirement system or plan covered by this part shall be applicable:

(14) The state is not liable for any obligation relating to any current or future shortfall in any local government retirement system or plan.

Section 2. Section 112.664, Florida Statutes, is created to read:

112.664 Reporting standards for defined benefit retirement plans or systems.—

(1) In addition to the other reporting requirements of this part, within 180 days after the close of the first plan year that ends on or after June 30, 2013, and thereafter in each year required under s. 112.63(2), each defined benefit retirement system or plan, including the Florida Retirement System, shall electronically report the following information to the Department of Management Services in a format prescribed by

the department:

(a) The long-term funded ratio calculated in a manner similar to the Government Accounting Standards Board's Statement No. 67, Financial Reporting for Pension Plans, including the market value of its assets, the value of its actuarial liabilities, and the amount of its unfunded accrued liability, if any.

(b) The dollar value of the unfunded accrued liability, if any, of the plan.

(c) The number of months or years for which the current market value of assets is adequate to sustain the payment of expected retirement benefits.

(d) The recommended contributions to the plan under the calculations required under paragraph (a) stated as an annual dollar value and a percentage of valuation payroll.

(2) Each defined benefit retirement system or plan shall use the following assumptions and methods in determining the information required under subsection (1):

(a) The actuarial cost method, which is the Entry Age Normal method.

(b) The assumed rate of return on investments and the assumed discount rate, which are the adjusted 24-month average corporate bond segment rates determined under s. 430(h)(2)(C)(iv) of the Internal Revenue Code by the Department of the Treasury.

(c) Preretirement mortality calculated using the RP-2000 Mortality Tables for male and female employees. Postretirement mortality is calculated using the RP-2000 Mortality Tables for

healthy white-collar employees, as projected from the year 2000 to the valuation year using Projection Scale AA.

(d) The asset valuation method, which is the market value less the value of any deferred retirement option program accounts.

(e) The actuarial accrued liabilities, excluding the value of any deferred retirement option program accounts.

(f) All other assumptions and methods used by the system or plan in its latest valuation.

(3) Each defined benefit retirement system or plan and its plan sponsor shall provide the information required by this section and the funded ratio of the system or plan as determined in the most recent actuarial valuation as part of the disclosures required under s. 166.241(3) and on any website that contains budget information relating to the plan sponsor or actuarial or performance information related to the system or plan. The Executive Office of the Governor shall comply with this subsection by making the information and funded ratio relating to the Florida Retirement System available on the website described in s. 215.985 which contains state financial information.

(4) If a plan has not submitted the required information to the Department of Management Services within 180 days after the closing date of a plan year in which the information is required to be submitted to the department, the plan shall be deemed to be in noncompliance.

(a) The Department of Management Services may notify the Department of Revenue and the Department of Financial Services

of the noncompliance, and the Department of Revenue and the Department of Financial Services shall withhold any funds not pledged for satisfaction of bond debt service and which are payable to the plan sponsor until the information is provided to the Department of Management Services. The Department of Management Services shall specify the date the withholding is to begin and notify the Department of Revenue, the Department of Financial Services, and the plan sponsor 30 days before the specified date.

(b) Within 21 days after receipt of the notice, the plan sponsor may petition the Department of Management Services for a hearing under ss. 120.569 and 120.57. The Department of Revenue and the Department of Financial Services may not be parties to the hearing but may request to intervene if requested by the Department of Management Services or if the Department of Revenue or the Department of Financial Services determines its interests may be adversely affected by the hearing.

Section 3. Subsection (1) of section 112.665, Florida Statutes, is amended to read:

112.665 Duties of Department of Management Services.—

(1) The Department of Management Services shall:

(a) Gather, catalog, and maintain complete, computerized data information on all public employee retirement systems or plans in the state~~,~~ based upon a review of audits, reports, and other data pertaining to the systems or plans;

(b) Receive and comment upon all actuarial reviews of retirement systems or plans maintained by units of local government;

(c) Cooperate with local retirement systems or plans on matters of mutual concern and provide technical assistance to units of local government in the assessment and revision of retirement systems or plans;

(d) Annually issue, by January 1 ~~annually~~, a report to the President of the Senate and the Speaker of the House of Representatives, which ~~report~~ details division activities, findings, and recommendations concerning all governmental retirement systems. The report may include legislation proposed to carry out such recommendations;

(e) Provide a fact sheet for each participating local government defined benefit pension plan which summarizes ~~summarizing~~ the plan's actuarial status. The fact sheet should provide a summary of the plan's most current actuarial data, minimum funding requirements as a percentage of pay, and a 5-year history of funded ratios. The fact sheet must include a brief explanation of each element in order to maximize the transparency of the local government plans. The fact sheet must also contain the information specified in s. 112.664(1). These documents shall be posted on the department's website. Plan sponsors that have websites must provide a link to the department's website;

(f) Annually issue, by January 1 ~~annually~~, a report to the Special District Information Program of the Department of Economic Opportunity which ~~that~~ includes the participation in and compliance of special districts with the local government retirement system provisions in s. 112.63 and the state-administered retirement system provisions ~~as~~ specified in part I

of chapter 121; and

(g) Adopt reasonable rules to administer ~~the provisions of~~ this part.

Section 4. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems that provide fair and adequate benefits and that are managed, administered, and funded in an actuarially sound manner as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 5. 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 Caldwell offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (f) and (g) of subsection (1) of section 112.63, Florida Statutes, are amended to read:

112.63 Actuarial reports and statements of actuarial impact; review.—

(1) Each retirement system or plan subject to the provisions of this act shall have regularly scheduled actuarial reports prepared and certified by an enrolled actuary. The actuarial report shall consist of, but shall not be limited to, the following:

~~(f) A disclosure of the present value of the plan's accrued vested, nonvested, and total benefits, as adopted by the Financial Accounting Standards Board, using the Florida Retirement System's assumed rate of return, in order to promote the comparability of actuarial data between local plans.~~

(f) ~~(g)~~ A statement by the enrolled actuary that the report is complete and accurate and that in his or her opinion the techniques and assumptions used are reasonable and meet the requirements and intent of this act.

The actuarial cost methods utilized for establishing the amount of the annual actuarial normal cost to support the promised benefits shall only be those methods approved in the Employee Retirement Income Security Act of 1974 and as permitted under regulations prescribed by the Secretary of the Treasury.

Section 2. Subsection (14) is added to section 112.66, Florida Statutes, to read:

112.66 General provisions.—The following general provisions relating to the operation and administration of any retirement system or plan covered by this part shall be applicable:

(14) The state is not liable for any obligation relating to any current or future shortfall in any local government retirement system or plan.

Section 3. Section 112.664, Florida Statutes, is created to read:

112.664 Reporting standards for defined benefit retirement plans or systems.—

(1) In addition to the other reporting requirements of this part, within 60 days after receipt of the certified actuarial report submitted after the close of the plan year that ends on or after June 30, 2014, and thereafter in each year required under s. 112.63(2), each defined benefit retirement

system or plan, excluding the Florida Retirement System, shall prepare and electronically report the following information to the Department of Management Services in a format prescribed by the department:

(a) Annual financial statements that are in compliance with the requirements of the Government Accounting and Standard Board's Statement No. 67, Financial Reporting for Pension Plans and Statement No. 68, Accounting and Financial Reporting for Pensions, using RP-2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by Scale AA.

(b) Annual financial statements similar to those required under paragraph (a), but which use an assumed rate of return on investments and an assumed discount rate that are equal to 200 basis points less than the plan's assumed rate of return.

(c) Information indicating the number of months or years for which the current market value of assets are adequate to sustain the payment of expected retirement benefits as determined in the plan's latest valuation and under the financial statements prepared pursuant to paragraphs (a) and (b).

(d) Information indicating the recommended contributions to the plan based on the plan's latest valuation, and the contributions necessary to fund the plan based on financial statements prepared pursuant to paragraphs (a) and (b), stated as an annual dollar value and a percentage of valuation payroll.

(2) Each defined benefit retirement system or plan, excluding the Florida Retirement System, and its plan sponsor:

(a) Shall provide the information required by this section and the funded ratio of the system or plan as determined in the most recent actuarial valuation as part of the disclosures required under s. 166.241(3) and on any website that contains budget information relating to the plan sponsor or actuarial or performance information related to the system or plan.

(b) That has a publicly available website shall provide on that website:

1. The plan's most recent financial statement and actuarial valuation, including a link to the Division of Retirement Actuarial Summary Fact Sheet for that plan.

2. For the previous 5 years, beginning with 2013, a side-by-side comparison of the plan's assumed rate of return compared to the actual rate of return, as well as the percentages of cash, equity, bond, and alternative investments in the plan portfolio.

3. Any charts and graphs of the data provided in subparagraphs 1. and 2., presented in a standardized, user-friendly, and easily interpretable format as prescribed by the department.

(3) The plan shall be deemed to be in noncompliance if it has not submitted the required information to the Department of Management Services within 60 days after receipt of the certified actuarial report for the plan year for which the information is required to be submitted to the department.

(a) The Department of Management Services may notify the Department of Revenue and the Department of Financial Services of the noncompliance, and the Department of Revenue and the

Department of Financial Services shall withhold any funds not pledged for satisfaction of bond debt service and which are payable to the plan sponsor until the information is provided to the department. The department shall specify the date the withholding is to begin and notify the Department of Revenue, the Department of Financial Services, and the plan sponsor 30 days before the specified date.

(b) Within 21 days after receipt of the notice, the plan sponsor may petition the Department of Management Services for a hearing under ss. 120.569 and 120.57. The Department of Revenue and the Department of Financial Services may not be parties to the hearing, but may request to intervene if requested by the department or if the Department of Revenue or the Department of Financial Services determines its interests may be adversely affected by the hearing.

Section 4. Subsection (1) of section 112.665, Florida Statutes, is amended to read:

112.665 Duties of Department of Management Services.—

(1) The Department of Management Services shall:

(a) Gather, catalog, and maintain complete, computerized data information on all public employee retirement systems or plans in the state~~,~~ based upon a review of audits, reports, and other data pertaining to the systems or plans;

(b) Receive and comment upon all actuarial reviews of retirement systems or plans maintained by units of local government;

(c) Cooperate with local retirement systems or plans on matters of mutual concern and provide technical assistance to

units of local government in the assessment and revision of retirement systems or plans;

(d) Annually issue, by January 1 ~~annually~~, a report to the President of the Senate and the Speaker of the House of Representatives, which ~~report~~ details division activities, findings, and recommendations concerning all governmental retirement systems. The report may include legislation proposed to carry out such recommendations;

(e) Provide a fact sheet for each participating local government defined benefit pension plan which summarizes ~~summarizing~~ the plan's actuarial status. The fact sheet should provide a summary of the plan's most current actuarial data, minimum funding requirements as a percentage of pay, and a 5-year history of funded ratios. The fact sheet must include a brief explanation of each element in order to maximize the transparency of the local government plans. The fact sheet must also contain the information specified in s. 112.664(1). These documents shall be posted on the department's website. Plan sponsors that have websites must provide a link to the department's website;

(f) Annually issue, by January 1 ~~annually~~, a report to the Special District Information Program of the Department of Economic Opportunity which ~~that~~ includes the participation in and compliance of special districts with the local government retirement system provisions in s. 112.63 and the state-administered retirement system provisions ~~as~~ specified in part I of chapter 121; and

(g) Adopt reasonable rules to administer ~~the provisions of~~ this part.

Section 5. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems that provide fair and adequate benefits and that are managed, administered, and funded in an actuarially sound manner as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 6. This act shall take effect July 1, 2013.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to publicly funded defined benefit retirement plans; amending s. 112.63, F.S.; deleting the requirement that required actuarial reports for retirement plans include a disclosure of the present value of the plan's benefits; amending s. 112.66, F.S.; providing that the state is not liable for shortfalls in local government retirement systems or plans; creating s. 112.664, F.S.; requiring a defined benefit system or plan to report certain information

to the Department of Management Services by a certain date; requiring the plan sponsor to make certain information available on certain websites; providing consequences for failure to timely submit the required information; providing a method for a plan sponsor to request a hearing to contest such consequences; amending s. 112.665, F.S.; requiring the department to provide a fact sheet specifying certain information; providing a declaration of important state interest; providing an effective date.

WHEREAS, in 2012, there were 492 local government employee defined benefit pension plans in Florida, providing pension benefits to approximately 79,000 retirees. The interests of participants in many of these plans may have property rights implications under state law, and

WHEREAS, local government employee defined benefit pension plans are becoming a large financial burden on certain local governments and have already resulted in tax increases and the reduction of services, and

WHEREAS, the 2012 Florida Local Government Retirement Systems Annual Report published by the Department of Management Services specifies the total unfunded actuarial accrued liability of all local government defined benefit pension plans at approximately $10 billion, and

WHEREAS, some economists and observers have stated that the extent to which state or local government employee defined benefit pension plans are underfunded is obscured by

governmental accounting rules and practices, particularly as they relate to the valuation of plan assets and liabilities. This results in a misstatement of the value of plan assets and an understatement of plan liabilities, a situation that poses a significant threat to the soundness of state and local budgets, and

WHEREAS, there is currently a lack of meaningful disclosure regarding the value of state or local government employee defined benefit pension plan assets and liabilities. This lack of meaningful disclosure poses a direct and serious threat to the financial stability of such plans and their sponsoring governments, impairs the ability of state and local government taxpayers and officials to understand the financial obligations of their government, and reduces the likelihood that state and local government processes will be effective in assuring the prudent management of their plans, and

WHEREAS, the financial health of state or local government employee pension benefit plans can have statewide public repercussions, and the meaningful disclosure of the value of their assets and liabilities is necessary and desirable in order to adequately protect plan participants and their beneficiaries as well as the general public, and to further efforts to provide for the general welfare and the free flow of commerce, NOW, THEREFORE,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 639 Practitioners
SPONSOR(S): Health Quality Subcommittee; Harrell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	Poche	O'Callaghan
2) Appropriations Committee		Rodriguez	Leznoff
3) Health & Human Services Committee			

SUMMARY ANALYSIS

CS/HB 639 directs certain fees collected by the Department of Health (DOH) for examination, certification, and recertification of emergency medical technicians and paramedics to be deposited into the Medical Quality Assurance Trust Fund.

The bill requires the Department of Financial Services (DFS) to provide legal representation to an impaired practitioner consultant, under contract with DOH to provide services under the impaired practitioner program, and certain agents in any action or proceeding for injunctive, affirmative, or declaratory relief as a result of an act or omission, if that act or omission occurred within the scope of the contract. DFS is currently required to provide legal representation to the same parties in other specific legal actions.

The bill appears to have a minimal fiscal impact on state government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Medical Transportation Services

Part III of ch. 401, F.S., applies to medical transportation services, and provides for:

- Training and certification of emergency medical technicians (EMTs) and paramedics.[1]
- Licensure of emergency medical service (EMS) providers and permitting of EMS vehicles.[2]
- Development of a comprehensive state plan for basic and advanced life support services, the EMS grants program, trauma centers, the injury control program, and medical disaster preparedness.[3]
- Approval of any program for the education of EMTs and paramedics at any public or private institution.[4]
- Establishing the Emergency Medical Services Advisory Council and detailing its duties.[5]
- Examination and inspection of licensees.[6]
- Imposing fees for certain organizations and persons.[7]

Florida currently has 38,053 certified EMTs and 28,191 certified paramedics.[8] There are 274 licensed EMS providers in the state, with more than 4,300 permitted vehicles.[9] Under the provisions of part I, chapter 401, F.S., 136 EMS providers were inspected in 2012.[10]

Fees Imposed for Medical Transportation Services

Section 401.34, F.S., establishes the following fee schedule payable by personnel, programs, or services subject to part I, chapter 401, F.S.:

- Basic life support service license application - $660, biennially;
- Advanced life support service license application - $1,375, biennially;
- Original or renewal vehicle permit application for basic or advanced life support - $25, biennially;
- EMT certification examination application - $40;
- EMT original certificate application - $35;
- EMT renewal certificate application - $20, biennially;
- Paramedic certification examination application - $40;
- Paramedic original certificate application - $45;
- Paramedic renewal certificate application - $45, biennially;
- Air ambulance service application - $1,375, biennially; and
- Original or renewal aircraft permit application for air ambulance - $25, biennially.

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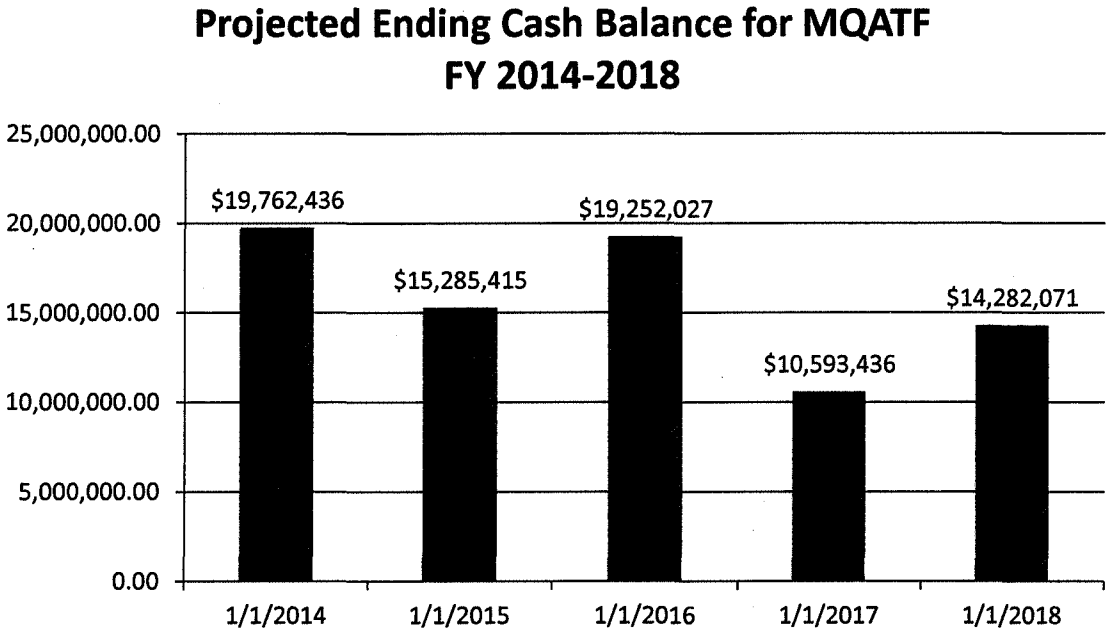
[1] S. 401.27, F.S.
[2] SS. 401.25, 401.251, and 401.26, F.S.
[3] S. 401.24, F.S.
[4] S. 401.2701, F.S.
[5] S. 401.245, F.S.
[6] S. 401.31, F.S.
[7] S. 401.34, F.S.
[8] Florida Department of Health, Emergency Medical Services Program, *EMS Program Highlights-January 2013*, page 1, available at www.doh.state.fl.us/demo/ems/EMSAC/ACPDFS/SBRHighlightsJan2013.pdf.
[9] Id.
[10] Id. at page 2.

All fees must be deposited into the Emergency Medical Services Trust Fund and used only for salaries and expenses incurred by DOH in administering part I of chapter 401, F.S.[11]

Medical Quality Assurance Trust Fund

The Medical Quality Assurance Trust Fund (MQATF) was created in 1997 and re-created as required by law in subsequent years.[12] The MQATF is administered by DOH and funded with fees and fines related to the licensing of health care professionals.[13] Funds in the MQATF must be used for administrative support for the regulation of health care professionals and other appropriate purposes.[14] For fiscal year 2012-2013, budget appropriations from the MQATF totaled $58,904,271; more than half of the appropriations were dedicated to funding 600 Full-Time Equivalents (FTEs) within the Division of Medical Quality Assurance (MQA).[15] As of March 19, 2013, the MQATF had undisbursed appropriations totaling $34,208,442.67.[16]

The following chart shows the projected ending cash balance for the MQATF for the next five fiscal years:[17]



Health Care Professions

DOH is created under the authority of s. 20.43, F.S., which outlines the composition of the agency structure to include MQA. MQA is statutorily responsible for the following boards and professions established within the division:

- The Board of Acupuncture, created under chapter 457.

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[11] S. 401.34(2), F.S.

[12] S. 1, ch. 97-119, L.O.F.; the MQATF was subsequently recreated in 2000 (s. 1, ch. 2000-47), and 2004 (s.1, ch. 2004-176). In 2004, a provision requiring that the MQATF be terminated on a date certain appears to have been written out of s. 20.435, F.S. The MQATF has been in effect continuously since 2004.

[13] S. 20.435(4)(a), F.S.

[14] Id.

[15] S. 3, ch. 2012-118, L.O.F. (lines 562-572).

[16] *2012-13 Trust Fund Detail-Cash/Investment Balance*, available at http://www.transparencyflorida.gov/TrustFundDetailReport.aspx?FY=13&RT=TF&Option=&BE=64&Fund=2352.

[17] Email correspondence from DOH to Florida House of Rep. policy staff, MQA Trust Fund Information Request, March 20, 2013 (on file with the Florida House of Rep. Health Quality Subcommittee).

- The Board of Medicine, created under chapter 458.
- The Board of Osteopathic Medicine, created under chapter 459.
- The Board of Chiropractic Medicine, created under chapter 460.
- The Board of Podiatric Medicine, created under chapter 461.
- Naturopathy, as provided under chapter 462.
- The Board of Optometry, created under chapter 463.
- The Board of Nursing, created under part I of chapter 464.
- Nursing assistants, as provided under part II of chapter 464.
- The Board of Pharmacy, created under chapter 465.
- The Board of Dentistry, created under chapter 466.
- Midwifery, as provided under chapter 467.
- The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.
- The Board of Nursing Home Administrators, created under part II of chapter 468.
- The Board of Occupational Therapy, created under part III of chapter 468.
- Respiratory therapy, as provided under part V of chapter 468.
- Dietetics and nutrition practice, as provided under part X of chapter 468.
- The Board of Athletic Training, created under part XIII of chapter 468.
- The Board of Orthotists and Prosthetists, created under part XIV of chapter 468.
- Electrolysis, as provided under chapter 478.
- The Board of Massage Therapy, created under chapter 480.
- The Board of Clinical Laboratory Personnel, created under part III of chapter 483.
- Medical physicists, as provided under part IV of chapter 483.
- The Board of Opticianry, created under part I of chapter 484.
- The Board of Hearing Aid Specialists, created under part II of chapter 484.
- The Board of Physical Therapy Practice, created under chapter 486.
- The Board of Psychology, created under chapter 490.
- School psychologists, as provided under chapter 490.
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.
- Emergency medical technicians and paramedics, as provided under part III of chapter 401.

DOH regulates most health care practitioners and professions.[18] Each practitioner or profession is governed by an individual practice act and by ch. 456, F.S., which is considered the core licensure statute for all health care practitioners within MQA.

Section 456.001(4), F.S., defines "health care practitioner" to mean any person licensed under: ch. 457, F.S., (acupuncture); ch. 458, F.S., (medicine); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathic medicine); ch. 463, F.S., (optometry); ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy); ch. 466, F.S., (dentistry and dental hygiene); ch. 467, F.S., (midwifery); parts I, II, III, V, X, XIII, and XIV of ch. 468, F.S., (speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthics); ch. 478, F.S., (electrology or electrolysis); ch. 480, F.S., (massage therapy); parts III and IV of ch. 483, F.S., (clinical laboratory personnel or medical physics); ch. 484, F.S., (opticianry and hearing aid specialists); ch. 486, F.S., (physical therapy); ch. 490, F.S., (psychology); and ch. 491, F.S. (psychotherapy).

The definition of health care practitioner does not include EMTs, paramedics[19] or radiology technologists.[20] However, s. 456.001, F.S., defines the term "profession" to mean any activity, occupation, profession, or vocation regulated by DOH within MQA, and EMTs and paramedics are

[18] The Department of Business and Professional Regulation regulates veterinarians pursuant to ch. 474, F.S.
[19] EMT and paramedics are governed by part III of ch. 401, F.S.
[20] Radiation technologists are governed by part IV of ch. 468, F.S.

listed as a "profession" regulated by MQA under s. 20.43, F.S. Therefore, EMTs and paramedics are a *profession* governed by ch. 456, F.S.

Effect of Proposed Changes

The bill revises s. 401.34, F.S., to redirect the payment of certain fees to the MQATF. Currently, all fees required to be paid by organizations or persons under part I of chapter 401, F.S., must be deposited into the Emergency Medical Services Trust Fund. The bill requires all fees to be paid by EMTs and paramedics relating to examination and initial and renewal certification to be deposited into the MQATF. Fees required to be paid by organizations for certain service applications and permits will continue to be deposited into the Emergency Medical Services Trust Fund.

The bill requires DFS to defend an impaired practitioner consultant, the consultant's officers and employees, and any person acting at the direction of the consultant in certain emergency intervention situations when the consultant is not available against a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief arising out of an act or omission committed by the specified actors, if the act or omission is within the scope of the consultant's duties under the contract with DOH. Current law requires DFS to defend the same parties against any claim, suit, action, or proceeding arising out of identical circumstances. The proposed requirement that DFS defend the parties in additional legal proceedings offers a near comprehensive range of representation in actions that could be brought against an impaired practitioner consultant, or its agents, for acting or not acting under the contract to provide services to impaired practitioners.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 401.34, F.S., relating to fees.
Section 2: Amends s. 456.076, F.S., relating to treatment programs for impaired practitioners.
Section 3: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill is revenue neutral; it simply realigns revenues between DOH trust funds.

2. Expenditures:

   The bill requires the DFS to defend an impaired practitioner consultant, the consultant's officers or employees, or a person acting at the direction of the consultant in limited circumstances against a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief arising out of an act or omission in the scope of the consultant's duties under the contract with the DOH. DFS may need to hire, purchase, or otherwise obtain additional legal resources, including attorneys, paralegals, administrative assistants, computer hardware and software, office space, office supplies, and other personnel and equipment in order to provide the legal representation required under the bill. However, the potential expenditures may be absorbed within existing agency resources within DFS.

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 fees payable by EMTs and paramedics for application, certification, and recertification to be deposited into the MQATF. These fees are currently paid into the Emergency Medical Services Trust Fund (EMSTF). DOH may need to internally realign existing trust fund authority from the EMSTF to the MQATF in order to maintain funding for current FTEs and avoid reductions in services associated with the proposed redirection of fee revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   DOH has appropriate rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Health Quality Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment made the following changes to the bill:

- Clarified that certain fees payable by EMTs and paramedics for examination, certification, and recertification will be deposited in the MQATF, instead of the Emergency Medical Services Trust Fund.

- Removed provisions that permitted an impaired practitioner consultant or an agent of an impaired practitioner consultant to have access to the Prescription Drug Monitoring Program (PDMP) database and confidential records of the PDMP in certain circumstances and only with the written consent of an impaired practitioner enrolled in the impaired practitioner program.

The analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

A bill to be entitled

An act relating to practitioners; reordering and amending s. 401.34, F.S.; revising requirements for the deposit and use of license fees for certain practitioners; amending s. 456.076, F.S.; providing that the Department of Financial Services shall defend certain claims, suits, actions, or proceedings for injunctive, affirmative, or declaratory relief involving emergency interventions on behalf of impaired practitioners; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 401.34, Florida Statutes, are reordered and amended to read:

401.34 Fees.—

(1) Each organization ~~or person~~ subject to this part must pay to the department the following nonrefundable fees, and these fees must be deposited into the Emergency Medical Services Trust Fund to be applied solely for salaries and expenses of the department incurred in implementing and enforcing this part:

(a) Basic life support service license application: $660, to be paid biennially.

(b) Advanced life support service license application: $1,375, to be paid biennially.

(c) Original or renewal vehicle permit application for basic or advanced life support: $25, to be paid biennially.

(d) ~~(j)~~ Air ambulance service application: $1,375, to be

paid biennially.

(e)~~(k)~~ Original or renewal aircraft permit application for air ambulance: $25, to be paid biennially.

(2) Each person subject to this part must pay to the department the following nonrefundable fees, and these fees must be deposited into the Medical Quality Assurance Trust Fund:

(a)~~(d)~~ Emergency medical technician certification examination application: $40.

(b)~~(e)~~ Emergency medical technician original certificate application: $35.

(c)~~(f)~~ Emergency medical technician renewal certificate application: $20, to be paid biennially.

(d)~~(g)~~ Paramedic certification examination application: $40.

(e)~~(h)~~ Paramedic original certificate application: $45.

(f)~~(i)~~ Paramedic renewal certificate application: $45, to be paid biennially.

~~(2) Fees collected under this section must be deposited to the credit of the Emergency Medical Services Trust Fund and must be applied solely for salaries and expenses of the department incurred in implementing and enforcing this part.~~

Section 2. Paragraph (b) of subsection (7) of section 456.076, Florida Statutes, is amended to read:

456.076 Treatment programs for impaired practitioners.—

(7)

(b) In accordance with s. 284.385, the Department of Financial Services shall defend any claim, suit, action, or proceeding, including a claim, suit, action, or proceeding for

injunctive, affirmative, or declaratory relief, against the consultant, the consultant's officers or employees, or those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention, which claim, suit, action, or proceeding is brought as a result of an ~~any~~ act or omission by any of the consultant's officers and employees and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of the ~~a~~ licensee or student ~~as described in subsection (2)~~ when the consultant is unable to perform such intervention, if the ~~when such~~ act or omission arises out of and is in the scope of the consultant's duties under its contract with the department.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 905 Family Law
SPONSOR(S): Judiciary Committee; Steube
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1210

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Ward	Bond
2) Judiciary Committee	17 Y, 0 N, As CS	Ward	Havlicak
3) Appropriations Committee		McAuliffe	Leznoff

SUMMARY ANALYSIS

The bill amends child support guidelines to add that the court may take into account the parenting plan recognized by the parties, even if it is not reduced to writing, in awarding child support outside the statutory schedule.

The bill amends the Florida Evidence Code to allow the court to take judicial notice of court records in determining family law cases where there is imminent threat of harm, notice is impractical, and a later hearing is scheduled to challenge the matter. The bill adds conforming references regarding this provision to statutes which address injunctions for domestic and repeat violence, and injunctions against stalking.

The bill adds that the Department of Revenue may not provide representation to determine paternity, to modify child support, or to seek child support unless public assistance is being received by either of the parents or the child.

The bill appears to have a potential impact on state revenues in the amount of $839 million in TANF funding should the federal government choose to enforce the provisions of 42 U.S.C. ss. 651-669b.

The federal government pays 2/3 of the cost of operating the child support enforcement office of the Department of Revenue. In the last fiscal year Florida received $232 million in child support enforcement funding and $607 million in TANF funding. A state plan for child support must provide that the "state will provide services relating to the establishment of paternity or the establishment, modification or enforcement of child support obligations" with respect to each child receiving public assistance, or "any other child, if an individual applies for such services with respect to the child." 42 U.S.C. 654.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Child Support Guidelines

Current Situation

Child support guidelines allow the court to adjust a statutory award based upon additional factors.[1] Included in those factors which might adjust an award up or down, is the "parenting plan."[2] Currently, deviations from the promulgated schedule of child support must be supported by the factors listed in the statute.

The parenting plan is defined by statute and must be reduced to a document endorsed by the court.[3] The courts do not recognize a course of dealing by the parties as a formal parenting plan when considering the amount of child support.[4]

Recently, a number of child support cases have been decided based upon the lack of a written parenting plan as defined in the statute. The courts have determined that they may not take into account the amount of time that the child spends routinely with one parent or the other unless there is a written parenting plan. Courts have not considered less formal arrangements in deviating from the child support guidelines.[5]

Effect of Proposed Changes

The bill amends s. 61.30, F.S., to expand the court's ability to recognize a course of dealing by the parents in awarding child support outside the schedule. The bill includes in the deviation factors of s. 61.30(11)(a), F.S, "a court ordered timesharing schedule or a timesharing schedule exercised by agreement of the parties." This will allow the court to take into consideration the actions of the parties, even if not reduced to writing. The expanded factor which the court may consider appears both places where the term "parenting plan" appears in s. 61.30, F.S.

Judicial Notice

Current Situation

Judicial notice takes the place of proof, and makes evidence unnecessary.[6] The Florida Evidence Code[7] addresses matters that may be, or must be noticed by the judge, so that evidence of the fact is not required.[8]

Generally, notice is afforded to both parties before the court will take judicial notice of a fact.[9] The court must give each party an opportunity to challenge the information offered for judicial notice prior to taking it into evidence.[10]

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[1] Section 61.30, F.S.
[2] Section 61.30(11)(a)10., F.S.
[3] Section 61.046, F.S.
[4] *See State Dept. of Revenue v. Kline*, 95 So.3d 440 (Fla. 1st DCA 2012); *Department of Revenue v. Dorkins*, 91 So.3d 278 (Fla. 1st DCA 2012); *Department of Revenue v. Aluscar*, 82 So.3d 1165 (Fla. 1st DCA 2012).
[5] *Id.*
[6] *Amos v. Moseley*, 77 So. 619 (Fla. 1917).
[7] Chapter 90, F.S.
[8] Sections 90.201 - 90.207, F.S.

In a recent case,[11] a judge issued a domestic violence injunction[12] based upon testimony she observed in a separate court matter between the parties. The ruling was entered without giving advance notice of the matter, pursuant to the current terms of the statute. Because the court essentially took judicial notice of the other hearing in ruling on the injunction, the injunction was reversed.[13]

Effect of Proposed Changes

The bill amends s. 90.204, F.S., to provide that in a family law case the court may take judicial notice of "records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States,"[14] when:

- Imminent danger has been alleged.
- It is impractical to give notice.
- A later opportunity is provided to challenge the matter noticed.

The judge must, within two business days, file a notice in the pending case of the matter noticed.

The bill will allow the court to take judicial notice without further proof of court records at the state and national level in determining family law cases. Family law cases are defined by the Florida Rules of Judicial Administration.

Conforming changes are made to ss. 741.30 (domestic violence), 784.046 (repeat violence), and 784.0485 (stalking), F.S., to include court records in the evidence a judge may take into account when considering an injunction to prevent domestic or repeat violence, or stalking.

Actions for Support

Current Situation

Section 409.2564, F.S. currently provides that the Department of Revenue may file an action in the circuit court to enforce child support payments, and collect any arrearages.

Effect of Proposed Changes

The bill adds that the Department of Revenue may not undertake an action to determine paternity, to modify or seek child support unless public assistance is being received by either parent or the child, or if an application for assistance has been filed. The bill also precludes the department from representing a parent already represented in a support or paternity proceeding by a private attorney unless either parent or the child is already receiving public assistance.

The federal government pays 2/3 of the cost of operating the child support enforcement office of the Department of Revenue. In the last fiscal year Florida received $232 million in child support enforcement funding and $607 million in TANF funding. A state plan for child support must provide that the "state will provide services relating to the establishment of paternity or the establishment, modification or enforcement of child support obligations" with respect to

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[9] Sections 90.203, 90.204, F.S.
[10] *Id.*
[11] *Coe v. Coe*, 39 So.3d 542 (Fla. 2d DCA 2010).
[12] Domestic violence injunctions are governed by s. 741.30, F.S.
[13] *Coe* at 543.
[14] Section 90.202(6), F.S.

each child receiving public assistance, or "any other child, if an individual applies for such services with respect to the child." 42 U.S.C. 654.

B. SECTION DIRECTORY:

Section 1 amends s. 61.30, F.S., regarding child support guidelines; retroactive child support.

Section 2 amends s. 90.204, F.S., regarding determination of propriety of judicial notice and nature of matter noticed.

Section 3 amends s. 409.2564, F.S., regarding actions for support.

Section 4. amends s. 741.30, F.S., regarding domestic violence injunction.

Section 5 amends s. 784.046, F.S., regarding actions for repeat violence.

Section 6 amends s. 784.0485, F.S., regarding stalking injunctions and enforcement.

Section 7 amends s. 61.14, F.S., regarding enforcement and modification of support.

Section 8 amends s. 61.1814, F.S., regarding Child Support Enforcement Application and Program.

Section 9 amends s. 61.30, F.S., regarding child support guidelines.

Section 10 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill appears to have a potential impact on state revenues in the amount of $839 million in TANF funding should the federal government choose to enforce the provisions of 42 U.S.C. ss. 651-669b.

The federal government pays 2/3 of the cost of operating the child support enforcement office of the Department of Revenue. In the last fiscal year Florida received $232 million in child support enforcement funding and $607 million in TANF funding. A state plan for child support must provide that the "state will provide services relating to the establishment of paternity or the establishment, modification or enforcement of child support obligations" with respect to each child receiving public assistance, or "any other child, if an individual applies for such services with respect to the child." 42 U.S.C. 654.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

See revenue comments above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 14, 2013, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that the court may take judicial notice of any matter of public record when imminent danger has been alleged, and makes conforming changes to statutes addressing stalking and domestic violence. The amendment further provides that the Department of Revenue may not bring a paternity action to establish or modify an obligation of child support unless public assistance is being received by a parent or by the child, or the custodial parent is entitled to the department's assistance as a result of federal law. The amendment also provides that in a child support enforcement or paternity action, the department may not represent a party if he or she is being represented by a private attorney unless public assistance is being received by one of the parents or the child. This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

A bill to be entitled

An act relating to family law; amending s. 61.30, F.S.; providing for consideration of time-sharing schedules as a factor in the adjustment of awards of child support; amending s. 90.204, F.S.; authorizing judges in family cases to take judicial notice of certain court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice; providing for a deferred opportunity to present evidence; requiring a notice of such judicial notice having been taken to be filed within a specified period; providing that the term "family cases" has the same meaning as provided in the Rules of Judicial Administration; amending s. 409.2564, F.S.; providing that the Department of Revenue may not undertake certain actions regarding paternity or support except in certain circumstances; providing that a parent is not eligible to receive assistance from the department for certain actions if the parent is being represented by a private attorney unless public assistance is being received; amending ss. 741.30, 784.046, and 784.0485, F.S.; creating an exception to a prohibition against using evidence other than the verified pleading or affidavit in an ex parte hearing for a temporary injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking;

amending ss. 61.14, 61.1814, and 61.30, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (11) of section 61.30, Florida Statutes, are amended to read:

61.30 Child support guidelines; retroactive child support.—

(11)(a) The court may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon the following deviation factors:

1. Extraordinary medical, psychological, educational, or dental expenses.

2. Independent income of the child, not to include moneys received by a child from supplemental security income.

3. The payment of support for a parent which has been regularly paid and for which there is a demonstrated need.

4. Seasonal variations in one or both parents' incomes or expenses.

5. The age of the child, taking into account the greater needs of older children.

6. Special needs, such as costs that may be associated with the disability of a child, that have traditionally been met within the family budget even though fulfilling those needs will cause the support to exceed the presumptive amount established

by the guidelines.

7. Total available assets of the obligee, obligor, and the child.

8. The impact of the Internal Revenue Service Child & Dependent Care Tax Credit, Earned Income Tax Credit, and dependency exemption and waiver of that exemption. The court may order a parent to execute a waiver of the Internal Revenue Service dependency exemption if the paying parent is current in support payments.

9. An application of the child support guidelines schedule that requires a person to pay another person more than 55 percent of his or her gross income for a child support obligation for current support resulting from a single support order.

10. The particular parenting plan, court-ordered time-sharing schedule, or particular time-sharing schedule exercised by agreement of the parties, such as where the child spends a significant amount of time, but less than 20 percent of the overnights, with one parent, thereby reducing the financial expenditures incurred by the other parent; or the refusal of a parent to become involved in the activities of the child.

11. Any other adjustment that is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt. Such expense or debt may include, but is not limited to, a reasonable and necessary expense or debt that the parties jointly incurred during the marriage.

(b) Whenever a particular parenting plan, court-ordered

time-sharing schedule, or particular time-sharing schedule exercised by agreement of the parties provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support, as follows:

1. In accordance with subsections (9) and (10), calculate the amount of support obligation apportioned to each parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5.

2. Calculate the percentage of overnight stays the child spends with each parent.

3. Multiply each parent's support obligation as calculated in subparagraph 1. by the percentage of the other parent's overnight stays with the child as calculated in subparagraph 2.

4. The difference between the amounts calculated in subparagraph 3. shall be the monetary transfer necessary between the parents for the care of the child, subject to an adjustment for day care and health insurance expenses.

5. Pursuant to subsections (7) and (8), calculate the net amounts owed by each parent for the expenses incurred for day care and health insurance coverage for the child.

6. Adjust the support obligation owed by each parent pursuant to subparagraph 4. by crediting or debiting the amount calculated in subparagraph 5. This amount represents the child support which must be exchanged between the parents.

7. The court may deviate from the child support amount calculated pursuant to subparagraph 6. based upon the deviation factors in paragraph (a), as well as the obligee parent's low income and ability to maintain the basic necessities of the home

for the child, the likelihood that either parent will actually exercise the time-sharing schedule set forth in the parenting plan granted by the court, and whether all of the children are exercising the same time-sharing schedule.

8. For purposes of adjusting any award of child support under this paragraph, "substantial amount of time" means that a parent exercises time-sharing at least 20 percent of the overnights of the year.

Section 2. Subsection (4) is added to section 90.204, Florida Statutes, to read:

90.204 Determination of propriety of judicial notice and nature of matter noticed.—

(4) In family cases, the court may take judicial notice of any matter described in s. 90.202(6) when imminent danger to persons or property has been alleged and it is impractical to give prior notice to the parties of the intent to take judicial notice. Opportunity to present evidence relevant to the propriety of taking judicial notice under subsection (1) may be deferred until after judicial action has been taken. If judicial notice is taken under this subsection, the court shall, within 2 business days, file a notice in the pending case of the matters judicially noticed. For purposes of this subsection, the term "family cases" has the same meaning as provided in the Rules of Judicial Administration.

Section 3. Subsections (4) through (13) of section 409.2564, Florida Statutes, are renumbered as subsections (5) through (14), respectively, and a new subsection (4) is added to that section, to read:

409.2564 Actions for support.—

(4)(a) The Department of Revenue shall not undertake an action to determine paternity, to establish an obligation of support, or to enforce or modify an obligation of support unless:

1. Public assistance is being received by one of the parents, both parents, or the dependent child or children; or

2. The custodial parent or the parent entitled to receive support has requested the Department of Revenue's assistance in enforcing or modifying a child support order and has filed a signed application for services under Title IV-D of the Social Security Act.

(b) Notwithstanding subparagraph (a)2., a parent is not eligible to receive assistance from the Department of Revenue to determine paternity, to establish an obligation of support, or to enforce or modify an obligation of support, whichever is applicable, if that parent is being represented by a private attorney in proceedings to determine paternity, to establish an obligation of support, or to enforce or modify an obligation of support, whichever is applicable, unless public assistance is being received by that parent, the other parent, or the dependent child or children.

Section 4. Paragraph (b) of subsection (5) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(5)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, no evidence other than verified pleadings or affidavits shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Section 5. Paragraph (b) of subsection (6) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(6)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such temporary injunction, no evidence other than the verified pleading or affidavit shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing.

Section 6. Paragraph (b) of subsection (5) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(5)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, evidence other than verified pleadings or affidavits may not be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. If the only ground for denial is no appearance of an immediate and present danger of stalking, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. This paragraph does not affect a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Section 7. Paragraph (c) of subsection (1) of section 61.14, Florida Statutes, is amended to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(c) For each support order reviewed by the department as required by s. 409.2564(12) ~~409.2564(11)~~, if the amount of the child support award under the order differs by at least 10 percent but not less than $25 from the amount that would be awarded under s. 61.30, the department shall seek to have the

order modified and any modification shall be made without a requirement for proof or showing of a change in circumstances.

Section 8. Paragraph (e) of subsection (2) of section 61.1814, Florida Statutes, is amended to read:

61.1814 Child Support Enforcement Application and Program Revenue Trust Fund.—

(2) With the exception of fees required to be deposited in the Clerk of the Court Child Support Enforcement Collection System Trust Fund under s. 61.181(2)(b) and collections determined to be undistributable or unidentifiable under s. 409.2558, the fund shall be used for the deposit of Title IV-D program income received by the department. Each type of program income received shall be accounted for separately. Program income received by the department includes, but is not limited to:

(e) Fines imposed under ss. 409.256(7)(b), 409.2464(8) ~~409.2564(7)~~, and 409.2578; and

Section 9. Paragraph (c) of subsection (1) of section 61.30, Florida Statutes, is amended to read:

61.30 Child support guidelines; retroactive child support.—

(1)

(c) For each support order reviewed by the department as required by s. 409.2564(12) ~~409.2564(11)~~, if the amount of the child support award under the order differs by at least 10 percent but not less than $25 from the amount that would be awarded under this section, the department shall seek to have the order modified and any modification shall be made without a

requirement for proof or showing of a change in circumstances.

Section 10. 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 Steube offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (11) of section 61.30, Florida Statutes, is amended to read:

61.30 Child support guidelines; retroactive child support.—

(11)(a) The court may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon the following deviation factors:

1. Extraordinary medical, psychological, educational, or dental expenses.

2. Independent income of the child, not to include moneys received by a child from supplemental security income.

3. The payment of support for a parent which has been regularly paid and for which there is a demonstrated need.

4. Seasonal variations in one or both parents' incomes or expenses.

5. The age of the child, taking into account the greater needs of older children.

6. Special needs, such as costs that may be associated with the disability of a child, that have traditionally been met within the family budget even though fulfilling those needs will cause the support to exceed the presumptive amount established by the guidelines.

7. Total available assets of the obligee, obligor, and the child.

8. The impact of the Internal Revenue Service Child & Dependent Care Tax Credit, Earned Income Tax Credit, and dependency exemption and waiver of that exemption. The court may order a parent to execute a waiver of the Internal Revenue Service dependency exemption if the paying parent is current in support payments.

9. An application of the child support guidelines schedule that requires a person to pay another person more than 55 percent of his or her gross income for a child support obligation for current support resulting from a single support order.

10. The particular parenting plan, <u>a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties,</u> such as where the child spends a significant amount of time, but less than 20 percent of the overnights, with one parent, thereby reducing the financial

expenditures incurred by the other parent; or the refusal of a parent to become involved in the activities of the child.

11. Any other adjustment that is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt. Such expense or debt may include, but is not limited to, a reasonable and necessary expense or debt that the parties jointly incurred during the marriage.

(b) Whenever a particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support, as follows:

1. In accordance with subsections (9) and (10), calculate the amount of support obligation apportioned to each parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5.

2. Calculate the percentage of overnight stays the child spends with each parent.

3. Multiply each parent's support obligation as calculated in subparagraph 1. by the percentage of the other parent's overnight stays with the child as calculated in subparagraph 2.

4. The difference between the amounts calculated in subparagraph 3. shall be the monetary transfer necessary between the parents for the care of the child, subject to an adjustment for day care and health insurance expenses.

5. Pursuant to subsections (7) and (8), calculate the net amounts owed by each parent for the expenses incurred for day care and health insurance coverage for the child.

6. Adjust the support obligation owed by each parent pursuant to subparagraph 4. by crediting or debiting the amount calculated in subparagraph 5. This amount represents the child support which must be exchanged between the parents.

7. The court may deviate from the child support amount calculated pursuant to subparagraph 6. based upon the deviation factors in paragraph (a), as well as the obligee parent's low income and ability to maintain the basic necessities of the home for the child, the likelihood that either parent will actually exercise the time-sharing schedule set forth in the parenting plan, a court-ordered time-sharing schedule, or a particular time-sharing arrangement exercised by agreement of the parties ~~granted by the court~~, and whether all of the children are exercising the same time-sharing schedule.

8. For purposes of adjusting any award of child support under this paragraph, "substantial amount of time" means that a parent exercises time-sharing at least 20 percent of the overnights of the year.

(c) A parent's failure to regularly exercise the time-sharing schedule set forth in the parenting plan, a court-ordered ~~or agreed~~ time-sharing schedule, or a particular time-sharing arrangement exercised by agreement of the parties not caused by the other parent which resulted in the adjustment of the amount of child support pursuant to subparagraph (a)10. or paragraph (b) shall be deemed a substantial change of

circumstances for purposes of modifying the child support award. A modification pursuant to this paragraph is retroactive to the date the noncustodial parent first failed to regularly exercise the court-ordered or agreed time-sharing schedule.

Section 2. Subsection (4) is added to section 90.204, Florida Statutes, to read:

90.204 Determination of propriety of judicial notice and nature of matter noticed.—

(4) In family cases, the court may take judicial notice of any matter described in s. 90.202(6) when imminent danger to persons or property has been alleged and it is impractical to give prior notice to the parties of the intent to take judicial notice. Opportunity to present evidence relevant to the propriety of taking judicial notice under subsection (1) may be deferred until after judicial action has been taken. If judicial notice is taken under this subsection, the court shall, within 2 business days, file a notice in the pending case of the matters judicially noticed. For purposes of this subsection, the term "family cases" has the same meaning as provided in the Rules of Judicial Administration.

Section 3. Paragraph (b) of subsection (5) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(5)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, no evidence other than verified pleadings or affidavits shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Section 4. Paragraph (b) of subsection (6) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(6)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such temporary injunction, no evidence other than the verified pleading or affidavit shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing.

Section 5. Paragraph (b) of subsection (5) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(5)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, evidence other than verified pleadings or affidavits may not be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. If the only ground for denial is no appearance of an immediate and present danger of stalking, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. This paragraph does not affect a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Section 6. This act shall take effect July 1, 2013.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to family law; amending s. 61.30, F.S.; providing for consideration of time-sharing schedules or time-sharing arrangements as a factor in

the adjustment of awards of child support; amending s. 90.204, F.S.; authorizing judges in family cases to take judicial notice of certain court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice; providing for a deferred opportunity to present evidence; requiring a notice of such judicial notice having been taken to be filed within a specified period; providing that the term "family cases" has the same meaning as provided in the Rules of Judicial Administration; amending ss. 741.30, 784.046, and 784.0485, F.S.; creating an exception to a prohibition against using evidence other than the verified pleading or affidavit in an ex parte hearing for a temporary injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1017 State Procurement
SPONSOR(S): Government Operations Subcommittee; Fresen
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N, As CS	Harrington	Williamson
2) Appropriations Committee		White CCW	Leznoff
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law requires each state agency, university, college, school district, or other political subdivision of this state to award a preference to Florida-based businesses for the purchase of personal property and services, including printing services, through competitive solicitation, when the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is another state, or political subdivision of that state. However, uniform in-state preferences are not provided for all state purchasing.

The bill creates a uniform local business preference for state procurement for goods or contractual services, including construction services. The bill defines "local business" for purposes of evaluating state procurements and awarding in-state preferences to local businesses. The bill creates a preference procedure that permits both the out-of-state and in-state vendors to submit their best and final bid.

The bill provides that the preference does not apply if such preference is prohibited by law, the procurement is designated for small business, it is an emergency, or it is a sole source procurement.

The bill may have an indeterminate fiscal impact on state government. *See* Fiscal Comments section for further discussion.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency[1] procurement of personal property and services. The Department of Management 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.[2] DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[3]

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:[4]

- 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
- 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.[5] 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."

Local governmental units are not subject to the provisions of chapter 287, F.S.

Florida In-state Preference

State agencies, universities, colleges, school districts, and other political subdivisions are required to grant a preference in the award for contracts for the purchase of personal property, when competitive solicitation is required and when the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in another state, or political subdivision of that state.[6] The preference is mandatory and is utilized by the procuring entity to award a preference to the lowest responsible and responsive vendor having a principal place of business in this state. The preference awarded is the same preference provided by the out-of-state bidder's home state.

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[1] 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."

[2] *See* ss. 287.032 and 287.042, F.S.

[3] *Id.*

[4] *See ss.* 287.012(6) and 287.057, F.S.

[5] 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.

[6] Section 287.084(1)(a), F.S.

If the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is another state, or political subdivision of that state, and that state does not award a preference for in-state vendors, state agencies, universities, colleges, school districts, and other political subdivisions must award a 5 percent preference to Florida-based vendors.[7]

A vendor whose principal place of business is outside of this state must submit with the bid, proposal, or reply documents a written opinion of an attorney at law licensed to practice law in that foreign state as to the preferences, if any, granted by the law of that state to a business entity whose principal place of business is in that foreign state.[8]

Florida's preference law does not apply to transportation projects for which federal aid funds are available,[9] or to counties or cities.[10] It also does not apply in the award of contracts for the purchase of construction services.

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly-owned buildings. DMS is responsible for establishing by rule the following:[11]

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities those contracts are determined to be in the best interest of the state.

State contracts for construction projects that are projected to cost in excess of $200,000 must be competitively bid.[12] Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of $300,000.[13]

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than $200,000 to be publicly advertised in the Florida Administrative Weekly[14] at least 21 days prior to the established bid opening. If the construction project is projected to exceed $500,000, the advertisement must be published at least 30 days prior to the bid opening in the Florida Administrative Weekly, and at least once 30 days prior to the bid opening in a newspaper of general circulation in the county where the project is located.[15]

Florida In-state Preference

Current law requires every official board in the state, whether of the state, a county, or a municipality, to give a preference in the purchase of material or in the procurement of construction contracts for buildings, to materialmen, contractors, builders, architects, and laborers who reside within the state, whenever such material can be purchased or the services can be employed at no greater expense than would be obtained if the materials or services were provided by a person residing in another state.

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[7] *Id.*
[8] Section 287.084(2), F.S.
[9] Section 287.084(1)(b), F.S.
[10] Section 287.084(1)(c), F.S.
[11] Section 255.29, F.S.
[12] *See* chapters 60D-5.002 and 60D-5.0073, F.A.C.; *see also* s. 255.0525, F.S.
[13] *See* s. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than $75,000.
[14] The Florida Administrative Weekly was renamed the Florida Administrative Register during the 2012 Session. Chapter 2012-63, L.O.F.
[15] For counties, municipalities, and political subdivisions, similar publishing provisions apply. Section 255.0525(2), F.S.

Florida Preference to State Residents

Florida law provides a preference for the employment of state residents in construction contracts funded by money appropriated with state funds. Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications[16] to those of non-residents.[17] If a construction contract is funded by local funds, the contract may contain such a provision.[18] In addition, the contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.[19]

Florida Department of Transportation

The Florida Department of Transportation (FDOT) Central Procurement Office is responsible for acquiring professional consulting services, contractual services, and commodities related to the state highway systems. FDOT procures road and bridge construction materials and services, and other products or services related to the maintenance of roads, bridges or other transportation facilities, as well as supplies and services that support FDOT. FDOT purchasing is governed by chapters 283 and 287, F.S., and the rules adopted by DMS. However, the FDOT may purchase parts and repairs valued at up to the threshold amount provided for Category Two ($35,000) for the repair of mobile road maintenance equipment, marine vessels, permanent vehicle scales, and mechanical and electrical equipment for movable bridges, toll facilities including the Florida Turnpike, and up to the threshold amount for Category Three ($65,000) for treatment plans and lift stations for water and sewage and major heating and cooling systems without receiving competitive solicitations.

If FDOT determines that an emergency exists in regard to the purchase of materials, machinery, tools, equipment, or supplies, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, the provisions for competitive bidding do not apply and FDOT may authorize or purchase such materials, machinery, tools, equipment, or supplies without giving opportunity for competitive bidding thereon. Within 10 days after such determination and purchase, FDOT must notify DMS as to the conditions and circumstances constituting such emergency.[20] When FDOT advertises for bids for supplies, materials, equipment, or other items needed by FDOT, specifications must be drafted in such manner as will afford adequate protection to the state as to quality and performance, but specifications must not be drafted in any manner that will preclude competition in bidding.[21]

Chapter 337, F.S., contains other requirements and provisions specifically related to FDOT contracting, which includes efforts to encourage awarding contracts to disadvantaged business enterprises[22] and requirements for prequalification and certification in specified circumstances.[23]

Public Printing

Chapter 283, F.S., governs public printing and applies to all agencies. Section 283.33, F.S., provides that publications may be printed in-house or may be purchased on bid, whichever is more economical or practicable. All printing of publications purchased by agencies that cost in excess of the threshold for Category Two ($35,000) must be competitively procured and the agency must award the contract to the vendor that submits the lowest responsive bid and that will furnish all materials used in printing.

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[16] Section 255.099(1)(a), F.S., defines substantially equal qualifications as the "qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons."

[17] Section 255.099(1), F.S.

[18] *Id.*

[19] Section 255.099(1)(b), F.S.

[20] Section 337.02(2), F.S.

[21] Section 337.02(3), F.S.

[22] Section 337.139, F.S.

[23] Section 337.14, F.S.

Florida In-state Preference
Current law provides that when agencies award a contract to have materials printed, the agency, university, college, school district, or other political subdivision of this state must grant a preference to the lowest responsible and responsive vendor having a principal place of business within this state. The preference must be 5 percent if the lowest bid is submitted by a vendor whose principal place of business is outside the state and if the printing can be performed in this state at a level of quality comparable to that obtainable from the vendor submitting the lowest bid outside the state. This preference does not apply to counties or municipalities.[24]

Effect of the Bill

The bill creates a uniform local business preference for state procurement for goods or contractual services, including construction services.

The bill defines the term "local business" to mean a business entity of which:

- At least 60 percent of the individuals who collectively own the business reside in the state.
- The business's principal place of business has been located in the state for at least one year. Principal place of business means a fully operational office at which the majority of the business's employees and principals are located.
- At least 60 percent of the business's employees reside in the state at the time of contract award.

The bill requires the state to evaluate each procurement before advertisement to determine whether a local preference is appropriate. The entity must evaluate the availability of local businesses to provide the goods or contractual services, including construction services. When the state makes an evaluation and identifies an opportunity to utilize a local preference, the state must give preference as follows:

- In a low bid procurement, when a business that is not a local business is the lowest responsive bidder and the bid of the local business is not more than 10 percent above the lowest bid or, in the alternative the actual dollar bid is not more than the established dollar threshold for that particular procurement above the lowest bid, preference must be given to the local business by offering the local business and the nonlocal business that was the lowest responsive bidder an opportunity to submit a best and final bid equal to or lower than the amount of the lowest bid.
- The contract award must be made to the bidder submitting the lowest best and final bid. In the case of a tie, the contract must be awarded to the local business.
- A business that intentionally misrepresents its qualifications as a local business in a proposal or bid loses the privilege to claim local preference status for a period of two years.

The bill provides that the preference does not apply if such preference is prohibited by law, the procurement is designated for small business, it is an emergency, or it is a sole source procurement.

B. SECTION DIRECTORY:

Section 1. creates an unnumbered section of law that defines the term "local business"; provides preference for local businesses in state contracting for goods and contractual services, including construction services; provides for applicability.

Section 2. provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[24] Section 283.35, F.S.

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could result in more business being awarded to in-state vendors as a result of the state preference.

D. FISCAL COMMENTS:

The bill may have an unknown fiscal impact on the state government. The bill may have a positive effect as the state government may experience decreased expenditures with the possibility of vendors submitting best and final offers that are at or below the low bid.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   Equal Protection Clause
   The United States Constitution provides that "[n]o State shall...deny to any person within its jurisdiction the equal protection of the laws." The expansion of the in-state preference provisions in this bill may constitute an equal protection violation. If such legislation is challenged, the court would use a rational basis test to determine the constitutionality of the alleged discriminatory treatment. Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.

   Commerce Clause
   The United States Constitution provides that Congress shall have the power to "regulate commerce...among the states." The Commerce Clause acts not only as a positive grant of powers to Congress, but also as a negative constraint upon the states. When a state or local government is acting as a "market participant" rather than a "market regulator," it is not subject to the limitations of the Commerce Clause. A state is considered to be a "market participant" when it is acting as an economic actor such as a purchaser of goods and services.

B. RULE-MAKING AUTHORITY:

The bill does not provide for rulemaking; however, rulemaking may be necessary for purposes of implementing the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Conflicting Preference Provisions

The bill creates a new standardized local business preference in an unnumbered section of law. It appears that the preference must be applied to all competitive solicitation procedures. However, current law already provides for mandatory in-state preferences in certain circumstances. The bill does not repeal the current preferences and could create confusion regarding applicability.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Government Operations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrects a drafting issue.

A bill to be entitled

An act relating to state procurement; defining the term "local business"; providing preference for local businesses in state contracting for goods and contractual services, including construction services; providing for applicability; providing an effective date.

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

Section 1. (1) As used in this section, the term "local business" means a business entity of which:

(a) At least 60 percent of the individuals who collectively own the business reside in the state.

(b) The business's principal place of business has been located in the state for at least 1 year. For purposes of this subsection, the term "principal place of business" means a fully operational office at which the majority of the business's employees and principals are located.

(c) At least 60 percent of the business's employees reside in the state at the time of contract award.

(2)(a) Every state procurement shall be evaluated before advertisement to determine whether a local preference is appropriate. The factors to be considered in such evaluation include, but are not limited to, the availability of local businesses to provide the goods or contractual services, including construction services.

(b) When the state makes a procurement for goods or

contractual services, including construction services, and identifies an opportunity to afford a local preference, the state shall give preference to a local business as follows:

1. In a low bid procurement, when a business that is not a local business is the lowest responsive bidder and the bid of a local business is no more than 10 percent above the lowest bid or, in the alternative the actual dollar bid is no more than the established dollar threshold for that particular procurement above the lowest bid, preference shall be given to the local business by offering the local business and the nonlocal business that was the lowest responsive bidder an opportunity to submit a best and final bid equal to or lower than the amount of the lowest bid.

2. The contract award shall be made to the bidder submitting the lowest best and final bid. In the case of a tie in the best and final bid between the local business and the nonlocal business, the contract award shall be made to the local business.

(3) A business that intentionally misrepresents its qualifications as a local business in a proposal or bid submitted to the state shall lose the privilege to claim local preference status for a period of 2 years.

(4) This section does not apply to a procurement if:

(a) Such preference is prohibited by law.

(b) The procurement is designated for small business.

(c) It is an emergency procurement.

(d) It is a sole source procurement.

Section 2. 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 Fresen offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 255.0991, Florida Statutes, is created to read:

255.0991 Preference to Florida businesses.—

(1)(a) When a business that is not a local business is the lowest responsive bidder and the bid of a local business is no more than 10 percent above the lowest bid or, in the alternative the actual dollar bid is no more than the established dollar threshold for that competitive solicitation above the lowest bid, an agency, university, college, school district, or other political subdivision shall grant a preference to the local business by offering the local business and the nonlocal business that was the lowest responsive bidder an opportunity to submit a best and final bid equal to or lower than the amount of the lowest bid.

(b) The contract award shall be made to the bidder

submitting the lowest best and final bid. In the case of a tie in the best and final bid between the local business and the nonlocal business, the contract award shall be made to the local business.

(2) A business that intentionally misrepresents its qualifications as a local business in a proposal or bid submitted to an agency, university, college, school district, or other political subdivision shall lose the privilege to claim local preference status for a period of 2 years.

(3) This section does not apply to a competitive solicitation if:

1. Such preference is prohibited by law.

2. The competitive solicitation is designated for small business.

3. The competitive solicitation requires emergency action.

4. It is available only from a single source.

(4) As used in this section, the term:

(a) "Local business" means a business entity of which:

1. The business's principal place of business has been located in the state for at least 1 year.

2. At least 60 percent of the business's employees reside in the state at the time of contract award.

(b) "Principal place of business" means a fully operational office at which the majority of the business's employees and principals are located.

(5) This section does not apply to transportation projects which are funded, in whole or in part, by federal aid funds.

Section 2. Section 283.35, Florida Statutes, is amended to read:

283.35 Preference given printing within the state.— When awarding a contract to have materials printed, the agency, university, college, school district, or other political subdivision of this state awarding the contract shall grant a preference to the lowest responsible and responsive vendor having a principal place of business within this state in accordance with either subsection (1) or subsection (2).

(1) The preference shall be 5 percent if the lowest bid is submitted by a vendor whose principal place of business is located outside the state and if the printing can be performed in this state at a level of quality comparable to that obtainable from the vendor submitting the lowest bid located outside the state. As used in this subsection ~~section~~, the term "other political subdivision of this state" does not include counties or municipalities.

(2)(a)1. When a business that is not a local business is the lowest responsive bidder and the bid of a local business is no more than 10 percent above the lowest bid or, in the alternative the actual dollar bid is no more than the established dollar threshold for that competitive solicitation above the lowest bid, an agency, university, college, school district, or other political subdivision shall grant a preference to the local business by offering the local business and the nonlocal business that was the lowest responsive bidder an opportunity to submit a best and final bid equal to or lower than the amount of the lowest bid.

2. The contract award shall be made to the bidder submitting the lowest best and final bid. In the case of a tie in the best and final bid between the local business and the nonlocal business, the contract award shall be made to the local business.

(b) A business that intentionally misrepresents its qualifications as a local business in a proposal or bid submitted to an agency, university, college, school district, or other political subdivision shall lose the privilege to claim local preference status for a period of 2 years.

(c) This subsection does not apply to a competitive solicitation if:

1. Such preference is prohibited by law.

2. The competitive solicitation is designated for small business.

3. The competitive solicitation requires emergency action.

4. It is available only from a single source.

(d) As used in this subsection, the term:

1. "Local business" means a business entity of which:

a. The business's principal place of business has been located in the state for at least 1 year.

b. At least 60 percent of the business's employees reside in the state at the time of contract award.

2. "Principal place of business" means a fully operational office at which the majority of the business's employees and principals are located.

Section 3. Section 287.084, Florida Statutes, is amended to read:

287.084 Preference to Florida businesses.—

(1)~~(a)~~ When an agency, university, college, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in another ~~a~~ state or political subdivision thereof, the agency, university, college, school district, or other political subdivision must grant a preference for the purchase of such personal property to the lowest responsible and responsive vendor having a principal place of business in this state in accordance with either subsection (2) or subsection (3).

(2)(a)1. If the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is a state or political subdivision which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the agency, university, college, school district, or other political subdivision of this state shall award a preference to the lowest responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. In a competitive solicitation in which the lowest bid is submitted by a vendor whose principal place of business is located outside the state and that state does not grant a preference in competitive

solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive vendor having a principal place of business in this state shall be 5 percent.

~~(b) Paragraph (a) does not apply to transportation projects for which federal aid funds are available.~~

~~(c) As used in this section, the term "other political subdivision of this state" does not include counties or municipalities.~~

(b) ~~(2)~~ A vendor whose principal place of business is outside this state must accompany any written bid, proposal, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

(c) This subsection does not apply to transportation projects which are funded, in whole or in part, by federal aid funds.

(d) As used in this subsection, the term "other political subdivision of this state" does not include counties or municipalities.

(3)(a)1. When a business that is not a local business is the lowest responsive bidder and the bid of a local business is no more than 10 percent above the lowest bid or, in the alternative the actual dollar bid is no more than the established dollar threshold for that competitive solicitation

above the lowest bid, an agency, university, college, school district, or other political subdivision shall grant a preference to the local business by offering the local business and the nonlocal business that was the lowest responsive bidder an opportunity to submit a best and final bid equal to or lower than the amount of the lowest bid.

2. The contract award shall be made to the bidder submitting the lowest best and final bid. In the case of a tie in the best and final bid between the local business and the nonlocal business, the contract award shall be made to the local business.

(b) A business that intentionally misrepresents its qualifications as a local business in a proposal or bid submitted to an agency, university, college, school district, or other political subdivision shall lose the privilege to claim local preference status for a period of 2 years.

(c) This subsection does not apply to a competitive solicitation if:

1. Such preference is prohibited by law.

2. The competitive solicitation is designated for small business.

3. The competitive solicitation requires emergency action.

4. It is available only from a single source.

(d) This subsection does not apply to transportation projects which are funded, in whole or in part, by federal aid funds.

(e) As used in this subsection, the term:

1. "Local business" means a business entity of which:

a. The business's principal place of business has been located in the state for at least 1 year.

b. At least 60 percent of the business's employees reside in the state at the time of contract award.

2. "Principal place of business" means a fully operational office at which the majority of the business's employees and principals are located.

(4) ~~(3)~~ (a) A vendor whose principal place of business is in this state may not be precluded from being an authorized reseller of information technology commodities of a state contractor as long as the vendor demonstrates that it employs an internationally recognized quality management system, such as ISO 9001 or its equivalent, and provides a warranty on the information technology commodities which is, at a minimum, of equal scope and length as that of the contract.

(b) This subsection applies to any renewal of any state contract executed on or after July 1, 2012.

Section 4. This act shall take effect July 1, 2013.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to preference in award of governmental contracts; creating s. 255.0991, F.S.; providing a preference for local businesses in awarding competitively bid contracts for construction services; providing for applicability; defining

terms; amending s. 283.35, F.S.; providing an alternative preference for local businesses in awarding competitively bid contracts for printing contracts; providing for applicability; defining terms; amending s. 287.084, F.S.; providing a preference for local businesses in awarding competitively bid contracts for goods and contractual services; providing for applicability; defining terms; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1093 Volunteer Health Services
SPONSOR(S): Health Quality Subcommittee; Hudson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1690

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	McElroy	O'Callaghan
2) Appropriations Committee		Rodriguez	Leznoff
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Pursuant to s. 766.1115, F.S., the Access to Health Care Act (Act), a governmental contractor, who contracts with a health care provider to provide volunteer and uncompensated health care services to low-income individuals, has exclusive control and oversight over patient eligibility, referral determinations, and patient care.

The bill amends the Act to authorize the health care provider to determine patient eligibility, referrals, and care. The bill specifies that the patient selection and initial referral "may" be made by the government contractor or provider.

The bill requires the Department of Health (DOH) to provide an online listing of all health care providers volunteering under this program including the duration of service (in hours) and the number of patient visits by provider.

The bill creates a continuing education credit for health care providers who provide health care services in accordance with the Act.

The bill retains DOH's review and oversight authority over patient eligibility and referral determinations and requires DOH to adopt rules that specify the required methods for making and approving these determinations.

There is an insignificant fiscal impact on state government that may be absorbed within existing agency resources.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Access to Health Care Act

Section 766.1115, F.S., is entitled the "Access to Health Care Act" (Act).[1] The Act was enacted in 1992 to encourage health care providers to provide care to low-income persons.[2] This section extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who provide volunteer, uncompensated health care services to low-income individuals as an agent of the state. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the Act.

Health care providers under the Act include:[3]

- A birth center licensed under chapter 383.
- An ambulatory surgical center licensed under chapter 395.
- A hospital licensed under chapter 395.
- A physician or physician assistant licensed under chapter 458.
- An osteopathic physician or osteopathic physician assistant licensed under chapter 459.
- A chiropractic physician licensed under chapter 460.
- A podiatric physician licensed under chapter 461.
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this section.
- A dentist or dental hygienist licensed under chapter 466.
- A midwife licensed under chapter 467.
- A health maintenance organization certificated under part I of chapter 641.
- A health care professional association and its employees or a corporate medical group and its employees.
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as a health care professional.
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by the listed licensed professionals, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

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[1] Chapter 64I-2, F.A.C., refers to the Access to Health Care Act as the "Volunteer Health Care Provider Program."

[2] Low-income persons are defined in the Act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department.

[3] Section 766.1115, F.S.

A health care provider may not subcontract for the provision of services.[4]

A "governmental contractor" is defined in the Act as DOH, a county health department, a special taxing district with health care responsibilities, or a hospital owned and operated by a governmental entity.[5]

The definition of "contract" under the Act provides that the contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or any public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.[6]

The Act further specifies contract requirements. The contract must provide that:

- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.
- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor must make patient selection and initial referrals.
- The health care provider must accept all referred patients, however the contract may specify limits on the number of patients to be referred and patients may not be transferred to the provider based on a violation of the antidumping provisions of the Omnibus Budget Reconciliation Acts.
- Patient care, including any follow-up or hospital care, is subject to approval by the governmental contractor.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of actions related to medical negligence.[7]

The individual accepting services through the contracted provider must not have medical or dental care coverage for the illness, injury, or condition in which medical or dental care is sought.[8] The health care provider cannot perform experimental procedures and clinically unproven procedures.[9] The governmental contractor must determine whether or not a procedure is authorized under the Act.[10]

DOH has adopted rules that specify required methods of determination and approval of patient eligibility and referral, as well as services and procedures authorized to be provided by the health care provider. These rules include, but are not limited to, the following:

- The provider must accept all patients referred by DOH. The number of patients that must be accepted may be limited in the contract.

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[4] Rule 64I-2.004, F.A.C.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] Rule 64I-2.002, F.A.C.
[9] Rule 64I-2.006, F.A.C.
[10] *Id.*

- The provider shall comply with DOH rules regarding determination and approval of the patient eligibility and referral.
- The provider shall complete training by DOH regarding compliance with the approved methods of determination and approval of patient eligibility and referral.
- DOH shall retain review oversight authority of the patient eligibility and referral determination.[11]

As of June 30, 2012, there were 12,867 licensed, contracted volunteer providers in the state.[12]

Annually, DOH reports a summary to the Legislature of the efficacy of access and treatment outcomes from the provision of health care services for low-income persons under the Act.[13]

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the right to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event or omission of action in the scope of his or her employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. In addition, the law limits the recovery of any one person to $200,000 for one incident and limits all recovery related to one incident to a total of $300,000. The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps but the plaintiff cannot recover the excess damages without action by the Legislature.[14]

The Florida Supreme Court, in *Stoll v. Noel* set forth the test to be utilized in determining whether a health care provider is entitled to sovereign immunity.[15] Specifically, whether a health care provider is entitled to sovereign immunity turns on the degree of control retained or exercised by the governmental entity.[16] The degree of control over a health care provider necessary for agency status cannot be established through contractual language but rather must be based upon the actual relationship between the parties.[17]

Effect of Proposed Changes

Under s. 766.1115, F.S., the "Access to Health Care Act" (Act), a governmental contractor, who contracts with a health care provider to provide volunteer and uncompensated health care services to low-income individuals, retains exclusive control and oversight over patient eligibility, referral determinations, and patient care. Patient selection and initial referral must be made solely by the

[11] Section 766.1115 (10), F.S.
[12] *Id.*
[13] Department of Health, Volunteer Health Services Program Annual Report 2010-2011, available at: http://doh.state.fl.us/workforce/vhs/index.html (last visited on March 23, 2013).
[14] Section 768.28(5), F.S.
[15] *Stoll v. Noel,*694 So.2d 701 (Fla. 1997)
[16] *Id.*
[17] *Robinson v. Linzer,* 758 So.2d 1163 (Fla. 4th DCA 2000).

governmental contractor and the health care provider must accept all referred patients.[18] Patient care, including any follow-up or hospital care, is subject to approval by the governmental contractor.[19]

Whether health care providers are agents of the state turns on the degree of control retained or exercised by governmental contractors, including DOH.[20] Currently, exclusive control for patient eligibility, referrals, and patient care rests with the governmental contractors. As long as the health care providers are working within the scope of their duties under the contract, they are agents of the state and are entitled to sovereign immunity.[21]

The bill amends the Act to authorize health care providers to make patient eligibility, referral, and care determinations and thereby diminishes government control. The bill specifies that the patient selection and initial referral "may" be made by the government contractor or provider. Removing the decision-making process for the government may result in a court determining that there was not sufficient government control to create an agency relationship.[22]

The bill requires DOH to provide an online listing of all health care providers volunteering under this program including the duration of service (in hours) and the number of patient visits by provider. There is currently no reporting requirement for this information either online or in the annual report required under the Act.

The bill creates a continuing education credit for health care providers who provide services under the Act. Specifically, health care providers can earn one credit hour for every one hour volunteered up to a maximum of 8 credit hours.

The bill retains DOH's review and oversight authority over patient eligibility and referral determinations, and requires DOH to adopt rules that specify the required methods under which these determinations must be made and approved. The bill requires such rules to give providers the greatest flexibility possible in order to serve eligible patients.

The bill also deletes the requirement that DOH adopt a rule requiring a provider to complete training conducted by DOH regarding compliance with the approved methods for determination and approval of patient eligibility and referral.

B. SECTION DIRECTORY:

Section 1. Amends s. 766.1115, F.S., relating to health care providers; creation of relationship with governmental contractors.
Section 2. 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:

[18] Section 766.1115, F.S.
[19] *Id.*
[20] *Supra* fn 16.
[21] Section 766.1115, F.S.
[22] Correspondence from DOH, 2013 Florida Legislative Session, Review of Proposed Amendments to s. 766.115, F.S., HB 1093 (on file with the Florida House of Rep. Health Care Appropriations Subcommittee).

The bill has an insignificant fiscal impact that may be absorbed within existing agency resources.

The bill requires DOH to provide an online listing of all health care providers volunteering under this program including the duration of service (in hours) and the number of patient visits by provider. According to DOH, reporting data by volunteer physicians can be done within existing resources by using the existing Medical Quality Assurance licensure and enforcement database, COMPAS.[24] The use of this existing system will eliminate the need to create a new online database.[25]

The bill retains DOH's review and oversight authority over patient eligibility and referral determinations, and requires DOH to adopt rules that specify the required methods under which these determinations must be made and approved. The fiscal impact associated with rule promulgation may be absorbed within existing agency resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill eliminates the exclusive control for eligibility determinations and patient care previously held by the governmental contractors. The bill specifies that the patient selection and initial referral "may" be made by the government contractor or provider. Removing the decision-making process for the government may result in a court determining that there was not sufficient government control to create an agency relationship. Although the state still retains some review and oversight authority over the providers, there may be an increase in the number and duration of lawsuits filed against the health care providers who deliver services under the Act.

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:

DOH has appropriate rule-making authority to implement the provisions of the bill.

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[24] Correspondence from DOH, 2013 Legislative Session, Review of Proposed Amendments to s. 766.1115, F.S., Data Reporting Requirement Fiscal Impact (on file with the Florida House of Rep. Health Care Appropriations Subcommittee).

[25] *Id.*

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a continuing education credit for health care providers who provide services under the Act. Specifically, health care providers can earn one credit hour for every one hour volunteered up to a maximum of 8 credit hours. The bill however fails to cross-reference s. 766.1116 or s. 456.013(9), F.S., which allow the DOH to waive up to 25% of the continuing education hours required for licensure renewal if the health care practitioner provides health care services to low-income or indigent individuals, or underserved populations, for at least 160 hours during the renewal cycle. This omission may confuse health care providers as to their eligibility for these credit hours, and whether the newly established continuing education credit is in addition to the existing credit.

The bill creates a requirement for DOH to provide an online listing of all providers volunteering under this program along with the number of hours and patient visits each provided. It is unclear as to what "hours" refers to in this section. The bill does not specify how, or the frequency of which, this information is to be reported to DOH. Additionally, the bill does not provide an enforcement mechanism for DOH to collect this information from non-responsive providers.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Health Quality Subcommittee adopted two amendments to HB 1093 and reported the bill favorably as a committee substitute. The amendments:

- Reinstate the DOH's authority to adopt rules that specify methods for the determination and approval of patient eligibility and referral.
- Require the rules adopted by the DOH to provide health care providers flexibility in order to serve eligible patients.
- Reinstate the DOH's review and oversight authority of patient eligibility and referral determinations.
- Reinstate language relating to anti-dumping prohibitions.

The analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

A bill to be entitled

An act relating to volunteer health services; amending s. 766.1115, F.S.; revising requirements for patient referral under the "Access to Health Care Act"; eliminating a requirement that the governmental contractor approve all followup or hospital care; requiring the Department of Health to post specified information online concerning volunteer providers; permitting volunteer providers to earn continuing education credit for participation in the program up to a specified amount; providing that rules adopted by the department give providers the greatest flexibility possible in order to serve eligible patients; providing an effective date.

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

Section 1. Subsections (10) and (11) of section 766.1115, Florida Statutes, are renumbered as sections (11) and (12), respectively, a new subsection (10) is added to that section, and paragraphs (d), (f), and (g) of subsection (4) and present subsections (8) and (10) of that section are amended, to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services on or after April 17, 1992, as an agent of the governmental contractor is an agent for purposes of s.

768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider under contract with the state may not be named as a defendant in any action arising out of medical care or treatment provided on or after April 17, 1992, under contracts entered into under this section. The contract must provide that:

(d) Patient selection and initial referral may ~~must~~ be made ~~solely~~ by the governmental contractor or the provider~~, and the provider must accept all referred patients~~. ~~However, the number of patients that must be accepted may be limited by the contract, and~~ Patients may not be transferred to the provider based on a violation of the antidumping provisions of the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990, or chapter 395.

~~(f) Patient care, including any followup or hospital care, is subject to approval by the governmental contractor.~~

(f)~~(g)~~ The provider is subject to supervision and regular inspection by the governmental contractor.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

(8) REPORTING ~~REPORT TO THE LEGISLATURE~~.—

(a) Annually, the department shall report to the President of the Senate, the Speaker of the House of Representatives, and the minority leaders and relevant substantive committee

chairpersons of both houses, summarizing the efficacy of access and treatment outcomes with respect to providing health care services for low-income persons pursuant to this section.

(b) The department shall provide an online listing of all providers volunteering under this program with their hours and the number of patient visits each provided.

(10) CONTINUING EDUCATION CREDIT.—A provider may fulfill 1 hour of continuing education credit by performing 1 hour of volunteer services to the indigent as provided in this section, up to a maximum of eight credits per licensure period for that provider.

(11) ~~(10)~~ RULES.—The department shall adopt rules to administer this section in a manner consistent with its purpose to provide and facilitate access to appropriate, safe, and cost-effective health care services and to maintain health care quality. ~~The rules may include services to be provided and authorized procedures.~~ Notwithstanding the requirements of paragraph (4)(d), the department shall adopt rules that specify required methods for determination and approval of patient eligibility and referral by government contractors and providers. The rules adopted by the department under this subsection shall give providers the greatest flexibility possible in order to serve eligible patients. The department shall retain review and oversight authority of the patient eligibility and referral determination ~~and the contractual conditions under which a health care provider may perform the patient eligibility and referral process on behalf of the department. These rules shall include, but not be limited to,~~

~~the following requirements:~~

~~(a) The provider must accept all patients referred by the department. However, the number of patients that must be accepted may be limited by the contract.~~

~~(b) The provider shall comply with departmental rules regarding the determination and approval of patient eligibility and referral.~~

~~(c) The provider shall complete training conducted by the department regarding compliance with the approved methods for determination and approval of patient eligibility and referral.~~

~~(d) The department shall retain review and oversight authority of the patient eligibility and referral determination.~~

Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1245 Building Construction
SPONSOR(S): Business & Professional Regulation Subcommittee; Davis
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1252

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	13 Y, 0 N, As CS	Livingston	Luczynski
2) Appropriations Committee		Topp BDT	Leznoff
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill amends a number of provisions related to building construction in the state. The bill:

- revises noticing requirements of alleged violators of local codes and ordinances;
- exempts specified septic tank system inspections and evaluations when remodeling a home and establishes guidelines for construction proximate to a system;
- exempts certain demolition work and volunteer work on a construction project from the requirements for licensure as a contractor;
- amends the definition of plumbing contractor to include a person licensed under liquefied petroleum gas provisions to be among those not requiring certification or registration as a plumbing contractor when disconnecting or reconnecting water lines in the servicing or replacement of an existing water heater;
- increases the maximum civil penalty a local governing body may levy against an unlicensed contractor;
- revises local government and Department of Business and Professional Regulation (DBPR) collection retention percentages for unpaid fines and costs ordered by the Construction Industry Licensing Board;
- removes a requirement that local governments send minor violation notices of noncompliance to contractors prior to seeking fines and other disciplinary penalties;
- increases the maximum civil penalty by local code enforcement officers against unlicensed electrical and alarm system contractors from $500 to $2,000;
- prohibits adopting any mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code;
- authorizes that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site;
- specifies DBPR procedures for Florida Building Code product approval compliance and authorizes the process for expedited 10-day approval reviews;
- renames the statewide standard for energy efficiency;
- specifies that residential heating and cooling systems need only meet the manufacturer's approval and listing of equipment;
- changes the purpose of the Florida Building Energy-Efficiency Rating Act from rating system development to energy rating system oversight;
- removes the requirement that a building energy-efficiency rating system provide a uniform rating scale of the efficiency of buildings;
- allows DBPR to recognize and approve another nationally recognized building energy-efficiency rating system; and
- clarifies DBPR's role in developing, adopting and administering the building energy-efficiency system.

DBPR indicates that the bill will have a significant positive fiscal impact.

DOH indicates a significant negative fiscal impact, however, due to the discretionary nature of certain provisions of the bill, it appears that any fiscal impact would be self-imposed by the department.

The effective date of the bill is July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

Code Enforcement Notices

Notices to alleged violators of local government codes and ordinances are governed by s. 162.12, F.S. There are four options cited in s. 162.12(1), F.S., by which notices are provided, including by:

> certified mail to the address listed in the tax collector's office for tax notices, or to any other address provided by the property owner in writing to the local government for the purpose of receiving notices. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.;

The other options for serving notices in s. 162.12(1), F.S., are:

- hand delivery by the sheriff, code inspector, or other designated person;
- leaving at the violator's residence with any person residing there above the age of 15; or
- for commercial premises, leaving the notice with the manager or other person in charge.

In addition to the noticing provisions outlined in s. 162.12(1), F.S., the code enforcement board may serve notice through publication or posting methods.

Onsite Sewage Treatment and Disposal Systems and Remodeling

An "onsite sewage treatment and disposal system (system)" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system.[1]

Section 381.0065(3), F.S., authorizes the Department of Health (DOH) to adopt rules administering system provisions and to perform system application reviews, site evaluations and issue permits. In addition, DOH may inspect residential system construction, modification, and repair. Currently, a system modification, replacement, or upgrade is not required for a remodeling addition to a single-family home if a bedroom is not added.[2]

Construction Contracting and Licensure to Demolish

Contracting is defined in the context of the regulation of construction contracting under ch. 489, F.S.

Section 489.103, F.S., specifies several exemptions from licensure as a contractor and includes owners of property when acting as their own contractor and providing direct, onsite supervision themselves of all work not performed by licensed contractors and the owner complies with qualifying criteria specified in this section.

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[1] Section 381.0065(2)(k), F.S.
[2] Section 381.0065(4)(aa), F.S.

Section 489.105(3), F.S., defines "contractor" as a person, who for compensation undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others. Prior to changes to this definition during the 2012 legislative session, demolition of buildings or residences that were three stories in height or less, as well as, steel tanks, towers and other structures 50 feet in height or less did not require licensure pursuant to ch. 489, F.S.

Plumbing/LP gas contracting

Plumbing Contractors
Section 489.105(3)(m), F.S., defines "plumbing contractor." This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6), F.S., and does not require certification or registration of an authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater.

Chapter 527, F.S., governs the sale of liquefied petroleum gas and defines numerous categories of licensure by the Department of Agriculture and Consumer Services. Among these categories, "LP gas installer" is defined to mean any person who is engaged in the liquefied petroleum gas business and whose services include the installation, servicing, altering, or modifying of apparatus, piping, tubing, tanks, and equipment for the use of liquefied petroleum or natural gas.

Grandfathering Provisions for Electrical and Alarm System Contractors

Chapter 489, F.S., requires that all individuals who practice construction and electrical contracting in Florida must either be "certified" or "registered." Section 489.514, F.S., provides that the Electrical Contractors Licensing Board issue a "certification" to an electrical, electrical specialty or alarm system contractor who is "registered" upon receipt of a completed application, payment of an appropriate fee, and evidence that he or she meets statutorily specified criteria. The criteria include possessing a registered local license, passing an approved written examination, and having at least five years of contracting. Applicants wishing to obtain a "certificate" pursuant to this statutory "grandfather" allowance were required to make application by November 1, 2004.

Penalties for Unlicensed Contracting

Prohibitions and penalties for construction contracting and electrical and alarm system contracting are found in Part I, ch. 489, F.S., and Part II, ch. 489, F.S., respectively. The local governing body of a county or municipality is authorized to enforce codes and ordinances against unlicensed contractors. The local governing board may enact an ordinance establishing procedures for implementing codes, including a schedule of penalties to be assessed by the code enforcement officer for violations.[3] The maximum civil penalty to be levied for a citation may not exceed $500.[4]

A person charged with a violation has two options: correct the cited violation and pay the civil penalty, or, request an administrative hearing before the enforcement or licensing board or designated special magistrate. If either of these entities finds that a violation exists, it may order the violator to pay a civil penalty of not less than the original citation but not more than $1,000 per day for each construction contracting violation and $500 for each electrical contracting violation.[5]

[3] See ss. 489.127(5)(c) and 489.531(4)(c), F.S.
[4] Id.
[5] See 489.127(5)(f) and 489.531(4)(f), F.S.

Outstanding Fines Issued by the Florida Construction Industry Licensing Board

Section 489.127(6), F.S., authorizes local municipalities and counties to collect unpaid fines and costs ordered by the Florida Construction Industry Licensing Board. These local governments may retain 25 percent of the total amount collected if they remit the remaining 75 percent to the DBPR.[6] According to DBPR, the department currently uses the Department of Financial Services' approved collections vendor to collect unpaid fines and costs when a required payment remains delinquent for more than 6 months.[7] The vendor charges a 23 percent fee in order to collect the ordered amount. This fee becomes due upon collection regardless of who collects the unpaid fine.

Compliance with State Law and Local Ordinances on Contracting

Section 489.131(7)(a), F.S., provides that local government contracting fines and other penalties are assessed for the primary purpose of gaining compliance with the laws regulating the unlicensed practice of contracting. The subsection further requires that local jurisdictions issue a notice of noncompliance prior to seeking fines and other penalties for first-time "minor violations."[8] Such notices of non-compliance must identify the ordinance violated, specify a method of compliance, and provide a reasonable time period for compliance. Failure to address a notice of non-compliance is grounds for additional disciplinary proceedings.

Residential Fire Sprinklers

In 2010, the Legislature amended s. 553.73(17), F.S., to prohibit the Florida Building Commission from adopting or incorporating mandatory fire sprinklers provisions in section R313 of the most current version of the International Residential Code (IRC) as part of the Florida Building Code or as a local amendment to the Code.[9] Pursuant to the enacted prohibition, the Florida Building Commission did not adopt the current version section as part of the 2010 Florida Building Code and, according to DBPR, the Commission is not considering it for the next edition of the Code.[10]

Florida Building Commission

The Florida Building Commission (ss. 553.76 and 553.77, F.S.) is a 25-member technical body responsible for the development, maintenance and interpretation of the Florida Building Code. The Commission also approves products for statewide acceptance and administers the Building Code Training Program. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the code.

Electronic Documents

The Building Code requires that a permit applicant submit one or more copies of construction documents to the building official and specifically authorizes applicants to submit such documents electronically when authorized by the local building official.[11] Once reviewed and approved by the building official, the Florida Building Code requires that one set of construction documents be retained by the building official and another be provided to the applicant to "be kept at the site of work and be

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[6] DBPR does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.

[7] Florida Department of Business and Professional Regulation, Agency Analysis of SB 1252: Building Construction (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).

[8] A violation is deemed "minor" if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm.

[9] Chapter 2010-176, s. 32, Laws of Florida.

[10] Florida Department of Business and Professional Regulation, Agency Analysis of SB 1252: Building Construction (Mar. 13, 2013) (on file with the Business and Professional Regulation Subcommittee.

[11] See s. 468.604(4), F.S.

open to inspection by the building official or a duly authorized representative" pursuant to s.107.3.1, Florida Building Code, Building (2010).

Florida Building Code and the State Product Approval Program

The State Product Approval System, which went into effect October 1, 2003, covers certain structural products (i.e., panel walls, exterior doors, roofing products; skylights, windows, shutters, structural components, and new and innovative products) and provides manufacturers of these products with the choice of obtaining state approval as an alternative to receiving local approval.[12]

To obtain state approval, a manufacturer must demonstrate compliance with applicable standards and provisions of the Florida Building Code by submitting one of the following reports:

- a certification mark or listing from an approved certification agency,
- a test report from an approved test laboratory,
- a product evaluation report from an evaluation entity authorized under s. 553.842(8)(a), F.S., or
- a product evaluation report developed, signed and sealed by a Florida licensed engineer or architect.

Currently, applications for product approval using the test report method and evaluation report method are subject to approval by the Florida Building Commission using the normal approval process. However, applications for product approval using the certification method are subject to approval by DBPR using the expedited 10-day review process as outlined in s. 553.842(5), F.S.

Florida Energy Code

Part V of ch. 553, F.S.(ss. 553.900 – 553.912), titled "Florida Thermal Efficiency Code," was enacted in 1979 in response to the oil crisis of the 70s and required the establishment of a "statewide thermal efficiency code." The Florida Building Commission adopted the Florida Energy Efficiency Code for Building Construction (FEECBC), which remained Florida's statewide energy code from 1979 to 2012.

In 2008, s. 553.73(7)(a), F.S., was amended to require the Florida Building Commission to use the International Energy Conservation Code as the foundation for Florida's Energy Code, while retaining the Florida-specific criteria which were established as part of the FEECBC.[13] The 2008 legislation required the Florida Building Commission to effectively adopt both the International Energy Code and the Florida Energy Efficiency Code for Building Construction. On March 15, 2012, the Florida Building Commission adopted the 2010 Florida Building Code – Energy Conservation, which is based on the 2009 IECC but maintains the Florida-specific criteria of the FEECBC.

Although Florida's 2010 Florida Building Code – Energy Conservation is different from the Florida Energy Efficiency Code for Building Construction, according to DBPR, most of the significant changes to its content result directly from the Florida-specific changes approved by the Florida Building Commission through the code update process.[14]

Florida Building Energy Efficiency Rating System (BERS)

Chapter 553, part VIII, F.S., is known as the "Florida Building Energy-Efficiency Rating Act." The Act requires DBPR to provide a statewide uniform system for rating the energy efficiency of buildings. In addition, DBPR is required to develop a training and certification program to certify energy raters. DBPR established the Building Energy Raters System (BERS) program to train and certify energy raters. DBPR currently outsources administration of the BERS program to the Florida Solar Energy

[12] See s. 553.842, F.S.

[13] Chapter 2008-227, s. 108, Laws of Florida.

[14] Florida Department of Business and Professional Regulation, Agency Analysis of SB 1252: Building Construction (Mar. 13, 2013) (on file with the Business and Professional Regulation Subcommittee).

Center (FSEC) on a no-cost basis through a Memorandum of Understanding.[15] Energy raters are trained and tested by FSEC and the DBPR issues the rater a certificate based on completion of the FSEC program. The rating system is a voluntary program and does not require any rating be performed.

Currently, BERS rules adopt by reference the 2006 Mortgage Industry National Home Energy Rating Systems Accreditation Standards, promulgated by the National Association of State Energy Officials (NASEO)/Residential Energy Services Network (RESNET) as the standard for energy rater certifications under the BERS program. As a national program for energy rating, RESNET's services and rating procedures are similar to those of the BERS program. Based on adoption of the NASEO standard, Florida BERS raters are also required to undertake national examinations and certifications.

Effect of proposed changes

Section 1 amends s. 162.12, F.S., on noticing alleged violators of local codes and ordinances to qualify that a notice sent by certified mail include a return receipt request. The notice may be sent to either an address from the tax collector's office or one from the database of the county property appraiser. The section also allows the local government to provide notices to any address it may have for the property owner or through publication or posting methods.

Section 2 amends s. 381.0065, F.S., on onsite sewage treatment and disposal systems when remodeling a single family home that does not include the addition of a bedroom. Currently, a system modification, replacement or upgrade of a system is not required in these types of remodeling projects. This section specifies that an "existing inspection or evaluation, or an existing system tank pump-out" is also not required for such remodels.

This section also clarifies that the remodeling addition or modification may not cover any part of the system or encroach upon a required setback or the unobstructed area as determined by a timely local health department floor and site plan review.

Section 3 amends s. 489.103, F.S., to create an exemption from contractor licensure for a person acting voluntarily or out of charity and assists a residential property owner in making improvements to the owner's property. The exemption does not apply to a person who has a contract with the property owner to act in the capacity of a contractor or otherwise represents that he or she is qualified to engage in contracting. The property owner must be present on the job site and actively supervising work performed by the volunteer.

Section 4 amends s. 489.105, F.S., to define the term "demolish," for purposes of licensure, as it existed prior to changes in 2012, and create an exemption from licensure for work that applies to demolition of buildings or residences that are three stories in height or less, as well as, steel tanks, towers and other structures 50 feet in height or less.

This section defines a plumbing contractor to include a person licensed under the liquefied petroleum gas provisions of ch. 527, F.S., among those not requiring certification or registration as a plumbing contractor when disconnecting or reconnecting water lines in the servicing or replacement of an existing water heater.

Section 5 amends s. 489.127, F.S., on construction contracting prohibitions and penalties to increase the maximum amount local municipalities and counties may charge for unlicensed contracting citations from $500 to $2,000 and to increase the maximum civil penalties for unlicensed contracting from $1,000 to $1,500 per day of each violation. In addition, the bill increases the percentage of funds a local government may retain when they collect unpaid fines and costs ordered by the Construction Industry Licensing Board from 25 percent to 75 percent. The remaining 25 percent would be remitted to DBPR.

[15] Id. The remainder of this section of the analysis is drawn from the DBPR Agency Analysis of the bill.

As noted in the DBPR bill analysis Section 2 of the bill appears to contain an internal inconsistency by requiring a local licensing board or special magistrate to assess a civil penalty which is no less than the citation amount but no more than $1,500. Since the maximum citation is more than the maximum penalty, a local board or magistrate would be unable to comply with the provisions since the minimum civil penalty required ($2000) would be more than the $1,500 maximum civil penalty permitted.[16]

Section 6 amends s. 489.131, F.S., remove the statutory intent that collection of fines and imposition of other penalties is secondary to the goal of attaining compliance with current construction contracting regulations. In addition, the section removes the requirement that local counties and municipalities issue a notice of non-compliance for first time minor violations prior to seeking fines and other disciplinary penalties.

Section 7 amends s. 489.514, F.S., on certification for registered contractors to re-open and extend the period for grandfathering of "registered" electrical, specialty electrical and alarm system contractor licenses to statewide "certified" licenses until November 1, 2015. This is consistent with the extension of a similar grandfather allowance for construction contractors, which in 2012 was extended to November 1, 2015.

Section 8 amends s. 489.531, F.S., to increase the maximum amount local municipalities and counties may charge for unlicensed electrical and alarm system contracting citations from $500 to $2,000.

Section 9 amends s. 553.73, F.S., to prohibit adopting any mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code.

Section 10 amends s. 553.74, F.S., relating to the Florida Building Commission to add a 26th member to the Commission who will represent the natural gas distribution system industry.

Section 11 amends s. 553.79, F.S., to authorize that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site.

Section 12 amends s. 553.842, F.S., to require that DBPR approve products that demonstrate compliance with the Florida Building Code using product evaluation reports from approved evaluation entities. Applications for product approval using product evaluation reports may be considered and approved by DBPR under the expedited 10-day review process. The current procedure requires applications be held until the next meeting of the Florida Building Commission.

Section 13 amends s. 553.901, F.S., to rename the statewide standard for energy efficiency the Florida Building Code-Energy Conservation, to reflect a coordination of construction standards related to energy efficiency within the Florida Building Code adopted in accordance with s. 553.73(7)(a), F.S.

Section 14 amends s. 553.902, F.S., to conform to the change made by section 13.

Section 15 amends s. 553.903, F.S., to conform to the change made by section 13.

Section 16 amends s. 553.904, F.S., to conform to the change made by section 13.

Section 17 amends s. 553.905, F.S., to conform to the change made by section 13.

Section 18 amends s. 553.906, F.S., to conform to the change made by section 13.

[16] Florida Department of Business and Professional Regulation, Agency Analysis of SB 1252: Building Construction (Mar. 13, 2013) (on file with the Business and Professional Regulation Subcommittee).

Section 19 amends s. 553.912, F.S., to conform to the change made by Section 13 and codifies the current energy code provision applicable to existing residential heating and cooling equipment excepting that equipment from meeting minimum equipment efficiencies unless necessary to preserve the listing of the equipment.

Section 20 amends s. 553.991, F.S., of the Florida Building Energy-Efficiency Rating Act to identify the purpose of the Act as statewide oversight of energy rating systems to promote energy efficiency rather than to develop a statewide rating system.

Section 21 amends s. 553.992, F.S., to direct DBPR to establish and maintain criteria for a building energy-efficiency rating system and to require that the department's rules specifically prohibit a sole provider of functions related to the system.

Section 22 amends s. 553.993, F.S., to include a definition of "building energy-efficiency rating system" as a system created by one of three national systems or the Florida Solar Energy System and allows DBPR to recognize and approve another nationally recognized rating system. The section also provides definitions for "energy auditor," "energy-efficiency rating," and energy rater."

Section 23 amends s. 553.995, F.S., to remove the requirement that a building energy-efficiency rating system provide a uniform rating scale of the efficiency of buildings; to direct the efforts of a designated stakeholders' group to provide input on the adoption and administration of the system; and to specify that DBPR approve training and certification programs applicable to raters.

Section 24 provides an effective date of July 1, 2013.

B. SECTION DIRECTORY:

See A., Effect of proposed changes, above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR indicates that the bill will likely produce revenues (that will exceed expenditures) related to implementation primarily of the licensure sections of the bill of: $677,159 in FY 2013-14, $518,219 in FY 2014-15, and $601,509 in FY 2015-16.[17]

The Department of Health (DOH) indicates the bill will have a fiscal impact in loss of revenue from the prohibition on existing system inspections and evaluations. The loss of revenue is expected to be minimal.

2. Expenditures:

DBPR reports that the bill will require increased expenditures in the department, however, the expenditures will be less than the projected revenues the department would anticipate receiving as a result of CS/HB 1245 becoming law. Specifically, DBPR reports that the estimated expenditures to implementation the bill would be: $436,934 in FY 2013-14, $161,075 in FY 2014-15, and

[17] Department of Business and Professional Regulation, Bill Analysis on CS/HB 1245, dated April 3, 2013, on file with House Appropriations Committee.

$167,739 in FY 2015-16.[18] DBPR would need an appropriation to increase the budget authority within the Professional Regulation Program to implement and accomplish the provisions of the bill.

The Department of Health indicates the bill will have a fiscal impact from the increased workload of eviewing applications within five business days without a specific fee. Staff works quickly to review applications so as not to delay building permits unduly; however, with a mandated deadline as proposed in the legislation, there may be a need to add staff in order to be in compliance. The cost for additional staff cannot be determined at this time. However, the bill language states "The local health department may review a floor plan and site plan that show the distance of the remodeling addition or modification from the system to determine if a setback or unobstructed area is impacted." Since this language allows for a permissive review by DOH it is believed that this workload can be handled through reprioritizing the resources formerly used existing onsite sewage system inspections or evaluations. Any fiscal impact to the department would be self-imposed, as the relevant provisions of the bill are discretionary.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain DFS approved collection vendors currently utilized by DBPR may experience indeterminate revenue losses related to the collection retention percentage changes in the bill.

D. FISCAL COMMENTS:

The bill may have an initial insignificant negative fiscal impact on DBPR related to the collection of fines from local governments. DBPR does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.[19] It is unknown to what extent the bill's change in the local government collection retention percentage (from 25 percent to 75 percent) may entice local governments to begin such collections. In future years it is possible fine collections could see a positive fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

[18] Florida Department of Business and Professional Regulation, Bill Analysis of CS/HB 1245, dated April 3, 2013, on file with the House Appropriations Committee.

[19] Florida Department of Business and Professional Regulation, Agency Analysis of SB 1252: Building Construction (Mar. 13, 2013) (on file with the Business and Professional Regulation Subcommittee).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DOH points out that not evaluating systems under the proposed change would allow these systems to remain in failure and discharge untreated wastewater into Florida's ground and surface waters. System failure may eventually lead to a direct public health hazard because of backups of wastewater into homes and untreated wastewater runoff into the yard and adjacent properties.

DBPR noted in its bill analysis that they have transferred the collection of the delinquent Final Order to a DFS approved collection vendor, under the terms of the DSF statewide contract, the approved collection vendor will receive 23 percent of the collection amount regardless of who collects it.

DBPR also offered bedroom is added.

potential revisions to the bill in the Comments or Concerns section of it agency analysis. These are provided below.

- In section 7, s. 553.842(5)(a), F.S., change "commission staff" to "Department staff." Currently, there is no specific staff designated as "commission staff." DBPR is the sole agency with the responsibility of staffing the Florida Building Commission.
- In section 14, s. 553.912, F.S., change the term "Florida Energy Efficiency Code for Building Construction" to "Florida Building Code – Energy Conservation" for consistency with the proposed legislation.
- Sections 20 and 21, ss. 553.991 and 553.992, F.S. DBPR conducted several workshops with industry groups regarding improvements to the BERS program. During these workshops, industry groups urged the department to open BERS to more providers and thus eliminate the perceived monopoly by FSEC. The DBPR believes that the Florida Building Energy Rating Act is no longer necessary since available national energy rating programs adequately accomplish the objectives of the statutes. Reliance on national programs with no oversight from the DBPR could permit additional avenues for training and certification sought by several stakeholder groups.
- According to DBPR, the effective date of July 1, 2013, may not allow sufficient time to update the current BERS rules for consistency with the proposed legislation. The DBPR anticipates an additional ten months from the effective date of the Act would be necessary to make the changes.

IV. ADMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Business & Professional Regulation Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute (CS). The significant differences between the CS and the bill as originally filed include the following:

- Revises noticing requirements of alleged violators of local codes and ordinances.
- Exempts certain demolition work and volunteer work on a construction project from the requirements for licensure as a contractor.
- Revises a definition for licensed plumbing contractors.
- Re-opens and extends the grandfathering period for certain registered electrical and alarm system contractors to acquire statewide certified licenses.

- Adds a member to Florida Building Commission from the natural gas distribution industry.
- Clarifies that cost-saving incentives for IRC fire sprinklers are permissible when mutually agreed upon between a builder and code official.
- Provides building energy-efficiency system definitions.

The staff analysis is drafted to reflect the CS.

A bill to be entitled

An act relating to building construction; amending s. 162.12, F.S.; revising notice requirements in the Local Government Code Enforcement Boards Act; amending s. 381.0065, F.S.; specifying that certain actions relating to onsite sewage treatment and removal are not required if a bedroom is not added during a remodeling addition or modification to a single-family home; prohibiting a remodeling addition or modification from certain coverage or encroachment; authorizing a local health board to review specific plans; requiring a review to be completed within a specific time period after receipt of specific plans; amending s. 489.103, F.S.; exempting specified persons from licensure as a contractor; amending s. 489.105, F.S.; revising definitions; amending s. 489.127, F.S.; revising civil penalties; authorizing a local building department to retain 75 percent of certain fines collected if it transmits 25 percent to the Department of Business and Professional Regulation; amending s. 489.131, F.S.; deleting legislative intent referring to a local agency's enforcement of regulatory laws; deleting the definitions of "minor violation" and "notice of noncompliance"; deleting provisions that provide for what a notice of noncompliance should or should not include; deleting a provision that provides for further disciplinary proceedings for certain licensees; amending s. 489.514, F.S.; extending the

date by which an applicant must make application for a contracting license to be grandfathered; amending s. 489.531, F.S.; revising a maximum civil penalty; amending s. 553.73, F.S.; prohibiting any provision of the International Residential Code relating to mandated fire sprinklers from incorporation into the Florida Building Code; amending s. 553.74, F.S.; revising the membership of the Florida Building Commission; amending s. 553.79, F.S.; authorizing a site plan to be maintained at the worksite as an electronic copy; requiring the copy to be open to inspection by certain officials; amending s. 553.842, F.S.; requiring an application for state approval of a certain product to be approved by the department after the application and related documentation are complete; amending ss. 553.901, 553.902, 553.903, 553.904, 553.905, and 553.906, F.S.; requiring the Florida Building Commission to adopt the Florida Building Code-Energy Conservation; conforming subsequent sections of the thermal efficiency code; amending s. 553.912, F.S.; providing that certain existing heating and cooling equipment is not required to meet the minimum equipment efficiencies; amending s. 553.991, F.S.; revising the purpose of the Florida Building Energy-Efficiency Rating Act; amending s. 553.992, F.S.; requiring the department to administer statewide criteria for building energy-efficiency rating systems; requiring department rules to prohibit

a sole provider from conducting functions relating to the building energy-efficiency rating system; amending s. 553.993, F.S.; providing definitions; amending s. 553.995, F.S.; deleting a minimum requirement for the building energy-efficiency rating system; revising language; requiring the interest group to advise the department in the adoption and administration of the system; deleting a provision that requires the interest group to assist in the implementation of the system by performing certain acts; requiring the department to approve, rather than develop, a training and certification program to certify raters; providing an effective date.

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

Section 1. Section 162.12, Florida Statutes, is amended to read:

162.12 Notices.—

(1) All notices required by this part must be provided to the alleged violator by:

(a) Certified mail, return receipt requested, to the address listed in the tax collector's office for tax notices~~,~~ or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for ~~provided by~~ the property owner ~~in writing to the local government for the purpose of receiving notices~~. For property owned by a

corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.;

(b) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body;

(c) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(d) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may ~~also~~ be served by publication or posting, as follows:

(a)1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

(b)1. In lieu of publication as described in paragraph (a), such notice may be posted at least 10 days prior to the

hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be, in the case of municipalities, at the primary municipal government office, and in the case of counties, at the front door of the courthouse or the main county governmental center in said county.

2. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(c) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (1).

Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

Section 2. Paragraph (aa) of subsection (4) of section 381.0065, Florida Statutes, is amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue

permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no

fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(aa) An existing-system inspection or evaluation; a modification, replacement, or upgrade of an onsite sewage treatment and disposal system; or a pump-out of an existing tank is not required for a remodeling addition or modification to a

single-family home if a bedroom is not added. However, a remodeling addition or modification may not cover any part of the system or encroach upon a required setback or the unobstructed area. The local health department may review a floor plan and site plan that show the distance of the remodeling addition or modification from the system to determine if a setback or unobstructed area is impacted. The review shall be completed within 5 business days after receipt of an adequate floor plan and site plan.

Section 3. Subsection (23) is added to section 489.103, Florida Statutes, to read:

489.103 Exemptions.—This part does not apply to:

(23) A person acting voluntarily or out of charity and not for personal monetary or other personal gain who assists a property owner of a single family residential building and appurtenances in making improvements to the owner's property. This subsection does not exempt a person who is employed by or has a contract with the property owner and who acts in the capacity of a contractor. This subsection does not exempt a person who advertises that he or she is a contractor or otherwise represents that he or she is qualified to engage in contracting. The property owner must be present on the job site and actively engaging and participating in the supervision of work performed by a person acting as a volunteer or acting out of charity, and the work must not be performed by a licensed contractor.

Section 4. Subsection (3) of section 489.105, Florida Statutes, is amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height, other than buildings or residences more than three stories tall; and ~~all~~ buildings or residences more than three stories tall. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(a) "General contractor" means a contractor whose services are unlimited as to the type of work which he or she may do, who may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113.

(b) "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings,

which do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith.

(d) "Sheet metal contractor" means a contractor whose services are unlimited in the sheet metal trade and who has the experience, knowledge, and skill necessary for the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, insulation, alteration, repair, servicing, or design, if not prohibited by law, of ferrous or nonferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge and of other materials, including, but not limited to, fiberglass, used in lieu thereof and of air-handling systems, including the setting of air-handling equipment and reinforcement of same, the balancing of air-handling systems, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system.

(e) "Roofing contractor" means a contractor whose services are unlimited in the roofing trade and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials

and items used in the installation, maintenance, extension, and alteration of all kinds of roofing, waterproofing, and coating, except when coating is not represented to protect, repair, waterproof, stop leaks, or extend the life of the roof. The scope of work of a roofing contractor also includes skylights and any related work, required roof-deck attachments, and any repair or replacement of wood roof sheathing or fascia as needed during roof repair or replacement and any related work.

(f) "Class A air-conditioning contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-

conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class A air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(g) "Class B air-conditioning contractor" means a contractor whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as necessary to complete an air-distribution system being installed under this classification, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping and insulation of pipes,

vessels, and ducts; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class B air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(h) "Class C air-conditioning contractor" means a contractor whose business is limited to the servicing of air-conditioning, heating, or refrigeration systems, including any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system, and whose certification or registration, issued pursuant to this part, was valid on October 1, 1988. Only a person who was registered or certified as a Class C air-conditioning contractor as of October 1, 1988, shall be so registered or certified after October 1, 1988. However,

the board shall continue to license and regulate those Class C air-conditioning contractors who held Class C licenses before October 1, 1988.

(i) "Mechanical contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing

safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring. A mechanical contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(j) "Commercial pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, and servicing of any swimming pool, or hot tub or spa, whether public, private, or otherwise, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure;

however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.

(k) "Residential pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, and servicing of a residential swimming pool, or hot tub or spa, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves

construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.

(l) "Swimming pool/spa servicing contractor" means a contractor whose scope of work involves, but is not limited to, the repair and servicing of a swimming pool, or hot tub or spa, whether public or private, or otherwise, regardless of use. The scope of work includes the repair or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior refinishing, the reinstallation or addition of pool heaters, the repair or replacement of all perimeter piping and filter piping, the repair of equipment rooms or housing for pool/spa equipment, and the substantial or complete draining of a swimming pool, or hot tub or spa, for the purpose of repair or renovation. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, substantial or complete disassembly, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, substantial or

complete disassembly, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and

fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6), and does not require certification or registration under this part of a person licensed under chapter 527 or any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

(n) "Underground utility and excavation contractor" means a contractor whose services are limited to the construction, installation, and repair, on public or private property, whether accomplished through open excavations or through other means, including, but not limited to, directional drilling, auger

boring, jacking and boring, trenchless technologies, wet and dry taps, grouting, and slip lining, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single-occupancy commercial properties, or on multioccupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. However, an underground utility and excavation contractor may install empty underground conduits in rights-of-way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings no smaller than 2 inches in diameter if each conduit system installed is designed by a licensed professional engineer or an authorized employee of a municipality, county, or public utility and the installation of such conduit does not include installation of any conductor wiring or connection to an energized electrical system. An underground utility and excavation contractor may not install piping that is an integral part of a fire protection system as defined in s. 633.021 beginning at the point where the piping is used exclusively for such system.

(o) "Solar contractor" means a contractor whose services consist of the installation, alteration, repair, maintenance, relocation, or replacement of solar panels for potable solar water heating systems, swimming pool solar heating systems, and

photovoltaic systems and any appurtenances, apparatus, or equipment used in connection therewith, whether public, private, or otherwise, regardless of use. A contractor, certified or registered pursuant to this chapter, is not required to become a certified or registered solar contractor or to contract with a solar contractor in order to provide services enumerated in this paragraph that are within the scope of the services such contractors may render under this part.

(p) "Pollutant storage systems contractor" means a contractor whose services are limited to, and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of, pollutant storage tanks. Any person installing a pollutant storage tank shall perform such installation in accordance with the standards adopted pursuant to s. 376.303.

(q) "Specialty contractor" means a contractor whose scope of work and responsibility is limited to a particular phase of construction established in a category adopted by board rule and whose scope is limited to a subset of the activities described in one of the paragraphs of this subsection.

Section 5. Paragraphs (c) and (f) of subsection (5) and subsection (6) of section 489.127, Florida Statutes, are amended to read:

489.127 Prohibitions; penalties.—

(5) Each county or municipality may, at its option, designate one or more of its code enforcement officers, as

defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) and s. 489.132(1) against persons who engage in activity for which a county or municipal certificate of competency or license or state certification or registration is required.

(c) The local governing body of the county or municipality may ~~is authorized to~~ enforce codes and ordinances against unlicensed contractors under the provisions of this subsection and may enact an ordinance establishing procedures for implementing this subsection, including a schedule of penalties to be assessed by the code enforcement officer. The maximum civil penalty which may be levied may ~~shall~~ not exceed $2,000 ~~$500~~. Moneys collected pursuant to this subsection shall be retained locally, as provided for by local ordinance, and may be set aside in a specific fund to support future enforcement activities against unlicensed contractors.

(f) If the enforcement or licensing board or designated special magistrate finds that a violation exists, the enforcement or licensing board or designated special magistrate may order the violator to pay a civil penalty of not less than the amount set forth on the citation but not more than $1,500 ~~$1,000~~ per day for each violation. In determining the amount of the penalty, the enforcement or licensing board or designated special magistrate shall consider the following factors:

1. The gravity of the violation.

2. Any actions taken by the violator to correct the violation.

3. Any previous violations committed by the violator.

(6) Local building departments may collect outstanding fines against registered or certified contractors issued by the Construction Industry Licensing Board and may retain 75 ~~25~~ percent of the fines they are able to collect, provided that they transmit 25 ~~75~~ percent of the fines they are able to collect to the department according to a procedure to be determined by the department.

Section 6. Paragraph (a) of subsection (7) of section 489.131, Florida Statutes, is amended to read:

489.131 Applicability.—

(7)(a) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established in law. Fines and other penalties are provided in order to ensure compliance~~; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance~~ with state laws and local jurisdiction ordinances. ~~It is the intent of the Legislature that a local jurisdiction agency charged with enforcing regulatory laws shall issue a notice of noncompliance as its first response to a minor violation of a regulatory law in any instance in which it is reasonable to assume that the violator was unaware of such a law or unclear as to how to comply with it. A violation of a regulatory law is a "minor violation" if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. A "notice of noncompliance" is a notification by the local jurisdiction agency charged with enforcing the ordinance, which is issued to~~

~~the licensee that is subject to the ordinance. A notice of noncompliance should not be accompanied with a fine or other disciplinary penalty. It should identify the specific ordinance that is being violated, provide information on how to comply with the ordinance, and specify a reasonable time for the violator to comply with the ordinance. Failure of a licensee to take action correcting the violation within a set period of time would then result in the institution of further disciplinary proceedings.~~

Section 7. Section 489.514, Florida Statutes, is amended to read:

489.514 Certification for registered contractors; grandfathering provisions.—

(1) The board shall, upon receipt of a completed application, appropriate fee, and proof of compliance with the provisions of this section, issue:

(a) To an applying registered electrical contractor, a certificate as an electrical contractor, as defined in s. 489.505(12); ~~or~~

(b) To an applying registered alarm system contractor, a certificate in the matching alarm system contractor category, as defined in s. 489.505(2)(a) or (b); or

(c) To an applying registered electrical specialty contractor, a certificate in the matching electrical specialty contractor category, as defined in s. 489.505(19).

(2) Any contractor registered under this part who makes application under this section to the board shall meet each of the following requirements for certification:

(a) Currently holds a valid registered local license in the category of electrical contractor, alarm system contractor, or electrical specialty contractor.

(b) Has, for that category, passed a written, proctored examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(c) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation ~~shall~~ count toward the 5 years required under this subsection.

(d) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended in the last 5 years, or been assessed a fine in excess of $500 in the last 5 years.

(e) Is in compliance with the insurance and financial responsibility requirements in s. 489.515(1)(b).

(3) An applicant must make application by November 1, 2015

~~2004~~, to be licensed pursuant to this section.

Section 8. Paragraph (c) of subsection (4) of section 489.531, Florida Statutes, is amended to read:

489.531 Prohibitions; penalties.—

(4) Each county or municipality may, at its option, designate one or more of its code enforcement officers, as defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) against persons who engage in activity for which county or municipal certification is required.

(c) The local governing body of the county or municipality may ~~is authorized to~~ enforce codes and ordinances against unlicensed contractors under the provisions of this section and may enact an ordinance establishing procedures for implementing this section, including a schedule of penalties to be assessed by the code enforcement officers. The maximum civil penalty which may be levied may ~~shall~~ not exceed $2,000 ~~$500~~. Moneys collected pursuant to this section shall be retained locally as provided for by local ordinance and may be set aside in a specific fund to support future enforcement activities against unlicensed contractors.

Section 9. Subsection (17) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(17) A provision ~~The provisions of section R313 of the most current version~~ of the International Residential Code relating to mandated fire sprinklers may not be incorporated into the Florida Building Code as adopted by the Florida

Building Commission and may not be adopted as a local amendment to the Florida Building Code. This subsection does not prohibit the application of cost-saving incentives for residential fire sprinklers that are authorized in the International Residential Code upon a mutual agreement between the builder and the code official. This subsection does not apply to a local government that has a lawfully adopted ordinance relating to fire sprinklers which has been in effect since January 1, 2010.

Section 10. Subsection (1) of section 553.74, Florida Statutes, is amended to read:

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and located within the Department of Business and Professional Regulation for administrative purposes. Members are ~~shall be~~ appointed by the Governor subject to confirmation by the Senate. The commission is ~~shall be~~ composed of 26 ~~25~~ members, consisting of the following:

(a) One architect registered to practice in this state and actively engaged in the profession. The American Institute of Architects, Florida Section, is encouraged to recommend a list of candidates for consideration.

(b) One structural engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(c) One air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession. The Florida Air Conditioning Contractors

Association, the Florida Refrigeration and Air Conditioning Contractors Association, and the Mechanical Contractors Association of Florida are encouraged to recommend a list of candidates for consideration.

(d) One electrical contractor certified to do business in this state and actively engaged in the profession. The Florida Electrical Contractors Association and the National Electrical Contractors Association, Florida Chapter, are encouraged to recommend a list of candidates for consideration.

(e) One member from fire protection engineering or technology who is actively engaged in the profession. The Florida Chapter of the Society of Fire Protection Engineers and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(f) One general contractor certified to do business in this state and actively engaged in the profession. The Associated Builders and Contractors of Florida, the Florida Associated General Contractors Council, and the Union Contractors Association are encouraged to recommend a list of candidates for consideration.

(g) One plumbing contractor licensed to do business in this state and actively engaged in the profession. The Florida Association of Plumbing, Heating, and Cooling Contractors is encouraged to recommend a list of candidates for consideration.

(h) One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession. The Florida Roofing, Sheet Metal, and Air Conditioning Contractors Association and the Sheet Metal and Air Conditioning

Contractors National Association are encouraged to recommend a list of candidates for consideration.

(i) One residential contractor licensed to do business in this state and actively engaged in the profession. The Florida Home Builders Association is encouraged to recommend a list of candidates for consideration.

(j) Three members who are municipal or district codes enforcement officials, one of whom is also a fire official. The Building Officials Association of Florida and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(k) One member who represents the Department of Financial Services.

(l) One member who is a county codes enforcement official. The Building Officials Association of Florida is encouraged to recommend a list of candidates for consideration.

(m) One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state.

(n) One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry. The Florida Manufactured Housing Association is encouraged to recommend a list of candidates for consideration.

(o) One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(p) One member who is a representative of a municipality

or a charter county. The Florida League of Cities and the Florida Association of Counties are encouraged to recommend a list of candidates for consideration.

(q) One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry. The Florida Building Material Association, the Florida Concrete and Products Association, and the Fenestration Manufacturers Association are encouraged to recommend a list of candidates for consideration.

(r) One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management. The Building Owners and Managers Association is encouraged to recommend a list of candidates for consideration.

(s) One member who is a representative of the insurance industry. The Florida Insurance Council is encouraged to recommend a list of candidates for consideration.

(t) One member who is a representative of public education.

(u) One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession. The Florida Swimming Pool Association and the United Pool and Spa Association are encouraged to recommend a list of candidates for consideration.

(v) One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited

under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED).

(w) One member who is a representative of a natural gas distribution system who is actively engaged in the distribution of natural gas in this state. The Florida Natural Gas Association is encouraged to recommend a list of candidates for consideration.

(x) ~~(w)~~ One member who shall be the chair.

Any person serving on the commission under paragraph (c) or paragraph (h) on October 1, 2003, and who has served less than two full terms is eligible for reappointment to the commission regardless of whether he or she meets the new qualification.

Section 11. Subsection (18) is added to section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(18) For the purpose of inspection and record retention, site plans for a building may be maintained in the form of an electronic copy at the worksite. These plans must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code.

Section 12. Paragraph (a) of subsection (5) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(5) Statewide approval of products, methods, or systems of construction may be achieved by one of the following methods. One of these methods must be used by the commission to approve

the following categories of products: panel walls, exterior doors, roofing, skylights, windows, shutters, and structural components as established by the commission by rule. A product may not be advertised, sold, offered, provided, distributed, or marketed as hurricane, windstorm, or impact protection from wind-borne debris from a hurricane or windstorm unless it is approved pursuant to this section or s. 553.8425. Any person who advertises, sells, offers, provides, distributes, or markets a product as hurricane, windstorm, or impact protection from wind-borne debris without such approval is subject to the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501 brought by the enforcing authority as defined in s. 501.203.

(a) Products for which the code establishes standardized testing or comparative or rational analysis methods shall be approved by submittal and validation of one of the following reports or listings indicating that the product or method or system of construction was in compliance with the Florida Building Code and that the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Florida Building Code:

1. A certification mark or listing of an approved certification agency, which may be used only for products for which the code designates standardized testing;

2. A test report from an approved testing laboratory;

3. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, from an approved product evaluation entity; or

4. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, developed and signed and sealed by a professional engineer or architect, licensed in this state.

A product evaluation report or a certification mark or listing of an approved certification agency which demonstrates that the product or method or system of construction complies with the Florida Building Code for the purpose intended is equivalent to a test report and test procedure referenced in the Florida Building Code. An application for state approval of a product under subparagraph 1. or subparagraph 3. must be approved by the department after the commission staff or a designee verifies that the application and related documentation are complete. This verification must be completed within 10 business days after receipt of the application. Upon approval by the department, the product shall be immediately added to the list of state-approved products maintained under subsection (13). Approvals by the department shall be reviewed and ratified by the commission's program oversight committee except for a showing of good cause that a review by the full commission is necessary. The commission shall adopt rules providing means to cure deficiencies identified within submittals for products approved under this paragraph.

Section 13. Section 553.901, Florida Statutes, is amended to read:

553.901 Purpose of thermal efficiency code.—The Department of Business and Professional Regulation shall prepare a thermal

efficiency code to provide for a statewide uniform standard for energy efficiency in the thermal design and operation of all buildings statewide, consistent with energy conservation goals, and to best provide for public safety, health, and general welfare. The Florida Building Commission shall adopt the Florida Building Code-Energy Conservation ~~Energy Efficiency Code for Building Construction within the Florida Building Code~~, and shall modify, revise, update, and maintain the code to implement the provisions of this thermal efficiency code and amendments thereto, in accordance with the procedures of chapter 120. The department shall, at least triennially, determine the most cost-effective energy-saving equipment and techniques available and report its determinations to the commission, which shall update the code to incorporate such equipment and techniques. The proposed changes shall be made available for public review and comment no later than 6 months before ~~prior to~~ code implementation. The term "cost-effective," as used in ~~for the purposes of~~ this part, means ~~shall be construed to mean~~ cost-effective to the consumer.

Section 14. Section 553.902, Florida Statutes, is reordered and amended to read:

553.902 Definitions.—As used in ~~For the purposes of~~ this part, the term:

(1) ~~(6)~~ "Energy performance level" means the indicator of the energy-related performance of a building, including, but not limited to, the levels of insulation, the amount and type of glass, and the HVAC and water heating system efficiencies.

(2) ~~(1)~~ "Exempted building" means:

(a) A ~~Any~~ building or portion thereof whose peak design rate of energy usage for all purposes is less than 1 watt (3.4 Btu per hour) per square foot of floor area for all purposes.

(b) A ~~Any~~ building that ~~which~~ is neither heated nor cooled by a mechanical system designed to control or modify the indoor temperature and powered by electricity or fossil fuels.

(c) A ~~Any~~ building for which federal mandatory standards preempt state energy codes.

(d) A ~~Any~~ historical building as described in s. 267.021(3).

The Florida Building Commission may recommend to the Legislature additional types of buildings which should be exempted from compliance with the Florida Building Code-Energy Conservation ~~Energy Efficiency Code for Building Construction~~.

(3) ~~(5)~~ "Exterior envelope physical characteristics" means the physical nature of those elements of a building which enclose conditioned spaces through which energy may be transferred to or from the exterior.

(4) ~~(2)~~ "HVAC" means a system of heating, ventilating, and air-conditioning.

(5) ~~(4)~~ "Local enforcement agency" means the agency of local government which has the authority to make inspections of buildings and to enforce the Florida Building Code. The term ~~It~~ includes any agency within the definition of s. 553.71(5).

(6) ~~(3)~~ "Renovated building" means a residential or nonresidential building undergoing alteration that varies or changes insulation, HVAC systems, water heating systems, or

exterior envelope conditions, if ~~provided~~ the estimated cost of renovation exceeds 30 percent of the assessed value of the structure.

Section 15. Section 553.903, Florida Statutes, is amended to read:

553.903 Applicability.—This part applies ~~shall apply~~ to all new and renovated buildings in the state, except exempted buildings, for which building permits are obtained after March 15, 1979, and to the installation or replacement of building systems and components with new products for which thermal efficiency standards are set by the Florida Building Code-Energy Conservation ~~Energy Efficiency Code for Building Construction~~. The provisions of this part shall constitute a statewide uniform code.

Section 16. Section 553.904, Florida Statutes, is amended to read:

553.904 Thermal efficiency standards for new nonresidential buildings.—Thermal designs and operations for new nonresidential buildings for which building permits are obtained after March 15, 1979, must ~~shall~~ at a minimum take into account exterior envelope physical characteristics, including thermal mass; HVAC, service water heating, energy distribution, lighting, energy managing, and auxiliary systems design and selection; and HVAC, service water heating, energy distribution, lighting, energy managing, and auxiliary equipment performance, and are ~~shall~~ not ~~be~~ required to meet standards more stringent than the provisions of the Florida Building Code-Energy Conservation ~~Energy Efficiency Code for Building Construction~~.

Section 17. Section 553.905, Florida Statutes, is amended to read:

553.905 Thermal efficiency standards for new residential buildings.—Thermal designs and operations for new residential buildings for which building permits are obtained after March 15, 1979, must ~~shall~~ at a minimum take into account exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance, and service water heating design and equipment selection and are ~~shall~~ not ~~be~~ required to meet standards more stringent than the provisions of the Florida Building Code-Energy Conservation ~~Energy Efficiency Code for Building Construction~~. HVAC equipment mounted in an attic or a garage is ~~shall~~ not ~~be~~ required to have supplemental insulation in addition to that installed by the manufacturer. All new residential buildings, except those herein exempted, must ~~shall~~ have insulation in ceilings rated at R-19 or more, space permitting. Thermal efficiency standards do not apply to a building of less than 1,000 square feet which is not primarily used as a principal residence and which is constructed and owned by a natural person for hunting or similar recreational purposes; however, ~~no~~ such person may not build more than one exempt building in any 12-month period.

Section 18. Section 553.906, Florida Statutes, is amended to read:

553.906 Thermal efficiency standards for renovated buildings.—Thermal designs and operations for renovated buildings for which building permits are obtained after March 15, 1979, must ~~shall~~ take into account insulation; windows;

infiltration; and HVAC, service water heating, energy distribution, lighting, energy managing, and auxiliary systems design and equipment selection and performance. Such buildings are ~~shall~~ not ~~be~~ required to meet standards more stringent than the provisions of the Florida Building Code-Energy Conservation ~~Energy Efficiency Code for Building Construction~~. These standards apply only to those portions of the structure which are actually renovated.

Section 19. Section 553.912, Florida Statutes, is amended to read:

553.912 Air conditioners.—All air conditioners that are sold or installed in the state must ~~shall~~ meet the minimum efficiency ratings of the Florida Energy Efficiency Code for Building Construction. These efficiency ratings must ~~shall~~ be minimums and may be updated in the Florida Building Code-Energy Conservation ~~Energy Efficiency Code for Building Construction~~ by the department in accordance with s. 553.901, following its determination that more cost-effective energy-saving equipment and techniques are available. It is the intent of the Legislature that all replacement air-conditioning systems be installed using energy-saving, quality installation procedures, including, but not limited to, equipment sizing analysis and duct inspection. Notwithstanding this section, existing heating and cooling equipment in residential applications need not meet the minimum equipment efficiencies, except to preserve the original approval or listing of the equipment.

Section 20. Section 553.991, Florida Statutes, is amended to read:

553.991 Purpose.—The purpose of this part is to provide for ~~a~~ statewide oversight of ~~uniform system for~~ rating systems for the energy efficiency of buildings. It is in the interest of the state to encourage energy efficiency ~~the consideration of the energy-efficiency rating system~~ in the market so as to provide market rewards for energy-efficient buildings and to those persons or companies designing, building, or selling energy-efficient buildings.

Section 21. Section 553.992, Florida Statutes, is amended to read:

553.992 Adoption of rating system criteria.—The Department of Business and Professional Regulation shall adopt, update, ~~and~~ maintain, and administer ~~a~~ statewide criteria for a ~~uniform~~ building energy-efficiency rating system to implement the provisions of this part and amendments thereto in accordance with the procedures of chapter 120 and shall, upon the request of any builder, designer, rater, or owner of a building, issue nonbinding interpretations, clarifications, and opinions concerning the application and use of the building energy-efficiency ~~energy~~ rating system under rules that the department adopts in accordance with chapter 120. Department rules must prohibit a sole provider from conducting functions relating to the building energy-efficiency rating system, including energy rating, energy testing, certification of energy raters, and training.

Section 22. Section 553.993, Florida Statutes, is amended to read:

553.993 Definitions.—For purposes of this part:

(1) "Acquisition" means to gain the sole or partial use of a building through a purchase agreement.

(2) "Builder" means the primary contractor who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the contracting activities of the business organization with which she or he is connected and who has the responsibility to supervise, direct, manage, and control the construction work on a job for which she or he has obtained the building permit. Construction work includes, but is not limited to, foundation, framing, wiring, plumbing, and finishing work.

(3) "Building energy-efficiency rating system" means a whole building energy evaluation system established by the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, the Florida Solar Energy Center, or a nationally recognized rating system approved by the department.

(4) ~~(3)~~ "Designer" means the architect, engineer, landscape architect, builder, interior designer, or other person who performs the actual design work or under whose direct supervision and responsible charge the construction documents are prepared.

(5) "Energy auditor" means a trained and certified professional who conducts energy evaluations of an existing building and uses tools to identify the building's current energy usage and the condition of the building and equipment.

(6) "Energy-efficiency rating" means an unbiased indication of a building's relative energy efficiency based on

consistent inspection procedures, operating assumptions, climate data, and calculation methods.

(7) "Energy rater" means an individual certified by the state to perform building energy-efficiency ratings for the building type and in the rating class for which the rater is certified.

(8) ~~(4)~~ "New building" means commercial occupancy buildings permitted for construction after January 1, 1995, and residential occupancy buildings permitted for construction after January 1, 1994.

(9) ~~(5)~~ "Public building" means a building comfort-conditioned for occupancy that is owned or leased by the state, a state agency, or a governmental subdivision, including, but not limited to, a city, county, or school district.

Section 23. Section 553.995, Florida Statutes, is amended to read:

553.995 Energy-efficiency ratings for buildings.—

(1) The building energy-efficiency rating system must ~~shall~~ at a minimum:

~~(a) Provide a uniform rating scale of the efficiency of buildings based on annual energy usage.~~

(a) ~~(b)~~ Take into account local climate conditions, construction practices, and building use.

(b) ~~(c)~~ Be compatible with standard federal rating systems and state building codes and standards, where applicable, and shall satisfy the requirements of s. 553.9085 with respect to residential buildings and s. 255.256 with respect to state buildings.

(2) Building ~~The~~ energy-efficiency rating systems ~~system~~ adopted by the department must ~~shall~~ provide a means of analyzing ~~and comparing~~ the relative energy efficiency of buildings upon the sale of new or existing residential, public, or commercial buildings.

(3) The department shall establish a voluntary working group of persons interested in the building energy-efficiency rating system or energy efficiency, including, but not limited to, such persons as electrical engineers, mechanical engineers, architects, public utilities, energy raters, and builders. The interest group shall advise the department in the adoption, administration, and oversight ~~development~~ of the building energy-efficiency rating system ~~and shall assist the department in the implementation of the rating system by coordinating educational programs for designers, builders, businesses, and other interested persons to assist compliance and to facilitate incorporation of the rating system into existing practices~~.

(4) The department shall approve ~~develop~~ a training and certification program to certify raters. In addition to the department, ratings may be conducted by any local government or private entity if~~, provided that~~ the appropriate persons have completed the necessary training and have been certified by the department. The Department of Management Services shall rate state-owned or state-leased buildings if~~, provided that~~ the appropriate persons have completed the necessary training and have been certified by the Department of Business and Professional Regulation. A state agency that ~~which~~ has building construction regulation authority may rate its own buildings and

those it is responsible for~~,~~ if the appropriate persons have completed the necessary training and have been certified by the Department of Business and Professional Regulation. The Department of Business and Professional Regulation may charge a fee not to exceed the costs for the training and certification of raters. The department shall by rule set the appropriate charges for raters to charge for energy ratings, not to exceed the actual costs.

Section 24. 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 Davis offered the following:

Amendment

Between lines 1184 and 1185, insert:

Section 24. The sum of $119,618 in recurring funds and $263,143 in nonrecurring funds from the Professional Regulation Trust Fund are appropriated to the Department of Business and Professional Regulated for FY 2013-2014 fiscal year to implement the provisions of this act.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1295 Discretionary Sales Surtaxes
SPONSOR(S): Education Committee, Finance & Tax Subcommittee, Fresen, Campbell
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee	16 Y, 0 N, As CS	Flieger	Langston
2) Education Committee	13 Y, 0 N, As CS	Thomas	Mizereck
3) Appropriations Committee		Heflin	Leznoff

SUMMARY ANALYSIS

The bill creates a ninth discretionary sales and use surtax in s. 212.055, F.S. The newly created "Higher Education Surtax" allows a county as defined in s. 125.011(1), F.S., to levy a surtax of up to 0.5 percent for the benefit of a Florida College System institution and a state university as defined by s. 1000.21, F.S., which is located within that county. To levy the surtax, a qualifying county must approve an ordinance via referendum.

The expense of holding the referendum may not be paid using student fees or state funding. The referendum must be paid only through funds received from private donors or with college auxiliary funds.

Should the referendum be successful, the surtax will last for 5 years. The funds raised by the surtax will be subject to oversight by a seven member board created by the bill.

The bill requires that 90 percent of the proceeds from the surtax be transferred to a Florida Prime account to be managed by the State Board of Administration (SBA) and used for the operation, maintenance, and administration of the Florida College System institution within that county and 10 percent of the proceeds from the surtax be transferred to a Florida Prime account to be managed by the SBA and used for the operation, maintenance, land acquisition, and administration of the state university within that county.

Currently, Miami-Dade is the only county in Florida whose charter satisfies the definition in s. 125.011(1), F.S. The only Florida College System institution and state university located within Miami-Dade County are Miami-Dade College and Florida International University, respectively. Of the four discretionary sales surtaxes Miami-Dade may levy, the county currently levies a 0.5 percent Charter County and Regional Transportation Surtax and a 0.5 percent County Public Hospital Surtax.

The bill has not been evaluated by the Revenue Estimating Conference. Finance and Tax committee staff estimates that a 0.5 percent surtax in Miami-Dade could raise $202M in annual revenue.

The bill prohibits any reduction in the annual apportionment of state funds allocated to support a Florida College System institution or a state university that has received funds from a Higher Education Surtax.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.[1] The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state sales and use tax of 6 percent. The surtax does not apply to sales price above $5,000 on any item of tangible personal property. This $5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

The eight discretionary sales surtaxes and their maximum rates are:

- Charter County and Regional Transportation System Surtax, 1 percent
- Emergency Fire Rescue Services and Facilities Surtax, 1 percent
- Local Government Infrastructure Surtax, 1 percent
- Small County Surtax, 1 percent
- Indigent Care and Trauma Center Surtax, 0.5 percent
- County Public Hospital Surtax, 0.5 percent
- School Capital Outlay Surtax, 0.5 percent
- Voter-Approved Indigent Care Surtax, 1 percent

Every county is eligible to levy the School Capital Outlay and Local Government Infrastructure Surtaxes, the others have varying requirements. Section 212.055, F.S., further provides caps on the combined rates. The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility. Currently, the highest surtax imposed is 1.5 percent in several counties;[2] however, the theoretical maximum combined rate ranges between 2 percent and 3.5 percent, depending on the specifics of each individual county.[3]

Section 212.054, F.S., requires that any increase or decrease in a discretionary sales surtax must take effect on January 1.

Of the four discretionary sales surtaxes Miami-Dade may levy, the county currently levies a 0.5 percent Charter County and Regional Transportation Surtax and a 0.5 percent County Public Hospital Surtax.

Effect of the Proposed Changes

The bill creates a ninth discretionary surtax in s. 212.055, F.S. The "Higher Education Surtax" allows a county as defined in s. 125.011(1), F.S.,[4] to levy a surtax of up to 0.5 percent for the benefit of a Florida College System institution and a state university as defined by s. 1000.21, F.S.,[5] which is located within that county. Miami-Dade is the only county in Florida whose charter satisfies the definition in s.

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[1] The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

[2] See DOR Form DR-15 DSS, "Discretionary Sales Surtax Information", available at http://dor.myflorida.com/dor/forms/2013/dr15dss.pdf (last visited 1/31/2013).

[3] See pg. 212-213 of the REC's 2012 Florida Tax Handbook, available at http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2012.pdf (last visited 3/9/12)

[4] A county "operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred."

[5] http://data.fldoe.org/workforce/contacts/default.cfm?action=showList&ListID=52 (last accessed 3/18/13)

125.011(1), F.S., though Hillsborough and Monroe County are authorized to operate under such a charter.
The institutions currently located within Miami-Dade County are Miami-Dade College and Florida International University.

To levy the surtax, a qualifying county must approve an ordinance via referendum. The ordinance must set forth the permissible uses of the surtax proceeds. The expense of holding the referendum may not be paid using student fees or state funding; the referendum must be paid only through funds received from private donors or with college auxiliary funds. The surtax expires 5 years after enactment.

The bill provides that if the referendum is successful, a seven member oversight board (board) shall be established to provide guidance and accountability for the expenditure of the revenue raised by the surtax. The board will annually meet to approve proposed spending plans. Members will be appointed to 5 year terms. The board shall be composed of:

- One member appointed by the board of directors of the chamber of commerce of the county in which the institutions are located,
- One member of the board of directors of the chapter of the United Way in the county in which the institutions are located appointed by the board of directors of that chapter of the United Way,
- One member appointed by the board of trustees of the state university who may not be a member of the board of trustees of the state university,
- Two members appointed by the board of trustees of the Florida College System institution who may not be members of the board of trustees of the Florida College System institution, and
- Two members appointed by the chair of the county legislative delegation.

The bill requires that 90 percent of the proceeds from the surtax must be transferred to a Florida Prime account to be managed by the SBA and used for the operation, maintenance, and administration of the Florida College System institution and 10 percent of the proceeds from the surtax must be transferred to a Florida Prime account to be managed by the SBA and used for the operation, maintenance, land acquisition for parcels that are contiguous with its main campus, and administration of the state university.

The board of trustees of each the Florida College System institution and state university must annually prepare plans that specify how each board of trustees intends to allocate and expend the funds for the institution's upcoming fiscal year and submit such plan to the board for approval.

The bill prohibits any reduction in the annual apportionment of state funds allocated to support a Florida College System institution or a state university that has received funds from a Higher Education Surtax.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.055, F.S., creating a ninth discretionary surtax.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill has not been evaluated by the Revenue Estimating Conference. Based on the estimated countywide distribution of a 1 percent surtax in the Office of Demographic Research 2012 Local Government Financial Information Handbook, Finance and Tax staff estimates that a 0.5 percent surtax in Miami-Dade could raise $202M in annual revenue.[6]

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2013, the Finance and Tax Subcommittee adopted a strike-all amendment which reduced the length of the surtax from 10 years to 5 years and increased the term of board members from 4 to 5 years. This analysis reflects those changes.

[6] Office of Economic and Demographic Research, 2012 Local Government Financial Information Handbook , pg 164. Available at http://edr.state.fl.us/Content/local-government/reports/lgfih12.pdf (last accessed 3/19/13)

On April 4, 2013, the Education Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Creates the Higher Education Surtax;
- Allows a state university located in the county to benefits from the Higher Education Surtax;
- Revises the oversight board membership;
- Provides allocation of proceeds from the Higher Education Surtax, 90 percent to the Florida College System institution and 10 percent to the state university; and
- Allows a state university to use proceeds from the surtax for land acquisition for parcels that are contiguous with its main campus.

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

A bill to be entitled

An act relating to discretionary sales surtaxes; amending s. 212.055, F.S.; authorizing a county defined in s. 125.011(1), F.S., to levy a surtax up to a specified amount for the benefit of a Florida College System institution and a state university in the county pursuant to an ordinance conditioned to take effect upon approval in a county referendum; requiring the ordinance to include a plan for the use of the proceeds; providing referendum requirements and procedures; requiring that the proceeds from the surtax be transferred into a specified account and managed in a specified manner; establishing an oversight board with specified duties, responsibilities, and requirements relating to the expenditure of surtax proceeds; providing for the appointment of members of the oversight board; requiring that the board of trustees of each institution receiving surtax proceeds prepare an annual plan for submission to the oversight board for approval; providing that state funding may not be reduced because an institution receives surtax funds; providing for the scheduled expiration of the surtax; providing an effective date.

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

Section 1. Subsection (9) is added to section 212.055,

Florida Statutes, to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(9) HIGHER EDUCATION SURTAX.—A county as defined in s. 125.011(1), pursuant to an ordinance that is conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum, may levy a surtax of up to 0.5 percent for the benefit of a Florida College System institution and a state university as defined in s. 1000.21 located in the county.

(a) The ordinance must set forth a plan for using the surtax proceeds for the benefit of the Florida College System institution and the state university by each of the institutions' boards of trustees. Such plans must provide for the permissible uses of the surtax proceeds, including, but not limited to, the maintenance, improvement, and expansion of academic and workforce training programs; teaching enhancements;

capital expenditures and infrastructure projects; fixed capital costs associated with the construction, reconstruction, renovation, maintenance, or improvement of facilities and campuses that have a useful life expectancy of at least 5 years; deferred maintenance; land improvement, design, and engineering costs related thereto; and the expansion and enhancement of facilities at all institution sites within the county. The proceeds from the surtax may be used by a state university for land acquisition for parcels that are contiguous with its existing main campus. The proceeds of the surtax must be set aside and invested as permitted by law, with the principal and income to be used for the purposes listed in this subsection as administered by the board of trustees.

(b) The expense of holding the referendum may not be paid with student fees or moneys that the institution receives from the state, but shall be paid only with funds received from private sources or with college auxiliary funds. The county must provide at least 30 days' notice of the election as provided under s. 100.342.

(c) The referendum providing for the imposition of the surtax shall include a statement that provides a brief and general description of the purposes for which the proceeds of the surtax may be used, conform to the requirements of s. 101.161, and be placed on the ballot by the governing body of the county. The following questions shall be placed on the ballot:

FOR THE. . . .CENTS TAX

AGAINST THE. . . .CENTS TAX

(d) Upon approval of the referendum, 90 percent of the proceeds from the surtax must be transferred by the Department of Revenue into a Florida Prime account managed by the State Board of Administration and used only for the operation, maintenance, and administration of the Florida College System institution within that county and 10 percent of the proceeds from the surtax must be transferred by the Department of Revenue into a Florida Prime account managed by the State Board of Administration and used only for the operation, maintenance, land acquisition, and administration of the state university.

(e) Upon approval of the referendum, an oversight board shall be established to review and accept or amend expenditures of the proceeds of the surtax and to review the plan prepared by the boards of trustees pursuant to paragraph (f). Annually, or as needed, the oversight board shall meet to approve each proposed spending plan.

1. The board shall be composed of seven members who are residents of the county and appointed as follows:

a. One member appointed by the board of directors of the chamber of commerce of the county in which the institutions are located.

b. One member of the board of directors of the chapter of the United Way in the county in which the institutions are located appointed by the board of directors of that chapter of the United Way.

c. One member appointed by the board of trustees of the

state university who may not be a member of the board of trustees of the state university.

d. Two members appointed by the board of trustees of the Florida College System institution who may not be members of the board of trustees of the Florida College System institution.

e. Two members appointed by the chair of the county legislative delegation.

2. Initial appointments to the oversight board shall be made by the respective entities within 60 days after the passage of the referendum. Each member shall be appointed for a 5-year term. A vacancy on the board shall be filled for the unexpired portion of the term in the same manner as the original appointment. No member may serve for more than the remaining portion of a previous member's unexpired term.

(f) Consistent with the purposes set forth in the plan included in the ordinance under paragraph (a), the board of trustees of the Florida College System institution and the board of trustees of the state university shall annually prepare plans that specify how each board of trustees intends to allocate and expend the funds for the institutions' upcoming fiscal year and submit such plans to the oversight board for approval.

(g) The annual apportionment of state funds for the support of a state university and a Florida College System institution allocated under general law may not be reduced because the institutions have received funds pursuant to a sales surtax levied under this subsection.

(h) A surtax imposed under this subsection expires 5 years after the effective date of the surtax.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1357 Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act
SPONSOR(S): Energy & Utilities Subcommittee & Cummings
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 1594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	11 Y, 0 N, As CS	Whittier	Collins
2) Appropriations Committee		White CGW	Leznoff
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act (Act) encourages agencies to "invest in energy, water, and wastewater efficiency and conservation measures to minimize energy and water consumption and wastewater production and maximize energy, water, and wastewater savings" and to reinvest any savings resulting from those measures in additional energy, water, and wastewater efficiency and conservation measures.

The Act provides for contracts that are required to produce immediate and long-term energy cost savings through Energy Savings Contracting (ESCO). A state agency may pursue an ESCO project if it finds that the amount the agency would spend on energy conservation measures would not likely exceed the amount of the cost savings for up to 20 years from the date of installation. ESCO projects are typically financed through a third-party financial institution. The bill clarifies that in a guaranteed energy, water, and wastewater performance savings contract between an ESCO and an agency, the contract may provide for repayment to the lender of the installation construction loan though installment payments.

Currently, state agencies, municipalities, and political subdivisions are authorized to utilize the provisions of the Act. The bill expands the Act to include a county or city school district or an institution of higher education, including all state universities, colleges, and technical colleges.

ESCO projects are required to produce a net cost savings to the state in every year of the contract. Agencies may use the recurring cost savings to repay the third-party loans, but they are required to gain the spending authority through an annual legislative budget request process.

All ESCO projects must be approved by the Department of Financial Services (DFS) and the Department of Management Services (DMS). Proponents of the bill state that the length of time between an audit and approval by the Department of Management Services and DFS is so long that the audit may become outdated. The bill requires DFS to complete its review and approval of the guaranteed energy, water, and wastewater performance savings contract within 10 business days of receiving it.

The bill also adds to contract requirements that a contract must include an investment-grade audit, certified by DMS, which states that the cost savings are appropriate and sufficient for the term of the contract.

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.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act

The Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act (Act) encourages agencies to "invest in energy, water, and wastewater efficiency and conservation measures to minimize energy and water consumption and wastewater production and maximize energy, water, and wastewater savings" and to reinvest any savings resulting from those measures in additional energy, water, and wastewater efficiency and conservation measures.[1]

The Act provides for contracts that are required to produce immediate and long-term energy cost savings through Energy Savings Contracting (ESCO). A state agency may pursue an ESCO project if it finds that the amount the agency would spend on energy conservation measures would not likely exceed the amount of the cost savings for up to 20 years from the date of installation. ESCO projects are typically financed through a third-party financial institution. Currently, state agencies, municipalities, and political subdivisions are authorized to utilize the provisions of the Act.

ESCO projects are required to produce a net cost savings to the state in every year of the contract. Agencies may use the recurring cost savings to repay the third-party loans, but they are required to gain the spending authority through annual legislative budget request process.

"Energy, water, or wastewater cost savings" means a measured reduction in the cost of fuel, energy or water consumption, wastewater production, and stipulated operation and maintenance created from the implementation of one or more energy, water, or wastewater efficiency or conservation measures when compared with an established baseline for the previous cost of fuel, energy or water consumption, wastewater production, and stipulated operation and maintenance.

A proposed contract or lease must include the following information:

- Supporting information required by statutes pertaining to legislative budget requests, deferred-payment commodity contracts, and consolidated financing of deferred-payment purchases.[2] For contracts approved under this section, the criteria may, at a minimum, include the specification of a benchmark cost of capital and minimum real rate of return on energy, water, or wastewater savings against which proposals shall be evaluated.

- Documentation supporting recurring funds requirements in statutes pertaining to deferred-payment commodity contracts, and consolidated financing of deferred-payment purchases.[3]

- Approval by the head of the agency or his or her designee.

- An agency measurement and verification plan to monitor cost savings.

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[1] Section 489.145(2), F.S.
[2] See ss. 216.023(4)(a)9., 287.063(5), and 287.064(11), F.S.
[3] See ss. 287.063(5) and 287.064(11), F.S.

Section 489.145(6), F.S., requires the Department of Management Services (DMS) to verify that the cost savings of all proposed ESCO projects are sufficient for the term of the contract. DMS is also required to provide technical assistance to the agencies regarding these projects. According to DMS, "In order to verify that ESCO-related cost savings are sufficient for the term of the contract, DMS first evaluates the technical merits of the energy audit. This process includes evaluating the assumptions made for the baseline and the proposed savings models, and the calculation methods used to generate the proposed savings."[4] DMS then attempts to determine if the proposed energy savings are achievable.

Once ESCO projects are approved by the DMS, the Department of Financial Services (DFS) must review the financial terms of the contract. Proponents of the bill state that the length of time between an audit and approval by the DMS and DFS is so long that the audit may become outdated.

Effects of Proposed Changes

The term "agency" means the state, a municipality, or a political subdivision. The bill expands this list of entities to include a county or city school district or an institution of higher education, including all state universities, colleges, and technical colleges.

The bill amends the definition of "energy, water, and wastewater efficiency and conservation measure," to mean a "training program incidental to the contract, facility alteration, or equipment purchase to be used in a building retrofit, addition, or renovation, or in new construction, including an addition to existing facilities or infrastructure, which reduces energy or water consumption, wastewater production, or energy-related operating costs." The definition includes, but is not limited to, the following measures:

1. Installing or modifying:
   - Insulation of the facility structure and systems within the facility.
   - Window and door systems that reduce energy consumption or operating costs, such as storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, and reductions in glass area.
   - Automatic energy control systems.
   - Energy recovery systems.
   - Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a facility or complex of facilities.
   - Renewable energy systems.
   - Devices that reduce water consumption or sewer charges.
   - Energy storage systems, such as fuel cells and thermal storage.
   - Energy-generating technologies.
   - Automated, electronic, or remotely controlled technologies, systems, or measures that reduce utility or operating costs.
   - Software-based systems that reduce facility management or other facility operating costs.
   - Energy information and control systems that monitor consumption, redirect systems to optimal energy sources, and manage energy-using equipment.

2. Replacing or modifying:
   - Heating, ventilating, or air-conditioning systems.
   - Lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a building, unless the increase in illumination is necessary to conform to the applicable state or local building code.

[4] *The ESCO Program: Challenges & Recommendations*, Department of Management Services' Division of Real Estate Development & Management, October 4, 2011, p. 9.

3. Implementing a program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, demand response programs, changes to more favorable rate schedules, or auditing utility billing and metering.

4. An improvement that reduces solid waste and associated removal costs.

5. Meter replacement, installation of an automated meter reading system, or other construction, modification, installation, or remodeling of water, electric, gas, fuel, communication, or other supplied utility system.

6. Any other energy conservation measure that reduces British thermal units (Btu), kilowatts (kW), or kilowatt hours (kWh); reduces fuel or water consumption in the building or waste water production; or reduces an operating cost or provides long-term cost reductions.

7. Any other repair, replacement, or upgrade of existing equipment that produces measurable savings, or any other construction, modification, installation, or remodeling that is approved by an agency and that is within the legislative authority granted the agency, such as an energy conservation measure.

8. Any other measure not otherwise defined in this chapter which is designed to reduce utility consumption, revenue enhancements, wastewater cost savings, avoided capital costs, or similar efficiency gains to a governmental unit.

The bill amends the definition of "energy, water, or wastewater cost savings" to include "identified avoided capital savings" when determining the difference between costs associated with implementation of the new measures and an established baseline for the previous costs of fuel, energy, water consumption, wastewater production, stipulated operation and maintenance, and identified avoided capital costs.

The bill clarifies that in a guaranteed energy, water, and wastewater performance savings contract between an ESCO and an agency, the contract may provide for repayment to the lender of the installation construction loan though installment payments. The period may not exceed 20 years. The bill provides that a facility alteration that includes expenditures that are required to properly implement other energy conservation measures may be included as part of the performance contract. In these instances, the installation of those measures may be supervised by the performance savings contractor.

The bill also adds to contract requirements that a contract must include an investment-grade audit, certified by DMS, which states that the cost savings are appropriate and sufficient for the term of the contract.

The bill requires DFS to complete its review and approval of the guaranteed energy, water, and wastewater performance savings contract within 10 business days of receiving it.

B. SECTION DIRECTORY:

Section 1. Amends s. 489.145, F.S., relating to the Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act; revises the terms "agency," "energy, water, and wastewater efficiency and conservation measure," and "energy, water, or wastewater cost savings"; provides that a contract may provide for repayments to a lender of an installation construction loan in installments for a period not to exceed 20 years; requires a contract to provide that repayments to a lender of an installation construction loan may be made over time, not to exceed 20 years from a certain date; requires a contract to provide for a certain amount of repayment to the lender of the installation construction loan within 2 years after a specified date; authorizes certain facility alterations to be included in a performance contract and to be supervised by the performance savings contractor; limits the time allotted to the Office of the Chief Financial Officer to review and approve an agency's

guaranteed energy, water, and wastewater performance savings contract; requires that a proposed contract include an investment-grade audit certified by the Department of Management Services which states that the cost savings are appropriate and sufficient for the term of the contract; clarifies that for funding purposes of consolidated financing of deferred payment commodity contracts an agency means a state agency; conforms language.

Section 2. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See *Fiscal Comments.*

2. Expenditures:

   See *Fiscal Comments.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive effect on the Energy Savings Contracting industry if more agencies enter into guaranteed energy, water, and wastewater performance savings contracts.

D. FISCAL COMMENTS:

The bill adds to contract requirements that a contract must include an investment-grade audit, certified by DMS, which states that the cost savings are appropriate and sufficient for the term of the contract. Current law directs DMS to review the investment-grade audit for each proposed project and certify that the cost savings are appropriate and sufficient for the term of the contract. There is no fiscal impact for DMS to administer the provisions in this bill.

The bill requires DFS to complete its review and approval of the guaranteed energy, water, and wastewater performance savings contract within 10 business days of receiving it. DFS stated that it can handle the provisions of this bill within existing resources.[5]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

[5] March 15, 2013 Department of Financial Services Bill Analysis on file with the House Appropriations Committee.

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Energy & Utilities Subcommittee heard the bill as a Proposed Committee Substitute (PCS). The committee adopted an amendment to the PCS that removed references to "use of alternative energy suppliers" and "negotiation of lower rates using new suppliers" within the definition of "energy, water, and wastewater efficiency and conservation measure." This change maintains consistency with the current legal framework for the provision of retail electric service in Florida. The bill was reported favorably as a committee substitute. The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to the Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act; amending s. 489.145, F.S.; revising the terms "agency," "energy, water, and wastewater efficiency and conservation measure," and "energy, water, or wastewater cost savings"; providing that a contract may provide for repayments to a lender of an installation construction loan in installments for a period not to exceed 20 years; requiring a contract to provide that repayments to a lender of an installation construction loan may be made over time, not to exceed 20 years from a certain date; requiring a contract to provide for a certain amount of repayment to the lender of the installation construction loan within 2 years after a specified date; authorizing certain facility alterations to be included in a performance contract and to be supervised by the performance savings contractor; limiting the time allotted to the Office of the Chief Financial Officer to review and approve an agency's guaranteed energy, water, and wastewater performance savings contract; requiring that a proposed contract or lease include an investment-grade audit certified by the Department of Management Services with specified findings; conforming language; providing an effective date.

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

Section 1. Paragraphs (a) through (c) of subsection (3), paragraphs (c) and (j) of subsection (4), and subsections (5) through (7) of section 489.145, Florida Statutes, are amended to read:

489.145 Guaranteed energy, water, and wastewater performance savings contracting.—

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

(a) "Agency" means the state, a municipality, ~~or~~ a political subdivision, a county or city school district, or an institution of higher education, including all state universities, colleges, and technical colleges.

(b) "Energy, water, and wastewater efficiency and conservation measure" means a training program incidental to the contract, facility alteration, or equipment purchase to be used in a building retrofit, addition, or renovation, or in new construction, ~~including an addition to existing facilities or infrastructure,~~ which reduces energy or water consumption, wastewater production, or energy-related operating costs and includes, but is not limited to:

1. Installing or modifying:

a. Insulation of the facility structure and systems within the facility.

b.~~2.~~ Window and door systems that reduce energy consumption or operating costs, such as storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat-absorbing~~,~~ or heat-reflective~~,~~ glazed and coated window and door systems, additional glazing, and reductions in glass area~~,~~

~~and other window and door system modifications that reduce energy consumption~~.

c.~~3.~~ Automatic energy control systems.

~~4. Heating, ventilating, or air-conditioning system modifications or replacements.~~

~~5. Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system, which, at a minimum, must conform to the applicable state or local building code.~~

d.~~6.~~ Energy recovery systems.

e.~~7.~~ Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a facility or complex of facilities.

~~8. Energy conservation measures that reduce British thermal units (Btu), kilowatts (kW), or kilowatt hours (kWh) consumed or provide long-term operating cost reductions.~~

f.~~9.~~ Renewable energy systems~~, such as solar, biomass, or wind systems~~.

g.~~10.~~ Devices that reduce water consumption or sewer charges.

h.~~11.~~ Energy storage systems, such as fuel cells and thermal storage.

i.~~12.~~ Energy-generating technologies~~, such as microturbines~~.

j. Automated, electronic, or remotely controlled technologies, systems, or measures that reduce utility or operating costs.

k. Software-based systems that reduce facility management

or other facility operating costs.

1. Energy information and control systems that monitor consumption, redirect systems to optimal energy sources, and manage energy-using equipment.

2. Replacing or modifying:

a. Heating, ventilating, or air-conditioning systems.

b. Lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a building, unless the increase in illumination is necessary to conform to the applicable state or local building code.

3. Implementing a program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, demand response programs, changes to more favorable rate schedules, or auditing utility billing and metering.

4. An improvement that reduces solid waste and associated removal costs.

5. Meter replacement, installation of an automated meter reading system, or other construction, modification, installation, or remodeling of water, electric, gas, fuel, communication, or other supplied utility system.

6. Any other energy conservation measure that reduces British thermal units (Btu), kilowatts (kW), or kilowatt hours (kWh); reduces fuel or water consumption in the building or waste water production; or reduces an operating cost or provides long-term cost reductions.

7.~~13.~~ Any other repair, replacement, or upgrade of existing equipment that produces measurable savings, or any other construction, modification, installation, or remodeling

that is approved by an agency and that is within the legislative authority granted the agency, such as an energy conservation measure.

8. Any other measure not otherwise defined in this chapter which is designed to reduce utility consumption, revenue enhancements, wastewater cost savings, avoided capital costs, or similar efficiency gains to a governmental unit.

(c) "Energy, water, or wastewater cost savings" means a measured reduction in the cost of fuel, energy or water consumption, wastewater production, ~~and~~ stipulated operation and maintenance, and identified avoided capital savings created from the implementation of one or more energy, water, or wastewater efficiency or conservation measures when compared with an established baseline for the previous cost of fuel, energy or water consumption, wastewater production, ~~and~~ stipulated operation and maintenance, and identified avoided capital costs.

(4) PROCEDURES.—

(c) An ~~The~~ agency may enter into a guaranteed energy, water, and wastewater performance savings contract with a guaranteed energy, water, and wastewater performance savings contractor if the agency finds that the amount the agency would spend on an ~~the~~ energy, water, and wastewater efficiency and conservation measure is unlikely to ~~measures will not likely~~ exceed the amount of the cost savings for up to 20 years after ~~from~~ the date of installation, based on the life cycle cost calculations provided in s. 255.255, if the recommendations in the report were followed and if the qualified provider or providers give a written guarantee that the cost savings will

meet or exceed the costs of the system. However, actual computed cost savings must meet or exceed the estimated cost savings provided in each agency's program approval. Baseline adjustments used in calculations must be specified in the contract. The contract may provide for repayment to the lender of the installation construction loan through installment payments for a period not to exceed 20 years.

(j) In determining the amount the agency will finance to acquire the energy, water, and wastewater efficiency and conservation measures, the agency may reduce such amount by the application of ~~any~~ grant moneys, rebates, or capital funding available to the agency for the purpose of buying down the cost of the guaranteed energy, water, and wastewater performance savings contract. However, in calculating the life cycle cost as required in paragraph (c), the agency shall not apply any grants, rebates, or capital funding.

(5) CONTRACT PROVISIONS.—

(a) A guaranteed energy, water, and wastewater performance savings contract must include a written guarantee that may include, but is not limited to the form of, a letter of credit, insurance policy, or corporate guarantee by the guaranteed energy, water, and wastewater performance savings contractor that annual cost savings will meet or exceed the amortized cost of energy, water, and wastewater efficiency and conservation measures.

(b) The guaranteed energy, water, and wastewater performance savings contract must provide that all repayments ~~payments~~ to the lender of the installation construction loan,

except obligations on termination of the contract before its expiration, may be made over time, but may not ~~to~~ exceed 20 years from the date of complete installation and acceptance by the agency, and that the annual savings are guaranteed to the extent necessary to make annual payments to satisfy the guaranteed energy, water, and wastewater performance savings contract.

(c) The guaranteed energy, water, and wastewater performance savings contract must require that the guaranteed energy, water, and wastewater performance savings contractor to whom the contract is awarded provide a 100-percent public construction bond to the agency for its faithful performance, as required by s. 255.05.

(d) The guaranteed energy, water, and wastewater performance savings contract may contain a provision allocating to the parties to the contract ~~any~~ annual cost savings that exceed the amount of the cost savings guaranteed in the contract.

(e) The guaranteed energy, water, and wastewater performance savings contract must ~~shall~~ require the guaranteed energy, water, and wastewater performance savings contractor to provide to the agency an annual reconciliation of the guaranteed energy or associated cost savings. If the reconciliation reveals a shortfall in annual energy or associated cost savings, the guaranteed energy, water, and wastewater performance savings contractor is liable for such shortfall. If the reconciliation reveals an excess in annual cost savings, the excess savings may be allocated under paragraph (d) but may not be used to cover

potential energy or associated cost savings shortages in subsequent contract years.

(f) The guaranteed energy, water, and wastewater performance savings contract must provide for repayment ~~payments~~ to the lender of the installation construction loan of not less than one-twentieth of the price to be paid within 2 years after ~~from~~ the date of the complete installation and acceptance by the agency using straight-line amortization for the term of the loan, and the remaining costs to be paid at least quarterly, not to exceed a 20-year term, based on life cycle cost calculations.

(g) The guaranteed energy, water, and wastewater performance savings contract may extend beyond the fiscal year in which it becomes effective; however, the term of a ~~any~~ contract expires at the end of each fiscal year and may be automatically renewed annually for up to 20 years, subject to the agency making sufficient annual appropriations based upon continued realized energy, water, and wastewater savings.

(h) The guaranteed energy, water, and wastewater performance savings contract must stipulate that it does not constitute a debt, liability, or obligation of the state.

(i) A facility alteration that includes expenditures that are required to properly implement other energy conservation measures may be included as part of a performance contract. In such case, notwithstanding any provision of law, the installation of these additional measures may be supervised by the performance savings contractor.

(6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The Department of Management Services, with the assistance of the

Office of the Chief Financial Officer, shall, within available resources, provide technical content assistance to state agencies contracting for energy, water, and wastewater efficiency and conservation measures and engage in other activities considered appropriate by the department for promoting and facilitating guaranteed energy, water, and wastewater performance contracting by state agencies. The Department of Management Services shall review the investment-grade audit for each proposed project and certify that the cost savings are appropriate and sufficient for the term of the contract. The Office of the Chief Financial Officer, with the assistance of the Department of Management Services, shall, within available resources, develop model contractual and related documents for use by state agencies. Before ~~Prior to~~ entering into a guaranteed energy, water, and wastewater performance savings contract, a ~~any~~ contract or lease for third-party financing, or any combination of such contracts, a state agency shall submit such proposed contract or lease to the Office of the Chief Financial Officer for review and approval. The Office of the Chief Financial Officer shall complete its review and approval within 10 business days after receiving the proposed contract or lease. A proposed contract or lease must ~~shall~~ include:

(a) Supporting information required by s. 216.023(4)(a)9. in ss. 287.063(5) and 287.064(11). For contracts approved under this section, the criteria may, at a minimum, include the specification of a benchmark cost of capital and minimum real rate of return on energy, water, or wastewater savings against

which proposals shall be evaluated.

(b) Documentation supporting recurring funds requirements in ss. 287.063(5) and 287.064(11).

(c) Approval by the head of the agency or his or her designee.

(d) An agency measurement and verification plan to monitor cost savings.

(e) An investment-grade audit, certified by the Department of Management Services, which states that the cost savings are appropriate and sufficient for the term of the contract.

(7) FUNDING SUPPORT.—For purposes of consolidated financing of deferred payment commodity contracts under this section by a state ~~an~~ agency, any such contract must be supported from available funds appropriated to the state agency in an appropriation category, as defined in chapter 216, that the Chief Financial Officer has determined is appropriate or that the Legislature has designated for payment of the obligation incurred under this section.

The Office of the Chief Financial Officer shall not approve any contract submitted under this section from a state agency that does not meet the requirements of this section.

Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1399 Firefighter and Police Officer Pension Plans
SPONSOR(S): Government Operations Subcommittee; Rooney, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N, As CS	Harrington	Williamson
2) Appropriations Committee		Delaney	Leznoff
3) State Affairs Committee			

SUMMARY ANALYSIS

The Municipal Firefighters' Pension Trust Fund and the Police Officers' Trust Fund were created to provide uniform retirement system benefits for firefighters, who are employed by a municipal or special fire district, and for municipal police officers. The Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within the boundaries of the municipality. The Police Officers' Retirement Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality. Current law requires the use of premium tax revenues to fund additional or extra pension benefits, which has been inconsistently interpreted.

The bill substantially changes how insurance premium tax revenues must be used in the funding of firefighter and police officer pension plans under chapters 175 and 185, F.S. The bill amends parallel provisions in chapters 175 and 185, F.S., and specifies that in order to receive insurance premium tax revenues, those revenues must be used as follows:

- The amount of premium tax revenues received in 1997 must be used to fund the benefits in existence on March 12, 1999.
- The increase in additional premium tax revenues between 1997 and 2012 must be used to fund any benefits above the base benefits.
- Premium tax revenues in excess of the amount received in 2012, and any accumulations of additional premium tax revenues that have not been applied to fund extra benefits must be used as follows:
  - If the plan is less than 80 percent funded, then:
    - Fifty percent of the revenues must be used to pay actuarial deficiencies;
    - Twenty-five percent of the revenues must be used to fund base benefits; and
    - Twenty-five percent of the revenues must fund defined contribution benefits.
  - If the plan is funded at 80 percent or greater, then:
    - Fifty percent of the revenues must be used to fund base benefits; and
    - Fifty percent of the revenues must fund defined contribution benefits.
- Premium tax revenues may not fund new defined benefits after March 1, 2013, except as provided.

The bill permits a reduction in plan benefits, but requires 25 percent of the freed up money to be used towards funding actuarial deficiencies. The bill requires plan sponsors to create a defined contribution component within their plans.

The bill clarifies that a maximum of 300 hours of overtime may be included for purposes of calculating municipal police officer pension plan benefits.

The bill may have an indeterminate negative fiscal impact on state premium tax revenues and an indeterminate fiscal impact on local governments offering pension plans under chapters 175 or 185, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution Requirements
Section 14, Art. X of the State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis.

The Florida Protection of Public Employee Retirement Benefits Act
Part VII of chapter 112, F.S., the Florida Protection of Public Employee Retirement Benefits Act (act) was adopted by the Legislature to implement the provisions of s. 14, Art. X of the State Constitution. The act establishes minimum standards for operating and funding public employee retirement systems and plans. It is applicable to all units of state, county, special district, and municipal governments participating in, operating, or administering a retirement system for public employees, which is funded in whole or in part by public funds.[1] Responsibility for administration of the act has been assigned primarily to the Florida Department of Management Services, Division of Retirement (division).

Municipal Firefighters' Pension Trust Fund and Police Officers' Retirement Trust Fund
The Marvin B. Clayton Firefighters' and Police Officers' Pension Trust Fund Acts[2] declare a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers. All municipal and special district firefighters and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds.[3]

Local firefighter pension plans are governed by chapter 175, F.S., which is known as the Marvin B. Clayton Firefighters Pension Trust Fund Act. Chapter 175, F.S., was originally enacted in 1939 to provide an incentive--access to premium tax revenues--to encourage the establishment of firefighter retirement plans by cities. Fourteen years later, the Legislature enacted chapter 185, F.S., the Marvin B. Clayton Police Officers' Pension Trust Fund Act, which provides a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under chapter 175, F.S., in 1993.

The acts set forth the minimum benefits or minimum standards for pensions for municipal firefighters and police officers. The benefits provided in the acts may not be reduced by municipalities; however, the benefits provided in a local plan may vary from the provisions in that act so long as the minimum standards are met.

Funding for these pension plans primarily comes from four sources:

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax);
- Employee contributions;
- Other revenue sources; and
- Mandatory payments by the city to fund the normal cost and any actuarial deficiency of the plan.

[1] Section 112.62, F.S.
[2] *See* chapters 175 and 185, F.S.
[3] *See* ss. 175.021(1) and 185.01(1), F.S.

The Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or special fire control district.[4] It is payable by the insurers to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division. In 2011, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to $71.7 million.[5]

The Police Officers' Retirement Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality.[6] Similar to the Firefighters' Pension Trust Fund, the excise tax is payable to the DOR, and the net proceeds are transferred to the appropriate fund at the division. In 2011, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to $59.6 million.[7]

To qualify for insurance premium tax dollars, plans must meet requirements found in chapters 175 and 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees. The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., or s. 185.06, F.S., as applicable, unless specifically authorized to vary from the law.

If the division deems that a firefighter or police officer pension plan created pursuant to these chapters is not in compliance with those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

Premium Tax Revenue Restrictions

In 1999, the Legislature passed legislation that made virtually all provisions of chapters 175 and 185, F.S., expressly applicable to all participating police officer and firefighter pension plans, except the local law plans established by the cities of Jacksonville, Coral Gables, and Miami.[8] All pension plans falling under these chapters are required to meet specific "minimum benefit" standards. The law requires insurance premium tax revenues over the amount received for calendar year 1997, be used to provide additional or "extra benefits" in firefighter and police officer pension plans. The term "extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality, and in addition to those in existence for firefighters and police officers on March 12, 1999.[9]

Until August 2012, the division had consistently interpreted the law to require that premium tax revenues be used first to meet any minimum benefit requirements and those other pension benefits that were in place on March 12, 1999. Once the plan was in compliance with their minimum benefits requirements, any additional premium tax revenues had to be used to fund extra benefits. Plans were not permitted to reduce pension benefits below the minimum benefits level or the level of pension benefits in effect on March 12, 1999, if greater.

In August 2012, the division responded to a letter from the City of Naples, Florida, advising that its ongoing interpretation of s. 185.35(2), F.S., "appears inaccurate." The division was asked whether a city could negotiate with its police officers to reduce benefits below the level of benefits provided on March 12, 1999, and whether that reduction would jeopardize its premium tax revenues. In response, the division advised that for local law plans in effect on October 1, 1998, the law compels the plan to provide chapter minimum benefits only to the extent that those benefits can be funded with additional

[4] Section 175.101, F.S.
[5] A copy of the 2011 Premium Tax Distribution report is available online at: http://www.dms.myflorida.com/human_resource_support/retirement/local_retirement_plans/municipal_police_and_fire_plans
[6] Section 185.08, F.S.
[7] *Supra* at n. 5.
[8] *See* chapter 99-1, L.O.F., and ss. 175.351(3) and 185.35(3), F.S. The law excludes plans created by special act before May 27, 1939, which include the cities of Jacksonville, Coral Gables, and Miami.
[9] *See* ss. 175.351 and 185.35, F.S.

premium tax revenues. Thus, the division's new interpretation requires plans in effect on October 1, 1998, to provide minimum chapter benefits *only* to the extent that they can be funded with premium tax revenues received in excess of the amount received for calendar year 1997. If additional premium tax revenues are available after providing the chapter minimum benefits, additional premium tax revenues must be used to fund extra benefits.

Utilizing this new interpretation, it appears that the following may occur:

- The plan's pension benefits could be reduced to the level that can be funded solely by those additional premium tax revenues received in excess of the 1997 level;
- A plan sponsor may redirect, at its discretion, its pre-1997 premium tax revenues from funding minimum pension benefits to funding other non-pension retirement benefits;
- A plan sponsor could reduce its mandatory contribution it was previously making to the plan to fund minimum benefits and redirect those monies to other municipal purposes; and
- Post-1997 insurance premium tax revenues used previously to fund extra benefits would be used to fund the minimum benefits.

Municipal Police Pension Plans Definition of "Salary"

In 2011, the Legislature imposed a 300 hour cap on the amount of overtime hours to be included in the calculation of retirement benefits in ss. 112.66, 175.032, and 185.02, F.S.[10] Section 112.66, F.S., provides that "a local government may include up to 300 hours per year of overtime compensation" when calculating retirement benefits. Likewise, ss. 175.032(3) and 185.02(4), F.S., provide that "up to 300 hours per year in overtime compensation may be included" for purposes of calculating firefighter and police officer retirement pension benefits. However, s. 185.02(4), F.S., also provides that overtime for police officers, for purposes of calculating benefits, may not be less than 300 hours per officer per calendar year for service earned under collective bargaining agreements in place before July 1, 2011.

Effect of the Bill

Use of Insurance Premium Tax Revenues

The bill substantially changes how insurance premium tax revenues must be used in the funding of firefighter and police officer pension plans under chapters 175 and 185, F.S.

The bill amends parallel provisions in chapters 175 and 185, F.S., and specifies that in order to receive insurance premium tax revenues, those revenues must be used as follows:

- The amount of premium tax revenues received in 1997 must be used to fund the benefits in existence on March 12, 1999.
- The increase in additional premium tax revenues between 1997 and 2012 must be used to fund any benefits above the base benefits.
- Premium tax revenues in excess of the amount received in 2012, and any accumulations of additional premium tax revenues that have not been applied to fund extra benefits must be used as follows:
    - If the plan is less than 80 percent funded, then:
        - Fifty percent of the revenues must be used to pay actuarial deficiencies;
        - Twenty-five percent of the revenues must be used to fund base benefits; and
        - Twenty-five percent of the revenues must fund defined contribution benefits.
    - If the plan is funded at 80 percent or greater, then:
        - Fifty percent of the revenues must be used to fund base benefits; and
        - Fifty percent of the revenues must fund defined contribution benefits.
- Premium tax revenues may not fund new defined benefits after March 1, 2013.

[10] Chapter 2011-216, L.O.F.

Reduction in Plan Benefits
The bill provides that plan benefits may be reduced if the plan continues to meet the required benefits of the plan and minimum chapter standards. If the plan sponsor reduces benefits, 25 percent of the moneys freed up by the reduction in benefits must be used to fund actuarial deficiencies.

Defined Contribution Component
The bill requires plan sponsors to create a defined contribution component within their plans by October 1, 2013, or upon the creation date of a new participating plan. Plans created by special act of the Legislature have until July 1, 2014, to create a defined contribution component. It provides that any supplemental plan in existence on March 1, 2013, is deemed to be a defined contribution plan in compliance with this requirement.

Definitions
The bill creates new definitions in both chapters 175 and 185, F.S., which include:

- "Additional premium tax revenues" means revenues received by a municipality (or special fire control district), which exceed base premium tax revenues.
- "Base benefits" means the level of benefits in existence for firefighters or police officers, as applicable, on March 12, 1999.
- "Base premium tax revenues" means the revenues received by a municipality (or special fire control district) equal to the amount of such revenues received in calendar year 1997.
- "Defined contribution plan" means the component of a local law plan to which deposits are made to provide benefits for firefighters or police officers, as applicable. Such component is an element of a local law plan and exists in conjunction with the defined benefit component that meets the base benefits and minimum standards of the chapter. Benefits provided by a defined contribution plan must be provided through individual member accounts and are limited to the contributions made into each member's account and the actual accumulated earnings, net of expenses, earned on the member's account.
- "Long-term funded ratio" or "funded ratio" means the ratio of the actuarial value of assets of the plan to the actuarial accrued liabilities of the plan, as reported in the most recent actuarial valuation of the plan.
- "Minimum benefits" means the benefits set forth in the applicable chapter.
- "Minimum standards" means the standards set forth in the applicable chapter.
- "Required benefits" means the lesser of the minimum benefits set forth in the chapter and the base benefits of the plan. For local law plans created after March 1, 2013, the required benefits are the minimum benefits set forth in the chapter.
- "Special benefits" means benefits provided in a defined contribution plan for firefighters or police officers, as applicable.

The bill revises the definition of "supplemental plan" to provide that any supplemental plan in existence on March 1, 2013, must be deemed a defined contribution plan in compliance with the chapter. The bill also revises the definition of "local law plan" to provide that it includes both a defined benefit plan component and a defined contribution plan component.

Municipal Police Officer Definition of "Salary"
The bill amends s. 185.02(4), F.S., to remove the sentence that provides that local law plans may limit overtime to not less than 300 hours per officer per calendar year for the calculation of retirement benefits. Deleting this provision should clarify that overtime is capped at 300 hours, with no required minimum, for the calculation of police officer retirement benefits.

Reliance on Division Interpretation
The bill provides that notwithstanding provisions of the chapter, a plan that has relied on an interpretation of the Department of Management Services (department) on or after August 14, 2012, and before February 1, 2013, may continue to implement proposed changes in reliance on that

interpretation.[11] Such reliance must be evidenced by formal correspondence between the municipality or district and the department. The changes that are otherwise contrary to the chapter provisions may continue in effect until the earlier of October 1, 2016, or the effective date of the collective bargaining agreement that is contrary to the changes to the local law plan.

Retirement Computation Requirements
Current law provides that retirement benefits must equal the number of years of service multiplied by 2 percent of the member's average final compensation. If current contributions are not adequate to fund the additional benefits to meet minimum requirements, only incremental increases must be required. Such increases must be provided as state moneys become available. The bill deletes the provision that permits incremental increases if contributions are not adequate to fund the additional benefits.

Important State Interest
The bill provides that the act fulfills an important state interest as related to public pension plans.

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

B. SECTION DIRECTORY:

Section 1 amends s. 175.021, F.S., revising the legislative declaration to require all plans to meet the requirements of chapter 175, F.S., in order to receive insurance premium tax revenues.

Section 2 amends s. 175.032, F.S., revising and providing definitions.

Section 3 amends s. 175.071, F.S., conforming a cross-reference.

Section 4 amends s. 175.091, F.S., revising existing payment provisions and providing an additional mandatory payment by the municipality or special fire control district to the firefighters' pension trust fund.

Section 5 amends s. 175.162, F.S., deleting a limitation on state contributions funding additional benefits.

Section 6 amends s. 175.351, F.S., relating to municipalities and special fire control districts that have their own pension plans and choose to participate in the distribution of a tax fund; revising criteria governing the use of income from the premium tax; requiring plan sponsors to have a defined contribution plan in place by a certain date; authorizing a municipality to implement certain changes to a local law plan which are contrary to chapter 175, F.S., under certain circumstances.

Section 7 amends s. 185.01, F.S., revising the legislative declaration to require all plans to meet the requirements of chapter 185, F.S., in order to receive insurance premium tax revenues.

Section 8 amends s. 185.02, F.S., revising and providing definitions; deleting a provision allowing a local law plan to limit the amount of overtime payments which can be used for retirement benefit calculations.

Section 9 amends s. 185.06, F.S., conforming a cross-reference.

Section 10 amends s. 185.07, F.S., revising existing payment provisions and providing for an additional mandatory payment by the municipality to the police officers' retirement trust fund.

[11] During the Government Operations Subcommittee meeting on April 1, 2013, a representative from the Florida League of Cities stated that less 20 letters have been issued by the department.

Section 11 amends s. 185.16, F.S., deleting a limitation on state contributions funding additional benefits.

Section 12 amends s. 185.35, F.S., relating to municipalities that have their own pension plans for police officers and choose to participate in the distribution of a tax fund; revising criteria governing the use of income from the premium tax; requiring plan sponsors to have a defined contribution plan in place by a certain date; authorizing a municipality to implement certain changes to a local law plan which are contrary to chapter 185, F.S., under certain circumstances.

Section 13 provides a declaration of important state interest.

Section 14 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on state revenues. Certain provisions of the bill directing the expenditure of insurance premium tax revenues may offer some incentive for entities currently not offering police or firefighter pension plans to do so, which would reduce the amount of premium tax revenues deposited in the state's General Revenue fund. However, virtually all of the largest public employers already offer such plans, or are irrevocably participating in the Florida Retirement System, significantly mitigating any potential fiscal impact. A reasonable estimate of the number of, if any, entities that may decide to offer a plan as a result the new provisions of the bill, is indeterminate, as is the impact of them doing so.

The bill redirects how premium tax revenues provided to local governments are to be used in funding their police and fire pension plans. The bill will have an indeterminate impact on local government plans as each has a different funding status and premium tax revenue stream.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Actuarial Requirements

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

> SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers. According to the division, this bill appears to comply with the requirements of Article X, s. 14 of the State Constitution.[12]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2013, the Government Operations Subcommittee adopted a strike-all amendment and reported HB 1399 favorably as a committee substitute. The committee substitute:

- Requires "required benefits" and minimum standards to be met as a condition precedent to the plan or plan sponsor receiving a distribution of insurance premium tax revenues, rather than "base benefits" and minimum standards.
- Defines "minimum benefits," "minimum standards," and "required benefits."
- Amends the definition for "supplemental plan" to provide that any supplemental plan in existence on March 1, 2013, must be deemed to be a defined contribution plan.
- Authorizes a local law plan created after March 1, 2013, to use up to 50 percent of the insurance premium tax revenues to fund defined benefit plan component benefits and the remaining must be used to fund defined contribution plan component benefits.

[12] Department of Management Services, Bill Analysis 2013 for HB 1399, dated March 15, 2013 (on file with the Government Operations Subcommittee).

- Deletes language in current law that permits plans to provide for incremental increases in benefits.
- Allows for a reduction in benefits if the plan offers benefits in excess of required benefits of the plan and the minimum standards of the chapter.
- Permits plans to rely on an interpretation of the department, as evidenced by formal correspondence between the plan and the department, until the earlier of October 1, 2016, or the effective date of the collective bargaining agreement.

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

A bill to be entitled

An act relating to firefighter and police officer pension plans; amending s. 175.021, F.S.; revising the legislative declaration to require all plans to meet the requirements of ch. 175, F.S., in order to receive insurance premium tax revenues; amending s. 175.032, F.S.; revising and providing definitions; amending s. 175.071, F.S.; conforming a cross-reference; amending s. 175.091, F.S.; revising existing payment provisions and providing an additional mandatory payment by the municipality or special fire control district to the firefighters' pension trust fund; amending s. 175.162, F.S.; deleting a limitation on state contributions funding additional benefits; amending s. 175.351, F.S., relating to municipalities and special fire control districts that have their own pension plans and choose to participate in the distribution of a tax fund; revising criteria governing the use of income from the premium tax; requiring plan sponsors to have a defined contribution plan in place by a certain date; authorizing a municipality to implement certain changes to a local law plan which are contrary to ch. 175, F.S., under certain circumstances; amending s. 185.01, F.S.; revising the legislative declaration to require all plans to meet the requirements of ch. 185, F.S., in order to receive insurance premium tax revenues; amending s. 185.02, F.S.; revising and providing definitions; deleting a provision allowing a

local law plan to limit the amount of overtime payments which can be used for retirement benefit calculations; amending s. 185.06, F.S.; conforming a cross-reference; amending s. 185.07, F.S.; revising existing payment provisions and providing for an additional mandatory payment by the municipality to the police officers' retirement trust fund; amending s. 185.16, F.S.; deleting a limitation on state contributions funding additional benefits; amending s. 185.35, F.S., relating to municipalities that have their own pension plans for police officers and choose to participate in the distribution of a tax fund; revising criteria governing the use of income from the premium tax; requiring plan sponsors to have a defined contribution plan in place by a certain date; authorizing a municipality to implement certain changes to a local law plan which are contrary to ch. 185, F.S., under certain circumstances; providing a declaration of important state interest; providing an effective date.

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

Section 1. Subsection (2) of section 175.021, Florida Statutes, is amended to read:

175.021 Legislative declaration.—

(2) This chapter hereby establishes, for all municipal and special district pension plans existing ~~now or hereafter~~ under

this chapter, including chapter plans and local law plans, required ~~minimum~~ benefits and minimum standards for the operation and funding of such plans, hereinafter referred to as firefighters' pension trust funds, which must be met as a condition precedent to the plan or plan sponsor receiving a distribution of insurance premium tax revenues under s. 175.121. The required ~~minimum~~ benefits and minimum standards for each plan as set forth in this chapter may not be diminished by local charter, ordinance, or resolution or by special act of the Legislature or~~, nor may the minimum benefits or minimum standards~~ be reduced or offset by any other local, state, or federal law that may include firefighters in its operation, except as provided under s. 112.65.

Section 2. Section 175.032, Florida Statutes, is amended to read:

175.032 Definitions.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the term ~~following words and phrases have the following meanings~~:

(1) "Additional premium tax revenues" means revenues received by a municipality or special fire control district pursuant to s. 175.121 which exceed base premium tax revenues.

(2)~~(1)(a)~~ "Average final compensation" for:

(a) A full-time firefighter means one-twelfth of the average annual compensation of the 5 best years of the last 10 years of creditable service before ~~prior to~~ retirement, termination, or death, or the career average as a full-time

firefighter since July 1, 1953, whichever is greater. A year is ~~shall be~~ 12 consecutive months or such other consecutive period of time as is used and consistently applied.

(b) ~~"Average final compensation" for~~ A volunteer firefighter means the average salary of the 5 best years of the last 10 best contributing years before a ~~prior to~~ change in status to a permanent full-time firefighter or retirement as a volunteer firefighter or the career average of a volunteer firefighter, since July 1, 1953, whichever is greater.

(3) "Base benefits" means the level of benefits in existence for firefighters on March 12, 1999.

(4) "Base premium tax revenues" means revenues received by a municipality or special fire control district pursuant to s. 175.121 equal to the amount of such revenues received for calendar year 1997.

(5) ~~(2)~~ "Chapter plan" means a separate defined benefit pension plan for firefighters which incorporates by reference the provisions of this chapter and has been adopted by the governing body of a municipality or special district. Except as may be specifically authorized in this chapter, the provisions of a chapter plan may not differ from the plan provisions set forth in ss. 175.021-175.341 and 175.361-175.401. Actuarial valuations of chapter plans shall be conducted by the division as provided by s. 175.261(1).

(6) ~~(3)~~ "Compensation" or "salary" means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the fixed monthly remuneration paid a

firefighter. If remuneration is based on actual services rendered, as in the case of a volunteer firefighter, the term means the total cash remuneration received yearly for such services, prorated on a monthly basis. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

(a) Any retirement trust fund or plan that meets the requirements of this chapter does not, solely by virtue of this subsection, reduce or diminish the monthly retirement income otherwise payable to each firefighter covered by the retirement trust fund or plan.

(b) The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code is ~~shall be~~ deemed to be the compensation or salary the member would receive if he or she were not participating in such program and ~~shall be~~ treated as compensation for retirement purposes under this chapter.

(c) For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for that plan year may not include any amounts in excess of the

Internal Revenue Code s. 401(a)(17) limitation, as amended by the Omnibus Budget Reconciliation Act of 1993, which limitation of $150,000 shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code s. 401(a)(17)(B). For any person who first became a member before the first plan year beginning on or after January 1, 1996, the limitation on compensation may not be less than the maximum compensation amount that was allowed to be taken into account under the plan in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 401(a)(17)(1991).

(7) ~~(4)~~ "Creditable service" or "credited service" means the aggregate number of years of service, and fractional parts of years of service, of any firefighter, omitting intervening years and fractional parts of years when such firefighter may not have been employed by the municipality or special fire control district, subject to the following conditions:

(a) A ~~No~~ firefighter may not ~~will~~ receive credit for years or fractional parts of years of service if he or she has withdrawn his or her contributions to the fund for those years or fractional parts of years of service~~,~~ unless the firefighter repays into the fund the amount he or she has withdrawn, plus interest determined by the board. The member has ~~shall have~~ at least 90 days after his or her reemployment to make repayment.

(b) A firefighter may voluntarily leave his or her contributions in the fund for ~~a period of~~ 5 years after leaving

the employ of the fire department, pending the possibility of being rehired by the same department, without losing credit for the time he or she has participated actively as a firefighter. If the firefighter is not reemployed as a firefighter~~,~~ with the same department~~,~~ within 5 years, his or her contributions shall be returned without interest.

(c) Credited service under this chapter shall be provided only for service as a firefighter~~, as defined in subsection (8),~~ or for military service and does not include credit for any other type of service. A municipality ~~may~~, by local ordinance, or a special fire control district ~~may~~, by resolution, may provide for the purchase of credit for military service before ~~prior to~~ employment as well as for prior service as a firefighter for some other employer as long as a firefighter is not entitled to receive a benefit for such prior service ~~as a firefighter~~. For purposes of determining credit for prior service as a firefighter, in addition to service as a firefighter in this state, credit may be given for federal, other state, or county service if the prior service is recognized by the Division of State Fire Marshal as provided under chapter 633, or the firefighter provides proof to the board of trustees that his or her service is equivalent to the service required to meet the definition of a firefighter under subsection (12) ~~(8)~~.

(8)~~(5)~~ "Deferred Retirement Option Plan" or "DROP" means a local law plan retirement option in which a firefighter may elect to participate. A firefighter may retire for all purposes of the plan and defer receipt of retirement benefits into a DROP

account while continuing employment with his or her employer. However, a firefighter who enters ~~the~~ DROP and who is otherwise eligible to participate may ~~shall~~ not ~~thereby~~ be precluded from participating, or continuing to participate, in a supplemental plan in existence on, or created after, March 12, 1999 ~~the effective date of this act~~.

(9) "Defined contribution plan" means the component of a local law plan to which deposits are made to provide benefits for firefighters, or for firefighters and police officers if both are included. Such component is an element of a local law plan and exists in conjunction with the defined benefit component that meets the required benefits and minimum standards of this chapter. The retirement benefits of the defined contribution plan shall be provided through individual member accounts in accordance with the applicable provisions of the Internal Revenue Code and related regulations and are limited to the contributions made into each member's account and the actual accumulated earnings, net of expenses, earned on the member's account.

(10)~~(6)~~ "Division" means the Division of Retirement of the Department of Management Services.

(11)~~(7)~~ "Enrolled actuary" means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

(12)~~(8)~~(a) "Firefighter" means any person employed solely by a constituted fire department of any municipality or special fire control district who is certified as a firefighter as a

condition of employment in accordance with s. 633.35 and whose duty it is to extinguish fires, to protect life, or to protect property. The term includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters, but does not include part-time firefighters or auxiliary firefighters. However, for purposes of this chapter only, the term also includes public safety officers who are responsible for performing both police and fire services, who are certified as police officers or firefighters, and who are certified by their employers to the Chief Financial Officer as participating in this chapter before October 1, 1979. Effective October 1, 1979, public safety officers who have not been certified as participating in this chapter are considered police officers for retirement purposes and are eligible to participate in chapter 185. Any plan may provide that the fire chief has an option to participate~~, or not,~~ in that plan.

(b) "Volunteer firefighter" means any person whose name is carried on the active membership roll of a constituted volunteer fire department or a combination of a paid and volunteer fire department of any municipality or special fire control district and whose duty it is to extinguish fires, to protect life, and to protect property. Compensation for services rendered by a volunteer firefighter does ~~shall~~ not disqualify him or her as a volunteer. A person may ~~shall~~ not be disqualified as a volunteer firefighter solely because he or she has other gainful employment. Any person who volunteers assistance at a fire but

is not an active member of a department described herein is not a volunteer firefighter within the meaning of this paragraph.

(13) ~~(9)~~ "Firefighters' Pension Trust Fund" means a trust fund, by whatever name known, as provided under s. 175.041, for the purpose of assisting municipalities and special fire control districts in establishing and maintaining a retirement plan for firefighters.

(14) ~~(10)~~ "Local law municipality" means ~~is~~ any municipality in which ~~there exists~~ a local law plan exists.

(15) ~~(11)~~ "Local law plan" means a retirement ~~defined benefit pension~~ plan, which includes both a defined benefit plan component and a defined contribution plan component, for firefighters, or for firefighters or police officers if both are ~~where~~ included, as described in s. 175.351, established by municipal ordinance, special district resolution, or special act of the Legislature, which ~~enactment~~ sets forth all plan provisions. Local law plan provisions may vary from the provisions of this chapter if the~~, provided that~~ required ~~minimum~~ benefits and minimum standards of this chapter are met. However, any such variance must ~~shall~~ provide a greater benefit for firefighters. Actuarial valuations of local law plans shall be conducted by an enrolled actuary as provided in s. 175.261(2).

(16) ~~(12)~~ "Local law special fire control district" means ~~is~~ any special fire control district in which ~~there exists~~ a local law plan exists.

(17) "Long-term funded ratio" or "funded ratio" means the ratio of the actuarial value of assets of the plan to the

actuarial accrued liabilities of the plan, as reported in the most recent actuarial valuation of the plan, deemed to be in compliance with chapter 112 by the Department of Management Services.

(18) "Minimum benefits" means the benefits set forth in ss. 175.021-175.341 and ss. 175.361-175.401.

(19) "Minimum standards" means the standards set forth in ss. 175.021-175.341 and ss. 175.361-175.401.

(20) ~~(13)~~ "Property insurance" means property insurance as defined in s. 624.604 and covers real and personal property within the corporate limits of a ~~any~~ municipality, or within the boundaries of a ~~any~~ special fire control district, within the state. "Multiple peril" means a combination or package policy that includes both property and casualty coverage for a single premium.

(21) "Required benefits" means the lesser of the minimum benefits set forth in this chapter and the base benefits of the plan. For local law plans created after March 1, 2013, the required benefits are the minimum benefits set forth in this chapter.

(22) ~~(14)~~ "Retiree" or "retired firefighter" means a firefighter who has entered retirement status. For the purposes of a plan that includes a Deferred Retirement Option Plan (DROP), a firefighter who enters ~~the~~ DROP is ~~shall be~~ considered a retiree for all purposes of the plan. However, a firefighter who enters ~~the~~ DROP and who is otherwise eligible to participate may ~~shall~~ not ~~thereby~~ be precluded from participating, or continuing to participate, in a supplemental plan in existence

on, or created after, March 12, 1999 ~~the effective date of this act~~.

(23)~~(15)~~ "Retirement" means a firefighter's separation from city or fire district employment as a firefighter with immediate eligibility for ~~receipt of~~ benefits under the plan. For purposes of a plan that includes a Deferred Retirement Option Plan (DROP), "retirement" means the date a firefighter enters ~~the~~ DROP.

(24) "Special benefits" means benefits provided in a defined contribution plan for firefighters.

(25)~~(16)~~ "Special fire control district" means a special district, as defined in s. 189.403 ~~189.403(1)~~, established for the purposes of extinguishing fires, protecting life, and protecting property within the incorporated or unincorporated portions of a ~~any~~ county or combination of counties, or within any combination of incorporated and unincorporated portions of a ~~any~~ county or combination of counties. The term does not include any dependent or independent special district, as those terms are defined in s. 189.403 ~~189.403(2) and (3), respectively~~, the employees of which are members of the Florida Retirement System pursuant to s. 121.051(1) or (2).

(26)~~(17)~~ "Supplemental plan" means a plan to which deposits are made to provide extra benefits for firefighters, or for firefighters and police officers if both are ~~where~~ included ~~under this chapter~~. Such a plan is an element of a local law plan and exists in conjunction with a defined benefit component ~~plan~~ that meets the required ~~minimum~~ benefits and minimum standards of this chapter. Any supplemental plan in existence on

March 1, 2013, is deemed to be a defined contribution plan in compliance with s. 175.351(8).

(27)~~(18)~~ "Supplemental plan municipality" means a ~~any~~ local law municipality in which ~~there existed~~ a supplemental plan existed, of any type or nature, as of December 1, 2000.

Section 3. Paragraph (b) of subsection (7) of section 175.071, Florida Statutes, is amended to read:

175.071 General powers and duties of board of trustees.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(7) To assist the board in meeting its responsibilities under this chapter, the board, if it so elects, may:

(b) Employ an independent enrolled actuary, as defined in s. 175.032 ~~175.032(7)~~, at the pension fund's expense.

If the board chooses to use the municipality's or special district's legal counsel or actuary, or chooses to use any of the municipality's or special district's other professional, technical, or other advisers, it must do so only under terms and conditions acceptable to the board.

Section 4. Paragraphs (d) through (g) of subsection (1) of section 175.091, Florida Statutes, are amended, and a new paragraph (e) is added to that subsection, to read:

175.091 Creation and maintenance of fund.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) The firefighters' pension trust fund in each municipality and in each special fire control district shall be created and maintained in the following manner:

(d) By mandatory payment by the municipality or special fire control district of a sum equal to the normal cost of and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of chapter 112 after taking into account the amounts described in paragraphs (b), (c), (f), (g), and (h) and the amounts of the tax proceeds described in paragraph (a) that must be used to fund defined benefit plan benefits, except as otherwise excluded from consideration in determining the mandatory payment.

(e) For local law plans, and in addition to the mandatory payment described in paragraph (d), by mandatory payment by the municipality or special fire control district of the amount described in s. 175.351(3) if the long-term funded ratio of the plan is less than 80 percent.

(f) ~~(e)~~ By all gifts, bequests, and devises when donated to the fund.

(g) ~~(f)~~ By all accretions to the fund by way of interest or dividends on bank deposits, or otherwise.

(h) ~~(g)~~ By all other sources or income now or hereafter authorized by law for the augmentation of such firefighters' pension trust fund.

Nothing in this section shall be construed to require adjustment of member contribution rates in effect on the date this act becomes a law, including rates that exceed 5 percent of salary,

provided that such rates are at least one-half of 1 percent of salary.

Section 5. Paragraph (a) of subsection (2) of section 175.162, Florida Statutes, is amended to read:

175.162 Requirements for retirement.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, any firefighter who completes 10 or more years of creditable service as a firefighter and attains age 55, or completes 25 years of creditable service as a firefighter and attains age 52, and who for such minimum period has been a member of the firefighters' pension trust fund operating under a chapter plan or local law plan, is eligible for normal retirement benefits. Normal retirement under the plan is retirement from the service of the municipality or special fire control district on or after the normal retirement date. In such event, payment of retirement income will be governed by the following provisions of this section:

(2)(a) The amount of monthly retirement income payable to a full-time firefighter who retires on or after his or her normal retirement date shall be an amount equal to the number of his or her years of credited service multiplied by 2 percent of his or her average final compensation as a full-time firefighter. ~~However, if current state contributions pursuant to this chapter are not adequate to fund the additional benefits to meet the minimum requirements in this chapter, only such incremental increases shall be required as state moneys are adequate to provide. Such increments shall be provided as state~~

~~moneys become available.~~

Section 6. Section 175.351, Florida Statutes, is amended to read:

175.351 Municipalities and special fire control districts that have ~~having~~ their own pension plans for firefighters. ~~For any municipality, special fire control district, local law municipality, local law special fire control district, or local law plan under this chapter,~~ In order for a municipality or ~~municipalities and~~ special fire control district that has its ~~districts with their~~ own pension plan ~~plans~~ for firefighters, or for firefighters and police officers if both are included, to participate in the distribution of the tax fund established under ~~pursuant to~~ s. 175.101, a local law plan and its plan sponsor ~~plans~~ must meet the required ~~minimum~~ benefits and minimum standards set forth in this chapter.

(1) If a municipality has a pension plan for firefighters, or ~~a pension plan~~ for firefighters and police officers if both are included, which in the opinion of the division meets the required ~~minimum~~ benefits and minimum standards set forth in this chapter, the board of trustees of the pension plan must~~, as approved by a majority of firefighters of the municipality, may:~~

~~(a)~~ place the income from the premium tax in s. 175.101 in such ~~pension~~ plan for the sole and exclusive use of its firefighters, or its ~~for~~ firefighters and police officers if both are included, where it shall become an integral part of that ~~pension~~ plan and ~~shall~~ be used to fund benefits for firefighters as follows:

(a) The base premium tax revenues must be used to fund

base benefits.

(b) Of the premium tax revenues received that are in excess of the amount received for the 2012 calendar year, and any accumulations of additional premium tax revenues that have not been applied to fund extra benefits:

1. If the plan has a long-term funded ratio of less than 80 percent:

a. Fifty percent must be used as additional contributions to pay the plan's actuarial deficiency and may not be considered in the determination of the mandatory payment described in s. 175.091(1)(d);

b. Twenty-five percent must be used to fund base benefits; and

c. The remainder must be placed in a defined contribution plan to fund special benefits.

2. If the plan has a long-term funded ratio of 80 percent or greater:

a. Fifty percent must be used to fund base benefits; and

b. The remainder must be placed in a defined contribution plan to fund special benefits.

(c) Additional premium tax revenues not described in paragraph (b) must be used to fund benefits that were not included in the base benefits ~~to pay extra benefits to the firefighters included in that pension plan; or~~

~~(b) Place the income from the premium tax in s. 175.101 in a separate supplemental plan to pay extra benefits to firefighters, or to firefighters and police officers if included, participating in such separate supplemental plan~~.

(2) Insurance premium tax revenues may not be used to fund benefits provided in a defined benefit plan which were not provided by the plan as of March 1, 2013; however, for a local law plan created after March 1, 2013, up to 50 percent of the insurance premium tax revenues may be used to fund defined benefit plan component benefits and the remainder used to fund defined contribution plan component benefits.

(3) If a plan offers benefits in excess of its required benefits, such benefits may be reduced if the plan continues to meet the required benefits of the plan and the minimum standards set forth in this chapter. The amount of insurance premium tax revenues previously used to fund benefits in excess of the plan's required benefits before the reduction must be used as provided in paragraph (1)(b). Twenty-five percent of the amount of any mandatory contribution paid by the municipality or special fire control district which was previously used to fund benefits above the level of required benefits provided before the reduction must be used as additional contributions as specified in s. 175.091 to fund the plan's actuarial deficiency.

(4) ~~(2)~~ The premium tax provided by this chapter shall ~~in all cases~~ be used in its entirety to provide retirement ~~extra~~ benefits to firefighters, or to firefighters and police officers if both are included. ~~However, local law plans in effect on October 1, 1998, must comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 175.162(2)(a). If a plan is in compliance with such minimum benefit provisions, as subsequent~~

~~additional premium tax revenues become available, they must be used to provide extra benefits.~~ Local law plans created by special act before May 27, 1939, are deemed to comply with this chapter. ~~For the purpose of this chapter, the term:~~

~~(a) "Additional premium tax revenues" means revenues received by a municipality or special fire control district pursuant to s. 175.121 which exceed that amount received for calendar year 1997.~~

~~(b) "Extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for firefighters on March 12, 1999.~~

(5)~~(3)~~ A retirement plan or amendment to a retirement plan may not be proposed for adoption unless the proposed plan or amendment contains an actuarial estimate of the costs involved. Such proposed plan or proposed plan change may not be adopted without the approval of the municipality, the special fire control district, or, where permitted, the Legislature. Copies of the proposed plan or proposed plan change and the actuarial impact statement of the proposed plan or proposed plan change shall be furnished to the division before the last public hearing thereon. Such statement must also indicate whether the proposed plan or proposed plan change is in compliance with s. 14, Art. X of the State Constitution and those provisions of part VII of chapter 112 which are not expressly provided in this chapter. Notwithstanding any other provision, only those local law plans created by special act of legislation before May 27, 1939, are deemed to meet the minimum benefits and minimum

standards only in this chapter.

(6) ~~(4)~~ Notwithstanding any other provision, with respect to any supplemental plan municipality:

(a) A local law plan and a supplemental plan may continue to use their definition of compensation or salary in existence on March 12, 1999.

(b) Section 175.061(1)(b) does not apply, and a local law plan and a supplemental plan shall continue to be administered by a board or boards of trustees numbered, constituted, and selected as the board or boards were numbered, constituted, and selected on December 1, 2000.

~~(c) The election set forth in paragraph (1)(b) is deemed to have been made.~~

(7) ~~(5)~~ The retirement plan setting forth the benefits and the trust agreement, if any, covering the duties and responsibilities of the trustees and the regulations of the investment of funds must be in writing~~,~~ and copies made available to the participants and to the general public.

(8) In addition to the defined benefit component of the local law plan, each plan sponsor must have a defined contribution plan component within the local law plan by October 1, 2013, or upon the creation date of a new participating plan. However, the plan sponsor of any plan established by special act of the Legislature has until July 1, 2014, to create a defined contribution component within the plan.

(9) Notwithstanding any other provision of this chapter, a municipality or special fire control district that has implemented or proposed changes to a local law plan based on the

municipality's or district's reliance on an interpretation of this chapter by the department on or after August 14, 2012, and before February 1, 2013, may continue the implemented changes or continue to implement proposed changes. Such reliance must be evidenced by formal correspondence between the municipality or district and the department which describes the specific changes to the local law plan, with the initial correspondence from the municipality or district dated before February 1, 2013. The changes to the local law plan that are otherwise contrary to the provisions of this chapter may continue in effect until the earlier of October 1, 2016, or the effective date of a collective bargaining agreement that is contrary to the changes to the local law plan.

Section 7. Subsection (2) of section 185.01, Florida Statutes, is amended to read:

185.01 Legislative declaration.—

(2) This chapter hereby establishes, for all municipal pension plans ~~now or hereinafter~~ provided for under this chapter, including chapter plans and local law plans, required ~~minimum~~ benefits and minimum standards for the operation and funding of such plans, hereinafter referred to as municipal police officers' retirement trust funds, which must be met as a condition precedent to the plan or plan sponsor receiving a distribution of insurance premium tax revenues under s. 185.10. The required ~~minimum~~ benefits and minimum standards for each plan as set forth in this chapter may not be diminished by local ordinance or by special act of the Legislature or~~, nor may the minimum benefits or minimum standards be~~ reduced or offset by

any other local, state, or federal plan that may include police officers in its operation, except as provided under s. 112.65.

Section 8. Section 185.02, Florida Statutes, is amended to read:

185.02 Definitions.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the term ~~following words and phrases as used in this chapter shall have the following meanings, unless a different meaning is plainly required by the context~~:

(1) "Additional premium tax revenues" means revenues received by a municipality pursuant to s. 185.10 which exceed base premium tax revenues.

(2)~~(1)~~ "Average final compensation" means one-twelfth of the average annual compensation of the 5 best years of the last 10 years of creditable service before ~~prior to~~ retirement, termination, or death.

(3) "Base benefits" means the level of benefits in existence for police officers on March 12, 1999.

(4) "Base premium tax revenues" means revenues received by a municipality pursuant to s. 185.10 equal to the amount of such revenues received for calendar year 1997.

(5)~~(2)~~ "Casualty insurance" means automobile public liability and property damage insurance to be applied at the place of residence of the owner, or if the subject is a commercial vehicle, to be applied at the place of business of the owner; automobile collision insurance; fidelity bonds; burglary and theft insurance; and plate glass insurance. "Multiple peril" means a combination or package policy that

includes both property coverage and casualty coverage for a single premium.

(6) ~~(3)~~ "Chapter plan" means a separate defined benefit pension plan for police officers which incorporates by reference the provisions of this chapter and has been adopted by the governing body of a municipality as provided in s. 185.08. Except as may be specifically authorized in this chapter, the provisions of a chapter plan may not differ from the plan provisions set forth in ss. 185.01-185.341 and 185.37-185.39. Actuarial valuations of chapter plans shall be conducted by the division as provided by s. 185.221(1)(b).

(7) ~~(4)~~ "Compensation" or "salary" means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including "overtime" paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. ~~A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year.~~ For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but

payments for accrued unused sick or annual leave may not be included.

(a) Any retirement trust fund or plan that meets the requirements of this chapter does not, solely by virtue of this subsection, reduce or diminish the monthly retirement income otherwise payable to each police officer covered by the retirement trust fund or plan.

(b) The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code is ~~shall be~~ deemed to be the compensation or salary the member would receive if he or she were not participating in such program and ~~shall be~~ treated as compensation for retirement purposes under this chapter.

(c) For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for that plan year may not include any amounts in excess of the Internal Revenue Code s. 401(a)(17) limitation, as amended by the Omnibus Budget Reconciliation Act of 1993, which limitation of $150,000 shall be adjusted as required by federal law for qualified government plans and ~~shall be~~ further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code s. 401(a)(17)(B). For any person who first became a member before the first plan year beginning on or after January 1, 1996, the limitation on compensation may not be less than the maximum compensation amount that was allowed to be taken into account under the plan ~~as~~ in effect on July 1, 1993, which

limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 401(a)(17)(1991).

(8) ~~(5)~~ "Creditable service" or "credited service" means the aggregate number of years of service and fractional parts of years of service of any police officer, omitting intervening years and fractional parts of years when such police officer may not have been employed by the municipality subject to the following conditions:

(a) A ~~No~~ police officer may not ~~will~~ receive credit for years or fractional parts of years of service if he or she has withdrawn his or her contributions to the fund for those years or fractional parts of years of service~~,~~ unless the police officer repays into the fund the amount he or she has withdrawn, plus interest as determined by the board. The member has ~~shall have~~ at least 90 days after his or her reemployment to make repayment.

(b) A police officer may voluntarily leave his or her contributions in the fund for ~~a period of~~ 5 years after leaving the employ of the police department, pending the possibility of his or her being rehired by the same department, without losing credit for the time he or she has participated actively as a police officer. If he or she is not reemployed as a police officer with the same department within 5 years, his or her contributions shall be returned to him or her without interest.

(c) Credited service under this chapter shall be provided only for service as a police officer~~, as defined in subsection (11),~~ or for military service and may not include credit for any

other type of service. A municipality ~~may~~, by local ordinance, may provide for the purchase of credit for military service occurring before employment as well as prior service as a police officer for some other employer as long as the police officer is not entitled to receive a benefit for such ~~other~~ prior service ~~as a police officer~~. For purposes of determining credit for prior service, in addition to service as a police officer in this state, credit may be given for federal, other state, or county service as long as such service is recognized by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement as provided under chapter 943 or the police officer provides proof to the board of trustees that such service is equivalent to the service required to meet the definition of a police officer under subsection (18) ~~(11)~~.

(d) In determining the creditable service of a ~~any~~ police officer, credit for up to 5 years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service, if:

1. The police officer is in the active employ of the municipality before ~~prior to~~ such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States.

2. The police officer is entitled to reemployment under ~~the provisions of~~ the Uniformed Services Employment and Reemployment Rights Act.

3. The police officer returns to his or her employment as a police officer of the municipality within 1 year after ~~from~~ the date of his or her release from such active service.

(9)~~(6)~~ "Deferred Retirement Option Plan" or "DROP" means a local law plan retirement option in which a police officer may elect to participate. A police officer may retire for all purposes of the plan and defer receipt of retirement benefits into a DROP account while continuing employment with his or her employer. However, a police officer who enters ~~the~~ DROP and who is otherwise eligible to participate may ~~shall~~ not ~~thereby~~ be precluded from participating, or continuing to participate, in a supplemental plan in existence on, or created after, March 12, 1999 ~~the effective date of this act~~.

(10) "Defined contribution plan" means the component of a local law plan to which deposits are made to provide benefits for police officers, or for police officers and firefighters if both are included. Such component is an element of a local law plan and exists in conjunction with the defined benefit component that meets the required benefits and minimum standards of this chapter. The retirement benefits of the defined contribution plan shall be provided through individual member accounts in accordance with the applicable provisions of the Internal Revenue Code and related regulations and are limited to the contributions made into each member's account and the actual accumulated earnings, net of expenses, earned on the member's account.

(11)~~(7)~~ "Division" means the Division of Retirement of the Department of Management Services.

(12)~~(8)~~ "Enrolled actuary" means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of

the Society of Actuaries or the American Academy of Actuaries.

(13) ~~(9)~~ "Local law municipality" means ~~is~~ any municipality in which ~~there exists~~ a local law plan exists.

(14) ~~(10)~~ "Local law plan" means a retirement ~~defined benefit pension~~ plan, which includes both a defined benefit plan component and a defined contribution plan component, for police officers, or for police officers and firefighters if both are~~,~~ ~~where~~ included, as described in s. 185.35, established by municipal ordinance or special act of the Legislature, which ~~enactment~~ sets forth all plan provisions. Local law plan provisions may vary from the provisions of this chapter if the~~,~~ ~~provided that~~ required ~~minimum~~ benefits and minimum standards of this chapter are met. However, any such variance must ~~shall~~ provide a greater benefit for police officers. Actuarial valuations of local law plans shall be conducted by an enrolled actuary as provided in s. 185.221(2)(b).

(15) "Long-term funded ratio" or "funded ratio" means the ratio of the actuarial value of assets of the plan to the actuarial accrued liabilities of the plan, as reported in the most recent actuarial valuation of the plan, deemed to be in compliance with chapter 112 by the Department of Management Services.

(16) "Minimum benefits" means the benefits set forth in ss. 185.01-185.341 and ss. 185.37-185.50.

(17) "Minimum standards" means the standards set forth in ss. 185.01-185.341 and ss. 185.37-185.50.

(18) ~~(11)~~ "Police officer" means any person who is elected, appointed, or employed full time by a ~~any~~ municipality, who is

certified or required to be certified as a law enforcement officer in compliance with s. 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term ~~This definition~~ includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as those terms ~~the same~~ are defined in s. 943.10 ~~943.10(6) and (8), respectively~~. For the purposes of this chapter only, the term also includes ~~"police officer" also shall include~~ a public safety officer who is responsible for performing both police and fire services. Any plan may provide that the police chief has ~~shall have~~ an option to participate~~, or not,~~ in that plan.

(19) ~~(12)~~ "Police Officers' Retirement Trust Fund" means a trust fund, by whatever name known, as provided under s. 185.03 for the purpose of assisting municipalities in establishing and maintaining a retirement plan for police officers.

(20) "Required benefits" means the lesser of the minimum benefits set forth in this chapter and the base benefits of the plan. For local law plans created after March 1, 2013, the required benefits are the minimum benefits set forth in this chapter.

(21) ~~(13)~~ "Retiree" or "retired police officer" means a

police officer who has entered retirement status. For the purposes of a plan that includes a Deferred Retirement Option Plan (DROP), a police officer who enters ~~the~~ DROP is ~~shall be~~ considered a retiree for all purposes of the plan. However, a police officer who enters ~~the~~ DROP and who is otherwise eligible to participate may ~~shall~~ not ~~thereby~~ be precluded from participating, or continuing to participate, in a supplemental plan in existence on, or created after, March 12, 1999 ~~the effective date of this act~~.

(22) ~~(14)~~ "Retirement" means a police officer's separation from city employment as a police officer with immediate eligibility for ~~receipt of~~ benefits under the plan. For purposes of a plan that includes a Deferred Retirement Option Plan (DROP), "retirement" means the date a police officer enters ~~the~~ DROP.

(23) "Special benefits" means benefits provided in a defined contribution plan for police officers.

(24) ~~(15)~~ "Supplemental plan" means a plan to which deposits of the premium tax moneys as provided in s. 185.08 are made to provide extra benefits to police officers, or police officers and firefighters if both are ~~where~~ included~~, under this chapter~~. Such a plan is an element of a local law plan and exists in conjunction with a defined benefit component ~~plan~~ that meets the required ~~minimum~~ benefits and minimum standards of this chapter. Any supplemental plan in existence on March 1, 2013, is deemed to be a defined contribution plan in compliance with s. 185.35(8).

(25) ~~(16)~~ "Supplemental plan municipality" means a ~~any~~

local law municipality in which ~~there existed~~ a supplemental plan existed as of December 1, 2000.

Section 9. Paragraph (b) of subsection (6) of section 185.06, Florida Statutes, is amended to read:

185.06 General powers and duties of board of trustees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(6) To assist the board in meeting its responsibilities under this chapter, the board, if it so elects, may:

(b) Employ an independent enrolled actuary, as defined in s. 185.02 ~~185.02(8)~~, at the pension fund's expense.

If the board chooses to use the municipality's or special district's legal counsel or actuary, or chooses to use any of the municipality's other professional, technical, or other advisers, it must do so only under terms and conditions acceptable to the board.

Section 10. Paragraphs (d) through (g) of subsection (1) of section 185.07, Florida Statutes, are amended, and a new paragraph (e) is added to that subsection, to read:

185.07 Creation and maintenance of fund.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) The municipal police officers' retirement trust fund in each municipality described in s. 185.03 shall be created and maintained in the following manner:

(d) By payment by the municipality or other sources of a sum equal to the normal cost and the amount required to fund any

actuarial deficiency shown by an actuarial valuation as provided in part VII of chapter 112 after taking into account the amounts described in paragraphs (b), (c), (f), (g), and (h) and the amounts of the tax proceeds described in paragraph (a) that must be used to fund defined benefit plan benefits, except as otherwise excluded from consideration in determining the mandatory payment.

(e) For local law plans, and in addition to the mandatory payment described in paragraph (d), by mandatory payment by the municipality of the amount specified in s. 185.35(3), if the long-term funded ratio of the plan is less than 80 percent.

(f) ~~(e)~~ By all gifts, bequests and devises when donated to the fund.

(g) ~~(f)~~ By all accretions to the fund by way of interest or dividends on bank deposits or otherwise.

(h) ~~(g)~~ By all other sources of income now or hereafter authorized by law for the augmentation of such municipal police officers' retirement trust fund.

Nothing in this section shall be construed to require adjustment of member contribution rates in effect on the date this act becomes a law, including rates that exceed 5 percent of salary, provided that such rates are at least one-half of 1 percent of salary.

Section 11. Subsection (2) of section 185.16, Florida Statutes, is amended to read:

185.16 Requirements for retirement.—For any municipality, chapter plan, local law municipality, or local law plan under

this chapter, any police officer who completes 10 or more years of creditable service as a police officer and attains age 55, or completes 25 years of creditable service as a police officer and attains age 52, and for such period has been a member of the retirement fund is eligible for normal retirement benefits. Normal retirement under the plan is retirement from the service of the city on or after the normal retirement date. In such event, for chapter plans and local law plans, payment of retirement income will be governed by the following provisions of this section:

(2) The amount of the monthly retirement income payable to a police officer who retires on or after his or her normal retirement date shall be an amount equal to the number of the police officer's years of credited service multiplied by 2 percent of his or her average final compensation. ~~However, if current state contributions pursuant to this chapter are not adequate to fund the additional benefits to meet the minimum requirements in this chapter, only increment increases shall be required as state moneys are adequate to provide. Such increments shall be provided as state moneys become available.~~

Section 12. Section 185.35, Florida Statutes, is amended to read:

185.35 Municipalities that have ~~having~~ their own retirement ~~pension~~ plans for police officers. ~~For any municipality, chapter plan, local law municipality, or local law plan under this chapter,~~ In order for a municipality that has its ~~municipalities with their~~ own retirement plan ~~pension plans~~ for police officers, or for police officers and firefighters if

both are included, to participate in the distribution of the tax fund established under ~~pursuant to~~ s. 185.08, a local law plan and its plan sponsor ~~plans~~ must meet the required ~~minimum~~ benefits and minimum standards set forth in this chapter.~~:~~

(1) If a municipality has a retirement ~~pension~~ plan for police officers, or for police officers and firefighters if both are included, which~~,~~ in the opinion of the division~~,~~ meets the required ~~minimum~~ benefits and minimum standards set forth in this chapter, the board of trustees of the retirement ~~pension~~ plan must~~, as approved by a majority of police officers of the municipality, may:~~

~~(a)~~ place the income from the premium tax in s. 185.08 in such ~~pension~~ plan for the sole and exclusive use of its police officers, or its police officers and firefighters if both are included, where it shall become an integral part of that ~~pension~~ plan and ~~shall~~ be used to fund benefits for police officers as follows:

(a) The base premium tax revenues must be used to fund base benefits.

(b) Of the premium tax revenues received that are in excess of the amount received for the 2012 calendar year, and any accumulations of additional premium tax revenues that have not been applied to fund extra benefits:

1. If the plan has a long-term funded ratio of less than 80 percent:

a. Fifty percent must be used as additional contributions to pay the plan's actuarial deficiency and may not be considered in the determination of the mandatory payment described in s.

185.07(1)(d);

b. Twenty-five percent must be used to fund base benefits; and

c. The remainder must be placed in a defined contribution plan to fund special benefits.

2. If the plan has a long-term funded ratio of 80 percent or greater:

a. Fifty percent must be used to fund base benefits; and

b. The remainder must be placed in a defined contribution plan to fund special benefits.

(c) Additional premium tax revenues not described in paragraph (b) must be used to fund benefits that were not included in the base benefits ~~pay extra benefits to the police officers included in that pension plan; or~~

~~(b) May place the income from the premium tax in s. 185.08 in a separate supplemental plan to pay extra benefits to the police officers, or police officers and firefighters if included, participating in such separate supplemental plan~~.

(2) Insurance premium tax revenues may not be used to fund benefits provided in a defined benefit plan which were not provided by the plan as of March 1, 2013; however, for a local law plan created after March 1, 2013, up to 50 percent of the insurance premium tax revenues may be used to fund defined benefit plan component benefits and the remainder used to fund defined contribution plan component benefits.

(3) If a plan offers benefits in excess of its required benefits, such benefits may be reduced if the plan continues to meet the required benefits of the plan and the minimum standards

set forth in this chapter. The amount of insurance premium tax revenues previously used to fund benefits in excess of the plan's required benefits before the reduction must be used as provided in paragraph (1)(b). Twenty-five percent of the amount of any mandatory contribution paid by the municipality which was previously used to fund benefits above the level of required benefits provided before the reduction must be used as additional contributions as specified in s. 185.07 to fund the plan's actuarial deficiency.

(4) ~~(2)~~ The premium tax provided by this chapter shall ~~in all cases~~ be used in its entirety to provide retirement ~~extra~~ benefits to police officers, or to police officers and firefighters if both are included. ~~However, local law plans in effect on October 1, 1998, must comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 185.16(2). If a plan is in compliance with such minimum benefit provisions, as subsequent additional tax revenues become available, they shall be used to provide extra benefits.~~ Local law plans created by special act before May 27, 1939, are ~~shall be~~ deemed to comply with this chapter. ~~For the purpose of this chapter, the term:~~

~~(a) "Additional premium tax revenues" means revenues received by a municipality pursuant to s. 185.10 which exceed the amount received for calendar year 1997.~~

~~(b) "Extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for police~~

~~officers on March 12, 1999.~~

(5) ~~(3)~~ A retirement plan or amendment to a retirement plan may not be proposed for adoption unless the proposed plan or amendment contains an actuarial estimate of the costs involved. Such proposed plan or proposed plan change may not be adopted without the approval of the municipality or, where permitted, the Legislature. Copies of the proposed plan or proposed plan change and the actuarial impact statement of the proposed plan or proposed plan change shall be furnished to the division before the last public hearing thereon. Such statement must also indicate whether the proposed plan or proposed plan change is in compliance with s. 14, Art. X of the State Constitution and those provisions of part VII of chapter 112 which are not expressly provided in this chapter. Notwithstanding any other provision, only those local law plans created by special act of legislation before May 27, 1939, are deemed to meet the minimum benefits and minimum standards only in this chapter.

(6) ~~(4)~~ Notwithstanding any other provision, with respect to any supplemental plan municipality:

(a) Section 185.02(7)(a) ~~185.02(4)(a)~~ does not apply, and a local law plan and a supplemental plan may continue to use their definition of compensation or salary in existence on March 12, 1999.

(b) A local law plan and a supplemental plan must continue to be administered by a board or boards of trustees numbered, constituted, and selected as the board or boards were numbered, constituted, and selected on December 1, 2000.

~~(c) The election set forth in paragraph (1)(b) is deemed~~

~~to have been made.~~

(7) ~~(5)~~ The retirement plan setting forth the benefits and the trust agreement, if any, covering the duties and responsibilities of the trustees and the regulations of the investment of funds must be in writing and copies made available to the participants and to the general public.

(8) In addition to the defined benefit component of the local law plan, each plan sponsor must have a defined contribution plan component within the local law plan by October 1, 2013, or upon the creation date of a new participating plan. However, the plan sponsor of any plan established by special act of the Legislature has until July 1, 2014, to create a defined contribution component within the plan.

(9) Notwithstanding any other provision of this chapter, a municipality that has implemented or proposed changes to a local law plan based on the municipality's reliance on an interpretation of this chapter by the department on or after August 14, 2012, and before February 1, 2013, may continue the implemented changes or continue to implement proposed changes. Such reliance must be evidenced by formal correspondence between the municipality and the department which describes the specific changes to the local law plan, with the initial correspondence from the municipality dated before February 1, 2013. The changes to the local law plan which are otherwise contrary to the provisions of this chapter may continue in effect until the earlier of October 1, 2016, or the effective date of a collective bargaining agreement that is contrary to the changes to the local law plan.

Section 13. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems that provide fair and adequate benefits and that are managed, administered, and funded in an actuarially sound manner as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 14. This act shall take effect July 1, 2013.