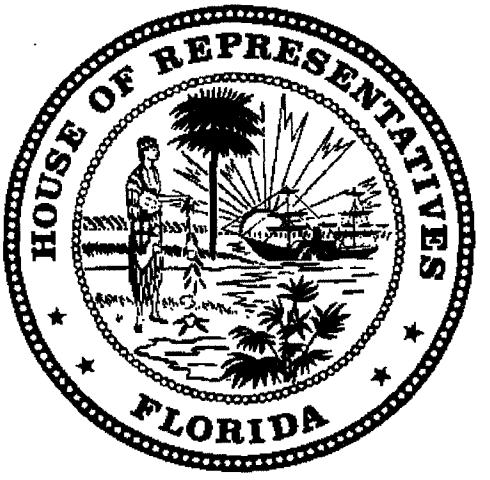


Appropriations Committee

Thursday, March 28, 2013
4:00 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
Thursday, March 28, 2013
212 Knott Building
4:00 PM – 6:30 PM

I. Call to Order/Roll Call

II. Opening Remarks by Chair McKeel

III. Consideration of the following proposed committee bill:

PCB APC 13-04 – Education Capital Outlay

IV. Consideration of the following bills:

CS/HB 301 Cancer Treatment by Health Innovation Subcommittee, Mayfield, Nuñez

CS/HB 441 Juvenile Justice Education Programs by Choice & Innovation Subcommittee, Adkins

HB 1353 Ticket Sales by Raulerson

HB 7105 Tax Administration by Finance & Tax Subcommittee, Caldwell

V. Presentation on Information Technology Governance by Committee Staff

VI. 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 #: PCB APC 13-04 Education Capital Outlay
SPONSOR(S): Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

This bill makes various changes related to the manner and requirements of state universities regarding fixed capital outlay. The bill eliminates the requirement that universities enter into campus development agreements with local government host communities. The campus master plan would be required to identify the level-of-service standard established by the local government and the entity that would provide the service to the campus.

The bill increases the cap for university capital improvement fees from a maximum of 10% of tuition to 20% of tuition and tuition differential; and it increases the cap on the incremental increase per year from $2 to $3 per credit hour.

The bill makes the following changes to Section 1010.62, F.S., relating to revenue bonds and debt:

- Specifically allows public private partnership agreements as a type of university debt.
- Expands the sources of revenues that can be used to secure debt to include technology fees and sales and services of education departments.
- It amends the calculation of the technology fee to include tuition differential.
- Increases the amount of athletic fees that may be used to pay and secure revenue bonds.
- Eliminates the "functional relationship test" to allow auxiliary enterprises revenues (i.e. housing and parking) and revenues from royalties and licensing to be used to secure debt for academic, education and research facilities that are part of a multi-use project.
- Allows academic or educational facilities that are part of a multi-purpose capital outlay project to be bonded without legislative approval of the specific project.

The bill increases from $1 million to $2 million the maximum amount universities may spend for building replacement or renovation projects.

The elimination of the requirement for universities to enter into campus development agreements with local government host communities will result in cost avoidance for future Legislatures. Consequently, local governments will have a reduction in their revenue collections. It is anticipated that state university revenues from Capital Improvement Fees and Technology Fees will result in an indeterminate positive impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Concurrency

History:

During the 1993 Session, the Legislature enacted the concurrency requirements for new developments[1]. That same year the Legislature created the University Concurrency Trust Fund to provide a source of funds from which universities could pay for concurrency assessments by local governments. The funding source was the general revenue service charge assessed on local option motor fuel taxes.[2] As part of a major transportation package called "Mobility 2000", the 2000 Legislature phased out the funding for the University Concurrency Trust Fund and redirected the revenues to the State Transportation Trust Fund[3]. The University Concurrency Trust Fund[4] was abolished during the 2011 Legislative Session.

Also, during the 2011 Legislative Session, HB 7207 was passed by the Legislature and subsequently signed into law. Provisions of this bill maintained the state concurrency requirements for sanitary sewer, solid waste, drainage, and potable water. This bill removed the state concurrency requirements for parks and recreation, schools, and transportation facilities. The bill provided that if concurrency is applied to other public facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels-of-service, to guide its application.

Present Situation:

Section 1013.30, F.S, contains the provisions for campus planning and concurrency management that supersede the general requirements of part II of chapter 163, F.S. Each university board of trustees is required to adopt a campus master plan that identifies general land uses and addresses the need for and plans for provision of roads, parking, public transportation, solid waste, drainage, sewer, potable water, and recreation and open space for a 10 to 20 year period. A master plan must contain the following elements: future land use, intergovernmental coordination, capital improvements, recreation and open space, general infrastructure, housing, and conservation. Each element must address compatibility with the surrounding community. Master plans must be updated at least every 5 years.

Within 270 days after the adoption of the campus master plan, the university board of trustees is required to draft a proposed campus development agreement for each local government and send it to the local government[5]. A campus development agreement must do the following:

- Identify the geographic area of the campus and local government covered by the campus development agreement;
- Establish its duration, which must be at least 5 years and not more than 10 years;
- Address public facilities and services including roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation and public transportation;

[1] 93-206, Laws of Florida
[2] 93-176, Laws of Florida
[3] 2000-257, Laws of Florida
[4] 2011-63, Laws of Florida
[5] Section 1013.30(2)(a), F.S. defines "affected local government" as a unit of local government that provides public services to or is responsible for maintaining facilities within a campus of an institution or is directly affected by development that is proposed for a campus. Section 1013.30(2)(c), F.S. defines "host local government" as a local government within the jurisdiction of which all or part of a campus of an institution is located, but does not include a county if no part of an institution is located within its unincorporated area.

- Identify the level-of-service standard established by the applicable local government, identify the entity that will provide the service to the campus, and describe any financial arrangements between the Board of Governors and other entities relating to the provision of the facility or service;
- Determine the impact of existing and proposed campus development on facilities and services for the term of the agreement and identify any deficiencies;
- Be consistent with the adopted campus master plan and host local government comprehensive plan.

With regards to the impact of campus development on facilities and services, the university board of trustees' fair share, as prescribed in subsection 1013.30(13), F.S., of the cost must be stated in the campus development agreement. The university board of trustees is responsible for paying the fair share identified in the campus development agreement. Funds provided by universities in accordance with the campus development agreements are subject to appropriation by the Legislature. A development authorized by a campus development agreement may not be built until the funds to be provided pursuant to the university board of trustees' fair share of the cost are appropriated by the Legislature.

Effect of the Bill:

The bill eliminates the requirement that universities enter into campus development agreements with local governments. The campus master plan would be required to identify the level-of-service standard established by the local government and the entity that would provide the service to the campus. Universities could begin constructing a campus development without having to pay the impact costs.

University Capital Improvement Fee

Present Situation:

State University System institutions may charge a Capital Improvement Trust Fund (CITF) fee of up to 10% of tuition for resident students or the sum of tuition and out-of-state fees for nonresident students. The fee may increase no more than $2 per credit hour over the prior year for resident students.

Effect of the Bill:

The bill increases the maximum amount that may be levied from10% to 20% making it consistent with the authorization for state colleges. The determination of the amount of the fee will be based upon the sum of tuition and tuition differential. It also increases the cap on the incremental increase per year from $2 to $3 per credit hour. Universities are authorized to charge up to an additional $18.59 per credit hour at 20% of the base tuition and tuition differential for a total of $28.92, and change the annual increase from $2 to $3. Implementing the $3 increase per year, the total increase for the CITF fee would take place over the course of seven years. In order to increase the CITF fee an appointed fee committee, of whom at least 50% are students, at each university must recommend the increase; the university board of trustees must then seek the approval from the Board of Governors.

Technology Fee

Present Situation:

The board of trustees of a State University System institution may establish a technology fee of up to 5% of the tuition per credit hour. Revenue from the technology fee may be used to enhance instructional technology resources for students and faculty.

Effect of the Bill:

The use of the revenue from the technology fee is expanded to include technology related facilities. The determination of the amount of the fee will be based upon the sum of tuition and tuition differential per credit hour. This change provides funding that could be used for building, renovating or expanding facilities for data centers and general computer labs.

Revenue Bonds and Debt

Present Situation:

Definition of Debt:
The current definition of debt in section 1010.62, F.S., does not include public-private partnership agreements. Public-private partnerships (PPP) are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public building and infrastructure projects. Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service of facility for the use of the general public. In additions to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.

Universities have generally not engaged in PPP ventures related to the construction of new facilities, as PPP are not clearly contemplated by either section 1010.62, F.S. or the Board of Governors State University System Debt Management Guidelines.

Revenue Sources for Bonding Purposes:
Current law caps the amount of debt service that can be secured by revenues from athletic fees to 5% of the fees collected during the most recent 12 consecutive months. Currently universities may not use technology fees and sales and services of educational departments for debt service.

Functionality:
Revenues from royalties and licensing fees may be used to pay and secure revenue bonds so long as the facilities being financed are functionally related to the university operation or direct-support organization reporting the royalties and licensing fees. Also, revenues from one auxiliary enterprise may not be used to secure revenue bonds of another auxiliary unless the Board of Governors determines that the facilities being financed are functionally related to the auxiliary enterprise revenues being used to secure the revenue bonds.

Legislative Approval of Capital Outlay Projects:
Projects related to housing, transportation, health care, research or research-related activities, food service, retail sales or student activities are approved without further legislative action pursuant to section 1010.62(7)(a)4., F.S. Projects related to academic and educational activities that are part of a multi-purpose project are not included in the list of approved projects.

Effect of the Bill:

Definition of Debt:
Public private partnership agreements are added to the definition of debt. The inclusion of PPP to section 1010.62, F.S., will provide authority for the Board of Governors to amend the universities Debt Management Guidelines so that public-private arrangements can be included as another financing mechanism.

Revenue Sources for Bonding Purposes:
The bill allows revenues from technology fees and from sales and services of educational departments to be used to secure debt. The debt service that can be secured by these revenues is capped at 75% of the fees collected during the most recent 12 consecutive months. In addition, debt service that can be secured by athletic fees is also capped at 75% of the fees collected during the most recent 12 consecutive months.

Functionality:

The bill eliminates the requirement for auxiliary revenues and revenues from royalties and licenses to be functionally related to the debt being secured when the debt is for academic, education and research facilities that are part of a multi-use facility. It would further allow for auxiliary revenues to be used to support the construction of academic or research space, subject to Board of Governors determination. This would provide for revenue-generating enterprises, such as university housing, or university parking, to subsidize the construction of academic space in mixed-use facilities.

Legislative Approval of Capital Outlay Projects:
The bill allows academic or educational facilities that are part of a multi-purpose facility to be bonded without legislative approval of the specific project.

Construction/Maintenance

Present Situation:

When it is determined that the cost of repair or renovation of a facility is greater than or equal to the cost of replacement, universities are authorized to use state capital outlay appropriations from the Public Education Capital Outlay and Debt Service (PECO) Trust Fund for replacement of facilities costing less than $1,000,000 and 10,000 square feet without specific additional legislative approval for the project. Universities are also authorized to use non-state sources, such as federal grants, private gifts, leases, etc. to construct new facilities, or remodel existing facilities if the cost is less than $1,000,000. The limit has not been increased since 2002.

Effect of the Bill:

The bill increases the cap on building replacement projects that can be undertaken without legislative approval from $1 million to $2 million. It also removes the requirement that the facility be equal to or less than 10,000 gross square feet in size. This provides greater flexibility for repairs, maintenance and replacement of minor structures by authorizing such projects to the extent funding is available.

B. SECTION DIRECTORY:

Section 1: amends paragraph (g) and (h) of subsection (7) of section 1001.706, F.S., to remove the requirement for the Board of Governors to adopt and execute a campus development agreement.

Section 2: amends paragraph (c) of subsection (8) and subsection (13) of section 1009.24, F.S., increasing the capital improvement fees for state universities.

Section 3: amends paragraph (c) of subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection (3), and paragraph (a) of subsection (7) of section 1010.62, F.S., to provide state university institutions more flexibility in bonding.

Section 4: amends section 1013.30, F.S., to remove the requirement for universities to enter into campus development agreements with local governments.

Section 5: amends subsection (6) of section 1013.33, F.S., conforming language to amendments to section 1013.30, F.S.

Section 6: amends paragraph (h) of subsection (1) of section 1013.64, F.S., to increase the cap for minor projects funded with PECO Trust Fund appropriations.

Section 7: amends paragraph (e) of subsection (2) of section 1013.74, F.S., to increase the cap for minor projects funded with non-state sources.

Section 8: 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:

   The last appropriation to universities for their share of the cost identified in campus development agreements was for $54,149,066 in Fiscal Year 2007-08. The elimination of the requirement for universities to enter into campus development agreements with local government host communities will result in cost avoidance for future Legislatures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate – Universities will not be required to pay the concurrency costs associated with a new campus development agreement. These costs were associated with the mitigation of development impact on the local host community, and typically were for a proportionate share of infrastructure projects, such as stormwater retention ponds, additional sidewalks and road-widening or other traffic enhancements. The previous funding stream, the University Concurrency Trust Fund, was eliminated, and the final payment from the fund was in 2010. The average annual payment to local host communities from the FY 2007-08 appropriation has been an estimated $9.8 million.

2. Expenditures:

   Indeterminate. Local host communities may experience additional delays in implementing local infrastructure enhancements needed to maintain level-of-service standards. If campus development occurs as contemplated in the campus master plan, university growth in student enrollment will lead to the creation of more jobs on campus, and economic development. There may be increased vehicle congestion absent the construction to expand the appropriate infrastructure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

D. FISCAL COMMENTS:

It is anticipated that state university revenues from the Capital Improvement Fees and Technology Fees will result in an indeterminate positive impact. Universities are authorized to charge up to an additional $18.59 per credit hour at 20% of the base tuition and tuition differential for a total of $28.92, and change the annual increase from $2 to $3. Implementing the $3 increase per year, the total increase for the CITF fee would take place over the course of seven years. In order to increase the CITF fee an appointed fee committee, of whom at least 50% are students, at each university must

recommend the increase; the university board of trustees must then seek the approval from the Board of Governors.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Article VII, Section 18(b) of the Florida Constitution provides that with certain exceptions, the legislature may not "enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989". While the bill eliminates the requirement that universities pay for concurrency assessments by local governments as part of a local campus development agreement and may therefore reduce revenues collected by local governments, the concurrency requirements were enacted in 1993 and did not exist on February 1, 1989. As such, the mandates provision of the constitution does not appear to apply.

   Article VII, Section 18(a) of the Florida Constitution provides that with certain exceptions, no county or municipality "shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds." This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds.

2. Other:

B. RULE-MAKING AUTHORITY: none

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to education capital outlay; amending s. 1001.706, F.S.; deleting the requirement that the Board of Governors prepare a campus development agreement; amending s. 1009.24, F.S.; increasing the cap on the university Capital Improvement Trust Fund fee; revising the amount of the technology fee and allowing the fee to be used for technology-related facilities; amending s. 1010.62, F.S.; adding public-private partnership agreements to the definition of university debt; allowing the technology fee and sales and services of education departments to be used to secure revenue bonds; increasing the cap on the amount of athletic fees that may be used to secure revenue bonds; allowing revenues from royalties and licensing and auxiliary enterprise revenues to be used to secure debt for academic, educational, and research facilities that are part of a multipurpose project; allowing academic and educational facilities to be bonded without legislative approval of the specific project; amending s. 1013.30, F.S.; deleting university campus development agreements and requirements thereof; requiring a university campus master plan to identify the level-of-service standard established by the local government and the entity that will provide the service to the campus; deleting a requirement relating to verification of campus master plan regulations; amending s. 1013.33, F.S.;

conforming provisions; amending s. 1013.64, F.S.; increasing the cap on certain appropriated funds a university board of trustees may utilize for minor projects; amending s. 1013.74, F.S.; increasing the cap on funds a university may use from nonstate revenue sources to construct new facilities or remodel existing facilities; providing an effective date.

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

Section 1. Paragraphs (g) and (h) of subsection (7) of section 1001.706, Florida Statutes, are amended to read:

1001.706 Powers and duties of the Board of Governors.—

(7) POWERS AND DUTIES RELATING TO PROPERTY.—

~~(g) The Board of Governors, or the board's designee, shall prepare, adopt, and execute a campus development agreement pursuant to s. 1013.30.~~

(g) ~~(h)~~ Notwithstanding the provisions of s. 216.351, the Board of Governors, or the board's designee, may authorize the rent or lease of parking facilities provided that such facilities are funded through parking fees or parking fines imposed by a university. The Board of Governors, or the board's designee, may authorize a university board of trustees to charge fees for parking at such rented or leased parking facilities.

Section 2. Paragraph (c) of subsection (8) and subsection (13) of section 1009.24, Florida Statutes, are amended to read:

1009.24 State university student fees.—

(8)

(c) The fee may not exceed 20 ~~10~~ percent of the sum of tuition and the tuition differential for resident students or 20 ~~10~~ percent of the sum of tuition, the tuition differential, and out-of-state fees for nonresident students. The fee for resident students shall be limited to an increase of $3 ~~$2~~ per credit hour over the prior year. The Capital Improvement Trust Fund fee may be used to fund any project or real property acquisition that meets the requirements of chapter 1013. The Division of Bond Finance of the State Board of Administration shall analyze any proposed reductions to the Capital Improvement Trust Fund fee to ensure consistency with prudent financial management of the bond program associated with the revenues from the fee. The Board of Governors shall approve any proposed fee reductions provided that no such reduction reduces the fee below the level established in paragraph (a).

(13) Each university board of trustees may establish a technology fee of up to 5 percent of the sum of tuition and the tuition differential per credit hour. The revenue from this fee shall be used to enhance instructional technology resources and related facilities for students and faculty. The technology fee may not be included in any award under the Florida Bright Futures Scholarship Program established pursuant to ss. 1009.53-1009.538.

Section 3. Paragraph (c) of subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection (3), and paragraph (a) of subsection (7) of section 1010.62, Florida Statutes, are amended to read:

1010.62 Revenue bonds and debt.—

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

(c) "Debt" means bonds, except revenue bonds as defined in paragraph (e), loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, public-private partnership agreements, or any other financing mechanism or financial arrangement, whether or not a debt for legal purposes, for financing or refinancing for or on behalf of a state university or a direct-support organization or for the acquisition, construction, improvement, or purchase of capital outlay projects.

(2)(a) The Board of Governors may request the issuance of revenue bonds pursuant to the State Bond Act and s. 11(d), Art. VII of the State Constitution to finance or refinance capital outlay projects permitted by law. Revenue bonds may be secured by or payable only from those revenues authorized for such purpose, including the Capital Improvement Trust Fund fee, ~~the building fee,~~ the health fee, the transportation access fee, hospital revenues, or those revenues derived from or received in relation to sales and services of auxiliary enterprises or component units of the university, including, but not limited to, housing, transportation, health care, research or research-related activities, food service, retail sales, athletic activities, or other similar services, other revenues attributable to the projects to be financed or refinanced, any other revenue approved by the Legislature for facilities construction or for securing revenue bonds issued pursuant to s. 11(d), Art. VII of the State Constitution, or any other revenues permitted by law. Revenues from the activity and service fee ~~and~~

~~the athletic fee~~ may be used to pay and secure revenue bonds except that the maximum annual debt service shall not exceed an amount equal to 5 percent of the fees collected during the most recent 12 consecutive months for which collection information is available before ~~prior to~~ the sale of the bonds. Revenues from the athletic fee, sales and services of educational departments, and the technology fee may be used to pay and secure revenue bonds except that the maximum annual debt service shall not exceed an amount equal to 75 percent of the pledged fees or revenue collected during the most recent 12 consecutive months for which collection information is available before the sale of the bonds. The assets of a university foundation and the earnings thereon may also be used to pay and secure revenue bonds of the university or its direct-support organizations. Revenues from royalties and licensing fees may also be used to pay and secure revenue bonds so long as either the facilities being financed are functionally related to the university operation or direct-support organization reporting such royalties and licensing fees or such revenues are used to secure revenue bonds issued to finance academic, educational, or research facilities that are part of a multipurpose capital outlay project. Revenue bonds may not be secured by or be payable from, directly or indirectly, tuition, the financial aid fee, ~~sales and services of educational departments,~~ revenues from grants and contracts, except for money received for overhead and indirect costs and other moneys not required for the payment of direct costs, or any other operating revenues of a state university. Revenues from one auxiliary enterprise may

~~not~~ be used to secure revenue bonds of another only if ~~unless~~ the Board of Governors, after review and analysis, determines that either the facilities being financed are functionally related to the auxiliary enterprise revenues being used to secure such revenue bonds or such revenues are used to secure revenue bonds issued to finance academic, educational, or research facilities that are part of a multipurpose capital outlay project.

(3)(a) A state university or direct-support organization may not issue debt without the approval of the Board of Governors. The Board of Governors may approve the issuance of debt by a state university or a direct-support organization only when such debt is used to finance or refinance capital outlay projects. The debt may be secured by or payable only from those revenues authorized for such purpose, including the health fee, the transportation access fee, hospital revenues, or those revenues derived from or received in relation to sales and services of auxiliary enterprises or component units of the university, including, but not limited to, housing, transportation, health care, research or research-related activities, food service, retail sales, athletic activities, or other similar services. Revenues derived from the activity and service fee ~~and the athletic fee~~ may be used to pay and secure debt except that the maximum annual debt service shall not exceed an amount equal to 5 percent of the fees collected during the most recent 12 consecutive months for which collection information is available before ~~prior to~~ incurring the debt. Revenues from the athletic fee, the sales and services of

educational departments, and the technology fee may be used to pay and secure debt except that the maximum annual debt service shall not exceed an amount equal to 75 percent of the pledged fees or revenues collected during the most recent 12 consecutive months for which collection information is available before incurring the debt. The assets of university foundations and the earnings thereon may be used to pay and secure debt of the university or its direct-support organizations. Gifts and donations or pledges of gifts may also be used to secure debt so long as the maturity of the debt, including extensions, renewals, and refundings, does not exceed 5 years. Revenues from royalties and licensing fees may also be used to secure debt so long as either the facilities being financed are functionally related to the university operation or direct-support organization reporting such royalties and licensing fees or such revenues are used to secure debt issued to finance academic, educational, or research facilities that are part of a multipurpose capital outlay project. The debt may not be secured by or be payable from, directly or indirectly, tuition, the financial aid fee, ~~sales and services of educational departments,~~ revenues from grants and contracts, except for money received for overhead and indirect costs and other moneys not required for the payment of direct costs of grants, or any other operating revenues of a state university. The debt of direct-support organizations may not be secured by or be payable under an agreement or contract with a state university unless the source of payments under such agreement or contract is limited to revenues that universities are authorized to use for

payment of debt service. Revenues from one auxiliary enterprise may ~~not~~ be used to secure debt of another only if ~~unless~~ the Board of Governors, after review and analysis, determines that either the facilities being financed are functionally related to the auxiliary enterprise revenues being used to secure such debt or such revenues are used to secure debt issued to finance academic, educational, or research facilities that are part of a multipurpose capital outlay project. Debt may not be approved to finance or refinance operating expenses of a state university or a direct-support organization. The maturity of debt used to finance or refinance the acquisition of equipment or software, including any extensions, renewals, or refundings thereof, shall be limited to 5 years or the estimated useful life of the equipment or software, whichever is shorter. The Board of Governors may establish conditions and limitations on such debt as it determines to be advisable.

(7)(a) As required pursuant to s. 11(d), Art. VII of the State Constitution and subsection (6), the Legislature approves capital outlay projects meeting the following requirements:

1. The project is located on a campus of a state university or on land leased to the university or is used for activities relating to the state university;

2. The project is included in the master plan of the state university or is for facilities that are not required to be in a university's master plan;

3. The project is approved by the Board of Governors as being consistent with the strategic plan of the state university and the programs offered by the state university; and

4. The project is for purposes relating to the housing, transportation, health care, research or research-related activities, food service, retail sales, ~~or~~ student activities, or academic or educational activities that are part of a multipurpose capital outlay project of the state university.

Section 4. Section 1013.30, Florida Statutes, is amended to read:

1013.30 University campus master plans ~~and campus development agreements~~.—

(1) This section contains provisions for campus planning and concurrency management that supersede the requirements of part II of chapter 163, except when stated otherwise in this section. These special growth management provisions are adopted in recognition of the unique relationship between university campuses and the local governments in which they are located. While the campuses provide research and educational benefits of statewide and national importance, and further provide substantial educational, economic, and cultural benefits to their host local governments, they may also have an adverse impact on the public facilities and services and natural resources of host governments. On balance, however, universities should be considered as vital public facilities of the state and local governments. The intent of this section is to address this unique relationship by providing for the preparation of campus master plans ~~and associated campus development agreements~~.

(2) As used in this section:

(a) "Affected local government" means a unit of local government that provides public services to or is responsible

for maintaining facilities within a campus of an institution or is directly affected by development that is proposed for a campus.

(b) "Affected person" means a host local government; an affected local government; any state, regional, or federal agency; or a person who resides, owns property, or owns or operates a business within the boundaries of a host local government or affected local government. In order to qualify under this definition, each person, other than a host or affected local government, must have submitted oral or written comments, recommendations, or objections to the university during the period of time beginning with the advertisement of the first public hearing under subsection (6) and ending with the adoption of the campus master plan or plan amendment. If the plan or plan amendment is amended at the adoption hearing, the time period shall be extended by 7 calendar days. However, any comments, recommendations, or objections filed during the extension must be limited to those amendments adopted at the adoption hearing.

(c) "Host local government" means a local government within the jurisdiction of which all or part of a campus of an institution is located, but does not include a county if no part of an institution is located within its unincorporated area.

(d) "Institution" means a university.

(e) "Division" means the Division of Administrative Hearings.

(3) Each university board of trustees shall prepare and adopt a campus master plan for the university and maintain a

copy of the plan on the university's website. The master plan must identify general land uses and address the need for and plans for provision of roads, parking, public transportation, solid waste, drainage, sewer, potable water, and recreation and open space during the coming 10 to 20 years. The plans must contain elements relating to future land use, intergovernmental coordination, capital improvements, recreation and open space, general infrastructure, housing, and conservation. Each element must address compatibility with the surrounding community. The master plan must identify specific land uses, general location of structures, densities and intensities of use, and contain standards for onsite development, site design, environmental management, and the preservation of historic and archaeological resources. The transportation element must address reasonable transportation demand management techniques to minimize offsite impacts where possible. Data and analyses on which the elements are based must include, at a minimum: the characteristics of vacant lands; projected impacts of development on onsite and offsite infrastructure, public services, and natural resources; student enrollment projections; student housing needs; and the need for academic and support facilities. <u>For each of the facilities and services listed in the campus master plan, the level-of-service standard established by the applicable local government and the entity that will provide the service to the campus shall be identified.</u> Master plans must be updated at least every 5 years.

(4) Campus master plans may contain additional elements at the discretion of the Board of Governors; however, such elements

are not subject to review under this section. These additional elements may include the academic mission of the institution, academic program, utilities, public safety, architectural design, landscape architectural design, and facilities maintenance.

(5) Subject to the right of the university board of trustees to initiate the dispute resolution provisions of subsection (8), a campus master plan must not be in conflict with the comprehensive plan of the host local government and the comprehensive plan of any affected local governments. A campus master plan must be consistent with the state comprehensive plan.

(6) Before a campus master plan is adopted, a copy of the draft master plan must be sent for review or made available electronically to the host and any affected local governments, the state land planning agency, the Board of Governors, the Department of Environmental Protection, the Department of Transportation, the Department of State, the Fish and Wildlife Conservation Commission, and the applicable water management district and regional planning council. At the request of a governmental entity, a hard copy of the draft master plan shall be submitted within 7 business days of an electronic copy being made available. These agencies must be given 90 days after receipt of the campus master plans in which to conduct their review and provide comments to the university board of trustees. The commencement of this review period must be advertised in newspapers of general circulation within the host local government and any affected local government to allow for public

comment. Following receipt and consideration of all comments and the holding of an informal information session and at least two public hearings within the host jurisdiction, the university board of trustees shall adopt the campus master plan. It is the intent of the Legislature that the university board of trustees comply with the notice requirements set forth in s. 163.3184(11) to ensure full public participation in this planning process. The informal public information session must be held before the first public hearing. The first public hearing shall be held before the draft master plan is sent to the agencies specified in this subsection. The second public hearing shall be held in conjunction with the adoption of the draft master plan by the university board of trustees. Campus master plans developed under this section are not rules and are not subject to chapter 120 except as otherwise provided in this section.

(7) Notice that the campus master plan has been adopted must be forwarded within 45 days after its adoption to any affected person that submitted comments on the draft campus master plan. The notice must state how and where a copy of the master plan may be obtained or inspected. Within 30 days after receipt of the notice of adoption of the campus master plan, or 30 days after the date the adopted plan is available for review, whichever is later, an affected person who submitted comments on the draft master plan may petition the university board of trustees, challenging the campus master plan as not being in compliance with this section or any rule adopted under this section. The petition must state each objection, identify its source, and provide a recommended action. A petition filed by an

affected local government may raise only those issues directly pertaining to the public facilities or services that the affected local government provides to or maintains within the campus or to the direct impact that campus development would have on the affected local government. A petition filed by an affected person must include those items required by the uniform rules adopted under s. 120.54(5). Any affected person who files a petition under this subsection may challenge only those provisions in the plan that were raised by that person's oral or written comments, recommendations, or objections presented to the university board of trustees, as required by paragraph (2)(b). ~~The university may, during the pendency of a challenge, negotiate a campus development agreement as provided in subsection (11).~~

(8) Following receipt of a petition challenging a campus master plan or plan amendment, the university board of trustees must submit the petition to the Division of Administrative Hearings of the Department of Management Services for assignment to an administrative law judge under ss. 120.569 and 120.57.

(a) If a party to the proceeding requests mediation, the parties have no more than 30 days to resolve any issue in dispute. The costs of the mediation must be borne equally by all of the parties to the proceeding.

(b) If the matter is not resolved within 30 days, the administrative law judge shall proceed with a hearing under ss. 120.569 and 120.57. The hearing shall be held in the county where the campus of the university subject to the amendment is located. Within 60 days after receiving the petition, the

administrative law judge must, consistent with the applicable requirements and procedures of the Administrative Procedure Act, hold a hearing, identify the issues remaining in dispute, prepare a record of the proceedings, and submit a recommended order to the state land planning agency for final action. Parties to the proceeding may submit written exceptions to the recommended order within 10 days after the recommended order is issued. The state land planning agency must issue its final order no later than 60 days after receiving the recommended order.

(c) The final order of the state land planning agency is subject to judicial review as provided in s. 120.68.

(d) The signature of an attorney or party constitutes a certificate that he or she has read the pleading, motion, or other paper and that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay, or for economic advantage, competitive reasons, frivolous purposes, or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the division, upon motion or its own initiative, shall impose upon either the person who signed it or a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorney's fees.

(9) An amendment to a campus master plan must be reviewed

and adopted under subsections (6)-(8) if such amendment, alone or in conjunction with other amendments, would:

(a) Increase density or intensity of use of land on the campus by more than 10 percent;

(b) Decrease the amount of natural areas, open space, or buffers on the campus by more than 10 percent; or

(c) Rearrange land uses in a manner that will increase the impact of any proposed campus development by more than 10 percent on a road or on another public facility or service provided or maintained by the state, the county, the host local government, or any affected local government.

(10) Upon adoption of a campus master plan, all campus development may proceed without further review by the host local government if it is consistent with the adopted ~~the university board of trustees shall draft a proposed campus development agreement for each local government and send it to the local government within 270 days after the adoption of the relevant~~ campus master plan.

~~(11) At a minimum, each campus development agreement:~~

~~(a) Must identify the geographic area of the campus and local government covered by the campus development agreement.~~

~~(b) Must establish its duration, which must be at least 5 years and not more than 10 years.~~

~~(c) Must address public facilities and services including roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and public transportation.~~

~~(d) Must, for each of the facilities and services listed in paragraph (c), identify the level-of-service standard~~

~~established by the applicable local government, identify the entity that will provide the service to the campus, and describe any financial arrangements between the Board of Governors and other entities relating to the provision of the facility or service.~~

~~(e) Must, for each of the facilities and services listed in paragraph (c), determine the impact of existing and proposed campus development reasonably expected over the term of the campus development agreement on each service or facility and any deficiencies in such service or facility which the proposed campus development will create or to which it will contribute.~~

~~(f) May, if proposed by the university board of trustees, address the issues prescribed in paragraphs (d) and (e) with regard to additional facilities and services, including, but not limited to, electricity, nonpotable water, law enforcement, fire and emergency rescue, gas, and telephone.~~

~~(g) Must, to the extent it addresses issues addressed in the campus master plan and host local government comprehensive plan, be consistent with the adopted campus master plan and host local government comprehensive plan.~~

~~(12)(a) Each proposed campus development agreement must clearly identify the lands to which the university board of trustees intends the campus development agreement to apply.~~

~~(b) Such land may include:~~

~~1. Land to be purchased by the university board of trustees and if purchased with state appropriated funds titled in the name of the board of trustees of the Internal Improvement Trust Fund for use by an institution over the life of the campus~~

~~development agreement.~~

~~2. Land not owned by the board of trustees of the Internal Improvement Trust Fund if the university board of trustees intends to undertake development activities on the land during the term of the campus development agreement.~~

~~(c) Land owned by the Board of Trustees of the Internal Improvement Trust Fund for lease to the Board of Governors acting on behalf of the institution may be excluded, but any development activity undertaken on excluded land is subject to part II of chapter 163.~~

~~(13) With regard to the impact of campus development on the facilities and services listed in paragraph (11)(c), the following applies:~~

~~(a) All improvements to facilities or services which are necessary to eliminate the deficiencies identified in paragraph (11)(c) must be specifically listed in the campus development agreement.~~

~~(b) The university board of trustees' fair share of the cost of the measures identified in paragraph (a) must be stated in the campus development agreement. In determining the fair share, the effect of any demand management techniques, which may include such techniques as flexible work hours and carpooling, that are used by the Board of Governors to minimize the offsite impacts shall be considered.~~

~~(c) The university board of trustees is responsible for paying the fair share identified in paragraph (b), and it may do so by:~~

~~1. Paying a fair share of each of the improvements~~

~~identified in paragraph (a); or~~

~~2. Taking on full responsibility for the improvements, selected from the list of improvements identified in paragraph (a), and agreed to between the host local government and the Board of Governors, the total cost of which equals the contribution identified in paragraph (b).~~

~~(d) All concurrency management responsibilities of the university board of trustees are fulfilled if the university board of trustees expends the total amount of funds identified in paragraph (b) notwithstanding that the university board of trustees may not have undertaken or made contributions to some of the measures identified in paragraph (a).~~

~~(e) Capital projects included in the campus development agreement may be used by the local government for the concurrency management purposes.~~

~~(f) Funds provided by universities in accordance with campus development agreements are subject to appropriation by the Legislature. A development authorized by a campus development agreement may not be built until the funds to be provided pursuant to paragraph (b) are appropriated by the Legislature.~~

~~(14) A campus development agreement may not address or include any standards or requirements for onsite development, including environmental management requirements or requirements for site preparation.~~

~~(15) Once the university board of trustees and host local government agree on the provisions of the campus development agreement, the campus development agreement shall be executed by~~

~~the university board of trustees and the host local government in a manner consistent with the requirements of s. 163.3225. Once the campus development agreement is executed, it is binding upon the university board of trustees and host local government. A copy of the executed campus development agreement must be sent to the state land planning agency within 14 days after the date of execution.~~

~~(16) If, within 180 days following the host local government's receipt of the proposed campus development agreement, the university board of trustees and host local government cannot reach agreement on the provisions of the campus development agreement, the following procedures for resolving the matter must be followed:~~

~~(a) The matter must be submitted to the state land planning agency, which has 60 days to hold informal hearings, if necessary.~~

~~(b) In deciding upon a proper resolution, the state land planning agency shall consider the nature of the issues in dispute, the compliance of the parties with this section, the extent of the conflict between the parties, the comparative hardships, and the public interest involved. In resolving the matter, the state land planning agency may prescribe, by order, the contents of the campus development agreement.~~

~~(17) Disputes that arise in the implementation of an executed campus development agreement must be resolved as follows:~~

~~(a) Each party shall select one mediator and notify the other in writing of the selection. Thereafter, within 15 days~~

~~after their selection, the two mediators selected by the parties shall select a neutral, third mediator to complete the mediation panel.~~

~~(b) Each party is responsible for all costs and fees payable to the mediator selected by it and shall equally bear responsibility for the costs and fees payable to the third mediator for services rendered and costs expended in connection with resolving disputes pursuant to the campus development agreement.~~

~~(c) Within 10 days after the selection of the mediation panel, proceedings must be convened by the panel to resolve the issues in dispute.~~

~~(d) Within 60 days after the convening of the panel, the panel shall issue a report containing a recommended resolution of the issues in dispute.~~

~~(e) If either the university board of trustees or local government rejects the recommended resolution of the issues in dispute, the disputed issues must be resolved pursuant to the procedures provided by subsection (16).~~

~~(18) Once the campus development agreement is executed, all campus development may proceed without further review by the host local government if it is consistent with the adopted campus master plan and associated campus development agreement.~~

~~(19) A campus development agreement may be amended under subsections (10)-(16):~~

~~(a) In conjunction with any amendment to the campus master plan subject to the requirements in subsection (9).~~

~~(b) If either party delays by more than 12 months the~~

~~construction of a capital improvement identified in the agreement.~~

~~(20) Any party to a campus development agreement or aggrieved or adversely affected person, as defined in s. 163.3215(2), may file an action for injunctive relief in the circuit court where the host local government is located to enforce the terms of a campus development agreement or to challenge compliance of the agreement with this section. This action shall be the sole and exclusive remedy of an adversely affected person other than a party to the agreement to enforce any rights or obligations arising from a development agreement.~~

(11) ~~(21)~~ State and regional environmental program requirements remain applicable, except that this section supersedes all other sections of part II of chapter 163 and s. 380.06 except as provided in this section.

(12) ~~(22)~~ In consultation with the state land planning agency, the Board of Governors shall adopt a single, uniform set of regulations to administer subsections (3)-(6). The regulations must set specific schedules and procedures for the development and adoption of campus master plans. ~~Before adopting the regulations, the Board of Governors must obtain written verification from the state land planning agency that the regulations satisfy the minimum statutory criteria required by subsections (3)-(6). The state land planning agency shall provide the verification within 45 days after receiving a copy of the regulations.~~

(13) ~~(23)~~ Until the campus master plan ~~and campus development agreement~~ for an institution is ~~have been~~ finalized,

any dispute between the university board of trustees and a local government relating to campus development for that institution shall be resolved by the process established in subsection (8).

Section 5. Subsection (6) of section 1013.33, Florida Statutes, is amended to read:

1013.33 Coordination of planning with local governing bodies.—

(6) As early in the design phase as feasible and consistent with an interlocal agreement entered pursuant to s. 163.31777, but no later than 90 days before commencing construction, the district school board shall in writing request a determination of consistency with the local government's comprehensive plan. The local governing body that regulates the use of land shall determine, in writing within 45 days after receiving the necessary information and a school board's request for a determination, whether a proposed educational facility is consistent with the local comprehensive plan and consistent with local land development regulations. If the determination is affirmative, school construction may commence and further local government approvals are not required, except as provided in this section. Failure of the local governing body to make a determination in writing within 90 days after a district school board's request for a determination of consistency shall be considered an approval of the district school board's application. Campus master plans ~~and development agreements~~ must comply with the provisions of s. 1013.30.

Section 6. Paragraph (h) of subsection (1) of section 1013.64, Florida Statutes, is amended to read:

1013.64 Funds for comprehensive educational plant needs; construction cost maximums for school district capital projects.—Allocations from the Public Education Capital Outlay and Debt Service Trust Fund to the various boards for capital outlay projects shall be determined as follows:

(1)

(h) University boards of trustees may utilize funds appropriated pursuant to this section for replacement of minor facilities provided that such projects do not exceed $2 ~~$1~~ million in cost ~~or 10,000 gross square feet in size~~. Minor facilities may not be replaced from funds provided pursuant to this section unless the board determines that the cost of repair or renovation is greater than or equal to the cost of replacement.

Section 7. Paragraph (e) of subsection (2) of section 1013.74, Florida Statutes, is amended to read:

1013.74 University authorization for fixed capital outlay projects.—

(2) The following types of projects may be accomplished pursuant to this section:

(e) Construction of facilities or remodeling of existing facilities to meet needs as determined by the university, provided that the amount of funds for any such project does not exceed $2 ~~$1~~ million, and the trust funds, other than the funds used to accomplish projects contemplated in this subsection, are authorized and available for such purposes.

Section 8. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 301 Cancer Treatment
SPONSOR(S): Health Innovation Subcommittee; Mayfield and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N, As CS	Poche	Shaw
2) Insurance & Banking Subcommittee	11 Y, 2 N	Cooper	Cooper
3) Appropriations Committee		Delaney JnD	Leznoff
4) Health & Human Services Committee			

SUMMARY ANALYSIS

Cancer is a group of diseases which cause the growth of abnormal cells in the body, resulting in severe sickness and death. Cancer is the second leading cause of death in the U.S. In 2010, Florida had 173,791 total deaths, of which 41,467 were caused by cancer, accounting for nearly 24 percent of all deaths in the state.

The trend in the treatment of cancer has been towards the development of oral chemotherapy medications. Experts estimate that more than 25 percent of the 400 chemotherapy drugs in the development pipeline are planned as oral medications. Although Florida law does not require health plans and health maintenance organizations (HMOs) to cover intravenous, injectable, or oral cancer treatment medications, health plans and HMOs routinely cover these treatments.

CS for HB 301 requires health insurance policies and contracts and HMO contracts that provide cancer treatment medication coverage to also provide coverage for oral cancer treatment medications. Out-of-pocket costs to the insured or member are often higher for oral cancer treatment medications than for other forms of cancer treatment. The bill requires policies and contracts to apply cost-sharing requirements for oral cancer treatment medications that are no less favorable than the cost-sharing requirements for other cancer treatment medications, such as intravenous and injectable medications. Grandfathered health plans, as that term is defined by the Patient Protection and Affordable Care Act (PPACA) and detailed in applicable regulations, are exempted from the oral cancer treatment medications coverage and cost-sharing parity requirements.

The bill prohibits insurers, HMOs, and certain other entities from taking specific actions in an effort to avoid compliance with the coverage and cost-sharing parity requirements. Prohibited actions include, but are not limited to, varying the terms of the policy in effect on the effective date of the bill and penalizing a health care provider for recommending or providing services that comply with the provisions of the bill. Cancer patients who currently have to rely on oral medications should experience cost savings. The overall impact of the bill's requirements to the cost of health insurance is unknown.

The bill may have a negative fiscal impact on local and state governmental entities when in effect; however, the amount is indeterminate.

The bill provides an effective date of January 1, 2015, and applies to policies and contracts issued or renewed on or after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

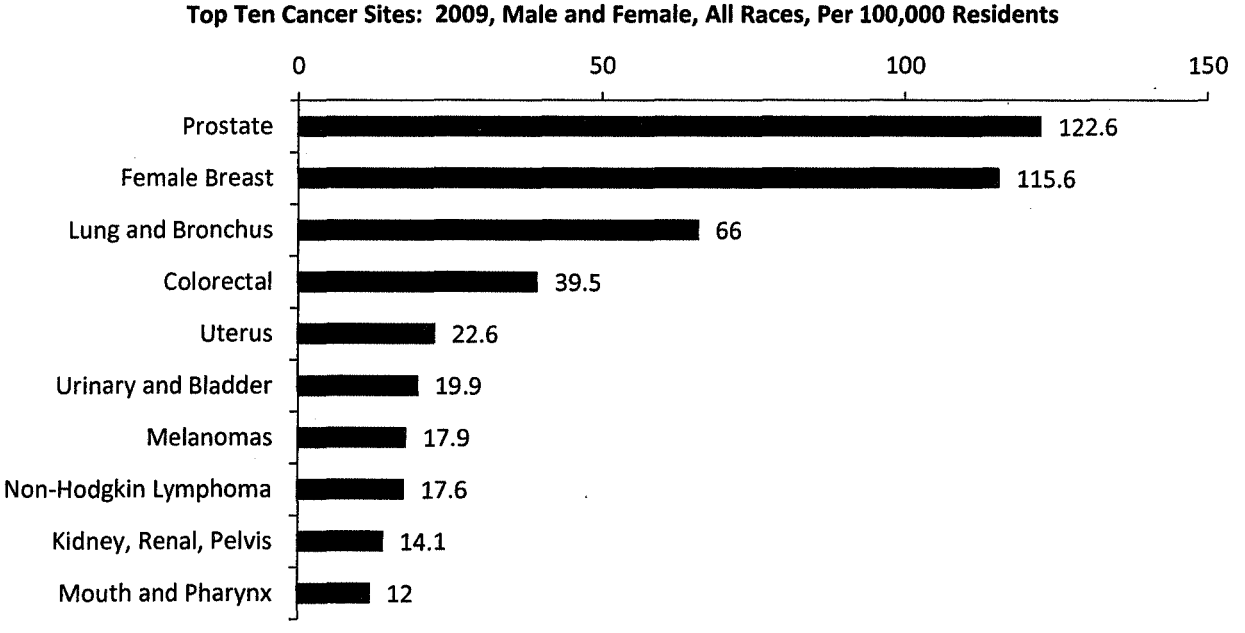
A. EFFECT OF PROPOSED CHANGES:

Background

Cancer

Cancer is a group of diseases which cause the growth of abnormal cells in the body, resulting in severe sickness and death. It can be caused by external factors, such as tobacco use and exposure to certain chemicals, and internal factors, like genetics, hormones, and immune conditions. These factors may work together or separately to promote the development of cancer. Common treatments for cancer include surgery, radiation, and chemotherapy.

Cancer is the second leading cause of death in the U.S., killing 573,313 people in 2011, a decrease of 2.4% over the number of deaths in 2010.[1] It is the leading cause of death of people between the ages of 45 and 64, accounting for 161,072 of the total cancer deaths in 2011.[2] In 2010, Florida had 173,791 total deaths, of which 41,467 were caused by cancer, accounting for nearly 24 percent of all deaths in the state.[3] The following chart shows the top ten cancer sites for men and women in Florida in 2009, the last year for which complete data is available[4]:



[1] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics Report, *Deaths: Preliminary Data for 2011*, page 4, Vol. 61, No. 6 (October 10, 2012) (available at www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.pdf).

[2] Id. at page 30.

[3] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics Report, *Deaths: Final Data for 2010*, page 112, Vol. 61, No. 4 (available at www.cdc.gov/nchs/data/dvs/deaths_2010_release.pdf).

[4] Chart created using information from U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Program of Cancer Registries, *United States Cancer Statistics-2009 Top Ten Cancers-Florida* (available at http://apps.nccd.cdc.gov/uscs/toptencancers.aspx) (last viewed March 11, 2013).

Approximately 1,660,290 new cases of cancer are expected to be diagnosed in the U.S. in 2013.[5] Of those new cases, 118,320 cases are expected to be diagnosed in Florida.[6] From 2005 to 2009, Florida averaged 101,744 incidences of cancer each year.[7]

Cancer care expenditures have been increasing nationwide. In 2008, the National Institutes of Health estimated the direct costs of cancer, including all health care expenditures, were $77.4 billion.[8] In 2010, total costs of cancer care were $124.6 billion[9] In 2020, estimates of cancer care costs in the U.S. range from $158 billion to $207 billion.[10] It should be noted that these are estimates of direct costs of care for the treatment of cancer and do not incorporate additional types of costs related to treatment.[11]

The National Cancer Institute estimates that there were 13.7 million cancer survivors alive in the U.S. on January 1, 2012.[12] By 2020, it is estimated that there will be 18.1 million cancer survivors in the U.S., an increase of 30% over 2010.[13]

Oral Cancer Treatment Medications

The trend in the treatment of cancer has been towards the development of oral chemotherapy medications. Experts estimate that more than 25 percent of the 400 chemotherapy drugs in the development pipeline are planned as oral medications.[14]

There are a more than two dozen oral cancer treatment medications that do not have an intravenous or injectable equivalent, including tamoxifen, used to treat breast cancer, Gleevec, used to treat chronic myeloid leukemia, and anastrozole, used to treat prostate cancer.

There is a significant cost disparity to the patient between intravenous or injectable cancer treatment medications and oral cancer treatment medications. In most cases, intravenous or injectable cancer treatment medications are covered in the medical benefits portion of a health insurance plan. Due to the nature of the delivery system of the medication, a patient is required to go to the hospital, a clinic, or her doctor's office in order to have an intravenous line inserted and the medication dose administered or to have the medication injected. Because this form of treatment is covered under the medical benefits portion of insurance, the out-of-pocket expenses to the patient are limited to the office co-payment amount, which is normally a very reasonable cost, or have a cap on annual or lifetime out-of-pocket payments.

Oral cancer treatment medications, however, are covered under the pharmacy benefits portion of health insurance coverage. Many pharmacy benefit designs assign medications into tiers based on cost. Each tier carries a co-payment amount, which significantly increases as the tier, and associated drug cost, increases. Also, pharmacy benefit designs may have unlimited out-of-pocket cost-sharing requirements, meaning can be required to pay significant co-payments for as long as the patient is

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[5] American Cancer Society, *Cancer Facts & Figures 2013*, page 1.
[6] Id., *Estimated Number of New Cases for Selected Cancers by State, US, 2013*, page 5.
[7] U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, *State Cancer Profiles-Florida, Incidence Rate Tables, Incidence Rate Report for Florida by County-All Races (includes Hispanic), Both Sexes, All Cancer Sites, All Ages Sorted by Rate* (available at http://statecancerprofiles.cancer.gov/cgi-bin/quickprofiles/profile.pl?12&001).
[8] See supra, FN 4 at page 3.
[9] U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, *The Cost of Cancer*, table 1 (January 2011)(available at www.cancer.gov/aboutnci/servingpeople/cancer-statistics/costofcancer) (last viewed on March 11, 2013).
[10] Id.; $158 billion is estimated based on 2010 dollars; $173 billion is estimated assuming a 2% increase in costs over time; and $207 billion is estimated based on a 5% increase in costs over time;
[11] Id.
[12] See supra, FN 4.
[13] U.S. Department of Health and Human Service, National Institutes of Health, National Cancer Institute, *Cancer Prevalence and Cost of Care Projections- Key Facts* (available at http://costprojections.cancer.gov) (last viewed on March 11, 2013).
[14] Weingart, S.N., Bach, P.B., et al., *NCCN task force report: oral chemotherapy*, Journal of the National Comprehensive Cancer Network, 2008;6: S1-S17.

required to take a certain medications. Oral cancer treatment medications can run into the thousands of dollars per month in out-of-pocket costs to the patient.

The following chart illustrates the cost of medications for serious illness, including oral oncology medications:[15]

Average Monthly Patient Out-of-Pocket Cost Per Prescription, 2011			
	Rheumatoid Arthritis	Multiple Sclerosis	Oral Oncology
Actual Out-of-Pocket (OOP) Cost	**$235**	**$227**	**$470**
Estimated OOP Cost (by Coinsurance Level)			
33% cost sharing	**$653**	**$1,100**	**$1,920**
25% cost sharing	**$495**	**$833**	**$1,454**
5% cost sharing	**$99**	**$167**	**$291**

Out-of-pocket costs for oral cancer medication treatments averaged $2,942 in 2009, which is a 17 percent increase over the costs in 2008.

Oral Cancer Treatment Parity

Between 2008 and January 2013, twenty-one states and the District of Columbia have enacted oral chemotherapy parity laws that require the same cost-sharing requirements for oral cancer treatment medications and intravenous or injectable cancer treatment medications.[16] It is anticipated that 16 states, including Florida, will have similar legislation introduced in 2013.[17]

In 2009, Milliman, Inc., in a study commissioned by GlaxoSmithKline, examined the average increase in insurance costs resulting from oral cancer treatment medication parity legislation. Such legislation requires state-regulated payers to cover oral cancer treatment medication with the same cost-sharing requirements as intravenous or injectable cancer treatment medications. Milliman found that, for most benefit plans, parity will increase plan costs less than $0.50 per member per month (PMPM).[18] Parity for some benefit plans that carry very high cost-sharing requirements for oral specialty drugs and low medical benefits may see a cost of $1.00 PMPM or more.[19] Other benefit plans that have a low cost-sharing requirement in general could see parity costs of $0.05 to $0.10 PMPM.[20]

Patient Protection and Affordable Care Act

In March 2010, the Congress passed and the President signed the Patient Protection and Affordable Care Act (PPACA).[21] Under PPACA, qualified health plans (QHP) would be available from the state or federal Exchange beginning January 1, 2014. PPACA required the Secretary of Health and Human Services to establish for those QHP's a minimum package of essential health benefits (EHB).[22] The EHB package must cover benefits across ten general categories, including, but not limited to preventive services, maternity care, hospital services and prescription drugs.[23]

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[15] Pharmaceutical Executive, *Who Pays for Specialty Medicines?* (citing Healthcare Analytics 2011, Amundsen Group Analysis)(available at http://license.icopyright.net/user/viewFreeUse.act?fuid=MTY5MTg4MiA%3D).
[16] *Oral Chemotherapy Parity Legislative Landscape- January 2013* (on file with Health Innovation Subcommittee staff).
[17] Id.
[18] Milliman, Client Report, Fitch, K., Iwasaki, K., Pyenson, B., *Parity for Oral and Intravenous/Injected Cancer Drugs*, page 1 (December 15, 2009).
[19] Id.
[20] Id.
[21] Pub. Law No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).
[22] Id.
[23] Center for Consumer Information and Insurance Oversight, *Essential Health Benefits Coverage Bulletin*, (1), Dec. 16, 2011, available at: http://cciio.cms.gov/resources/files/Files2/12162011/essential_health_benefits_bulletin.pdf (last viewed March 11, 2013).

Section 1311(d)(3)(B) of PPACA allows a state to require QHPs to cover additional benefits above those required under the EHB; however, the law also directs the state to offset the costs of those supplemental benefits to the enrollee.[24] Under the final rule released on February 25, 2013, a distinction in the proposed rule's preamble is made between changes in benefits versus changes in cost sharing. The final rule limits the offset requirement only to "care, treatment and services," thereby excluding a state's obligations to defray costs relating to changes relating to provider types, cost-sharing or reimbursement.[25]

In addition to these provisions, certain plans under PPACA received "grandfather status." A grandfathered health plan is a plan that existed on March 23, 2010, the date that PPACA was enacted, and that at least one person had been continuously covered for one year.[26] Some consumer protection elements do not apply to grandfathered plans that were part of PPACA but others are applicable, regardless of the type of plan.[27]

Providing the essential health benefits are also not required of grandfathered health plans.[28] A grandfathered plan can lose its status if significant changes to benefits or cost sharing changes are made to the plan since attaining its grandfathered status.[29] Grandfathered plans are required to disclose their status to their enrollees every time plan materials are distributed and to identify the consumer protections that are not available as a grandfathered plan.[30] Even though exempt from the EHB, a grandfathered plan could still be required to meet a new a requirement under state law if otherwise required under state requirements.[31]

The PPACA's provisions include annual limitations on cost sharing in section 1302(c)(1) and an annual limitation on deductibles in section 1302(c)(2) of the Affordable Care Act effective January 1, 2014. The type of plan an individual is enrolled in and the level of benefits selected or "medal plan," will determine the amount of out of pocket costs that an individual may incur.

The federal law further prohibits the imposition of annual and lifetime benefit limits, except for certain grandfathered plans, effective January 1, 2014. These protections went into effect for children earlier, September 23, 2010, and apply to grandfathered group health insurance plans. These restrictions would impact any out of pocket costs applied to prescription drug coverage whether delivered as an oral or an injectable medication.

Health Insurance Mandates and Mandated Offerings

A health insurance mandate is a legal requirement that an insurance company or health plan cover services by particular health care providers, specific benefits, or specific patient groups. Mandated offerings, on the other hand, do not mandate that certain benefits be provided. Rather, a mandated offering law can require that insurers offer an option for coverage for a particular benefit or specific patient groups, which may require a higher premium and which the insured is free to accept or reject. A mandated offering law in the context of mental health can require that insurers offer an option

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[24] 78 Fed. Reg. 12,837, 12,837-12,838 (February 25, 2013).
[25] Id.
[26] Healthcare.gov, *Grandfathered Health Plans*, available at http://www.healthcare.gov/law/features/rights/grandfathered-plans/index.html (last viewed March 11, 2013).
[27] Healthcare.gov., *Factsheet,* available at http://www.healthcare.gov/news/factsheets/2012/11/ehb11202012a.html (last viewed March 11, 2013).
[28] Barr, S., *FAQ: Grandfathered Health Plans*, December 2012, available at http://www.kaiserhealthnews.org/stories/2012/december/17/grandfathered-plans-faq.aspx (last viewed March 11, 2013).
[29] Healthcare.gov, *Keeping the Health Plan You Have: The Affordable Care Act and "Grandfathered Health Plans*, June 14, 2010, available at http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html (last viewed March 11, 2013).
[30] Id.
[31] 75 Fed. Reg. 34, 538, 34,540 (June 17, 2010).

of coverage for mental illness, which may require a higher premium and which the insured is free to accept or reject or require that, if insurers offer mental illness coverage, the benefits must be equivalent to other types of benefits.

Florida currently has at least 59 mandates.[32] Higher costs resulting from mandates are most likely to be experienced in the small group market since these are the plans that are subject to state regulations. The national average cost of insurance for a family of four is $15,745.[33]

Health Insurance Mandate Report

Section 624.215, F.S., was enacted in 1987 to aid the Legislature in assessing the impact of health insurance mandates and mandated offerings on insurance policy premiums when considering proposed health insurance mandates. The statute requires that any proposal for legislation that mandates health benefit coverage or mandatorily offered health coverage must be submitted with a report to Agency for Health Care Administration and to the legislative committees having jurisdiction over the issue. The report must assess the social and financial impact of the proposed coverage to the extent information is available, and shall include:

- To what extent is the treatment or service generally used by a significant portion of the population.[34]
- To what extent is the insurance coverage generally available.[35]
- If the insurance coverage is not generally available, to what extent does the lack of coverage result in persons avoiding necessary health care treatment.[36]
- If the coverage is not generally available, to what extent does the lack of coverage result in unreasonable financial hardship.[37]
- The level of public demand for the treatment or service.[38]
- The level of public demand for insurance coverage of the treatment or service.[39]
- The level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.[40]
- To what extent will the coverage increase or decrease the cost of the treatment or service.[41]
- To what extent will the coverage increase the appropriate uses of the treatment or service.[42]
- To what extent will the mandated treatment or service be a substitute for a more expensive treatment or service.[43]
- To what extent will the coverage increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders.[44]
- The impact of this coverage on the total cost of health care.[45]

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[32] Florida House of Representatives, Health and Human Services Quality Subcommittee, *Meeting Packet for November 15, 2011*, pages 7-9.
[33] The Henry J. Kaiser Family Foundation, Employer Health Benefits 2012 Annual Survey- Summary of Findings, page 1 (available at http://ehbs.kff.org/pdf/2012/8345.pdf) (last viewed March 11, 2013).
[34] S. 624.215(2)(a), F.S.
[35] S. 624.215(2)(b), F.S.
[36] S. 624.215(2)(c), F.S.
[37] S. 624.215(2)(d), F.S.
[38] S. 624.215(2)(e), F.S.
[39] S. 624.215(2)(f), F.S.
[40] S. 624.215(2)(g), F.S.
[41] S. 624.215(2)(h), F.S.
[42] S. 624.215(2)(i), F.S.
[43] S. 624.215(2)(j), F.S.
[44] S. 624.215(2)(k), F.S.
[45] S. 624.215(2)(l), F.S.

The International Myeloma Foundation (Foundation) delivered a report to the Senate Health Policy Committee on February 21, 2013, assessing SB 422 and HB 301 against the criteria of s. 624.215, F.S., while specifically not admitting that the bill's directives mandate any specific health coverage.[46] According to the Foundation, insurance coverage of oral cancer medications is not the precise issue. The issue is the out of pocket cost differential to patients between intravenous or injectables and oral treatments as most insurance plans already cover the medication.[47]

Effect of Proposed Changes

The bill requires an individual or group insurance policy or contract or a health maintenance organization (HMO) contract that provides coverage for cancer treatment medications (intravenous or injectable cancer treatment medications) must also provide coverage for oral cancer treatment medications. In addition, the bill prohibits a policy or contract from applying cost-sharing requirements to coverage for oral cancer treatment medications that are less favorable than the cost-sharing requirements for intravenous or injectable cancer treatment medications. The bill requires that all cancer treatment medications be covered and be treated the same by health insurance policies and contracts. The bill exempts grandfathered health plans from the oral cancer treatment medication coverage and cost-sharing parity.

The bill permits a policy or contract with cost-sharing requirements for intravenous or injectable cancer medications less than $50 to apply cost-sharing requirements up to $50 to prescribed oral cancer treatment medications.

The bill prohibits the following actions by insurers, HMOs, and other specific entities designed to avoid the parity requirements of the bill:

- Varying the terms of the policy in effect on the effective date of the bill.
- Providing any incentive to a covered person to accept coverage that includes anything less than parity.
- Penalizing a provider for recommending or providing oral cancer treatment medications.
- Providing any incentive to a provider to not comply with the parity provisions.
- Changing cost-sharing requirements or classification of intravenous or injectable cancer treatment medications in effect on the effective date of the bill.

The bill provides an effective date of January 1, 2015, and applies to policies or contracts issued or renewed after that date.

B. SECTION DIRECTORY:

Section 1: Provides that the act maybe cited as the "Cancer Treatment Fairness Act."

Section 2: Creates s. 627.42391, F.S., relating to insurance policies; cancer treatment parity; orally administered cancer treatment medications.

Section 3: Creates s. 641.313, F.S., relating to health maintenance contracts; cancer treatment parity; orally administered cancer treatment medications.

Section 4: Provides direction to the Division of Law Revision and Information.

Section 5: Provides an effective date of January 1, 2015.

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[46] International Myeloma Foundation, *Health Insurance Mandate Report, Parity for Oral and Intravenous Cancer Medications*, page 1, February 2013 (on file with the Health Innovation Subcommittee).
[47] Id. at page 2.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Management Services noted an indeterminate fiscal impact in its analysis of CS/HB 301.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments may experience a negative fiscal impact if health insurance premiums increase as a result of the bill. The amount is indeterminate and will vary depending on plan attributes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health insurers and HMOs may raise premiums to address the impact of oral cancer medication treatment coverage and cost-sharing parity under the bill. As a result, policyholders and contract holders for health care coverage may see an increase in monthly premiums for the same coverage for policies and contracts issued or renewed after the effective date of the bill.

Patients receiving oral cancer treatment medications may realize less out-of-pocket expenses to obtain their medications.

D. FISCAL COMMENTS:

PPACA allows a state to require QHPs to cover additional benefits above those required under the EHB. The law also directs the state to offset the costs of those supplemental benefits to the enrollee. The bill creates a new coverage and parity requirement for oral cancer treatment medications. While PPACA requires the state to be responsible for offsetting the cost of this additional coverage and parity requirement, there are no guidelines addressing how the total cost will be determined, how it will be paid by the state, and to whom the payments will be made. As a result, the bill presents a potential indeterminate negative fiscal impact to the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable. Rule-making authority is not required by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to cancer treatment; providing a short title; creating ss. 627.42391 and 641.313, F.S.; providing definitions; requiring that an individual or group insurance policy or contract or a health maintenance contract that provides coverage for cancer treatment medications provide coverage for orally administered cancer treatment medications; requiring that an individual or group insurance policy or contract or a health maintenance contract provide coverage for orally administered cancer treatment medications on a basis no less favorable than that required by the policy or contract for intravenously administered or injected cancer treatment medications; excluding grandfathered health plans from coverage and cost-sharing requirements; prohibiting insurers, health maintenance organizations, and certain other entities from engaging in specified actions to avoid compliance with this act; providing limits on certain cost-sharing requirements; providing a directive to the Division of Law Revision and Information; providing applicability; providing an effective date.

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

Section 1. This act may be cited as the "Cancer Treatment Fairness Act."

Section 2. Section 627.42391, Florida Statutes, is created

to read:

627.42391 Insurance policies; cancer treatment parity; orally administered cancer treatment medications.—

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

(a) "Cancer treatment medication" means medication prescribed by a treating physician who determines that the medication is medically necessary to kill or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of practice.

(b) "Cost sharing" includes copayments, coinsurance, dollar limits, and deductibles imposed on the covered person.

(c) "Grandfathered health plan" has the same meaning as provided in 42 U.S.C. s. 18011 and is subject to the conditions for maintaining status as a grandfathered health plan as specified in 45 C.F.R. s. 147.140.

(2) An individual or group insurance policy delivered, issued for delivery, renewed, amended, or continued in this state that provides medical, major medical, or similar comprehensive coverage and includes coverage for cancer treatment medications must also cover prescribed, orally administered cancer treatment medications and may not apply cost-sharing requirements for orally administered cancer treatment medications that are less favorable to the covered person than cost-sharing requirements for intravenous or injected cancer treatment medications covered under the policy or contract.

(3) An insurer providing a policy or contract described in subsection (2) and any participating entity through which the

insurer offers health services may not:

(a) Vary the terms of the policy in effect on the effective date of this act to avoid compliance with this section.

(b) Provide any incentive, including, but not limited to, a monetary incentive, or impose treatment limitations to encourage a covered person to accept less than the minimum protections available under this section.

(c) Penalize a health care practitioner or reduce or limit the compensation of a health care practitioner for recommending or providing services or care to a covered person as required under this section.

(d) Provide any incentive, including, but not limited to, a monetary incentive, to induce a health care practitioner to provide care or services that do not comply with this section.

(e) Change the classification of any intravenous or injected cancer treatment medication or increase the amount of cost sharing applicable to any intravenous or injected cancer treatment medication in effect on the effective date of this section in order to achieve compliance with this section.

(4) This section does not apply to grandfathered health plans.

Notwithstanding this section, if the cost-sharing requirements for intravenous or injected cancer treatment medications under the policy or contract are less than $50 per month, then the cost-sharing requirements for orally administered cancer treatment medications may be up to $50 per month.

Section 3. Section 641.313, Florida Statutes, is created to read:

641.313 Health maintenance contracts; cancer treatment parity; orally administered cancer treatment medications.—

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

(a) "Cancer treatment medication" means medication prescribed by a treating physician who determines that the medication is medically necessary to kill or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of practice.

(b) "Cost sharing" includes copayments, coinsurance, dollar limits, and deductibles imposed on the covered person.

(c) "Grandfathered health plan" has the same meaning as provided in 42 U.S.C. s. 18011 and is subject to the conditions for maintaining status as a grandfathered health plan as specified in 45 C.F.R. s. 147.140.

(2) A health maintenance contract delivered, issued for delivery, renewed, amended, or continued in this state that provides medical, major medical, or similar comprehensive coverage and includes coverage for cancer treatment medications must also cover prescribed, orally administered cancer treatment medications and may not apply cost-sharing requirements for orally administered cancer treatment medications that are less favorable to the covered person than cost-sharing requirements for intravenous or injected cancer treatment medications covered under the contract.

(3) A health maintenance organization providing a contract described in subsection (2) and any participating entity through

which the health maintenance organization offers health services may not:

(a) Vary the terms of the policy in effect on the effective date of this act to avoid compliance with this section.

(b) Provide any incentive, including, but not limited to, a monetary incentive, or impose treatment limitations to encourage a covered person to accept less than the minimum protections available under this section.

(c) Penalize a health care practitioner or reduce or limit the compensation of a health care practitioner for recommending or providing services or care to a covered person as required under this section.

(d) Provide any incentive, including, but not limited to, a monetary incentive, to induce a health care practitioner to provide care or services that do not comply with this section.

(e) Change the classification of any intravenous or injected cancer treatment medication or increase the amount of cost sharing applicable to any intravenous or injected cancer treatment medication in effect on the effective date of this section in order to achieve compliance with this section.

(4) This section does not apply to grandfathered health plans.

Notwithstanding this section, if the cost-sharing requirements for intravenous or injected cancer treatment medications under the contract are less than $50 per month, then the cost-sharing requirements for orally administered cancer treatment

medications may be up to $50 per month.

Section 4. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" and "the effective date of this section" wherever it occurs in this act with the date this act takes effect.

Section 5. This act shall take effect January 1, 2015, and applies to policies and contracts issued or renewed on or after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 441 Juvenile Justice Education Programs
SPONSOR(S): Choice & Innovation Subcommittee, Adkins
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1406

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

SUMMARY ANALYSIS

The bill makes changes to the provisions of law that govern the accountability, deliverance, and review of juvenile justice education programs that provide educational services to students within the Department of Juvenile Justice (DJJ).

The bill revises the accountability of juvenile justice education programs (program) by:

- Requiring cost and effectiveness information on programs and program activities be provided in order to compare, improve, or eliminate a program or program activity.
- Requiring program and program activity cost and effectiveness data be provided to the Legislature and the public.
- Implementing an accountability system to meet client needs.
- Requiring the Department of Education (DOE) in partnership with DJJ to develop a comprehensive accountability and school improvement process.
- Requiring DOE in collaboration with DJJ to monitor and report on the educational performance of students in commitment, day treatment, prevention, and detention programs.
- Requiring DOE in consultation with DJJ, district school boards, and providers to adopt rules for objective and measurable student performance measures and program performance ratings for the delivery of educational services by prevention, day treatment, and residential programs.
- Requiring DJJ in consultation with DOE to publish by March 1 of each year a report on program costs and effectiveness, educational performance of students, and recommendations for modification or elimination of programs or program activities.
- Requiring DOE in partnership with DJJ, the district school, and providers to:
  - Develop and implement requirements for contracts and cooperative agreements regarding the delivery of appropriate education services to students in DJJ programs.
  - Maintain standardized procedures for securing student records.

The bill revises provisions related to juvenile justice programs by:

- Requiring school districts and juvenile justice education providers, in collaboration with others to develop an individualized transition plan during a student's stay at a program.
- Requiring DOE and DJJ to provide oversight and guidance on how to implement effective educational transition planning and services.
- Requiring prevention and day treatment programs to provide career readiness and exploration opportunities as well as truancy and dropout prevention intervention services.
- Requiring the multiagency plan for career education to eliminate barriers to education and address virtual education.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Juvenile Justice (DJJ)

The Department of Juvenile Justice's mission is to increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen families and turn around the lives of troubled youth.[1] DJJ oversees at-risk and adjudicated youth in four service areas: prevention and victim services, probation and community intervention services, residential services, and detention services.[2] During the 2011-12 school year, Juvenile Justice education programs served more than 32,000 students.[3]

- Prevention and Victim Services - Prevention and Victim Services target at-risk youth who are considered most likely to become habitual juvenile offenders and who live in areas with the highest concentration of youth who have been referred for delinquency.[4]

- Probation and Community Intervention Services (Non-residential) - Non-residential services provide intervention and case management services to youth on diversion, probation, and post commitment supervision. These youth remain at home and participate in at least 5 days per week in a day treatment program.[5]

- Residential Services - Residential services ensure graduated sanctions for serious, violent and chronic offenders; address special mental health and substance abuse needs of offenders; and enhance their education in residential commitment programs.[6] Juveniles who are adjudicated by the court can be committed to residential programs classified as low, moderate, high or maximum risk.[7]

- Detention Services - Detention is the custody status for youth who are held pursuant to a court order; or following arrest for a violation of the law. A youth may be detained only when specific statutory criteria, outlined in s. 985.215, F.S. are met. Criteria for detention include current offenses, prior history, legal status, and any aggravating or mitigating factors.[8]

Multiagency Plan for Career Education

Present Situation

Current law requires DJJ and DOE, in consultation with the statewide Workforce Development Youth Council, school districts, providers, and others, to develop a multiagency plan (plan) for vocational education in commitment facilities.[9] The plan must include:

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[1] Florida Department of Juvenile Justice, *available at*, http://www.djj.state.fl.us (last visited March 1, 2013).
[2] Office of Program Policy Analysis and Government Accountability, Government Program Summaries – Department of Juvenile Justice, *available at* http://www.oppaga.state.fl.us/government/s_agency.asp .
[3] Florida Department of Juvenile Justice, e-mail (last visited March 1, 2013).
[4] Florida Department of Juvenile Justice, Fiscal year 2010-11 Annual Report, 16, *available at* http://www.djj.state.fl.us/AboutDJJ/index.html (last visited March 1, 2013).
[5] Florida Department of Juvenile Justice, http://www.djj.state.fl.us/Residential/restrictiveness.html (last visited March 3, 2013).
[6] Office of Program Policy Analysis and Government Accountability, Government Program Summaries – Department of Juvenile Justice Residential Services, *available at* http://www.oppaga.state.fl.us/profiles/1001.
[7] Office of Program Policy Analysis and Government Accountability, Government Program Summaries – Department of Juvenile Justice Residential Services, *available at* http://www.oppaga.state.fl.us/profiles/1001.
[8] Florida Department of Juvenile Justice, *available at*, http://www.djj.state.fl.us/AboutDJJ/faq.html#Education (last visited March 4, 2013.
[9] Section 985.622(1), F.S.

- Provisions for maximizing appropriate state and federal funding sources, responsibilities of both departments and all other appropriate entities and detailed implementation schedules.[10]
- A definition of vocational programming that is appropriate based upon the age and assessed educational abilities and goals of the youth to be served and the typical length of stay and custody characteristics at the commitment program to which each youth is assigned.[11]
- A definition of vocational programing that includes the classifications of commitment facilities that will offer vocational programming by one of the following types:

    - Type A - Programs that teach personal accountability skills and behavior that is appropriate for youth in all age groups and ability levels and that lead to work habits that help maintain employment and living standards.
    - Type B - Programs that include Type A program content and an orientation to the broad scope of career choices, based upon personal abilities, aptitudes and interest.
    - Type C - Programs that include Type A program content and the vocational competencies or the prerequisites needed for entry into a specific occupation.[12]

In October 2010, Office of Program Policy Analysis and Government Accountability (OPPAGA) issued a report that stated that the plan had several shortcomings. According to OPPAGA, the plan lacked goals and implementation strategies for increasing the percentage of youth receiving occupation-specific job training. Also, the plan did not address the barriers that juvenile justice students face in attaining a general educational development (GED) diploma.[13] OPPAGA found that many juvenile justice programs emphasized academic instruction rather than GED preparation and job training. OPPAGA recommended that the Legislature amend s. 985.622, F.S., to address the shortcomings found in the plan.

Effect of Proposed Changes

The bill expands the requirement of the plan to address all educational programs not just in commitment facilities. The plan must:

- Include provisions for eliminating barriers to increasing occupation-specific job training and high school equivalency examination preparation opportunities.
- Evaluate the effect that students' mobility between juvenile justice education programs and school districts has on the students' educational outcomes and whether the continuity of the students' education can be better addressed through virtual education.

The bill revises implementation dates for DOE and DJJ to align respective agency reporting documents to the revised plan for career education.

Educational Services in Department of Juvenile Justice Programs

Present Situation

Current law sets forth how educational services must be provided in DJJ programs and establishes the educational expectations for DJJ youth in such programs.[14] DOE is the lead agency for juvenile justice education programs, curriculum, support services, and resources; however, district school boards are responsible for actually providing educational services to youth in juvenile justice programs.[15] Educational services consist of basic academic, career, or exceptional curricula that support treatment

[10] Section 985.622(1)(a)(c), F.S.
[11] Section 985.622(2), F.S.
[12] Section 985.622(3), F.S.
[13] Office of Program Policy Analysis and Government Accountability, *Juvenile Justice Students Face Barriers to High School Graduation and Job Training*, Report No. 10-55, at 9 *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1055rpt.pdf
[14] Section 1003.52, F.S.
[15] Section 1003.52(1), (3), and (4), F.S.

goals and reentry, and that may lead to the completion of a high school diploma or its equivalent.[16] These services can be provided by the district school board itself or by a private provider through a contract with the district school board.[17] However, school districts remain responsible for the quality of education provided in residential and day treatment juvenile justice facilities regardless of whether the school district provides those services directly or through a contractor.[18]

Annually, DJJ and DOE must develop a cooperative agreement and plan for juvenile justice education service enhancement, which must be submitted to the Secretary of the Department of Juvenile Justice and the Commissioner of Education.[19]

Each district school board must negotiate a cooperative agreement with DJJ regarding the delivery of educational programming to DJJ youth. These agreements must include provisions that address certain issues, such as:

- Curriculum and delivery of instruction;
- Classroom management procedures and attendance policies;
- Procedures for provision of qualified instructional personnel;
- Improving skills in teaching and working with juvenile delinquents;
- Transition plans for students moving into and out of juvenile facilities; and
- Strategies for correcting any deficiencies found through the quality assurance process.[20]

DOE and DJJ must each designate a coordinator to resolve issues not addressed by the district school boards and to provide each department's participation in:

- Training, collaborating, and coordinating with DJJ, district school boards, educational contract providers, and juvenile justice providers, whether state-operated or contracted;
- Collecting and reporting information on the academic performance of students in juvenile justice programs;
- Developing academic and career protocols that provide guidance to district school boards and providers in educational programming; and
- Prescribing the roles of program personnel and school district or provider collaboration strategies.[21]

Effect of Proposed Changes

The bill revises the responsibilities of DOE and DJJ designated coordinators to include:

- Training, collaboration, and coordinating with local workforce boards and youth councils.
- Collecting information on the career education and transition performance of students in juvenile justice programs and reporting the results.
- Implementing a joint accountability, program performance, and program improvement process.

The bill also:

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[16] Section 1003.52(5), F.S.
[17] Section 1003.52(11), F.S.
[18] Office of Program Policy Analysis and Government Accountability, *Youth Entering the State's Juvenile Justice Programs Have Substantial Educational Deficits; Available Data Is Insufficient to Assess Leaning Gains of Students*, Report No. 10-07 (2010), *available at*, http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-07 (last visited March 4, 2013).
[19] Section 1003.52 (1), F.S.
[20] Section 1003.52(13), F.S.
[21] Section 1003.52(1), F.S.

- Requires prevention and day treatment juvenile justice education programs, at a minimum, to provide career readiness and exploration opportunities as well as truancy and dropout prevention intervention services.
- Requires residential juvenile justice education programs with a contracted minimum length of stay of 9 months to provide career education courses that lead to preapprentice certifications, industry certifications, occupational completion points, or work-related certifications.
- Allows residential programs with contract lengths of stay of less than 9 months to provide career education courses that lead to preapprentice certifications, industry certifications, and occupational completion points, or work related certifications.

The bill refines the educational component of programs with a duration of less than 40 days to include:

- tutorial remediation activities,
- career employability skills instruction,
- education counseling, and
- transition services that prepare students for a return to school, the community, and their home setting based on the students' needs.

The bill requires educational programs to provide instruction based on each student's individualized transition plan, assessed educational needs, and the educational programs available in the school district in which the student will return. Depending on the student's needs, educational programming may consist of remedial courses, academic courses required for grade advancement, career education courses, and high school equivalency examination preparation, or exceptional student education curricula and related services which support the transition goals and reentry and which may lead to completion of the requirements for receipt of a high school diploma or its equivalent.

The bill requires that the DJJ and DOE annual cooperative agreement and plan for juvenile justice education service enhancement include each agency's role regarding educational program accountability, technical assistance, training, and coordination of service.

Accountability and Reporting

Present Situation

The Department of Education and the Department of Juvenile Justice, after consulting with the district school boards and local providers, must report annually to the Legislature on the progress toward developing effective educational programs for youth in the juvenile justice system. This report must include the results of the quality assessment reviews, including recommendations for system improvement.[22] In its annual report to the Legislature, *Developing Effective Education in Department of Juvenile Justice and other Dropout Prevention Programs,* DOE made several recommendations to address educational accountability and improvement such as:

- Continue to develop a juvenile justice education accountability system for programs and explore a process in which high-performing programs are recognized and low-performing programs receive assistance.
- Develop a customized school improvement plan template for programs.
- Continue to support improvement in transition services for youth in juvenile justice education through the maintenance of an accurate statewide transition contact list.
- Provide additional training and support to programs to improve their efforts with the Basic Achievement Skills Inventory administration, data reporting, and data interpretation.

[22] Section 1003.52(19), F.S.

- Continue to identify effective program practices and resources for students in need of academic remediation and credit recovery.
- Continue to identify academic curriculum, resources, and instructional practices related to high academic achievement for all students while incarcerated.
- Continue to collaborate efforts among DOE, DJJ, school districts, and private providers to ensure appropriate and effective education for youth in juvenile justice programs.[23]

In 2010, the Office of Program Policy Analysis & Government Accountability (OPPAGA) issued a report examining educational services provided to youth in DJJ residential and day treatment programs. OPPAGA found that most students entering juvenile justice programs were older, academically behind their peers, and were likely to have had attendance problems at school. OPPAGA found that DOE had not collected sufficient information to assess the learning gains (or lack thereof) of students in juvenile justice programs. Only 48 of the 141 programs (34%) reported complete information for at least half of their students. For those programs that did report data, the nature of the assessment instrument made it difficult to determine whether students were making appropriate educational progress. OPPAGA recommended that the Legislature amend s. 1003.52(3)(b), F.S., to require that DOE make annual status reports to the Legislature on the learning gains of students in juvenile justice facilities and the steps it has taken to ensure the completeness and reliability of juvenile justice student performance data.[24]

The Department of Juvenile Justice is required to annually collect and report cost data for every program state-operated or contracted by the department. DJJ is responsible for accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. The cost of the educational program provided to a residential facility must be reported and included in the cost of a program. The cost-benefit analysis for each educational program will be developed and implemented in collaboration with the Department of Education, local providers, and local school districts. Cost data for the report must include data collected by DOE for the purpose of preparing the annual report required pursuant to s. 1003.52(19), F.S., relating to developing effective educational progress for juvenile delinquents.[25]

DOE in consultation with DJJ, district school boards and providers must establish objective and measurable quality assurance standards for the educational components of residential and nonresidential juvenile justice facilities.[26] The quality assurance standards and indicators are revised annually for juvenile justice education programs, based on new statutory and regulatory requirements, best practices research, and input from school districts and educational providers.[27] These standards must rate the district school boards' performance both as a provider and contractor.[28]

Effect of Proposed Changes

The bill requires DOE to establish and operate, either directly or indirectly through a contract, a mechanism to provide accountability measures that annually assess and evaluate all juvenile justice education program using student performance data and program performance ratings by type of program.

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[23] Florida Department of Education, *Developing Effective Education in Department of Juvenile Justice and other Dropout Prevention Programs,* Annual Report 200-2010, at 13 (2011), *available at* http://www.fldoe.org/ese/pdf/jj_annual.pdf

[24] Office of Program Policy Analysis and Government Accountability, *Youth Entering the State's Juvenile Justice Program Have Substantial Educational Deficits; Available Data is Insufficient to Assess Learning Gains of Students*, Report No. 10-07, at 8 (Jan. 2010), *available at* www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1007rpt.pdf.

[25] Section 985.632, F.S.

[26] Section 1003.52(15)(a), F.S.

[27] Florida Department of Education, *Developing Effective Education in Department of Juvenile Justice and other Dropout Prevention Programs*, Annual Report 2009-2010 (2011), *available at*, www.fldoe.org/ese/pdf/jj_annual.pdf.

[28] Section 1003.52(15)(a), F.S.

DOE, in partnership with DJJ, must develop a comprehensive accountability and program improvement process. The accountability and program improvement process must be based on student performance measures by type of program and must rate education program performance. The accountability system must identify and recognize high-performing education programs.

DOE, in partnership with DJJ, must identify low-performing programs. Low-performing education programs must receive an onsite program evaluation from DJJ. Identification of education programs needing school improvement, technical assistance, or reassignment of the program must be based, in part on the results of the program evaluation. Through a corrective action process, low-performing programs must demonstrate improvement or the program must be reassigned to the district or another provider.

DJJ must:

- Provide cost and effectiveness information on programs and program activities in order to compare, improve, or eliminate a program or program activity if necessary.
- Provide program and program activity cost and effectiveness data to the Legislature in order for resources to be allocated for achieving desired performance outcomes.
- Provide information to the public concerning program and program activity cost and effectiveness.
- Implement a system of accountability in order to provide the best and most appropriate program and activities to meet client needs.
- Continue to improve service delivery.

DJJ, in consultation with DOE, must publish by March 1 of each year a report on program costs and effectiveness. The report must include uniform cost data for each program operated by DJJ and by providers under contract with DJJ. DOE is required to provide cost data on each education program operated by a school district or a provider under contract with a school district. The report must also include data on student learning gains, as provided by DOE, for all juvenile justice education programs; educational performance information, developing effective education programs, cost-effectiveness, and recommendations for modification or elimination of programs or program activities.

DOE, in consultation with DJJ, district school boards, and providers must establish by rule:

- Objective and measurable student performance measures to evaluate a student's educational progress while participating in a prevention, day treatment, or residential program. The student performance measures must be based on appropriate outcomes for all students in juvenile justice programs, taking into consideration the student's length of stay in the program. Performance measures must include outcomes that relate to student achievement of career education goals, acquisition of employability skills, receipt of a high school diploma, grade advancement, and learning gains.
- A performance rating system to be used by DOE to evaluate the delivery of educational services within each of the juvenile justice education programs. The performance rating system must be primarily based upon data regarding student performance as described above.
- The timeframes, procedures, and resources to be used to improve a low-rated educational program or to terminate or reassign the program.

The bill requires that education program performance results, including the identification of high and low-performing programs and aggregated student performance results be included in DOE and DJJ annual report on the progress toward developing effective educational programs.

DOE in collaboration with DJJ must monitor and report on the educational performance of students in commitment, day treatment, prevention, and detention programs. The report must include, at a minimum, the number and percentage of students:

- Returning to an alternative school, middle school, or high school upon release and the attendance rate of such students before and after participation in juvenile justice education programs.
- Receiving a standard high school diploma or high school equivalency diploma.
- Receiving industry certification.
- Receiving occupational completion points.
- Enrolling in a postsecondary educational institution
- Completing a juvenile justice education program without reoffending
- Reoffending within 1 year after completing a day treatment or residential commitment program.
- Remaining employed 1 year after completion of a day treatment or residential commitment program.

The results of the educational performance report must be included in the program costs and effectiveness report.

Transition Plan and Reentry Plan

Present Situation

Currently an individual transition plan is developed for each student entering a DJJ commitment, day treatment, early delinquency intervention, or detention program.[29] The transition plan is based on the student's post-placement goals that are developed cooperatively with the student, his/her parents, school district and or contracted provider personnel, and DJJ program staff. Re-entry counselors, probation officers, and personnel from the student's "home" school district shall be involved in the transition planning to the extent practicable.[30] The transition plan also includes a student's academic record including each course completed by the student according to procedures in the State Course Code Directory, career re-entry goals maintained by the school district, and recommended educational placement. An exit plan is also conducted for each student. A copy of the academic records, student assessment, individual academic plan, work and project samples, and the transition plan is included in the discharge packet when the student exits a DJJ facility.[31]

Effect of Proposed Changes

The bill requires a transition plan to include, at a minimum:

- Services and interventions that address the student's assessed educational needs and postrelease education plans.
- Services to be provided during the program stay and services to be implemented upon release, including but not limited to, continuing education in secondary, career and technical programs, postsecondary education, or employment, based on the student's needs.
- Specific monitoring responsibilities to determine whether the individualized transition plan is being implemented and the student is provided access to support services that will sustain the student's success, that must be coordinated by individuals who are responsible for reintegration.

DOE and DJJ must provide oversight and guidance to school districts, education providers, and reentry personnel on how to implement effective educational transition planning and services. The bill also requires upon a student's return from a program, school districts to consider the individual needs and circumstances of the student and the transition plan recommendations when reenrolling a student in a public school. A local school district may not maintain a standardized policy for all students returning

[29] Section 1003.52(13)(i); Rule 6A-6.05281, F.A.C.
[30] Email, Florida Department of Education, Governmental Relation Office (Feb. 8, 2012).
[31] Florida Department of Education, Legislative Bill Analysis for SB 834 (2011).

from a juvenile justice program, but place students based on their needs and their performance in the program.

The bill requires that representatives from the school district and One Stop Center, where the student will return, participate as members of the local Department of Juvenile Justice reentry team.

Teachers in Juvenile Justice Programs

Present Situation

District school boards must recruit and train teachers who are interested, qualified, or experienced in educating students in juvenile justice programs. Students in juvenile justice programs must be provided a wide range of educational programs and opportunities including textbooks, technology, instructional support, and other resources available to students in public schools. Teachers assigned to educational programs in juvenile justice settings in which the district school board operates the educational program must be selected by the district school board in consultation with the director of the juvenile justice facility. Educational programs in juvenile justice facilities must have access to the substitute teacher pool utilized by the district school board.[32]

Effect of Proposed Changes

State Board of Education (SBE) rules for qualification of instructional staff must include career education instructors, standardized across the state, and be based on state certification, local school district approval, and industry recognized credentials or industry training. The bill also requires the establishment of procedures for the use of noncertified instructional personnel who possess expert knowledge or experience in their fields of instruction.

The bill also allows the Secretary of the Department of Juvenile Justice or the director of a juvenile justice program to request that the performance of a teacher assigned by the district to a juvenile justice education program be reviewed by the district and that the teacher be reassigned based upon an evaluation conducted pursuant to s. 1012.34, F.S., for inappropriate behavior.

Public Educational Services – District School Boards

The bill clarifies the responsibilies of district school boards to include:

- Notifying students in juvenile justice education program who attain the age of 16 years of the law regarding compulsory school attendance and make available the option of enrolling in a program to attain a high school diploma by taking the high school equivalency exam before release from the program.
- Responding to request for student education records received from another district school board or a juvenile justice education program within 5 working days after receiving the request.
- Providing access to courses offered through Florida Virtual School, virtual instruction programs, and school district virtual courses. School districts and providers may enter into cooperative agreements for the provision of curriculum associated with school district virtual courses to enable providers to offer such courses.
- Completing the assessment process.
- Monitoring compliance with contracts for education programs for students in juvenile justice prevention, day treatment, residential, and detention programs.

The bill requires DOE in partnership with DJJ, the district school, and providers to:

[32] Section 1003.52(10), F.S.

- Develop and implement requirements for contracts and cooperative agreements regarding the delivery of appropriate education services to students in DJJ programs.
- Maintain standardized procedures for securing the student's records. The records must include, but not be limited to the student's individualized progress monitoring plan and individualized transition plan.

The bill also requires DOE to assist juvenile justice programs with becoming high school equivalency examination centers.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.622, F.S., revising provisions to be included in the multiagency education plan for students in juvenile justice education programs.

Section 2. Amends s. 985.632, F.S., requiring the Department of Juvenile Justice to provide cost and effectiveness information for program and program activities to the Legislature and the public; deleting legislative intent language; requiring implementation of an accountability system to ensure client needs are met; requiring the Department of Juvenile Justice and Department of Education to submit an annual report including data on program costs and effectiveness and student achievement and recommendations for elimination or modification of programs.

Section 3. Amends s. 1001.31, F.S., authorizing instructional personnel at all juvenile justice facilities to access specific student records at the district.

Section 4. Amends s. 1003.51, F.S., revising terminology; revising requirements for rules to be maintained by the State Board of Education; providing expectations for effective education programs for students in Department of Juvenile Justice programs; revising requirements for contract and cooperative agreements for the delivery of appropriate education services to students in Department of Juvenile Justice programs; requiring the Department of Education to ensure that juvenile justice students who are eligible have access to high school equivalency testing and assist juvenile justice education programs with becoming high school equivalency testing centers; revising requirements for an accountability system for all juvenile justice education programs; revising requirements to district school boards.

Section 5. Amends s. 1003.52, F.S., revising requirements for activities to be coordinated by the coordinators for juvenile justice education programs; authorizing contracting for educational assessments; revising requirements for assessments; authorizing access to local virtual education courses; requiring that an educational program be based on each student's transition plan and assessed educational needs; providing requirements for prevention and day treatment juvenile justice education programs; requiring progress monitoring plans or all students not classified as exceptional student education students; revising requirements for such plans; requiring that the Department of Education, in partnership the Department of Juvenile Justice, ensure that school districts and juvenile justice education providers develop individualized transition plans; providing requirements for such plans; providing that the Secretary of the Department of Juvenile Justice or the director of a juvenile justice program may request that a school district teacher's performance be reviewed by the district and that the teacher be reassigned in certain circumstances; correcting a cross-reference; requiring the Department of Education to establish by rule objective and measurable student performance measures and program performance rating; providing requirements for such ratings; requiring a comprehensive accountability and program improvement process; providing requirements for such a process; deleting a requirement for an annual report; requiring data collection; deleting provisions concerning the Arthur Dozier School for boys; requiring rulemaking.

Section 6. Amends s. 1001.42, F.S., revising terminology; revising a cross-reference; providing a directive to the Division of Law Revision and Information.

Section 7. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a fiscal impact on DJJ providers or any other private sector entity.

D. FISCAL COMMENTS:

The Department of Juvenile Justice has indicated that there will be no fiscal impact from the effects of this bill.[33] DJJ has been working in consultation with the Department of Education on the proposed statutory changes of this bill. There will be no fiscal impact to the Department of Education or the Department of Children and Families.

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:

The bill requires SBE to implement rules relating to educational services in DJJ programs.

[33] Department of Juvenile Justice 2013 Legislative Session Bill Analysis, 3/22/2013, HB 441 Relating to DJJ Education Reform, Joan Wimmer. On file with Justice Appropriations Subcommittee staff.

The bill revises the rulemaking requirements of the Department of Education. The bill requires DOE to adopt rules for objective and measurable student performance measures and program performance ratings for the delivery of educational services by prevention, day treatment, and residential programs.

The bill requires that SBE rules relating to qualifications of instructional staff include career education instructors, standardized across the state, and based on state certification, local school district approval, and industry recognized credentials or industry training.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Choice & Innovation Subcommittee reported the proposed committee substitute (PCS) to HB 441 favorably as a committee substitute.

The committee substitute:

- Required cost and effectiveness information on programs and program activities be provided in order to compare, improve, or eliminate a program or program activity.
- Required DOE in partnership with DJJ to develop a comprehensive accountability and school improvement process.
- Required DOE in collaboration with DJJ to monitor and report on the educational performance of students in commitment, day treatment, prevention, and detention programs.
- Required DJJ in consultation with DOE to publish by March 1 of each year a report on program costs and effectiveness, educational performance of students, and recommendations for modification or elimination of programs or program activities.
- Clarified that school districts and juvenile justice education providers, in collaboration with others develop an individualized transition plan during a student's stay in a program.
- Clarified that an individualized progress monitoring plan be developed for all students (excluding ESE students) upon entry in a DJJ program and upon reentry in the school district.
- Required DOE and DJJ to provide oversight and guidance on how to implement effective educational transition planning and services.
- Required prevention and day treatment programs to provide career readiness and exploration opportunities as well as truancy and dropout prevention intervention services.
- Expanded the multiagency plan for career education to include eliminating barriers to education and addressing virtual education for juvenile justice programs.
- Allowed students in juvenile justice education programs to receive career readiness and exploration opportunities, pre-apprentice certifications, industry certifications, occupational completion points, or work-related certification depending on the length of stay in a program.

The committee substitute removed the provisions in HB 441 that:

- Required at least 95% of the Florida Education Finance Program (FEFP) funds generated by students in DJJ programs or in an education program for juveniles be spent on instructional cost for DJJ students.
- Required 90% of federal Title I, Part D funds generated by students in DJJ programs be expended directly on educational and transition services for DJJ students.
- Required students in juvenile justice education programs who are administered the GED test remain enrolled in the education program for the duration of the FTE student membership survey period in which they are tested.

- Required juvenile justice education programs not to be charged full-time equivalent student membership for virtual courses accessed through the school district that are for credit recovery or offered to youth beyond the instructional 300 minute daily requirement.
- Required juvenile justice educational programs receive year-round FEFP funding for DJJ programs.
- Required juvenile justice education programs receive additional weighted funding equivalent to 0.1 FTE.
- Required DOE provide funding that support students in juvenile justice education programs who have graduated high school or received their high school equivalency diploma.
- Removed the option for DOE to enter into an agreement with one or more state supported public postsecondary institutions to offer online courses to youth in juvenile justice education programs throughout the state.

This analysis is drafted to the committee substitute as passed by the Choice & Innovation Subcommittee.

A bill to be entitled

An act relating to juvenile justice education programs; amending s. 985.622, F.S.; revising provisions to be included in the multiagency education plan for students in juvenile justice education programs, including virtual education as an option; amending s. 985.632, F.S.; requiring the Department of Juvenile Justice to provide cost and effectiveness information for program and program activities to the Legislature and the public; deleting legislative intent language; requiring implementation of an accountability system to ensure client needs are met; requiring the department and Department of Education to submit an annual report that includes data on program costs and effectiveness and student achievement and recommendations for elimination or modification of programs; amending s. 1001.31, F.S.; authorizing instructional personnel at all juvenile justice facilities to access specific student records at the district; amending s. 1003.51, F.S.; revising terminology; revising requirements for rules to be maintained by the State Board of Education; providing expectations for effective education programs for students in Department of Juvenile Justice programs; revising requirements for contract and cooperative agreements for the delivery of appropriate education services to students in Department of Juvenile Justice programs; requiring the Department of Education to

ensure that juvenile justice students who are eligible have access to high school equivalency testing and assist juvenile justice education programs with becoming high school equivalency testing centers; revising requirements for an accountability system all juvenile justice education programs; revising requirements to district school boards; amending s. 1003.52, F.S.; revising requirements for activities to be coordinated by the coordinators for juvenile justice education programs; authorizing contracting for educational assessments; revising requirements for assessments; authorizing access to local virtual education courses; requiring that an education program shall be based on each student's transition plan and assessed educational needs; providing requirements for prevention and day treatment juvenile justice education programs; requiring progress monitoring plans for all students not classified as exceptional student education students; revising requirements for such plans; requiring that the Department of Education, in partnership with the Department of Juvenile Justice, ensure that school districts and juvenile justice education providers develop individualized transition plans; providing requirements for such plans; providing that the Secretary of Juvenile Justice or the director of a juvenile justice program may request that a school district teacher's performance be reviewed by the

district and that the teacher be reassigned in certain circumstances; correcting a cross-reference; requiring the Department of Education to establish by rule objective and measurable student performance measures and program performance ratings; providing requirements for such ratings; requiring a comprehensive accountability and program improvement process; providing requirements for such a process; deleting provisions for minimum thresholds for the standards and key indicators for education programs in juvenile justice facilities; deleting a requirement for an annual report; requiring data collection; deleting provisions concerning the Arthur Dozier School for Boys; requiring rulemaking; amending s. 1001.42, F.S.; revising terminology; revising a cross-reference; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Section 985.622, Florida Statutes, is amended to read:

985.622 Multiagency plan for career ~~vocational~~ education.—

(1) The Department of Juvenile Justice and the Department of Education shall, in consultation with the statewide Workforce Development Youth Council, school districts, providers, and others, jointly develop a multiagency plan for career ~~vocational~~

education that establishes the curriculum, goals, and outcome measures for career ~~vocational~~ programs in juvenile justice education programs ~~commitment facilities~~. The plan must include:

(a) Provisions for maximizing appropriate state and federal funding sources, including funds under the Workforce Investment Act and the Perkins Act.~~;~~

(b) Provisions for eliminating barriers to increasing occupation-specific job training and high school equivalency examination preparation opportunities.

(c) ~~(b)~~ The responsibilities of both departments and all other appropriate entities.~~; and~~

(d) ~~(c)~~ A detailed implementation schedule.

(2) The plan must define career ~~vocational~~ programming that is appropriate based upon:

(a) The age and assessed educational abilities and goals of the student ~~youth~~ to be served; and

(b) The typical length of stay and custody characteristics at the juvenile justice education ~~commitment~~ program to which each student ~~youth~~ is assigned.

(3) The plan must include a definition of career ~~vocational~~ programming that includes the following classifications of juvenile justice education programs ~~commitment facilities~~ that will offer career ~~vocational~~ programming by one of the following types:

(a) Type A.—Programs that teach personal accountability skills and behaviors that are appropriate for students ~~youth~~ in all age groups and ability levels and that lead to work habits that help maintain employment and living standards.

(b) Type B.—Programs that include Type A program content and an orientation to the broad scope of career choices, based upon personal abilities, aptitudes, and interests. Exploring and gaining knowledge of occupation options and the level of effort required to achieve them are essential prerequisites to skill training.

(c) Type C.—Programs that include Type A program content and the career ~~vocational~~ competencies or the prerequisites needed for entry into a specific occupation.

(4) The plan must also address strategies to facilitate involvement of business and industry in the design, delivery, and evaluation of career ~~vocational~~ programming in juvenile justice education ~~commitment facilities and conditional release~~ programs, including apprenticeship and work experience programs, mentoring and job shadowing, and other strategies that lead to postrelease employment. Incentives for business involvement, such as tax breaks, bonding, and liability limits should be investigated, implemented where appropriate, or recommended to the Legislature for consideration.

(5) The plan must also evaluate the effect of students' mobility between juvenile justice education programs and school districts on the students' educational outcomes and whether the continuity of the students' education can be better addressed through virtual education.

(6) ~~(5)~~ The Department of Juvenile Justice and the Department of Education shall each align its respective agency policies, practices, technical manuals, contracts, quality-assurance standards, performance-based-budgeting measures, and

outcome measures with the plan in juvenile justice education programs ~~commitment facilities~~ by July 31, 2014 ~~2001~~. Each agency shall provide a report on the implementation of this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives by August 31, 2014 ~~2001~~.

(7) ~~(6)~~ All provider contracts executed by the Department of Juvenile Justice or the school districts after January 1, 2015 ~~2002~~, must be aligned with the plan.

(8) ~~(7)~~ The planning and execution of quality assurance reviews conducted by the Department of Education or the Department of Juvenile Justice after August 1, 2014 ~~2002~~, must be aligned with the plan.

(9) ~~(8)~~ Outcome measures reported by the Department of Juvenile Justice and the Department of Education for students ~~youth~~ released on or after January 1, 2015 ~~2002~~, should include outcome measures that conform to the plan.

Section 2. Subsections (1) and (3) of section 985.632, Florida Statutes, are amended to read:

985.632 Quality assurance and cost-effectiveness.—

(1) The department shall:

(a) Provide cost and effectiveness information on programs and program activities in order to compare, improve, or eliminate a program or program activity if necessary.

(b) Provide program and program activity cost and effectiveness data to the Legislature in order for resources to be allocated for achieving desired performance outcomes.

(c) Provide information to the public concerning program and program activity cost and effectiveness.

(d) Implement a system of accountability in order to provide the best and most appropriate programs and activities to meet client needs.

(e) Continue to improve service delivery. ~~It is the intent of the Legislature that the department:~~

~~(a) Ensure that information be provided to decisionmakers in a timely manner so that resources are allocated to programs of the department which achieve desired performance levels.~~

~~(b) Provide information about the cost of such programs and their differential effectiveness so that the quality of such programs can be compared and improvements made continually.~~

~~(c) Provide information to aid in developing related policy issues and concerns.~~

~~(d) Provide information to the public about the effectiveness of such programs in meeting established goals and objectives.~~

~~(e) Provide a basis for a system of accountability so that each client is afforded the best programs to meet his or her needs.~~

~~(f) Improve service delivery to clients.~~

~~(g) Modify or eliminate activities that are not effective.~~

(3) By March 1st of each year, the department, in consultation with the Department of Education, shall publish a report on program costs and effectiveness. The report shall include uniform cost data for each program operated by the department or by providers under contract with the department. The Department of Education shall provide the cost data on each education program operated by a school district or a provider

under contract with a school district. Cost data shall be formatted and presented in a manner approved by the Legislature. The report shall also include data on student learning gains, as provided by the Department of Education, for all juvenile justice education programs as required under s. 1003.52(3)(b), information required under ss. 1003.52(17) and (21), the cost-effectiveness of each program offered, and recommendations for modification or elimination of programs or program activities ~~The department shall annually collect and report cost data for every program operated or contracted by the department. The cost data shall conform to a format approved by the department and the Legislature. Uniform cost data shall be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The department shall ensure that there is accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. The cost of the educational program provided to a residential facility shall be reported and included in the cost of a program. The department shall submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year. Cost-benefit analysis for educational programs will be developed and implemented in collaboration with and in cooperation with the Department of Education, local providers, and local school districts. Cost data for the report shall include data collected by the~~

~~Department of Education for the purposes of preparing the annual report required by s. 1003.52(19).~~

Section 3. Section 1001.31, Florida Statutes, is amended to read:

1001.31 Scope of district system.—A district school system shall include all public schools, classes, and courses of instruction and all services and activities directly related to education in that district which are under the direction of the district school officials. A district school system may also include alternative site schools for disruptive or violent students ~~youth~~. Such schools for disruptive or violent students ~~youth~~ may be funded by each district or provided through cooperative programs administered by a consortium of school districts, private providers, state and local law enforcement agencies, and the Department of Juvenile Justice. Pursuant to cooperative agreement, a district school system shall provide instructional personnel at juvenile justice facilities ~~of 50 or more beds or slots~~ with access to the district school system database for the purpose of accessing student academic, immunization, and registration records for students assigned to the programs. Such access shall be in the same manner as provided to other schools in the district.

Section 4. Section 1003.51, Florida Statutes, is amended to read:

1003.51 Other public educational services.—

(1) The general control of other public educational services shall be vested in the State Board of Education except as provided in this section ~~herein~~. The State Board of Education

shall, at the request of the Department of Children and Families ~~Family Services~~ and the Department of Juvenile Justice, advise as to standards and requirements relating to education to be met in all state schools or institutions under their control which provide educational programs. The Department of Education shall provide supervisory services for the educational programs of all such schools or institutions. The direct control of any of these services provided as part of the district program of education shall rest with the district school board. These services shall be supported out of state, district, federal, or other ~~lawful~~ funds, depending on the requirements of the services being supported.

(2) The State Board of Education shall adopt rules ~~and maintain an administrative rule~~ articulating expectations for effective education programs for students ~~youth~~ in Department of Juvenile Justice programs, including, but not limited to, education programs in juvenile justice prevention, day treatment, residential, ~~commitment~~ and detention facilities. The rule shall establish ~~articulate~~ policies and standards for education programs for students ~~youth~~ in Department of Juvenile Justice programs and shall include the following:

(a) The interagency collaborative process needed to ensure effective programs with measurable results.

(b) The responsibilities of the Department of Education, the Department of Juvenile Justice, Workforce Florida, Inc., district school boards, and providers of education services to students ~~youth~~ in Department of Juvenile Justice programs.

(c) Academic expectations.

(d) Career and technical expectations.

(e) Education transition planning and services.

(f) ~~(d)~~ Service delivery options available to district school boards, including direct service and contracting.

(g) ~~(e)~~ Assessment procedures, which:

1. Include appropriate academic and career assessments administered at program entry and exit that are selected by the Department of Education in partnership with representatives from the Department of Juvenile Justice, district school boards, and education providers.

~~2. Require district school boards to be responsible for ensuring the completion of the assessment process.~~

~~3. Require assessments for students in detention who will move on to commitment facilities, to be designed to create the foundation for developing the student's education program in the assigned commitment facility.~~

2. ~~4.~~ Require assessments of students in programs ~~sent directly to commitment facilities~~ to be completed within the first 10 school days after ~~of~~ the student's entry into the program ~~commitment~~.

The results of these assessments, together with a portfolio depicting the student's academic and career accomplishments, shall be included in the discharge packet ~~package~~ assembled for each student ~~youth~~.

(h) ~~(f)~~ Recommended instructional programs, including, but not limited to, secondary education, high school equivalency examination preparation, postsecondary education, career

training, and job preparation.

(i) ~~(g)~~ Funding requirements, which shall include the requirement that at least 90 percent of the FEFP funds generated by students in Department of Juvenile Justice programs or in an education program for juveniles under s. 985.19 be spent on instructional costs for those students. One hundred percent of the formula-based categorical funds generated by students in Department of Juvenile Justice programs must be spent on appropriate categoricals such as instructional materials and public school technology for those students.

(j) ~~(h)~~ Qualifications of instructional staff, procedures for the selection of instructional staff, and procedures for ~~to ensure~~ consistent instruction and qualified staff year round. Qualifications shall include those for career education instructors, standardized across the state, and shall be based on state certification, local school district approval, and industry-recognized credentials or industry training. Procedures for the use of noncertified instructional personnel who possess expert knowledge or experience in their fields of instruction shall be established.

(k) ~~(i)~~ Transition services, including the roles and responsibilities of appropriate personnel in the juvenile justice education program, the school district where the student will reenter ~~districts~~, provider organizations, and the Department of Juvenile Justice.

(l) ~~(j)~~ Procedures and timeframe for transfer of education records when a student ~~youth~~ enters and leaves a Department of Juvenile Justice education program ~~facility~~.

(m) ~~(k)~~ The requirement that each district school board maintain an academic transcript for each student enrolled in a juvenile justice education program ~~facility~~ that delineates each course completed by the student as provided by the State Course Code Directory.

(n) ~~(l)~~ The requirement that each district school board make available and transmit a copy of a student's transcript in the discharge packet when the student exits a juvenile justice education program ~~facility~~.

(o) ~~(m)~~ contract requirements.

(p) ~~(n)~~ Performance expectations for providers and district school boards, including student performance measures by type of program, education program performance ratings, school improvement, and corrective action plans for low-performing programs ~~the provision of a progress monitoring plan as required in s. 1008.25~~.

(q) ~~(o)~~ The role and responsibility of the district school board in securing workforce development funds.

(r) ~~(p)~~ A series of graduated sanctions for district school boards whose educational programs in Department of Juvenile Justice programs ~~facilities~~ are considered to be unsatisfactory and for instances in which district school boards fail to meet standards prescribed by law, rule, or State Board of Education policy. These sanctions shall include the option of requiring a district school board to contract with a provider or another district school board if the educational program at the Department of Juvenile Justice program is performing below minimum standards ~~facility has failed a quality assurance review~~

and, after 6 months, is still performing below minimum standards.

(s) Curriculum, guidance counseling, transition, and education services expectations, including curriculum flexibility for detention centers operated by the Department of Juvenile Justice.

(t) ~~(q)~~ Other aspects of program operations.

(3) The Department of Education in partnership with the Department of Juvenile Justice, the district school boards, and providers shall:

(a) Develop and implement requirements for contracts and cooperative agreements regarding ~~Maintain model contracts for~~ the delivery of appropriate education services to students ~~youth~~ in Department of Juvenile Justice programs ~~to be used for the development of future contracts~~. The minimum contract requirements shall include, but are not limited to, payment structure and amounts; access to district services; contract management provisions; data reporting requirements, including reporting of full-time equivalent student membership; administration of federal programs such as Title I, exceptional student education, and the Carl D. Perkins Career and Technical Education Act of 2006; and ~~model contracts shall reflect~~ the policy and standards included in subsection (2). ~~The Department of Education shall ensure that appropriate district school board personnel are trained and held accountable for the management and monitoring of contracts for education programs for youth in juvenile justice residential and nonresidential facilities.~~

(b) Develop and implement ~~Maintain model~~ procedures for

transitioning students ~~youth~~ into and out of Department of Juvenile Justice education programs. These procedures shall reflect the policy and standards adopted pursuant to subsection (2).

(c) Maintain standardized required content of education records to be included as part of a student's ~~youth's~~ commitment record and procedures for securing the student's records. The education records ~~These requirements shall reflect the policy and standards adopted pursuant to subsection (2) and~~ shall include, but not be limited to, the following:

1. A copy of the student's individual educational plan.

2. A copy of the student's individualized progress monitoring plan.

3. A copy of the student's individualized transition plan.

4.~~2.~~ Assessment data, including grade level proficiency in reading~~, writing,~~ and mathematics, and performance on tests taken according to s. 1008.22.

5.~~3.~~ A copy of the student's permanent cumulative record.

6.~~4.~~ A copy of the student's academic transcript.

7.~~5.~~ A portfolio reflecting the student's ~~youth's~~ academic and career and technical accomplishments, when age appropriate, while in the Department of Juvenile Justice program.

(d) Establish ~~Maintain model procedures for securing the education record and~~ the roles and responsibilities of the juvenile probation officer and others involved in the withdrawal of the student from school and assignment to a juvenile justice education program ~~commitment or detention facility~~. ~~District school boards shall respond to requests for student education~~

~~records received from another district school board or a juvenile justice facility within 5 working days after receiving the request.~~

(4) Each ~~The Department of Education shall ensure that~~ district school board shall: ~~boards~~

(a) Notify students in juvenile justice education programs ~~residential or nonresidential facilities~~ who attain the age of 16 years of the ~~provisions of~~ law regarding compulsory school attendance and make available the option of enrolling in a program to attain a Florida high school diploma by taking the high school equivalency examination before ~~General Educational Development test prior to~~ release from the program ~~facility~~. District school boards or Florida College System institutions, or both, shall ~~waive GED testing fees for youth in Department of Juvenile Justice residential programs and shall~~, upon request, designate schools operating for the purpose of providing educational services to students ~~youth~~ in Department of Juvenile Justice programs. The Department of Education shall assist juvenile justice education programs with becoming high school equivalency examination centers ~~as GED testing centers, subject to GED testing center requirements. The administrative fees for the General Educational Development test required by the Department of Education are the responsibility of district school boards and may be required of providers by contractual agreement~~.

(b) Respond to requests for student education records received from another district school board or a juvenile justice education program within 5 working days after receiving

the request.

(c) Provide access to courses offered pursuant to ss. 1002.37, 1002.45, and 1003.498. School districts and providers may enter into cooperative agreements for the provision of curriculum associated with courses offered pursuant to s. 1003.498 to enable providers to offer such courses.

(d) Complete the assessment process required by subsection (2).

(e) Monitor compliance with contracts for education programs for students in juvenile justice prevention, day treatment, residential, and detention programs.

(5) The Department of Education shall establish and operate, either directly or indirectly through a contract, a mechanism to provide accountability measures that annually assesses and evaluates all juvenile justice education programs using student performance data and program performance ratings by type of program ~~quality assurance reviews of all juvenile justice education programs~~ and shall provide technical assistance and related research to district school boards and juvenile justice education providers ~~on how to establish, develop, and operate educational programs that exceed the minimum quality assurance standards~~. The Department of Education, with input from the Department of Juvenile Justice, school districts, and education providers shall develop annual recommendations for system and school improvement.

Section 5. Section 1003.52, Florida Statutes, is amended to read:

1003.52 Educational services in Department of Juvenile

Justice programs.—

(1) ~~The Legislature finds that education is the single most important factor in the rehabilitation of adjudicated delinquent youth in the custody of Department of Juvenile Justice programs. It is the goal of the Legislature that youth in the juvenile justice system continue to be allowed the opportunity to obtain a high quality education.~~ The Department of Education shall serve as the lead agency for juvenile justice education programs, curriculum, support services, and resources. To this end, the Department of Education and the Department of Juvenile Justice shall each designate a Coordinator for Juvenile Justice Education Programs to serve as the point of contact for resolving issues not addressed by district school boards and to provide each department's participation in the following activities:

(a) Training, collaborating, and coordinating with ~~the Department of Juvenile Justice,~~ district school boards, local workforce boards and youth councils, educational contract providers, and juvenile justice providers, whether state operated or contracted.

(b) Collecting information on the academic, career education, and transition performance of students in juvenile justice programs and reporting on the results.

(c) Developing academic and career education protocols that provide guidance to district school boards and juvenile justice education providers in all aspects of education programming, including records transfer and transition.

(d) Implementing a joint accountability, program

performance, and program improvement process ~~Prescribing the roles of program personnel and interdepartmental district school board or provider collaboration strategies~~.

Annually, a cooperative agreement and plan for juvenile justice education service enhancement shall be developed between the Department of Juvenile Justice and the Department of Education and submitted to the Secretary of Juvenile Justice and the Commissioner of Education by June 30. The plan shall include, at a minimum, each agency's role regarding educational program accountability, technical assistance, training, and coordination of services.

(2) Students participating in Department of Juvenile Justice programs pursuant to chapter 985 which are sponsored by a community-based agency or are operated or contracted for by the Department of Juvenile Justice shall receive education ~~educational~~ programs according to rules of the State Board of Education. These students shall be eligible for services afforded to students enrolled in programs pursuant to s. 1003.53 and all corresponding State Board of Education rules.

(3) The district school board of the county in which the juvenile justice education prevention, day treatment, residential, or detention program ~~residential or nonresidential care facility or juvenile assessment facility~~ is located shall provide or contract for appropriate educational assessments and an appropriate program of instruction and special education services.

(a) The district school board shall make provisions for

each student to participate in basic, career education, and exceptional student programs as appropriate. Students served in Department of Juvenile Justice programs shall have access to the appropriate courses and instruction to prepare them for the high school equivalency examination ~~GED test~~. Students participating in high school equivalency examination ~~GED~~ preparation programs shall be funded at the basic program cost factor for Department of Juvenile Justice programs in the Florida Education Finance Program. Each program shall be conducted according to applicable law providing for the operation of public schools and rules of the State Board of Education. School districts shall provide the high school equivalency examination ~~GED~~ exit option for all juvenile justice programs.

(b) ~~By October 1, 2004,~~ The Department of Education, with the assistance of the school districts and juvenile justice education providers, shall select a common student assessment instrument and protocol for measuring student learning gains and student progression while a student is in a juvenile justice education program. ~~The assessment instrument and protocol must be implemented in all juvenile justice education programs in this state by January 1, 2005.~~

(4) Educational services shall be provided at times of the day most appropriate for the juvenile justice program. School programming in juvenile justice detention, prevention, day treatment, and residential ~~commitment, and rehabilitation~~ programs shall be made available by the local school district during the juvenile justice school year, as provided ~~defined~~ in s. 1003.01(11). In addition, students in juvenile justice

education programs shall have access to courses offered pursuant to ss. 1002.37, 1002.45, and 1003.498 ~~Florida Virtual School courses~~. The Department of Education and the school districts shall adopt policies necessary to provide ~~ensure~~ such access.

(5) The educational program shall provide instruction based on each student's individualized transition plan, assessed educational needs, and the education programs available in the school district in which the student will return. Depending on the student's needs, educational programming may consist of remedial courses, ~~consist of appropriate basic~~ academic courses required for grade advancement, career education courses, high school equivalency examination preparation, or exceptional student education curricula and related services which support the transition ~~treatment~~ goals and reentry and which may lead to completion of the requirements for receipt of a high school diploma or its equivalent. Prevention and day treatment juvenile justice education programs, at a minimum, shall provide career readiness and exploration opportunities as well as truancy and dropout prevention intervention services. Residential juvenile justice education programs with a contracted minimum length of stay of 9 months shall provide career education courses that lead to preapprentice certifications, industry certifications, occupational completion points, or work-related certifications. Residential programs with contracted lengths of stay of less than 9 months may provide career education courses that lead to preapprentice certifications, industry certifications, occupational completion points, or work-related certifications. If the duration of a program is less than 40 days, the

educational component may be limited to tutorial remediation activities, ~~and~~ career employability skills instruction, education counseling, and transition services that prepare students for a return to school, the community, and their home settings based on the students' needs.

(6) Participation in the program by students of compulsory school-attendance age as provided for in s. 1003.21 shall be mandatory. All students of noncompulsory school-attendance age who have not received a high school diploma or its equivalent shall participate in the educational program, unless the student files a formal declaration of his or her intent to terminate school enrollment as described in s. 1003.21 and is afforded the opportunity to take the general educational development test and attain a Florida high school diploma before ~~prior to~~ release from a juvenile justice education program ~~facility~~. A student ~~youth~~ who has received a high school diploma or its equivalent and is not employed shall participate in workforce development or other career ~~or technical~~ education or Florida College System institution or university courses while in the program, subject to available funding.

(7) An individualized ~~A~~ progress monitoring plan shall be developed for all students not classified as exceptional education students upon entry in a juvenile justice education program and upon reentry in the school district ~~who score below the level specified in district school board policy in reading, writing, and mathematics or below the level specified by the Commissioner of Education on statewide assessments as required by s. 1008.25~~. These plans shall address academic, literacy, and

career and technical ~~life~~ skills and shall include provisions for intensive remedial instruction in the areas of weakness.

(8) Each district school board shall maintain an academic record for each student enrolled in a juvenile justice program ~~facility~~ as prescribed by s. 1003.51. Such record shall delineate each course completed by the student according to procedures in the State Course Code Directory. The district school board shall include a copy of a student's academic record in the discharge packet when the student exits the program ~~facility~~.

(9) Each ~~The Department of Education shall ensure that all~~ district school board shall ~~boards~~ make provisions for high school level students ~~youth~~ to earn credits toward high school graduation while in residential and nonresidential juvenile justice programs ~~facilities~~. Provisions must be made for the transfer of credits and partial credits earned.

(10) School districts and juvenile justice education providers shall develop individualized transition plans during the course of a student's stay in a juvenile justice education program to coordinate academic, career and technical, and secondary and postsecondary services that assist the student in successful community reintegration upon release. Development of the transition plan shall be a collaboration of the personnel in the juvenile justice education program, reentry personnel, personnel from the school district where the student will return, the student, the student's family, and Department of Juvenile Justice personnel for committed students.

(a) Transition planning must begin upon a student's

placement in the program. The transition plan must include, at a minimum:

1. Services and interventions that address the student's assessed educational needs and postrelease education plans.

2. Services to be provided during the program stay and services to be implemented upon release, including, but not limited to, continuing education in secondary school, career and technical programs, postsecondary education, or employment, based on the student's needs.

3. Specific monitoring responsibilities to determine whether the individualized transition plan is being implemented and the student is provided access to support services that will sustain the student's success by individuals who are responsible for reintegration shall coordinate activities.

(b) For the purpose of transition planning and reentry services, representatives from the school district and the one stop center where the student will return shall participate as members of the local Department of Juvenile Justice reentry teams. The school district, upon return of a student from a juvenile justice education program, must consider the individual needs and circumstances of the student and the transition plan recommendations when reenrolling a student in a public school. A local school district may not maintain a standardized policy for all students returning from a juvenile justice program but place students based on their needs and their performance in the program.

(c) The Department of Education and the Department of Juvenile Justice shall provide oversight and guidance to school

districts, education providers, and reentry personnel on how to implement effective educational transition planning and services.

(11) ~~(10)~~ The district school board shall recruit and train teachers who are interested, qualified, or experienced in educating students in juvenile justice programs. Students in juvenile justice programs shall be provided a wide range of education ~~educational~~ programs and opportunities including textbooks, technology, instructional support, and ~~other~~ resources commensurate with resources provided ~~available~~ to students in public schools, including textbooks and access to technology. If the district school board operates a juvenile justice education program at a juvenile justice facility, the district school board, in consultation with the director of the juvenile justice facility, shall select the instructional personnel assigned to that program. The Secretary of Juvenile Justice or the director of a juvenile justice program may request that the performance of a teacher assigned by the district to a juvenile justice education program be reviewed by the district and that the teacher be reassigned based upon an evaluation conducted pursuant to s. 1012.34 or for inappropriate behavior ~~Teachers assigned to educational programs in juvenile justice settings in which the district school board operates the educational program shall be selected by the district school board in consultation with the director of the juvenile justice facility~~. ~~Educational programs in~~ Juvenile justice education programs ~~facilities~~ shall have access to the substitute teacher pool used ~~utilized~~ by the district school board.

(12) ~~(11)~~ District school boards may contract with a private provider for the provision of education ~~educational~~ programs to students ~~youths~~ placed with the Department of Juvenile Justice and shall generate local, state, and federal funding, including funding through the Florida Education Finance Program for such students. The district school board's planning and budgeting process shall include the needs of Department of Juvenile Justice programs in the district school board's plan for expenditures for state categorical and federal funds.

(13) ~~(12)~~ (a) Funding for eligible students enrolled in juvenile justice education programs shall be provided through the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act. Funding shall include, at a minimum:

1. Weighted program funding or the basic amount for current operation multiplied by the district cost differential as provided in s. 1011.62(1)(s) ~~1011.62(1)(r)~~ and (2);

2. The supplemental allocation for juvenile justice education as provided in s. 1011.62(10);

3. A proportionate share of the district's exceptional student education guaranteed allocation, the supplemental academic instruction allocation, and the instructional materials allocation;

4. An amount equivalent to the proportionate share of the state average potential discretionary local effort for operations, which shall be determined as follows:

a. If the district levies the maximum discretionary local effort and the district's discretionary local effort per FTE is

less than the state average potential discretionary local effort per FTE, the proportionate share shall include both the discretionary local effort and the compression supplement per FTE. If the district's discretionary local effort per FTE is greater than the state average per FTE, the proportionate share shall be equal to the state average; or

b. If the district does not levy the maximum discretionary local effort and the district's actual discretionary local effort per FTE is less than the state average potential discretionary local effort per FTE, the proportionate share shall be equal to the district's actual discretionary local effort per FTE. If the district's actual discretionary local effort per FTE is greater than the state average per FTE, the proportionate share shall be equal to the state average potential local effort per FTE; and

5. A proportionate share of the district's proration to funds available, if necessary.

(b) Juvenile justice education ~~educational~~ programs to receive the appropriate FEFP funding for Department of Juvenile Justice programs shall include those operated through a contract with the Department of Juvenile Justice ~~and which are under purview of the Department of Juvenile Justice quality assurance standards for education~~.

(c) Consistent with the rules of the State Board of Education, district school boards are required to request an alternative FTE survey for Department of Juvenile Justice programs experiencing fluctuations in student enrollment.

(d) FTE count periods shall be prescribed in rules of the

State Board of Education and shall be the same for programs of the Department of Juvenile Justice as for other public school programs. The summer school period for students in Department of Juvenile Justice programs shall begin on the day immediately following the end of the regular school year and end on the day immediately preceding the subsequent regular school year. Students shall be funded for no more than 25 hours per week of direct instruction.

(e) Each juvenile justice education program must receive all federal funds for which the program is eligible.

(14) ~~(13)~~ Each district school board shall negotiate a cooperative agreement with the Department of Juvenile Justice on the delivery of educational services to students ~~youths~~ under the jurisdiction of the Department of Juvenile Justice. Such agreement must include, but is not limited to:

(a) Roles and responsibilities of each agency, including the roles and responsibilities of contract providers.

(b) Administrative issues including procedures for sharing information.

(c) Allocation of resources including maximization of local, state, and federal funding.

(d) Procedures for educational evaluation for educational exceptionalities and special needs.

(e) Curriculum and delivery of instruction.

(f) Classroom management procedures and attendance policies.

(g) Procedures for provision of qualified instructional personnel, whether supplied by the district school board or

provided under contract by the provider, and for performance of duties while in a juvenile justice setting.

(h) Provisions for improving skills in teaching and working with students referred to juvenile justice programs ~~delinquents~~.

(i) Transition plans for students moving into and out of juvenile programs ~~facilities~~.

(j) Procedures and timelines for the timely documentation of credits earned and transfer of student records.

(k) Methods and procedures for dispute resolution.

(l) Provisions for ensuring the safety of education personnel and support for the agreed-upon education program.

(m) Strategies for correcting any deficiencies found through the accountability and evaluation system and student performance measures ~~quality assurance process~~.

(15) ~~(14)~~ Nothing in this section or in a cooperative agreement requires ~~shall be construed to require~~ the district school board to provide more services than can be supported by the funds generated by students in the juvenile justice programs.

(16) ~~(15)(a)~~ The Department of Education, in consultation with the Department of Juvenile Justice, district school boards, and providers, shall adopt rules establishing: ~~establish~~

(a) Objective and measurable student performance measures to evaluate a student's educational progress while participating in a prevention, day treatment, or residential program. The student performance measures must be based on appropriate outcomes for all students in juvenile justice education

programs, taking into consideration the student's length of stay in the program. Performance measures shall include outcomes that relate to student achievement of career education goals, acquisition of employability skills, receipt of a high school diploma, and grade advancement.

(b) A performance rating system to be used by the Department of Education to evaluate ~~quality assurance standards for~~ the delivery of educational services within each of the juvenile justice programs. The performance rating shall be primarily based on data regarding student performance as described in paragraph (a) ~~component of residential and nonresidential juvenile justice facilities~~.

(c) The timeframes, procedures, and resources to be used to improve a low-rated educational program or to terminate or reassign the program ~~These standards shall rate the district school board's performance both as a provider and contractor. The quality assurance rating for the educational component shall be disaggregated from the overall quality assurance score and reported separately~~.

(d) ~~(b)~~ The Department of Education, in partnership with the Department of Juvenile Justice, shall develop a comprehensive accountability and program improvement ~~quality assurance review~~ process. The accountability and program improvement process shall be based on student performance measures by type of program and shall rate education program performance. The accountability system shall identify and recognize high-performing education programs. The Department of Education, in partnership with the Department of Juvenile

Justice, shall identify low-performing programs. Low-performing education programs shall receive an onsite program evaluation from the Department of Juvenile Justice. School improvement, technical assistance, or the reassignment of the program shall be based, in part, on the results of the program evaluation. Through a corrective action process, low-performing programs must demonstrate improvement or reassign the program ~~and schedule for the evaluation of the educational component in juvenile justice programs. The Department of Juvenile Justice quality assurance site visit and the education quality assurance site visit shall be conducted during the same visit~~.

~~(c) The Department of Education, in consultation with district school boards and providers, shall establish minimum thresholds for the standards and key indicators for educational programs in juvenile justice facilities. If a district school board fails to meet the established minimum standards, it will be given 6 months to achieve compliance with the standards. If after 6 months, the district school board's performance is still below minimum standards, the Department of Education shall exercise sanctions as prescribed by rules adopted by the State Board of Education. If a provider, under contract with the district school board, fails to meet minimum standards, such failure shall cause the district school board to cancel the provider's contract unless the provider achieves compliance within 6 months or unless there are documented extenuating circumstances.~~

~~(d) The requirements in paragraphs (a), (b), and (c) shall be implemented to the extent that funds are available.~~

(17) The department, in collaboration with the Department of Juvenile Justice, shall monitor and report on the educational performance of students in commitment, day treatment, prevention, and detention programs. The report by the Department of Education must include, at a minimum, the number and percentage of students who:

(a) Return to an alternative school, middle school, or high school upon release and the attendance rate of such students before and after participation in juvenile justice education programs.

(b) Receive a standard high school diploma or a high school equivalency diploma.

(c) Receive industry certification.

(d) Receive occupational completion points.

(e) Enroll in a postsecondary educational institution.

(f) Complete a juvenile justice education program without reoffending.

(g) Reoffend within 1 year after completion of a day treatment or residential commitment program.

(h) Remain employed 1 year after completion of a day treatment or residential commitment program.

The results of this report shall be included in the report required by s. 985.632.

(18)~~(16)~~ The district school board shall not be charged any rent, maintenance, utilities, or overhead on such facilities. Maintenance, repairs, and remodeling of existing facilities shall be provided by the Department of Juvenile

Justice.

(19) ~~(17)~~ When additional facilities are required, the district school board and the Department of Juvenile Justice shall agree on the appropriate site based on the instructional needs of the students. When the most appropriate site for instruction is on district school board property, a special capital outlay request shall be made by the commissioner in accordance with s. 1013.60. When the most appropriate site is on state property, state capital outlay funds shall be requested by the Department of Juvenile Justice provided by s. 216.043 and shall be submitted as specified by s. 216.023. Any instructional facility to be built on state property shall have educational specifications jointly developed by the district school board and the Department of Juvenile Justice and approved by the Department of Education. The size of space and occupant design capacity criteria as provided by State Board of Education rules shall be used for remodeling or new construction whether facilities are provided on state property or district school board property.

(20) ~~(18)~~ The parent of an exceptional student shall have the due process rights provided for in this chapter.

(21) ~~(19)~~ The Department of Education and the Department of Juvenile Justice, after consultation with and assistance from local providers and district school boards, shall collect data ~~report annually to the Legislature by February 1~~ on the progress toward developing effective education ~~educational~~ programs for juvenile delinquents, including the amount of funding provided by district school boards to juvenile justice programs; ~~,~~ the

amount retained for administration, including documenting the purposes for such expenses; ~~,~~ the status of the development of cooperative agreements; ~~,~~ education program performance ~~the~~ results, including the identification of high and low-performing programs and aggregate student performance results; ~~of the quality assurance reviews including~~ recommendations for system improvement; ~~,~~ and information on the identification of, and services provided to, exceptional students in juvenile justice programs ~~commitment facilities~~ to determine whether these students are properly reported for funding and are appropriately served.

(22) ~~(20)~~ The education ~~educational~~ programs at ~~the Arthur Dozier School for Boys in Jackson County and~~ the Florida School for Boys in Okeechobee shall be operated by the Department of Education, either directly or through grants or contractual agreements with other public or duly accredited education agencies approved by the Department of Education.

(23) ~~(21)~~ The State Board of Education shall ~~may~~ adopt ~~any~~ rules necessary to implement ~~the provisions of~~ this section ~~,~~ ~~including uniform curriculum, funding, and second chance schools~~. Such rules must require the minimum amount of paperwork and reporting.

(24) ~~(22)~~ The Department of Juvenile Justice and the Department of Education, in consultation with Workforce Florida, Inc., the statewide Workforce Development Youth Council, district school boards, Florida College System institutions, providers, and others, shall jointly develop a multiagency plan for career education which describes the funding, curriculum,

transfer of credits, goals, and outcome measures for career education programming in juvenile commitment facilities, pursuant to s. 985.622. The plan must be reviewed annually.

Section 6. Paragraph (b) of subsection (18) of section 1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—Maintain a state system of school improvement and education accountability as provided by statute and State Board of Education rule. This system of school improvement and education accountability shall be consistent with, and implemented through, the district's continuing system of planning and budgeting required by this section and ss. 1008.385, 1010.01, and 1011.01. This system of school improvement and education accountability shall comply with the provisions of ss. 1008.33, 1008.34, 1008.345, and 1008.385 and include the following:

(b) Public disclosure.—The district school board shall provide information regarding the performance of students and educational programs as required pursuant to ss. 1008.22 and 1008.385 and implement a system of school reports as required by statute and State Board of Education rule which shall include schools operating for the purpose of providing educational services to students ~~youth~~ in Department of Juvenile Justice programs, and for those schools, report on the elements specified in s. 1003.52(16) ~~1003.52(19)~~. Annual public disclosure reports shall be in an easy-to-read report card

format and shall include the school's grade, high school graduation rate calculated without high school equivalency examinations ~~GED tests~~, disaggregated by student ethnicity, and performance data as specified in state board rule.

Section 7. The Division of Law Revision and Information is requested to prepare a reviser's bill for the 2014 Regular Session of the Legislature to change the terms "General Educational Development test" or "GED test" to "high school equivalency examination" and the terms "general education diploma," "graduate equivalency diploma," or "GED" to "high school equivalency diploma" wherever those terms appear in the Florida Statutes.

Section 8. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1353 Ticket Sales
SPONSOR(S): Raulerson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	11 Y, 0 N	Collins	Luczynski
2) Appropriations Committee		Kramer	Leznoff
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Several Florida statutes address the sale and resale of admission tickets in the state. Specifically, s. 817.355, F.S., relates to the fraudulent creation or possession of a ticket, s. 817.357, F.S., relates to the maximum amount of tickets allowed to be purchased by a consumer, s. 817.36, F.S., relates to the resale of tickets, and s. 817.361, F.S., relates to the resale of multi-day or multi-event tickets.

Generally, the bill:

- Provides definitions;
- Provides for and increases penalties for violations and subsequent violations of certain sections;
- Allows for a person to bring a declaratory action in certain circumstances; and
- Allows for actual damages, including attorney fees and court costs, in certain circumstances.

Additionally, the bill amends s. 817.36, F.S., which relates to the resale of tickets. Specifically, the bill:

- Clarifies when a person or entity may offer for resale or resell a ticket for more than one dollar over face value on its website;
- Provides that an online ticket reseller must guarantee the consumer a full refund when the ticket event is canceled if the purchaser requests a refund;
- Requires ticket brokers to register with the Department of Agriculture and Consumer Services (the Department), and provides requirements regarding how to maintain an effective registration;
- Requires the Department to publish a list of registered ticket brokers and their respective registration numbers;
- Requires that a ticket broker or resale website make certain disclosures to a prospective ticket resale purchaser prior to a resale transaction; and
- Prohibits a ticket broker or resale website from using a website with a URL that incorporates or contains a trademark that is rightfully owned by another, in violation of federal law.

The bill also amends s. 817.361, F.S., which relates to the resale of multi-day or multi-event tickets. The bill:

- Provides that a multi-use ticket is non-transferrable, unless otherwise provided by the issuer; and
- Provides increased criminal penalties for a person who violates the section relating to multi-use tickets.

Finally, the bill creates s. 817.362, F.S., which relates to the initial sales of tickets. Specifically, the bill:

- Prohibits restrictions from being placed on the ticketing methods used for the initial sale of tickets; and
- Declares that a ticket is considered to be a revocable license.

The bill has a fiscal impact on state funds. See fiscal comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Penalties for Counterfeiting, Forging, Altering or Otherwise Possessing Such Tickets

Current Situation

Currently, s. 817.355, F.S., provides that a person who counterfeits, forges, alters, or possesses any ticket, token, or paper that is designed for admission to any sports, amusement, concert, or other facility offering services to the general public with the intent to defraud such facility is guilty of a first degree misdemeanor.[1]

The statutory language does not provide any increased criminal penalties for subsequent violations of this section. There is also no additional criminal penalty for a person who counterfeits, forges, alters, or possesses more than one of such tickets, with the intent to defraud the event or amusement facility.

Effect of Proposed Changes

The bill creates s. 817.355(1), F.S., to provide increased criminal penalties for violations of the section. Specifically, a person who counterfeits, forges, alters, or possesses any ticket, token, or paper that is designed for admission to any sports, amusement, concert, or other facility offering services to the general public with the intent to defraud such facility for a subsequent time commits a third degree felony which is punishable as provided in ss. 775.082[2] or 775.084,[3] F.S., or by a fine of up to $10,000.[4]

Moreover, the bill creates s. 817.355(2), F.S., to impose a criminal penalty for a person who counterfeits, forges, alters, or possesses ten or more of such tickets, tokens, or papers designed for admission to any sports, amusement, concert, or other facility offering services to the general public, with the intent to defraud such facility. Such person commits a third degree felony, which is punishable as provided in ss. 775.082[5] or 775.084, F.S.[6], or by a fine of up to $10,000.[7]

Definitions

Current Situation

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[1] Section 775.082(4)(a), Florida Statutes, provides that the penalty for a first degree misdemeanor shall be a term of imprisonment not to exceed one year; Section 775.083(1)(d), Florida Statutes, provides that a person who has been convicted of a first degree misdemeanor may be sentenced to pay a fine of $1,000, in addition to any imprisonment that he or she has been sentenced to, unless specifically authorized by statute that the fine is in lieu of any incarceration.

[2] Section 775.082(3)(d), Florida Statutes, provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.

[3] Section 775.084, Florida Statutes, provides enhanced penalties for habitual felony offenders.

[4] See, generally: s. 775.083(1)(b), Florida Statutes, the $10,000 fine may be imposed in lieu of any incarceration, rather than in addition to any incarceration imposed by the court.

[5] Section 775.082(3)(d), Florida Statutes, provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.

[6] Section 775.084, Florida Statutes, provides enhanced penalties for habitual felony offenders.

[7] See, generally: s. 775.083(1)(b), Florida Statutes, the $10,000 fine may be imposed in lieu of any incarceration rather than in addition to any incarceration imposed by the court.

Section 817.36(6), F.S., sets forth the definition for the term "software," which is defined as computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.

No other definitions related to the resale of tickets are provided.

Effect of Proposed Changes

The bill amends s. 817.36(1), F.S., to provide definitions for the following terms: "department," "online marketplace," "resale website," and "ticket broker."

- "Department" is defined as the Department of Agriculture and Consumer Services.
- "Online Marketplace" is defined as an internet website that provides a forum for the buying and selling of tickets, which is not operated by a ticket issuer or an agent of an owner or operator of a place of entertainment.
- "Resale Website" is defined as an internet website, or portion of a website, whose primary purpose is to facilitate the resale of tickets to consumers.
- "Ticket Broker" is defined as a person in the business of reselling tickets to events at places of entertainment in the state, who charges a premium in excess of the face value of the ticket. The term does not include an individual who does not regularly engage in the business of reselling tickets who: 1) sells less than sixty tickets during a one-year period, and 2) initially obtained the tickets he or she sold for personal use, or the use of an immediate family member, friend, or known acquaintance. The term also does not include a person operating a website whose primary business is to serve as a resale marketplace where third parties can buy and sell tickets, and who does not otherwise engage in the business of reselling tickets.

The bill also includes the definition of "software" from s. 817.36(6), F.S., with the definitions now set forth in s. 817.36(1), F.S.

Ticket Resale Guarantees

Current Situation

Section 817.36(1)(d), F.S., prohibits a person or entity that offers to resell or resells a ticket from charging more than one dollar above the admission price charged by the original ticket seller in any transaction wherein the tickets are resold or offered through an internet website, unless:

- The website is authorized by the original ticket seller; or
- The website posts certain guarantees and disclosures on its website, or links to websites which contain such guarantees and disclosures.

The prospective purchaser must be directed to the guarantees and disclosures prior to the completion of the resale transaction.

Specifically, the website operator must:

- Disclose that it is not the issuer, original seller, or reseller of the ticket or items and does not control its pricing, and that the ticket or item may be resold for more than its original value; and
- Guarantee a full refund of the amount paid for the ticket, including any servicing, handling, or processing fees, if such fees are not disclosed, in certain circumstances.

The circumstances under which the website operator must provide a full refund include when:

- The ticketed event is canceled;
- The purchaser is denied admission to the ticketed event, unless such denial is due to an act or omission of the purchaser; or

- The ticket is not delivered to the purchaser in the manner requested and pursuant to any delivery guarantees made by the reseller, and such failure results in the purchaser's inability to attend the ticketed event.

Effect of Proposed Changes

The bill amends s. 817.36(1)(d), F.S., and renumbers it as s. 817.36(2)(d), F.S., to clarify that in order for a person or entity to offer to resell or resell a ticket for more than one dollar above its admission price on a website, that the website 1) is authorized by the original ticket seller to sell such tickets; or 2) provides certain guarantees and disclosures.

Moreover, the bill amends s. 817.36(1)(d)1.a., F.S., and renumbers it as s. 817.36(2)(d)1.a., F.S., to provide that the online ticket reseller must guarantee the consumer a full refund when the ticket event is canceled if the purchaser requests a refund.

Penalties for Software that Circumvents a Ticket Sellers' Website

Current Situation

Currently, s. 817.36(5), F.S., provides that a person who intentionally uses or sells software to circumvent a security measure, access control system, or any other control or measure that is used to ensure an equitable ticket-buying process on a ticket seller's website is liable to the state for a civil penalty equal to three times the amount for which the ticket or tickets were sold (hereinafter "treble damages").

Effect of Proposed Changes

The bill amends s. 817.36(5), F.S., and renumbers it as s. 817.36(6), F.S., to provide a criminal penalty for a person who intentionally uses or sells software to circumvent a security measure, access control system, or any other control or measure that is used to ensure an equitable ticket-buying process on a ticket seller's website. Specifically, such person commits a third degree felony, punishable as provided in ss. 775.082[8] or 775.084,[9] F.S., or by a fine of up to $10,000.[10]

The bill does not affect the person's liability to the state for treble damages if he or she intentionally uses or sells software to circumvent a security measure or access control system on a ticket seller's website, in violation of the subsection.

Ticket Broker Registration, Disclosures and Behavior

Current Situation

Currently, the term "ticket broker" is not used in Florida statutes. As such, there is nothing in Florida's statutes that requires a "ticket broker" to register with the state or otherwise make themselves known to the state. Additionally, there is nothing in Florida's statutes that requires a "ticket broker" to make any disclosures to the prospective ticket purchaser.

Effect of Proposed Changes

[8] Section 775.082(3)(d), Florida Statutes, provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.
[9] Section 775.084, Florida Statutes, provides enhanced penalties for habitual felony offenders.
[10] See, generally: s. 775.083(1)(b), Florida Statutes, the $10,000 fine may be imposed in lieu of any incarceration rather than in addition to any incarceration imposed by the court.

The bill creates s. 817.36(7), F.S., to require a ticket broker[11] to register with the Department of Agriculture and Consumer Services (hereinafter "Department") by April 1, 2014 or within thirty days after commencing business as a ticket broker in the state, whichever is later. The ticket broker must maintain an active registration with the Department.

The bill further provides that in order to have and maintain an effective registration, a ticket broker must:

- Maintain a permanent office or place of business in the state for the purpose of engaging in the business of a ticket broker;
- Submit the ticket brokers' business name, street address, and other information, as requested by the Department;
- Certify that the ticket broker does not use, sell, give, transfer, or distribute software that is primarily designed for the purpose of interfering with the operations of a ticket seller, as prohibited in s. 817.36, F.S.;
- Pay an annual registration fee;[12]
- Renew the registration annually; and
- Register for sales and use tax purposes under ch. 212, F.S.

Upon registration, the Department will issue the ticket broker a unique registration number. It must also publish a list of registered ticket brokers, including their respective registration numbers, on its website.

A person may not register as a ticket broker if he or she has been convicted of a felony, and has not been pardoned or had his or her civil rights, other than voting, restored under ch. 940, F.S. As such, prior to issuing the registration number, the Department is implicitly required to certify whether a ticket broker applicant has been convicted of a felony, and if so, the Department must certify whether the person's civil rights have been restored under ch. 940, F.S.

The bill also creates s. 817.36(8), F.S., to require that a ticket broker or resale website make certain disclosures to a prospective ticket resale purchaser prior to a resale transaction. Such disclosures may be on the ticket broker's resale website or online marketplace, or in person. Such disclosures must include:

- The face value and exact location of the seat offered for sale, including any section, row and seat number, or area specifically designated as accessible seating that is printed on the ticket; and
- Whether the ticket offered for sale is in the actual possession of the reseller and available for delivery.

Finally, the bill creates s. 817.36(9), F.S., to prohibit a ticket broker or resale website from using a website with a URL that incorporates or contains a trademark that is rightfully owned by another, without the written consent of the trademark owner, in such a way that the incorporation or use constitutes a violation of federal trademark law.

Penalties for Violations of Ticket Resale and Ticket Broker Provisions

Current Situation

Section 817.36(4), F.S., provides that a person who knowingly resells a ticket in violation of the ticket resale provisions of s. 817.36, F.S., is liable to the state for treble damages.

[11] The term "ticket broker" is defined on page 3 of this analysis.

[12] The amount of the fee is not specified. The bill indicates that the fee will be determined by the department sufficient to reimburse the department for the costs of administration.

Section 817.36, F.S., does not address penalties for a person who otherwise violates the section.[13]

Effect of Proposed Changes

Civil Penalties

The bill creates s. 817.36(10), F.S., which provides that a person who is aggrieved by a violation of section 817.36, which relates to the resale of tickets and ticket brokers, may bring a declaratory action in order to enjoin the person who has violated, is violating, or is otherwise likely to violate the section. This does not affect the aggrieved person's ability to receive any other relief or remedy to which he or she is entitled.

Moreover, the bill provides additional civil penalties for a person who has been aggrieved by a violation of the section and who has suffered a loss as a result of the violation. Specifically, the bill provides that an aggrieved person who has suffered a loss as a result of a violation may bring an action to recover actual damages, plus attorney fees and court costs.

Criminal Penalties

Finally, the bill creates s. 817.36(11), F.S., to provide a criminal penalty for a person who violates the provisions of the section. Specifically, except as otherwise provided, a person who knowingly violates the section commits a third degree felony, punishable as provided in ss. 775.082[14] or 775.084, F.S.,[15] or by a fine of up to $10,000.[16]

This criminal penalty is in addition to any non-criminal penalty provided in the section.

As a result, this criminal penalty provision would apply to a person who knowingly resells a ticket in violation of the section. Although that violation is provided for in s. 817.36(4), F.S., (renumbered by the bill to s. 817.36(5), F.S.) that provision provides for a non-criminal penalty. As a result, a person who knowingly resells a ticket in violation of the section commits a third degree felony, and is also liable to the state for treble damages.

Additionally, a person who is aggrieved by someone who has knowingly resold a ticket in violation of the section, as discussed above, may also bring:

- A declaratory action under the newly-created s. 817.36(10), F.S.; and
- A civil action for actual damages, including attorney fees and court costs, if the aggrieved person has suffered a loss as a result of the violation.

Conversely, the criminal penalty provision would not apply to a person who intentionally uses or sells software to circumvent a security measure or access control system on a ticket seller's website, as that violation has an a criminal penalty associated with it, as provided for in s. 817.36(5), F.S., (renumbered by the bill to s. 817.36(6), F.S.).

Finally, as generally discussed above, the criminal penalty provision is in addition to any declaratory judgment or civil damages obtained by a person aggrieved by any other violation of the section, as provided for in the newly created ss. 817.36(10) and 817.36(11), F.S., as these penalties are non-criminal in nature.

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[13] Section 817.36(5), Florida Statutes, addresses penalties for a person who intentionally uses or sells software to circumvent a ticket seller's website security measure or access control system.

[14] Section 775.082(3)(d), Florida Statutes, provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.

[15] Section 775.084, Florida Statutes, provides enhanced penalties for habitual felony offenders.

[16] See, generally: s. 775.083(1)(b), Florida Statutes, the $10,000 fine may be imposed in lieu of any incarceration rather than in addition to any incarceration imposed by the court.

Multi-Day or Multi-Event Tickets

Current Situation

Section 817.361, F.S., sets forth the statutory provisions relating to multi-day or multi-event tickets.

The statute defines "non-transferrable ticket or medium" as one on which the following phrase is clearly printed: "Non-transferrable; must be used by the same person on all days," or words of similar significance.

The statute further provides that it is a violation of the section to sell, offer for sale, or otherwise transfer in connection with a commercial transaction, any non-transferrable ticket or medium designed for admission to more than one amusement location or other facility offering entertainment to the general public, or for admission for more than one day thereto, after said ticket has been used at least once for admission. A person who violates the section is guilty of a second degree misdemeanor, punishable as provided in ss. 775.082[17] or 775.083, F.S.[18]

Moreover, the statute provides that upon a subsequent violation of the section, such person is guilty of a first degree misdemeanor, punishable as provided in ss. 775.082[19] or 775.083,[20] F.S.

Effect of Proposed Changes

Definitions

The bill creates s. 817.361(1), F.S., to define the term "multi-use ticket." Specifically, the bill defines a "multi-use ticket" to be a ticket, other medium, or right designed for admission to more than one amusement location or other facility offering entertainment to the general public, or for admission for more than one day to one or more such locations or facilities.

Moreover, the bill defines the "issuer of a multi-use ticket" as the person or entity that created the multi-use ticket, and who is obligated to allow admission thereunder.

The bill also creates s. 817.361(2), F.S., to provide that a multi-use ticket is non-transferrable, unless the issuer:

- Clearly prints on the multi-use ticket that it "may be used by more than one person;" or
- Explicitly states on its website that the multi-use ticket may be used by more than one person.

Enforcement

The bill creates s. 817.361(3), F.S., to retain the statutory language that it is a violation of the section to sell, offer for sale, or otherwise transfer in connection with a commercial transaction, any non-transferrable multi-use ticket after that ticket or medium has been used at least once for admission.

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[17] Section 775.082(4)(b), Florida Statutes, provides that the penalty for a second degree misdemeanor shall be a term of imprisonment not to exceed sixty days.

[18] Section 775.083(1)(e), Florida Statutes, provides that a person who has been convicted of a second degree misdemeanor may be sentenced to pay a fine of $500, in addition to any imprisonment that he or she has been sentenced to, unless specifically authorized by statute that the fine is in lieu of any incarceration.

[19] Section 775.082(4)(a), Florida Statutes, provides that the penalty for a first degree misdemeanor shall be a term of imprisonment not to exceed one year.

[20] Section 775.083(1)(d), Florida Statutes, provides that a person who has been convicted of a first degree misdemeanor may be sentenced to pay a fine of $1,000, in addition to any imprisonment that he or she has been sentenced to, unless specifically authorized by statute that the fine is in lieu of any incarceration.

The bill further creates s. 817.361(4), F.S., to provide that a person who violates the section commits a second degree misdemeanor, which is consistent with the current statutory language. Moreover, unlike the current statutory language, the bill provides that the violation is punishable as provided in s. 775.082, F.S.,[21] or by a fine of up to $10,000.[22]

Moreover, subsequent violations constitute a third degree felony, punishable as provided in ss. 775.082[23] or 775.084,[24] F.S., or by a fine of up to $10,000.[25]

Ticketholders' and Ticket Sellers' Rights

Current Situation

A "ticket" is generally defined as a certificate indicating that the person to whom it is issued, or the holder, is entitled to some right or privilege.[26] It is not specifically defined in Florida law.

In the absence of a statute to the contrary, an event or admission ticket is generally considered to be a license to witness the performance, which may be revoked by the owner or proprietor at will, either before or after admission of the ticketholder.[27] Florida law currently does not address whether an event or admission ticket is deemed to be a license or a property interest.

Without a Florida statute to the contrary, a ticket is generally considered to be a license, and the ticket seller is able to place restrictions upon the use of that ticket. For example, a common restriction placed on an event or admission ticket by the seller is the inability to reenter the venue facility upon leaving. In addition to manner of use restrictions, the ticket seller is also able to place conditions and restrictions upon the resale or transferability of the ticket.

Effect of Proposed Changes

The bill creates s. 817.362, F.S., to define the term "ticket." Specifically, the bill defines a "ticket" as a printed, electronic, or other type of evidence of the right, option or opportunity to occupy space at or to enter or attend an entertainment event, even if there is no physical manifestation of such right.

Moreover, the bill explicitly declares that a ticket is considered to be a revocable license, held by the person in possession of the ticket, to use a seat or standing area in a specific place for a limited period of time. The license may be revoked by the ticket issuer at any time, with or without cause.

Finally, the bill states that in order to preserve the rights of consumers to secure tickets to live entertainment events through safe and reliable means, nothing in ss. 817.355-817.361, F.S., prevents operators of places of entertainment, event presenters, or their agents from using any ticketing methods for the initial sale of tickets, through any medium, whether existing now or in the future.

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[21] Section 775.082(4)(b), Florida Statutes, provides that the penalty for a second degree misdemeanor shall be a term of imprisonment not to exceed sixty days.

[22] See, generally: s. 775.083(1)(e), Florida Statutes, provides that a person who has been convicted of a second degree misdemeanor may be sentenced to pay a fine of $500; s. 775.083(1)(g), Florida Statutes, provides that the fine may not exceed that amount, unless specifically authorized by the statute. Here, $10,000 is higher than the allowable amount set forth in s. 775.083(1)(3), Florida Statutes, but it is permissible pursuant to s. 775.083(1)(g), Florida Statutes.

[23] Section 775.082(3)(d), Florida Statutes, provides that the penalty for a third degree felony shall be a term of imprisonment not to exceed five years.

[24] Section 775.084, Florida Statutes, provides enhanced penalties for habitual felony offenders.

[25] See, generally: s. 775.083(1)(b), Florida Statutes, the $10,000 fine may be imposed in lieu of any incarceration rather than in addition to any incarceration imposed by the court.

[26] Black's Law Dictionary (9th ed. 2009), ticket.

[27] 27A Am. Jur. 2d Entertainment and Sports Law § 42.

B. SECTION DIRECTORY:

Section 1: amends s. 817.355, F.S., to provide increased criminal penalties for repeat violations by a person who counterfeits, forges, alters or otherwise possesses such ticket; and to provide a criminal penalty for a person who counterfeits, forges, alters or otherwise possesses ten or more of such tickets.

Section 2: amends s. 817.36, F.S., to provide definitions related to the resale of tickets; to clarify when a person or entity may offer for resale or resell a ticket for more than one dollar over face value on its website; to provide that an online ticket reseller must guarantee the consumer a full refund when the ticket event is canceled if the purchaser requests a refund; to provide criminal penalties for a person who intentionally uses or sells software to circumvent a security measure or access control system on a ticket seller's website; to require ticket brokers to register with the Department, and to provide requirements regarding how to maintain an effective registration; to require the Department to publish a list of registered ticket brokers and their respective registration numbers; to require that a ticket broker or resale website make certain disclosures to a prospective ticket resale purchaser prior to a resale transaction; to prohibit a ticket broker or resale website from using a website with a URL that incorporates or contains a trademark that is rightfully owned by another, in violation of federal law; to provide that a person who is aggrieved by a violation of the section relating to the resale of tickets and ticket brokers may bring a declaratory action; to provide that a person who has suffered a loss as a result of a violation of the section relating to the resale of tickets and ticket brokers may recover actual damages, plus attorney fees and court costs; and to provide criminal penalties for a person who violates the section relating to the resale of tickets and ticket brokers, except as otherwise provided in the section.

Section 3: creates s. 817.361, F.S., to provide definitions relating to multi-use tickets; to provide that a multi-use ticket is non-transferrable, unless otherwise provided by the issuer; to provide increased criminal penalties for a person who violates the section relating to multi-use tickets; and to provide increased criminal penalties for subsequent violations of the section relating to multi-use tickets.

Section 4: creates s. 817.362, F.S., to prohibit restrictions from being placed on the ticketing methods used for the initial sale of tickets.

Section 5: creates s. 817.362, F.S., to define the term "ticket," and to declare that a ticket is considered to be a revocable license.

Section 6: provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department has indicated that, beginning in fiscal year 2013-14, it anticipates that the ticket brokers' registration program will provide $25,000 in revenue.[28] The Department has indicated that it plans to impose a $250 registration fee and expects approximately 100 ticket brokers to register.

2. Expenditures:

The Department has indicated that the ticket brokers' registration program is anticipated to cost $2,500 in expenses on a recurring basis starting in fiscal year 2013-14.[29] $41,600 in non-recurring expenses for contracted services related to software development will also be needed to create the

[28] Department of Agriculture and Consumer Services Legislative Analysis Form, page 1-2, dated March 8, 2013, on file with subcommittee.
[29] Id.

program. The deficit created as a result of nonrecurring expenditures exceeding revenues in the first year will be managed with existing cash from within the division to conclude in FY 2014-15. At that time, the $250 registration fee will be re-evaluated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Consumers who qualify as a "ticket broker" under the definition set forth in s. 817.36, F.S., must formally register with the Department and pay an annual registration fee, which they are currently not required to do.

D. FISCAL COMMENTS:

None.

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 sales tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires that all ticket brokers register with the Department by April 1, 2014 or within thirty days after commencing business as a ticket broker in the state whichever is later. As such, the bill requires the Department to create and maintain a ticket brokers' registration program. Among other things, the Department is required to certify that an applicant is qualified to be a ticket broker, set fees, create forms, create procedures for issuing registration numbers, and publish lists of registered ticket brokers.

To carry out the objectives of the registration program, rulemaking is required. The bill does not set forth sufficient guidance to the Department regarding rulemaking. As such, the Department does not have adequate authority to promulgate the necessary rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Line 182-85 reads that "a person who has been convicted of a felony and who has not been pardoned or had his or her civil rights other that voting restored under chapter 940 may not register as a ticket broker." Line 184 contains a drafting error, and should read "...rights other than voting restored..."

Additionally, Section 4 creates s. 817.362, F.S., which is meant to include two subsections. The subsections are included in an additional section, Section 5, which does not have the appropriate directory language. This is likely the result of a drafting error, as the two subsections should be included in Section 4.

Other Concerns

The Department has indicated that typically, the programs that it registers have administrative fines that can be levied for failure to register.[30] This bill allows for civil and criminal penalties, but no administrative penalties.

In addition, the bill stipulates that a person may not register as a ticket broker if he or she has been convicted of a felony, and has not been pardoned or had his or her civil rights, other than voting, restored under ch. 940, F.S. (see lines 182-85). As discussed in the ticket brokers section of the bill analysis, this provision implicitly requires the Department to certify whether a ticket broker applicant has been convicted of a felony, and if so, the Department must certify whether the person's civil rights have been restored under ch. 940, F.S., prior to issuing the registration number. Despite this instruction, the bill is silent regarding the rulemaking needed to implement the provision, and as to how the Department is to fund the registration program's cost of certification.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[30] Department of Agriculture and Consumer Services Legislative Analysis Form, page 2, dated March 8, 2013, on file with subcommittee.

A bill to be entitled

An act relating to ticket sales; amending s. 817.355, F.S.; providing enhanced criminal penalties for second and subsequent violations concerning fraudulent creation or possession of admission ticket; providing criminal penalties for persons who commit such violations involving more than a specified number of tickets; amending s. 817.36, F.S.; providing definitions; providing criminal penalties for persons who intentionally use or sell software for specified purposes; requiring ticket brokers to register with the Department of Agriculture and Consumer Services; requiring ticket brokers and resale websites to make specified disclosures to prospective buyers; prohibiting ticket brokers and resale websites from using website universal resource locators containing trademarks without permission of the holder; providing for civil remedies for violations; providing criminal penalties; amending s. 817.361, F.S.; defining the term "multiuse ticket"; revising language concerning when a ticket is deemed nontransferable; providing enhanced criminal penalties for second or subsequent violations of provisions relating to resale of multiday or multievent tickets; creating s. 817.362, F.S.; providing that specified provisions do not affect the initial sales of tickets; defining the term "ticket"; providing that an admission ticket represents a revocable license; providing an effective

date.

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

Section 1. Section 817.355, Florida Statutes, is amended to read:

817.355 Fraudulent creation or possession of admission ticket.—

(1)(a) Except as provided in paragraph (b) and subsection (2), a ~~Any~~ person who counterfeits, forges, alters, or possesses any ticket, token, or paper designed for admission to or the rendering of services by any sports, amusement, concert, or other facility offering services to the general public, with the intent to defraud such facility, commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who commits a second or subsequent violation of paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine of up to $10,000.

(2) A person who counterfeits, forges, alters, or possesses 10 or more tickets, tokens, or papers designed for admission to or the rendering of services by any sports, amusement, concert, or other facility offering services to the general public, with the intent to defraud such facility, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine of up to $10,000.

Section 2. Section 817.36, Florida Statutes, is amended to

read:

817.36 Resale of tickets.—

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

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Online marketplace" means an Internet website that provides a forum for the buying and selling of tickets and that is not operated by a ticket issuer or an agent of an owner or operator of a place of entertainment.

(c) "Resale website" means an Internet website, or portion of a website, whose primary purpose is to facilitate the resale of tickets to consumers.

(d) "Software" means computer programs that are primarily designed or produced for the purpose of interfering with the operation of any person or entity that sells, over the Internet, tickets of admission to a sporting event, theater, musical performance, or place of public entertainment or amusement of any kind.

(e) "Ticket broker" means a person in the business of reselling tickets to events at places of entertainment in this state and who charges a premium in excess of the face value of the ticket. The term does not include an individual who does not regularly engage in the business of reselling tickets, who resells less than 60 tickets during any 1-year period, and who initially obtained any tickets he or she sold to others for personal use, or the use of an immediate family member, friend, or known acquaintances. The term also does not include a person operating a website whose primary business is to serve as a

resale marketplace where third parties can buy and sell tickets, and who does not otherwise engage in the business of reselling tickets.

(2) ~~(1)~~ A person or entity that offers for resale or resells any ticket may charge only $1 above the admission price charged therefor by the original ticket seller of the ticket for the following transactions:

(a) Passage or accommodations on any common carrier in this state. However, this paragraph does not apply to travel agencies that have an established place of business in this state and are required to pay state, county, and city occupational license taxes.

(b) Multiday or multievent tickets to a park or entertainment complex or to a concert, entertainment event, permanent exhibition, or recreational activity within such a park or complex, including an entertainment/resort complex as defined in s. 561.01(18).

(c) Event tickets originally issued by a charitable organization exempt from taxation under s. 501(c)(3) of the Internal Revenue Code for which no more than 3,000 tickets are issued per performance. The charitable organization must issue event tickets with the following statement conspicuously printed on the face or back of the ticket: "Pursuant to s. 817.36, Florida Statutes, this ticket may not be resold for more than $1 over the original admission price." This paragraph does not apply to tickets issued or sold by a third party contractor ticketing services provider on behalf of a charitable organization otherwise included in this paragraph unless the

required disclosure is printed on the ticket.

(d) Any tickets, other than the tickets in paragraph (a), paragraph (b), or paragraph (c), that are resold or offered through an Internet website, unless such website is authorized by the original ticket seller to sell such tickets or makes and posts the following guarantees and disclosures on ~~through~~ Internet web pages on which are visibly posted, or links to web pages on which are posted, text to which a prospective purchaser is directed before completion of the resale transaction:

1. The website operator guarantees a full refund of the amount paid for the ticket including any servicing, handling, or processing fees, if such fees are not disclosed, when:

a. The ticketed event is canceled and the purchaser requests a refund;

b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser;

c. The ticket is not delivered to the purchaser in the manner requested and pursuant to any delivery guarantees made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.

2. The website operator discloses that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than their original value.

(3) ~~(2)~~ This section does not authorize any individual or entity to sell or purchase tickets at any price on property where an event is being held without the prior express written

consent of the owner of the property.

(4) ~~(3)~~ Any sales tax due for resales under this section shall be remitted to the Department of Revenue in accordance with s. 212.04.

(5) ~~(4)~~ A person who knowingly resells a ticket or tickets in violation of this section is liable to the state for a civil penalty equal to treble the amount of the price for which the ticket or tickets were resold.

(6) ~~(5)~~ A person who intentionally uses or sells software to circumvent on a ticket seller's Internet website a security measure, an access control system, or any other control or measure that is used to ensure an equitable ticket-buying process for the general public, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine of up to $10,000, and is liable to the state for a civil penalty equal to treble the amount for which the ticket or tickets were sold.

(7)(a) A ticket broker shall register with the department by April 1, 2014, or within 30 days after commencing business as a ticket broker in this state, whichever is later, and maintain an active registration with the department. To have and maintain an effective registration, a ticket broker shall:

1. Maintain a permanent office or place of business in this state for the purpose of engaging in the business of a ticket broker.

2. Submit the ticket broker's business name, a street address in this state, and other information as requested on a form designated by the department.

3. Certify that the broker does not use, sell, give, transfer, or distribute software that is primarily designed for the purpose of interfering with the operations of any ticket seller in violation of this section.

4. Pay an annual registration fee as determined by the department sufficient to reimburse the department for the administration of this subsection.

5. Renew the registration annually.

6. Register for sales and use tax purposes under chapter 212.

(b) Upon registration, the department shall issue each ticket broker a unique registration number and publish a list of registered ticket brokers, including registration numbers on the department's website. A person who has been convicted of a felony and who has not been pardoned or had his or her civil rights other that voting restored under chapter 940 may not register as a ticket broker.

(8) A ticket broker or resale website must disclose to a prospective ticket resale purchaser, whether on the ticket broker's resale website, online marketplace, or in person, before a resale:

(a) The face value and exact location of the seat offered for sale, including any section, row, and seat number, or area specifically designated as accessible seating that is printed on the ticket.

(b) Whether the ticket offered for sale is in the actual possession of the reseller and available for delivery.

(9) A ticket broker or resale website may not use a

website with a uniform resource locator (URL) that incorporates or contains a trademark rightfully owned by another in such a way that the incorporation or use amounts to a violation of federal trademark law without the written consent of the trademark owner.

(10)(a) A person aggrieved by a violation of this section may, without regard to any other remedy or relief to which the person is entitled, bring an action to obtain a declaratory judgment that an act or practice violates this section and to enjoin a person who has violated, is violating, or is otherwise likely to violate this section.

(b) In any action brought by a person who has suffered a loss as a result of a violation of this section, such person may recover actual damages, plus attorney fees and court costs.

(11) Except as otherwise provided in this section and in addition to any noncriminal penalties provided in this section, a person who knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or may be fined up to $10,000.

Section 3. Section 817.361, Florida Statutes, is amended to read:

817.361 Resale of multiday or multievent ticket.—

(1) For purposes of this section, the term "multiuse ticket" means a ticket, other medium, or right designed for admission to more than one amusement location or other facility offering entertainment to the general public, or for admission for more than 1 day to one or more such locations or other facilities. The issuer of a multiuse ticket is the person or

entity that created the multiuse ticket and is obligated to allow admission thereunder.

(2) A multiuse ticket is deemed to be nontransferable unless the issuer either prints clearly on the multiuse ticket "May be used by more than one person" or explicitly states on its website that the multiuse ticket may be used by more than one person.

(3) A person who ~~Whoever~~ offers for sale, sells, or transfers in connection with a commercial transaction, with or without consideration, any nontransferable multiuse ticket ~~or other nontransferable medium designed for admission to more than one amusement location or other facility offering entertainment to the general public, or for admission for more than 1 day thereto,~~ after said ticket or other medium has been used at least once for admission commits a violation of this section~~, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~. ~~A nontransferable ticket or other nontransferable medium is one on which is clearly printed the phrase: "Nontransferable; must be used by the same person on all days" or words of similar import.~~

(4)(a) Except as provided in paragraph (b), a person who violates this section commits misdemeanor of the second degree, punishable as provided in s. 775.082 or by a fine of up to $10,000. ~~Upon conviction for~~

(b) A person who commits a second or subsequent violation of this section ~~subsection, such person~~ commits ~~is guilty of~~ a felony ~~misdemeanor~~ of the third ~~first~~ degree, punishable as provided in s. 775.082 or s. 775.084 or by a fine of up to

$10,000 ~~or s. 775.083~~.

Section 4. Section 817.362, Florida Statutes, is created to read:

817.362 Initial sales of tickets unaffected.—In order to preserve the rights of consumers to secure tickets to live entertainment events through safe and reliable means, nothing in ss. 817.355-817.361 prevents operators of places of entertainment, event presenters, or their agents from using any ticketing methods for the initial sale of tickets, through any medium, whether existing now or in the future.

Section 5. (1) As used in this section, the term "ticket" means a printed, electronic, or other type of evidence of the right, option, or opportunity to occupy space at or to enter or attend an entertainment event even if not evidenced by any physical manifestation of such right.

(2) An admission ticket represents a revocable license, held by the person in possession of the ticket, to use a seat or standing area in a specific place of an athletic contest or entertainment event for a limited time. The license represented by the ticket may be revoked at any time, with or without cause, by the ticket issuer.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7105 PCB FTSC 13-06 Tax Administration
SPONSOR(S): Finance & Tax Subcommittee, Caldwell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee	17 Y, 0 N	Pewitt	Langston
1) Appropriations Committee		Voyles SV	Leznoff

SUMMARY ANALYSIS

This bill contains the Department of Revenue's (Department) recommendations for general tax administration improvements. The bill includes numerous statutory changes that may reduce the burden on taxpayers, reduce the Department's costs, increase efficiency in tax administration, and improve enforcement of tax laws.

This bill:

- Permanently eliminates the requirement for a personal representative to file a Florida estate tax return.
- Clarifies the application of current criminal penalties regarding any person who willfully fails to collect a tax or fee, who makes a false or fraudulent return with willful intent, or who engages in acts that require a certificate of registration and "fails or refuses" to register or willfully fails to register after the Department provides notice.
- Provides that the Department can require individuals and entities seeking to obtain a dealer's certificate of registration to post a cash deposit, bond, or other security if that business will be operated at an identical location of a previous business that would have been required to post such security. This requirement can be waived if absence of tax liability or an arms-length transfer of the business can be demonstrated.
- Clarifies a provision requiring the clerks of the court to transmit all court-related collections electronically by the 10th of the month immediately following the month in which the funds are collected to conform to a similar law change made by the Legislature in 2010.
- Increases the Department of Revenue's authority to compromise when there is doubt as to liability or collectability by reducing tax assessed from $250,000 up to $500,000.
- Provides definitions for "automated sales suppression device" or "zappers" and "phantom-ware", and criminalizes the knowing sale, purchase, installation, transfer, or possession of such software or software devices that can be used to falsify the records of electronic cash registers and other point-of-sale systems.
- Establishes a requirement for employers to comply with all work records requested during an audit as a prerequisite to earn the lower reemployment assistance tax contribution rate instead of the "standard rate" at 5.4%. The bill further standardizes the interest rate provisions for the reemployment assistance tax and makes them the same rate as is applied to other taxes administered by the Department
- The bill will take effect July 1, 2013, with various sections within the bill being effective upon becoming law.

The Revenue Estimating Conference met on March 8, 2013, and estimated that the provisions relating to the standard reemployment assistance tax rate for failure to provide records, criminalization of "zappers," and security requirements for sales tax dealers will have positive, indeterminate impacts on state general revenues and trust fund revenues. The provision relating to the Department's compromise authority will have an indeterminate impact of unknown direction on state general revenues and trust fund revenues. The provision relating to the interest rate on late reemployment assistance tax remittances will have a negative insignificant general revenue impact in FY2013-2014 (-$0.1 million recurring), and a -$0.6 million Special Employment Security Administration Trust Fund impact (-$1.2 million recurring).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Estate Tax Return Requirements

Present situation
Effective January 1, 2005, Florida's estate tax has not been in effect due to a federal law eliminating tax credits against the federal estate tax, upon which Florida's estate tax is based. These provisions were set to expire on January 1, 2012, but they have been permanently extended, thus in effect eliminating Florida's estate tax. Section 198.13, F.S., eliminates the requirement for a personal representative to file a Florida estate tax return for the period January 1, 2005 through December 31, 2012.

Proposed change
The bill eliminates the expiration date of December 31, 2012 for this provision, thus permanently and retroactively removing the requirement for a personal representative to file a Florida estate tax return. This section will become effective upon becoming law.

Section 2. Failure to Collect; Penalties

Present situation
Provisions in s. 212.07(1)(b), F.S., provide that a resale must be in strict compliance with s. 212.18, F.S., and the rules and regulations of the Department. A dealer who makes a sale for resale that is not in strict compliance with 212.18, F.S., shall himself or herself be liable for and pay the tax due. Dealer guidelines for sales for resale are established and supported by rules of the Department. Section 212.07(3), F.S., establishes that any dealer who fails, neglects, or refuses to collect the tax is guilty of a first degree misdemeanor.

Proposed change
This bill amends s. 212.07(3), F.S., to clarify that a dealer who willfully fails to collect a tax or fee after receiving notice from the Department is liable for the uncollected tax or fee and subject to criminal penalties that are graduated based on the number of offenses and amount of taxes or fees that go uncollected. This section also provides that the Department may contact the dealer in violation by personal service, registered mail, or both. This section will become effective upon becoming a law. This amended section is related to similar changes made in sections 3 & 5. This bill also corrects a cross reference in s. 212.07(1).

Section 3. False or Fraudulent Return; Penalties

Present situation
Provisions in s. 212.12, F.S., establish rules regarding a person (dealer) who makes false or fraudulent returns and/or fails to register as a dealer. The Department will contact a person by written notice with a "failure to register" letter followed, if needed, by an intentional failure to collect letter. The provisions cited under s. 775.082, s. 775.083, and s. 775.084, F.S., provide the civil and criminal penalties imposed upon these violators.

Proposed change
This bill amends s. 212.12(2)(d), F.S., to provide that a person who makes a false or fraudulent return with willful intent is liable for the uncollected taxes or fees and subject to criminal penalties that are graduated based on the number of offenses and amount of taxes or fees that go uncollected. This amended section is related to similar changes made in sections 2 & 5. This section will become effective upon becoming a law.

Section 4. Security Requirements for New Registrations

Present situation
Section 212.14(4), F.S., authorizes the Department to require a cash deposit, bond, or other security as a condition to a person obtaining or retaining a dealer's certificate of registration. Despite this requirement, some delinquent sales tax dealers are able to close down their businesses with outstanding tax liabilities and reopen under a new name, allowing the dealers to repeatedly fail to remit sales and use tax for successive businesses. Delinquent dealers can engage in this activity because the current provisions in s. 212.14(4), F.S., do not clearly apply to all of the individuals who were operating, or all who had an ownership interest in, the prior businesses.

Proposed change
This bill amends s. 212.14(4), F.S., to define which individuals or entities the Department can require to produce a cash deposit, bond, or other security. Included in this list of individuals and entities are not only those who had an ownership interest or a controlling interest in a business that would otherwise be liable for posting a cash deposit, bond, or other security, but those individuals and entities seeking to obtain a dealer's certificate of registration for a business that will be operated at an identical location of a previous business that would have otherwise been liable for posting a cash deposit, bond, or other security. These requirements can be waived if absence of tax liability or an arms-length transfer of the business can be demonstrated. The bill further allows the Department to adopt rules necessary to administer this subsection.

Section 5. Failure to Register; Penalties

Present situation
In s. 212.18(3), F.S., guidelines are provided for persons who want to engage in and conduct business within the state as a dealer. The Department also grants certificates of registration for each place of business. The failure or refusal of any person, firm, co-partnership, or corporation to follow these rules is a first degree misdemeanor and is subject to injunctive proceedings as provided by law.

Proposed change
This bill amends s. 212.18(3), F.S., to clarify that any person that engages in acts that require a certificate of registration and "fails or refuses" to register, commits a misdemeanor of the first degree. This bill also adds s. 212.18(3)(c)2., F.S., to provide that a person who willfully fails to register after the Department provides notice, commits a felony of the third degree, punishable as proscribed in law. This section further provides that the Department shall give written notice of the duty to register to the person through registered mail, personal service or both. This section will become effective upon becoming a law. This amended section is related to similar changes made in sections 2 & 3.

Section 6. Electronic Remittance and Distribution of Funds by the Clerk of Courts

Present situation
In 2010, the Legislature passed ch. 2010-162, L.O.F., that changed the remittance date for funds collected by the clerks of the court from the 20th to the 10th day of the month immediately following the month in which the funds are collected. A conforming provision in s. 213.13, F.S., regarding electronic remittance was not updated after the law change.

Proposed change
This bill amends s. 213.13(5), F.S., to require the clerks of the court to transmit all court-related collections electronically by the 10th of the month immediately following the month in which the funds are collected. This section is effective upon becoming a law and will apply retroactively to July 1, 2010.

Section 7. Informal Conferences; Compromises

Present Situation
Section 213.21, F.S., allows the Executive Director of the Department of Revenue to enter into an agreement to accept less than the tax allegedly owed if there is a doubt as to liability or collectability of the tax assessed. The statute limits the Department's compromise authority to reduce tax by no more than $250,000.

Proposed Changes
The bill increases the Department's compromise limit from $250,000 to $500,000.

Section 8. Automated Sales Suppression Devices or "Zappers"

Present situation
The Department has identified a practice of retailers using automated sales suppression software programs ("zappers") and/or "phantom-ware" to falsify the records of electronic cash registers and other point-of-sale systems. In effect, the technologies allow dealers to create a fraudulent, virtual second set of books by which the dealers are able to evade sales taxes.

Proposed change
The bill creates s. 213.295, F.S., which defines automated sales suppression devices, zappers and phantom-ware, and criminalizes the knowing sale, purchase, installation, transfer, or possession of these devices in this state. This section provides that any person in violation of this section shall be guilty of a felony of the third degree and shall be liable for all taxes, fees, penalties, and interest due to the state; the dealer shall also forfeit to the state all profits associated with the sale or use of the automated sales suppression devices, zappers or phantom-ware. Finally, the bill classifies automated sales suppression devices, zappers and phantom-ware as contraband articles under s. 932.701-932.706, F.S., the Florida Contraband Forfeiture Act. This section will become effective upon becoming a law.

Section 9. Standard Rate for Non-Compliance with Audit Record Requests; Reemployment Assistance Tax

Present situation
Florida law provides a standard reemployment assistance tax rate, and allows many employers to earn a lower rate if they meet certain compliance conditions set forth in s. 443.131(3)(h), F.S. However, under the current requirements to meet the compliance standards, it does not explicitly state that the taxpayer must comply with records requests to qualify for the reduced tax rate pursuant to s. 443.171(5), F.S.

Proposed change
This bill amends s. 443.131, F.S., to require an employer to comply with records requests as a prerequisite for that employer to earn the lower, reemployment assistance tax contribution rate. In order to receive the lower contribution rate, the employer must produce all work records requested during an audit by the Department of Economic Opportunity or the state agency providing tax collection services pursuant to s. 443.171(5), F.S. This section will become effective upon becoming a law.

Section 10. Floating Interest Rate; Reemployment Assistance Tax

Present situation
Section 443.141(1)(a), F.S., states that reemployment assistance tax contributions or reimbursements that are unpaid on the due date bear an interest rate of 1 percent per month (an effective rate of 12 percent annually). Other payment deficiencies on taxes that the Department administers have an interest rate of prime plus 4 percent but not to exceed an effective rate of 1 percent per month, adjusted twice per year.

Proposed change
This bill amends s. 443.141(1)(a), F.S., to adjust the interest rate applied to contributions or reimbursements unpaid on the date due. The current interest rate of 1 percent will carry on through December 31, 2013. Beginning January 1, 2014, the interest rate shall be calculated in accordance with s. 213.235, F.S., except that the rate of interest shall never be greater than 1 percent per month. This bill would reduce the interest rate provisions for reemployment assistance tax and make them the same rate as is applied to other taxes administered by the Department. This section will become effective January 1, 2014.

Section 11. Effective Date

This act shall take effect July 1, 2013, except as expressly provided within the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference met on March 8, 2013, and estimated that the provisions relating to the standard reemployment assistance tax rate for failure to provide records, criminalization of "zappers," and security requirements for sales tax dealers will have positive, indeterminate impacts on state general revenues and trust fund revenues. The provision relating to the Department's compromise authority will have an indeterminate impact of unknown direction on state general revenues and trust fund revenues. The provision relating to the interest rate on late reemployment assistance tax remittances will have a negative insignificant general revenue impact in FY2013-2014 (-$0.1 million recurring), and a -$0.6 million Special Employment Security Administration Trust Fund impact (-$1.2 million recurring).

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference met on March 8, 2013, and estimated that the provisions relating to the standard reemployment assistance tax rate for failure to provide records, criminalization of "zappers," and security requirements for sales tax dealers will have positive, indeterminate impacts on local revenues. The provision relating to the Department's compromise authority will have an indeterminate impact of unknown direction on local revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce the interest paid by some taxpayers who remit their reemployment assistance tax payments late.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Revenue authority to adopt rules to administer their ability to require cash bonds from some sales tax dealers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The bill was amended in a meeting of the Finance & Tax Subcommittee on March 14, 2013. The amendment removed what was Section 9, relating to the Department of Revenue's ability to access the Department of Highway Safety and Motor Vehicles' database of driver license photographs.

A bill to be entitled

An act relating to tax administration; amending s. 198.13, F.S.; eliminating a requirement for a personal representative to file a Florida estate tax return for decedents who die after December 31, 2012; providing for retroactive application; amending s. 212.07, F.S.; conforming a cross-reference; subjecting a dealer to monetary and criminal penalties for the willful failure to collect certain taxes or fees after notice of the duty to collect the taxes or fees by the Department of Revenue; amending s. 212.12, F.S.; deleting provisions relating to the imposition of criminal penalties after notice by the Department of Revenue of requirements to register as a dealer or to collect taxes; making technical and grammatical changes to provisions specifying penalties for making a false or fraudulent return with the intent to evade payment of a tax or fee; amending s. 212.14, F.S.; defining the term "person"; authorizing the Department of Revenue to adopt rules relating to requirements for a person to deposit cash, a bond, or other security with the department in order to ensure compliance with sales tax laws; making technical and grammatical changes; amending s. 212.18, F.S.; subjecting a person to criminal penalties for willfully failing to register as a dealer after notice of the duty to register by the Department of Revenue; making technical and grammatical changes; amending s. 213.13,

F.S.; revising the due date for funds collected by the clerks of court to be transmitted to the Department of Revenue; providing for retroactive application; amending s. 213.21, F.S.; revising the maximum dollar amount of compromise authority that the Department of Revenue may delegate to the executive director; creating s. 213.295, F.S.; providing definitions; subjecting a person to criminal penalties and monetary penalties for knowingly selling or engaging in certain other actions involving an automated sales suppression device, zapper, or phantom-ware; defining sales suppression devices, zappers, and phantom-ware as contraband articles under the Florida Contraband Forfeiture Act; amending s. 443.131, F.S.; requiring employers to produce records for the Department of Economic Opportunity or its tax collection service provider as a prerequisite for a reduction in the employers' rate of unemployment tax; amending s. 443.141, F.S.; providing a method for calculating the interest rate for past due contributions and reimbursements, and delinquent, erroneous, incomplete, or insufficient reports; providing effective dates.

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

Section 1. Effective upon this act becoming a law and operating retroactively to January 1, 2013, subsection (4) of section 198.13, Florida Statutes, is amended to read:

198.13 Tax return to be made in certain cases; certificate of nonliability.—

(4) Notwithstanding any other provisions of this section and applicable to the estate of a decedent who dies after December 31, 2004, if, upon the death of the decedent, a state death tax credit or a generation-skipping transfer credit is not allowable pursuant to the Internal Revenue Code of 1986, as amended:

(a) The personal representative of the estate is not required to file a return under subsection (1) in connection with the estate.

(b) The person who would otherwise be required to file a return reporting a generation-skipping transfer under subsection (3) is not required to file such a return in connection with the estate.

~~The provisions of this subsection do not apply to estates of decedents dying after December 31, 2012.~~

Section 2. Effective upon this act becoming a law, subsections (1) and (3) of section 212.07, Florida Statutes, are amended to read:

212.07 Sales, storage, use tax; tax added to purchase price; dealer not to absorb; liability of purchasers who cannot prove payment of the tax; penalties; general exemptions.—

(1)(a) The privilege tax herein levied measured by retail sales shall be collected by the dealers from the purchaser or consumer.

(b) A resale must be in strict compliance with s. 212.18

and the rules and regulations, and any dealer who makes a sale for resale which is not in strict compliance with s. 212.18 and the rules and regulations shall himself or herself be liable for and pay the tax. Any dealer who makes a sale for resale shall document the exempt nature of the transaction, as established by rules promulgated by the department, by retaining a copy of the purchaser's resale certificate. In lieu of maintaining a copy of the certificate, a dealer may document, before ~~prior to~~ the time of sale, an authorization number provided telephonically or electronically by the department, or by such other means established by rule of the department. The dealer may rely on a resale certificate issued pursuant to s. 212.18(3)(d) ~~212.18(3)(c)~~, valid at the time of receipt from the purchaser, without seeking annual verification of the resale certificate if the dealer makes recurring sales to a purchaser in the normal course of business on a continual basis. For purposes of this paragraph, "recurring sales to a purchaser in the normal course of business" refers to a sale in which the dealer extends credit to the purchaser and records the debt as an account receivable, or in which the dealer sells to a purchaser who has an established cash or C.O.D. account, similar to an open credit account. For purposes of this paragraph, purchases are made from a selling dealer on a continual basis if the selling dealer makes, in the normal course of business, sales to the purchaser no less frequently than once in every 12-month period. A dealer may, through the informal protest provided for in s. 213.21 and the rules of the Department of Revenue, provide the department with evidence of the exempt status of a sale. Consumer

certificates of exemption executed by those exempt entities that were registered with the department at the time of sale, resale certificates provided by purchasers who were active dealers at the time of sale, and verification by the department of a purchaser's active dealer status at the time of sale in lieu of a resale certificate shall be accepted by the department when submitted during the protest period, but may not be accepted in any proceeding under chapter 120 or any circuit court action instituted under chapter 72.

(c) Unless the purchaser of tangible personal property that is incorporated into tangible personal property manufactured, produced, compounded, processed, or fabricated for one's own use and subject to the tax imposed under s. 212.06(1)(b) or is purchased for export under s. 212.06(5)(a)1. extends a certificate in compliance with the rules of the department, the dealer shall himself or herself be liable for and pay the tax.

(3)(a) A ~~Any~~ dealer who fails, neglects, or refuses to collect the tax or fees imposed under this chapter ~~herein provided, either~~ by himself or herself or through the dealer's agents or employees, ~~is,~~ in addition to the penalty of being liable for ~~and~~ paying the tax ~~himself or herself~~, commits ~~guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A dealer who willfully fails to collect a tax or fee after the department provides notice of the duty to collect the tax or fee is liable for a specific penalty of 100 percent of the uncollected tax or fee. This penalty is in addition to any

other penalty that may be imposed by law. A dealer who willfully fails to collect taxes or fees totaling:

1. Less than $300:

a. For a first offense, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

b. For a second offense, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

c. For a third or subsequent offense, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. An amount equal to $300 or more, but less than $20,000, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. An amount equal to $20,000 or more, but less than $100,000, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. An amount equal to $100,000 or more, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) The department shall provide written notice of the duty to collect taxes or fees to the dealer by personal service, by sending notice to the dealer's last known address by registered mail, or by both personal service and registered mail.

Section 3. Effective upon this act becoming a law, paragraph (d) of subsection (2) of section 212.12, Florida

Statutes, is amended to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; brackets applicable to taxable transactions; records required.—

(2)

(d) A ~~Any~~ person who makes a false or fraudulent return with a willful intent to evade payment of any tax or fee imposed under this chapter is~~; any person who, after the department's delivery of a written notice to the person's last known address specifically alerting the person of the requirement to register the person's business as a dealer, intentionally fails to register the business; and any person who, after the department's delivery of a written notice to the person's last known address specifically alerting the person of the requirement to collect tax on specific transactions, intentionally fails to collect such tax, shall, in addition to the other penalties provided by law, be~~ liable for a specific penalty of 100 percent of any unreported ~~or any uncollected~~ tax or fee. This penalty is in addition to any other penalty provided by law. A person who makes a false or fraudulent return with a willful intent to evade payment of taxes or fees totaling:

1. Less than $300:

a. For a first offense, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

b. For a second offense, commits a misdemeanor of the

first degree, punishable as provided in s. 775.082 or s. 775.083.

c. For a third or subsequent offense, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. An amount equal to $300 or more, but less than $20,000, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. An amount equal to $20,000 or more, but less than $100,000, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. An amount equal to $100,000 or more, commits a felony of the first degree, punishable ~~and, upon conviction, for fine and punishment~~ as provided in s. 775.082, s. 775.083, or s. 775.084. ~~Delivery of written notice may be made by certified mail, or by the use of such other method as is documented as being necessary and reasonable under the circumstances. The civil and criminal penalties imposed herein for failure to comply with a written notice alerting the person of the requirement to register the person's business as a dealer or to collect tax on specific transactions shall not apply if the person timely files a written challenge to such notice in accordance with procedures established by the department by rule or the notice fails to clearly advise that failure to comply with or timely challenge the notice will result in the imposition of the civil and criminal penalties imposed herein.~~

~~1. If the total amount of unreported or uncollected taxes or fees is less than $300, the first offense resulting in~~

~~conviction is a misdemeanor of the second degree, the second offense resulting in conviction is a misdemeanor of the first degree, and the third and all subsequent offenses resulting in conviction is a misdemeanor of the first degree, and the third and all subsequent offenses resulting in conviction are felonies of the third degree.~~

~~2. If the total amount of unreported or uncollected taxes or fees is $300 or more but less than $20,000, the offense is a felony of the third degree.~~

~~3. If the total amount of unreported or uncollected taxes or fees is $20,000 or more but less than $100,000, the offense is a felony of the second degree.~~

~~4. If the total amount of unreported or uncollected taxes or fees is $100,000 or more, the offense is a felony of the first degree.~~

Section 4. Subsection (4) of section 212.14, Florida Statutes, is amended to read:

212.14 Departmental powers; hearings; distress warrants; bonds; subpoenas and subpoenas duces tecum.—

(4) In all cases where it is necessary to ensure compliance with ~~the provisions of~~ this chapter, the department shall require a cash deposit, bond, or other security as a condition to a person obtaining or retaining a dealer's certificate of registration under this chapter. Such bond shall be in the form and such amount as the department deems appropriate under the particular circumstances. Every person failing to produce such cash deposit, bond, or other security as provided for herein shall not be entitled to obtain or retain a

dealer's certificate of registration under this chapter, and the Department of Legal Affairs is hereby authorized to proceed by injunction, when so requested by the Department of Revenue, to prevent such person from doing business subject to ~~the provisions of~~ this chapter until such cash deposit, bond, or other security is posted with the department, and any temporary injunction for this purpose may be granted by any judge or chancellor authorized by law to grant injunctions. Any security required to be deposited may be sold by the department at public sale if it becomes necessary so to do in order to recover any tax, interest, or penalty due. Notice of such sale may be served personally or by mail upon the person who deposited the ~~such~~ security. If by mail, notice sent to the last known address as the same appears on the records of the department shall be sufficient for the purpose of this requirement. Upon such sale, the surplus, if any, above the amount due under this chapter shall be returned to the person who deposited the security. The department may adopt rules necessary to administer this subsection. For the purpose of the cash deposit, bond, or other security required by this subsection, the term "person" includes those entities defined in s. 212.02(12), as well as:

(a) An individual or entity owning a controlling interest in an entity;

(b) An individual or entity that has acquired an ownership interest or a controlling interest in a business that would otherwise be liable for posting a cash deposit, bond, or other security, unless the department has determined that the individual or entity is not liable for taxes, interest, or

penalties as set forth in s. 213.758; or

(c) An individual or entity seeking to obtain a dealer's certificate of registration for a business that will be operated at an identical location of a previous business that would otherwise have been liable for posting a cash deposit, bond, or other security, if the individual or entity fails to provide evidence that the business was acquired for consideration in an arms-length transaction.

Section 5. Effective upon this act becoming a law, subsection (3) of section 212.18, Florida Statutes, is amended to read:

212.18 Administration of law; registration of dealers; rules.—

(3)(a) Every person desiring to engage in or conduct business in this state as a dealer~~, as defined in this chapter,~~ or to lease, rent, or let or grant licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, or tourist or trailer camps that are subject to tax under s. 212.03, or to lease, rent, or let or grant licenses in real property~~, as defined in this chapter~~, and every person who sells or receives anything of value by way of admissions, must file with the department an application for a certificate of registration for each place of business. The application must include~~, showing~~ the names of the persons who have interests in such business and their residences, the address of the business, and ~~such~~ other data reasonably required by ~~as~~ the department ~~may reasonably require~~. However, owners and operators of vending machines or newspaper rack machines are

required to obtain only one certificate of registration for each county in which such machines are located. The department, by rule, may authorize a dealer that uses independent sellers to sell its merchandise to remit tax on the retail sales price charged to the ultimate consumer in lieu of having the independent seller register as a dealer and remit the tax. The department may appoint the county tax collector as the department's agent to accept applications for registrations. The application must be made to the department before the person, firm, copartnership, or corporation may engage in such business, and it must be accompanied by a registration fee of $5. However, a registration fee is not required to accompany an application to engage in or conduct business to make mail order sales. The department may waive the registration fee for applications submitted through the department's Internet registration process.

(b) The department, upon receipt of such application, shall ~~will~~ grant to the applicant a separate certificate of registration for each place of business, which certificate may be canceled by the department or its designated assistants for any failure by the certificateholder to comply with ~~any of the provisions of~~ this chapter. The certificate is not assignable and is valid only for the person, firm, copartnership, or corporation to which issued. The certificate must be placed in a conspicuous place in the business or businesses for which it is issued and must be displayed at all times. Except as provided in this subsection, a ~~no~~ person may not ~~shall~~ engage in business as a dealer or in leasing, renting, or letting of or granting

licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, or real property, or ~~as hereinbefore defined, nor shall any person~~ sell or receive anything of value by way of admissions, without a valid ~~first having obtained such a~~ certificate. A ~~or after such certificate has been canceled; no~~ person may not ~~shall~~ receive a ~~any~~ license from any authority within the state to engage in any such business without a valid certificate ~~first having obtained such a certificate or after such certificate has been canceled~~. A person may not engage ~~The engaging~~ in the business of selling or leasing tangible personal property or services ~~or~~ as a dealer; engage~~, as defined in this chapter, or the engaging~~ in the business of leasing, renting, or letting of or granting licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, or tourist or trailer camps that are taxable under this chapter, or real property;~~,~~ or engage ~~the engaging~~ in the business of selling or receiving anything of value by way of admissions~~,~~ without a valid ~~such~~ certificate ~~first being obtained or after such certificate has been canceled by the department, is prohibited~~.

(c)1. A ~~The failure or refusal of any~~ person who engages in acts requiring a certificate of registration under this subsection who fails or refuses to register commits~~, firm, copartnership, or corporation to so qualify when required hereunder is~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Such acts are~~, or~~ subject to injunctive proceedings as provided by law. A person who

engages in acts requiring a certificate of registration and who fails or refuses to register is also subject ~~Such failure or refusal also subjects the offender~~ to a $100 initial registration fee in lieu of the $5 registration fee required by ~~authorized in~~ paragraph (a). However, the department may waive the increase in the registration fee if it finds ~~is determined by the department~~ that the failure to register was due to reasonable cause and not to willful negligence, willful neglect, or fraud.

2.a. A person who willfully fails to register after the department provides notice of the duty to register as a dealer commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. The department shall provide written notice of the duty to register to the person by personal service, by sending notice by registered mail to the person's last known address, or by both personal service and registered mail.

(d) ~~(c)~~ In addition to the certificate of registration, the department shall provide to each newly registered dealer an initial resale certificate that will be valid for the remainder of the period of issuance. The department shall provide each active dealer with an annual resale certificate. For purposes of this section, the term "active dealer" means a person who is currently registered with the department and who is required to file at least once during each applicable reporting period.

(e) ~~(d)~~ The department may revoke a ~~any~~ dealer's certificate of registration if ~~when~~ the dealer fails to comply with this chapter. Before ~~prior to~~ revocation of a dealer's

certificate of registration, the department must schedule an informal conference at which the dealer may present evidence regarding the department's intended revocation or enter into a compliance agreement with the department. The department must notify the dealer of its intended action and the time, place, and date of the scheduled informal conference by written notification sent by United States mail to the dealer's last known address of record furnished by the dealer on a form prescribed by the department. The dealer is required to attend the informal conference and present evidence refuting the department's intended revocation or enter into a compliance agreement with the department which resolves the dealer's failure to comply with this chapter. The department shall issue an administrative complaint under s. 120.60 if the dealer fails to attend the department's informal conference, fails to enter into a compliance agreement with the department resolving the dealer's noncompliance with this chapter, or fails to comply with the executed compliance agreement.

(f) ~~(e)~~ As used in this paragraph, the term "exhibitor" means a person who enters into an agreement authorizing the display of tangible personal property or services at a convention or a trade show. The following provisions apply to the registration of exhibitors as dealers under this chapter:

1. An exhibitor whose agreement prohibits the sale of tangible personal property or services subject to the tax imposed in this chapter is not required to register as a dealer.

2. An exhibitor whose agreement provides for the sale at wholesale only of tangible personal property or services subject

to the tax imposed in this chapter must obtain a resale certificate from the purchasing dealer but is not required to register as a dealer.

3. An exhibitor whose agreement authorizes the retail sale of tangible personal property or services subject to the tax imposed in this chapter must register as a dealer and collect the tax imposed under this chapter on such sales.

4. Any exhibitor who makes a mail order sale pursuant to s. 212.0596 must register as a dealer.

Any person who conducts a convention or a trade show must make his or her ~~their~~ exhibitor's agreements available to the department for inspection and copying.

Section 6. Effective upon this act becoming a law and operating retroactively to July 1, 2010, subsection (5) of section 213.13, Florida Statutes, is amended to read:

213.13 Electronic remittance and distribution of funds collected by clerks of the court.—

(5) All court-related collections, including fees, fines, reimbursements, court costs, and other court-related funds that the clerks must remit to the state pursuant to law, must be transmitted electronically by the 10th ~~20th~~ day of the month immediately following the month in which the funds are collected.

Section 7. Effective upon this act becoming a law, paragraph (a) of subsection (2) of section 213.21, Florida Statutes, is amended to read:

213.21 Informal conferences; compromises.—

(2)(a) The executive director of the department or his or her designee is authorized to enter into closing agreements with any taxpayer settling or compromising the taxpayer's liability for any tax, interest, or penalty assessed under any of the chapters specified in s. 72.011(1). Such agreements shall be in writing when the amount of tax, penalty, or interest compromised exceeds $30,000 or for lesser amounts when the department deems it appropriate or when requested by the taxpayer. When a written closing agreement has been approved by the department and signed by the executive director or his or her designee and the taxpayer, it shall be final and conclusive; and, except upon a showing of fraud or misrepresentation of material fact or except as to adjustments pursuant to ss. 198.16 and 220.23, no additional assessment may be made by the department against the taxpayer for the tax, interest, or penalty specified in the closing agreement for the time period specified in the closing agreement, and the taxpayer shall not be entitled to institute any judicial or administrative proceeding to recover any tax, interest, or penalty paid pursuant to the closing agreement. The department is authorized to delegate to the executive director the authority to approve any such closing agreement resulting in a tax reduction of $500,000 ~~$250,000~~ or less.

Section 8. Effective upon this act becoming a law, section 213.295, Florida Statutes, is created to read:

213.295 Automated sales suppression devices.—

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

(a) "Automated sales suppression device" or "zapper" means a software program that falsifies the electronic records of

electronic cash registers or other point-of-sale systems, including, but not limited to, transaction data and transaction reports. The term includes the software program, any device that carries the software program, or an Internet link to the software program.

(b) "Electronic cash register" means a device that keeps a register or supporting documents through the use of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner.

(c) "Phantom-ware" means a hidden programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that may be used to create a second set of records or eliminate or manipulate transaction records, which records may or may not be preserved in digital formats, to represent the true or manipulated record of transactions in the electronic cash register.

(d) "Transaction data" includes items purchased by a customer; the price of each item; a taxability determination for each item; a segregated tax amount for each of the taxed items; the amount of cash or credit tendered; the net amount returned to the customer in change; the date and time of the purchase; the name, address, and identification number of the vendor; and the receipt or invoice number of the transaction.

(e) "Transaction report" means a report that documents, but is not limited to documenting, the sales, taxes, or fees collected; media totals; and discount voids at an electronic cash register that is printed on a cash register tape at the end

of a day or a shift, or a report that documents every action at an electronic cash register and that is stored electronically.

(2) A person may not knowingly sell, purchase, install, transfer, possess, use, or access any automated sales suppression device, zapper, or phantom-ware.

(3)(a) A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates this section is liable for all taxes, fees, penalties, and interest due the state as a result of the use of an automated sales suppression device, zapper, or phantom-ware and shall forfeit to the state as an additional penalty all profits associated with the sale or use of an automated sales suppression device, zapper, or phantom-ware.

(4) An automated sales suppression device, zapper, or phantom-ware, or any device containing such device or software, is a contraband article under ss. 932.701-932.706, the Florida Contraband Forfeiture Act.

Section 9. Effective upon this act becoming a law, paragraph (h) of subsection (3) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—

(h) Additional conditions for variation from the standard rate.—An employer's contribution rate may not be reduced below the standard rate under this section unless:

1. All contributions, reimbursements, interest, and

penalties incurred by the employer for wages paid by him or her in all previous calendar quarters, except the 4 calendar quarters immediately preceding the calendar quarter or calendar year for which the benefit ratio is computed, are paid; ~~and~~

2. The employer has produced for inspection and copying all work records in his or her possession, custody, or control that were requested by the Department of Economic Opportunity or its tax collection service provider pursuant to s. 443.171(5). An employer shall have at least 60 days to provide the requested work records before the employer is assigned the standard rate; and

3.~~2.~~ The employer entitled to a rate reduction must have at least one annual payroll as defined in subparagraph (b)1. unless the employer is eligible for additional credit under the Federal Unemployment Tax Act. If the Federal Unemployment Tax Act is amended or repealed in a manner affecting credit under the federal act, this section applies only to the extent that additional credit is allowed against the payment of the tax imposed by the Federal Unemployment Tax Act.

The tax collection service provider shall assign an earned contribution rate to an employer ~~under subparagraph 1.~~ the quarter immediately after the quarter in which all contributions, reimbursements, interest, and penalties are paid in full and all work records requested pursuant to s. 443.171(5) have been provided to the Department of Economic Opportunity or the tax collection service provider for inspection and copying.

Section 10. Effective January 1, 2014, paragraph (a) of

subsection (1) of section 443.141, Florida Statutes, is amended to read:

443.141 Collection of contributions and reimbursements.—

(1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT, ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

(a) Interest.—Contributions or reimbursements unpaid on the date due bear interest at the rate of 1 percent per month through December 31, 2013. Beginning January 1, 2014, the interest rate shall be calculated in accordance with s. 213.235, except that the rate of interest shall never be greater than 1 percent per month, from and after the ~~that~~ date due until payment plus accrued interest is received by the tax collection service provider, unless the service provider finds that the employing unit has good reason for failing to pay the contributions or reimbursements when due. Interest collected under this subsection must be paid into the Special Employment Security Administration Trust Fund.

Section 11. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, 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)

Between lines 74 and 75, insert:

Section 2. Effective upon this act becoming a law, paragraph (c) of subsection (6) of section 211.3103, Florida Statutes, is amended to read:

211.3103 Levy of tax on severance of phosphate rock; rate, basis, and distribution of tax.-

(6)

(c) For purposes of this section, "phosphate-related expenses" means those expenses that provide for infrastructure or services in support of the phosphate industry <u>including environmental education</u>, reclamation or restoration of phosphate lands<u>, maintenance and restoration of reclaimed lands and county owned environmental lands which were formerly phosphate lands,</u> community infrastructure on such reclaimed lands <u>and county owned environmental lands which were formerly phosphate lands,</u>

and similar expenses directly related to support of the industry.

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

Remove line 6 and insert:

for retroactive application; amending s. 211.3103; modifying the definition of phosphate related expenses to expand county use of the phosphate severance tax; amending s. 212.07, F.S.;

Information Technology Governance

Information Technology Governance

House Appropriations Committee

March 28, 2013

Impact on Government

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

Technology Funding in State Government

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

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

Data Center Consolidation Legislation

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

IT Issues Requiring Resolution

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

IT Issues Requiring Resolution

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

Florida's Biggest Challenge in Addressing IT Issues

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

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

2012 Legislature

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

2012 Legislature

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

Questions?