Appropriations Committee

Thursday, April 10, 2014
1:00 PM – 5:00 PM
212 Knott Building

Meeting Packet

Will Weatherford
Speaker

Seth McKeel
Chair

The Florida House of Representatives

Appropriations Committee

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Seth McKeel
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AGENDA

Thursday, April 10, 2014
212 Knott Building
1:00 PM – 5:00 PM

I. Call to Order/Roll Call

II. Opening Remarks by Chair McKeel

III. Consideration of the following bills:

CS/CS/HB 487 Agricultural Industry Certifications by Agriculture & Natural Resources Subcommittee, Higher Education & Workforce Subcommittee, Raburn

HB 745 Pharmacy Audit Bill of Rights by Cummings

CS/HB 803 Communications Services Tax by Finance & Tax Subcommittee, Boyd

CS/HB 811 Foreign Investments by Government Operations Subcommittee, Hager

CS/HB 979 Homelessness by Economic Development & Tourism Subcommittee, Peters

CS/HB 1385 Inspectors General by Government Operations Subcommittee, Raulerson

HB 7157 State Group Insurance Program by Health & Human Services Committee, Brodeur

HB 7173 Florida Retirement System by State Affairs Committee, Boyd

IV. Closing Remarks and Adjournment

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 487 Agricultural Industry Certifications
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Higher Education & Workforce Subcommittee; Raburn and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee	12 Y, 0 N, As CS	Thomas	Sherry
2) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Kaiser	Blalock
3) Appropriations Committee		Lolley	Leznoff
4) Education Committee			

SUMMARY ANALYSIS

Current law requires the State Board of Education (state board) to work with Workforce Florida, Inc., to develop and adopt rules for implementing an industry certification process.

The bill requires the Department of Agriculture and Consumer Services (DACS), in cooperation with the Institute of Food and Agricultural Science at the University of Florida and the College of Agriculture and Food Sciences at Florida Agriculture and Mechanical University, to annually provide to the state board and the Department of Education (DOE) information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List. The information and industry certification provided must be based on the best available data.

The bill defines industry certification as:

- A voluntary process through which students are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a credential that is nationally recognized and must be:
  - Within an industry that addresses a critical local or statewide economic need;
  - Linked to an occupation that is included in the workforce system's targeted occupation list; or
  - Linked to an occupation that is identified as emerging.

The bill requires the state board to use the expertise of DACS to develop and adopt rules for implementing an industry certification process, and specifies that, for farm occupations, industry certification must demonstrate student skill proficiency and be based upon the best available data to address critical local or statewide economic needs. The bill also requires the list of industry certifications approved by Workforce Florida, Inc., DACS, and DOE to be published and updated annually.

Under current law, a local government may not adopt an ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land. In addition, an agritourism operator is not liable for injury resulting from the inherent risks of the agritourism activity, unless the operator is grossly negligent or intentionally injures the participant.

The bill amends the term "agritourism activity" to include skydiving.

The bill does not appear to have a fiscal impact on state or local governments or the private sector.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Industry Certifications

Section 1003.492, F.S., requires the State Board of Education (state board) to work with Workforce Florida, Inc., to develop and adopt rules for implementing an industry certification process. The Department of Economic Opportunity (DEO) is required to define industry certification based upon the highest available national standards for specific industry certification to ensure student skill proficiency and to address emerging labor market and industry trends.[1]

DEO currently defines industry certification as "a voluntary process, through which individuals are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills and competencies, resulting in the award of a time-limited credential that is nationally recognized and applicable to an occupation that is included in the workforce system's targeted occupation list or determined to be an occupation that is critical, emerging, or addresses a local need."[2]

The selection of industry certifications for academy courses and career-themed courses occurs in two phases. First, Workforce Florida, Inc. must identify industry certifications that meet the DEO definition and compile them into a comprehensive list.[3] Second, the Department of Education (DOE) must:

- Review the comprehensive list;[4]
- Identify certifications that are academically rigorous and at least 150 hours in length;[5]
- Compile a preliminary list of industry certifications that qualify for additional weighted funding;[6]
- Consider district requests that industry certifications be added to the approved list;[7] and
- Annually publish a final list.[8]

However, a regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certification based on high-skill, high-wage, and high-demanding job requirements in the regional economy.[9]

Workforce Florida, Inc.'s, comprehensive list includes 428 industry certifications.[10] From this list, DOE has identified 201 industry certifications and 287 postsecondary industry certifications as funding-eligible for the 2013 - 2014 school year.[11] Most industry certifications require passage of a subject area

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[1] Section 1003.492(2), F.S.
[2] Florida Department of Education, Division of Career and Adult Education, *Career and Professional Education Act CAPE,* at 1 (2012), *available at* http://www.fldoe.org/workforce/pdf/CAPE-Act-TechAssist.pdf.
[3] Section 1003.492(2), F.S.; Rule 6A-6.0573(1)-(3), F.A.C.; A regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certification based on high-skills, high-wage, and high-demand job requirements in the regional economy.
[4] Rule 6A-6.0573(3), F.A.C.
[5] Rule 6A-6.0573(3)(b), F.A.C.
[6] Rule 6A-6.0573(4), F.A.C.
[7] Rule 6A-6.0573(4)(a) and (4)(b), F.A.C.
[8] Rule 6A-6.0573(8), F.A.C.
[9] Section 1003.492(2), F.S.
[10] Workforce Florida, Inc. Career and Professional Education (CAPE), *2013-14 Comprehensive Industry Certification List,* http://careersourceflorida.com/wp-content/uploads/2014/02/2013-14ComprehensiveCondensedFINAL.pdf.
[11] Rule 6A-6.0573(6), F.A.C. The Industry Certification Funding List is incorporated by reference in the rule. *See also* Florida Department of Education, Division of Career and Adult Education, *2013-14 Final Industry Certification Funding List* (2013), *available at* www.fldoe.org/workforce/fcpea/pdf/1314icfl.pdf.

examination and some combination of work experience, educational attainment, or on-the-job training. DOE has approved industry certification in such career fields as information technology, automotive and aircraft mechanics, welding, and nursing. Certifying entities include Adobe Systems, Apple Computer, Inc., Hewlett-Packard, Microsoft Corporation, the National Institute for Automotive Services Excellence, the American Welding Society, the Federal Aviation Administration, and the Florida Department of Health.[12]

Industry certifications on the final approved list are eligible for additional weighted funding through the Florida Education Finance Program (FEFP). A value of 0.1 or 0.2 full-time equivalent student membership is calculated for each student who completes a career-themed course and who is issued an industry certification. A value of 0.2 full-time equivalent is calculated for each student who is issued an industry certification that articulates for college credits and a value of 0.1 for those industry certifications that do not articulate for college credit. Each district must allocate at least 80 percent of the funds provided for industry certification to the program that generated the funds. The allocation may not be used to supplant funds provided for basic operation of the program. The appropriation is limited to $60 million annually. If the appropriation is insufficient, it is prorated.[13]

The approved list may include both industry certifications that are achievable in a secondary education program and those that have requirements, such as minimum age, grade-level, diploma or degree, or post-graduation work experience of at least 12 months that make it impossible for the student to obtain full certification while in a public secondary school program. Funding industry certifications in which full certification cannot be achieved in a secondary program allows students to work toward certifications while in high school, without having to fulfill all requirements before graduation.[14]

DOE must also collect student achievement and performance data in industry-certified career education programs and career-themed courses and must work with Workforce Florida, Inc., in the analysis of collected data. The data collection and analyses must examine the performance of participating students over time. Performance factors must include, but are not limited to, graduation rates, retention rates, Florida Bright Futures Scholarship awards, additional educational attainment, employment records, earnings, industry certification, and employer satisfaction.[15]

Agritourism

Section 570.961, F.S., defines an "agritourism activity" as any agricultural activity consistent with a bona fide farm or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures of facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the public. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

Current law[16] provides that it is the intent of the Legislature to eliminate duplication of regulatory authority over agritourism. A local government may not adopt an ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as

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[12] *See* Florida Department of Education, Division of Career and Adult Education, *Industry Certification Descriptions*, http://app1.fldoe.org/WEIndCert/Default.aspx (last visited Mar. 12, 2014).
[13] Section 1011.62(1)(o), F.S.; rule 6A-6.0573(3), F.A.C.
[14] Section 1008.44(3), F.S. For industry certifications in which full certification cannot be achieved in a secondary program, the Commissioner of Education must differentiate the content, instructional, and assessment requirements for such industry certifications in determining funding. This allows students to work toward these certifications while in high school, without having to fulfill all requirements before graduation. *Id.*
[15] Section 1003.492(3), F.S. A report of data on academies and career-themed courses must be submitted to the President of the Senate and Speaker of the House of Representatives by December 31, each year.
[16] Section 570.96, F.S.

agricultural land under Florida's greenbelt law. This does not limit the powers and duties of a local government to address an emergency as provided in chapter 252, F.S.[17]

Section 570.961(5), F.S. creates the term "inherent risks of agritourism activity," which is defined to mean those dangers or conditions that are an integral part of an agritourism activity including certain hazards, such as surface and subsurface conditions, natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and the ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. The term also includes the potential of a participant to act in a negligent manner that may contribute to the injury of the participant or others, including failing to follow the instructions given by the agritourism professional[18] or failing to exercise reasonable caution while engaging in the agritourism activity.

Section 570.963, F.S., provides that an agritourism professional is not liable for injury, death, damage, or loss to a participant resulting from the inherent risk of agritourism activities if the notice of risk is posted as required by law. A participant, or a participant's representative, may not maintain an action against or recover from an agritourism professional for the injury, death, damage, or loss to an agritourism participant resulting exclusively from any of the inherent risks of agritourism activities. In an action for damages against an agritourism professional, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

The preceding provisions do not prevent or limit the liability of an agritourism professional if he/she:

- Commits an act or omission that constitutes negligence of willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant; or
- Intentionally injures the participant.

Effect of Proposed Change

Industry Certifications

The bill requires the Department of Agriculture and Consumer Services (DACS), in cooperation with the Institute of Food and Agricultural Science at the University of Florida and the College of Agriculture and Food Sciences at Florida Agriculture and Mechanical University, to annually provide to the state board and DOE information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List. The information and industry certification provided must be based on the best available data.

The bill defines industry certification as:

- A voluntary process through which students are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a credential that is nationally recognized and must be:
    - Within an industry that addresses a critical local or statewide economic need;
    - Linked to an occupation that is included in the workforce system's targeted occupation list; or
    - Linked to an occupation that is identified as emerging.

The bill requires the state board to use the expertise of DACS to develop and adopt rules for implementing an industry certification process, and specifies that, for farm occupations, industry

[17] Chapter 252, F.S., relates to emergency management.

[18] As used in this analysis, the term "agritourism professional" refers to an agritourism professional, his or her employer or employee, or the owner of the underlying land on which the agritourism occurs.

certification must demonstrate student skill proficiency and be based upon the best available data to address critical local or statewide economic needs. The list of industry certifications approved by Workforce Florida, Inc., DACS, and DOE must be published and updated annually.

The bill requires DOE to include DACS in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses.

Agritourism

The bill amends the term "agritourism activity" to include skydiving. Therefore, local governments are prohibited from adopting any ordinance or regulation that prohibits, restricts, or otherwise limits skydiving on land classified as agricultural land. In addition, skydiving operators will not be liable for any injury or death resulting from the inherent risks of skydiving, unless the skydiving operator acts grossly negligent or intentionally injures the participant.

B. SECTION DIRECTORY:

Section 1: Amends s. 570.07, F.S., requiring the Department of Agriculture and Consumer Services to annually provide to the State Board of Education and the Department of Education industry certifications for farm occupations to be considered for placement on industry certification funding lists.

Section 2: Amends s. 1003.492, F.S., defining industry certification as part of career education programs; requiring the state board to adopt rules for implementing an industry certification process for farm occupations.

Section 3: Amends s. 1003.4935, F.S., conforming a cross-reference.

Section 4: Amends s. 570.961, F.S., amending a definition.

Section 5: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

The bill is not expected to have a fiscal impact since the industry certification courses generate bonus funding within the Florida Education Finance Program (FEFP) in addition to the funding provided for basic operations. The additional funding is limited to $60 million annually and is prorated if the appropriation is insufficient.

The Department of Agriculture and Consumer Services anticipates that the responsibilities required by the bill can be achieved within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

This bill may implicate the single subject provision in Art. III, s. 6 of the Florida Constitution, which provides that "every law enacted by the Legislature shall embrace but one subject matter and properly connected therewith ..." The Florida Supreme Court has described the purpose of the single subject rule as twofold. First, it attempts to avoid surprise and fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. With regard to the test to be applied by a court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.[19] The bill is entitled "an act relating to agricultural industry certifications," but contains a section relating to the definition of "agritourism."

B. RULE-MAKING AUTHORITY:

The bill requires the state board to include the expertise of the Department of Agriculture and Consumer Services for implementing an industry certification process. The state board would have to amend the current industry certification process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Higher Education & Workforce Subcommittee reported HB 487 favorably as a committee substitute. There was a strike-all amendment to the bill that:

- Requires DACS, in cooperation with the Institute of Food and Agricultural Science at the University of Florida and the College of Agriculture and Food Sciences at Florida Agriculture and Mechanical University, to annually provide to the state board and DOE information and industry certifications for

[19] *Franklin v. State, 887 So. 2d 1063 (Fla. 2004)*

farm occupations to be considered for placement on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List.
- Provides a definition of industry certification.
- Requires the state board to use the expertise of DACS to develop and adopt rules for implementing an industry certification process.
- Requires DOE to include DACS in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses.

This analysis is drafted to the committee substitute as passed by the Higher Education & Workforce Subcommittee.

On March 18, 2014, the Agriculture and Natural Resources Subcommittee reported CS/HB 487 favorably as a committee substitute. There were two amendments to CS/HB 487.

The first amendment removed the words "time-limited" as used to describe the industry certification process. Many of the industry certifications on the state's industry certification list and post-secondary industry certification list are not time limited, meaning a person does not have to be recertified. The second amendment amended the definition of "agritourism activity" to include skydiving.

This analysis is drafted to the committee substitute as passed by the Agriculture and Natural Resources Subcommittee.

A bill to be entitled

An act relating to agricultural industry certifications; amending s. 570.07, F.S.; requiring the Department of Agriculture and Consumer Services to annually provide to the State Board of Education and the Department of Education information and industry certifications for farm occupations to be considered for placement on industry certification funding lists; amending s. 1003.492, F.S.; defining industry certification as part of career education programs; requiring the state board to adopt rules for implementing an industry certification process for farm occupations; amending s. 1003.4935, F.S.; conforming a cross-reference; amending s. 570.961, F.S.; revising definition of the term "agritourism activity" to include skydiving; providing an effective date.

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

Section 1. Subsection (43) is added to section 570.07, Florida Statutes, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(43) In cooperation with the Institute of Food and

Agricultural Sciences at the University of Florida and the College of Agriculture and Food Sciences at the Florida Agricultural and Mechanical University, to annually provide to the State Board of Education and the Department of Education information and industry certifications for farm occupations to be considered for placement on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List pursuant to s. 1008.44. Information and industry certifications provided by the department must be based upon the best available data.

Section 2. Section 1003.492, Florida Statutes, is amended to read:

1003.492 Industry-certified career education programs.—

(1) Secondary schools offering career-themed courses, as defined in s. 1003.493(1)(b), and career and professional academies shall be coordinated with the relevant and appropriate industry to prepare a student for further education or for employment in that industry.

(2) Industry certification as used in this section is a voluntary process through which students are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a credential that is nationally recognized and must be at least one of the following:

(a) Within an industry that addresses a critical local or statewide economic need;

(b) Linked to an occupation that is included in the workforce system's targeted occupation list; or

(c) Linked to an occupation that is identified as emerging.

(3) ~~(2)~~ The State Board of Education shall use the expertise of Workforce Florida, Inc., and the Department of Agriculture and Consumer Services to develop and adopt rules pursuant to ss. 120.536(1) and 120.54 for implementing an industry certification process.

(a) For nonfarm occupations, industry certification shall be ~~defined by the Department of Economic Opportunity,~~ based upon the highest available national standards for specific industry certification~~,~~ to ensure student skill proficiency and to address emerging labor market and industry trends. A regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certifications based on high-skill, high-wage, and high-demand job requirements in the regional economy. ~~The list of industry certifications approved by Workforce Florida, Inc., and the Department of Education shall be published and updated annually by a date certain, to be included in the adopted rule.~~

(b) For farm occupations submitted pursuant to s. 570.07, industry certification shall demonstrate student skill proficiency and be based upon the best available data to address critical local or statewide economic needs.

(4) The list of industry certifications approved by

Workforce Florida, Inc., the Department of Agriculture and Consumer Services, and the Department of Education shall be published and updated annually by a date certain, to be included in the adopted rule.

(5)~~(3)~~ The Department of Education shall collect student achievement and performance data in industry-certified career education programs and career-themed courses and shall work with Workforce Florida, Inc., and the Department of Agriculture and Consumer Services in the analysis of collected data. The data collection and analyses shall examine the performance of participating students over time. Performance factors shall include, but not be limited to, graduation rates, retention rates, Florida Bright Futures Scholarship awards, additional educational attainment, employment records, earnings, industry certification, and employer satisfaction. The results of this study shall be submitted to the President of the Senate and the Speaker of the House of Representatives annually by December 31.

Section 3. Subsection (3) of section 1003.4935, Florida Statutes, is amended to read:

1003.4935 Middle grades career and professional academy courses and career-themed courses.—

(3) Beginning with the 2012-2013 school year, if a school district implements a middle school career and professional academy or a career-themed course, the Department of Education shall collect and report student achievement data pursuant to performance factors identified under s. 1003.492(5) ~~1003.492(3)~~

for students enrolled in an academy or a career-themed course.

Section 4. Subsection (1) of section 570.961, Florida Statutes, is amended to read:

570.961 Definitions.—As used in ss. 570.96-570.964, the term:

(1) "Agritourism activity" means any agricultural related activity consistent with a bona fide farm or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, skydiving, historical, cultural, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

Section 5. This act shall take effect July 1, 2014.

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 Raburn offered the following:

Amendment (with title amendment)

Remove lines 106-121

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

Remove lines 14-16 and insert:

conforming a cross-reference; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 745 Pharmacy Audit Bill of Rights
SPONSOR(S): Cummings and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N	Poche	Shaw
2) Appropriations Committee		Clark	Leznoff
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Advances in pharmaceuticals have transformed health care over the last several decades. Many health care problems are prevented, cured, or managed effectively for years through the use of prescription drugs. As a result, national expenditures for retail prescription drugs have grown from $120.9 billion in 2000 to $263.3 billion in 2012. This has brought about increased scrutiny of pharmaceutical dispensing and reimbursement processes. As expenditures for drugs have increased, insurers have looked for ways to control that spending. Among other things, they have turned to pharmacy benefit managers (PBMs), which are third party administrators of prescription drug programs.

PBMs process prescriptions for the groups that pay for drugs, usually insurance companies or corporations, and use their size to negotiate with drug makers and pharmacies. They are primarily responsible for processing and paying prescription drug claims. They are also responsible for maintaining the formulary of covered drugs, contracting with pharmacies, and negotiating discounts and rebates with drug manufacturers. Pharmacies have increasingly complained about the onerous and burdensome nature of these audits. In Florida, the primary concerns of pharmacies regarding audits by PBMs are fairness and lack of consistency in many audit areas.

House Bill 745 creates a "bill of rights" in chapter 465, F.S., for a pharmacy that applies during an audit by a managed care company, an insurance company, a third-party payor, a PBM, or any entity that represents a party that is responsible for payment of pharmacy benefits. The bill imposes notice, timing, and procedural requirements on entities conducting pharmacy audits. The bill appears to address many of the complaints expressed by pharmacies in relation to perceived inequity, unfairness, or burdensome practices of third-party payor audits or third-party administrator audits.

The bill creates a new civil cause of action for an injured pharmacy when an entity willfully violates the provisions of the bill. A prevailing pharmacy will be entitled to treble damages, attorney fees, and costs.

The provisions of the bill do not apply to audits in which fraud or fraudulent activity is suspected. The bill also does not apply to audits related to Medicaid fee-for-service claim; however, the bill would apply to managed care plans under contract with the state to provide Medicaid services.

The bill has an indeterminate, but likely insignificant fiscal impact on state government.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Third-Party Payor/Third-Party Administrator Pharmacy Audits

Advances in pharmaceuticals have transformed health care over the last several decades. Many health care problems are prevented, cured, or managed effectively for years through the use of prescription drugs. As a result, national expenditures for retail prescription drugs have grown from $120.9 billion in 2000 to $263.3 billion in 2012.[1] This has brought about increased scrutiny of pharmaceutical dispensing and reimbursement processes.

Health insurers, including Medicare and Medicaid, and other third party payers spent $214 billion on prescription drugs in 2011 and consumers paid $46.8 billion out of pocket for prescription drugs that year.[2] As expenditures for drugs have increased, insurers have looked for ways to control that spending. Among other things, they have turned to pharmacy benefit managers (PBMs), which are third party administrators of prescription drug programs. PBMs process prescriptions for the groups that pay for drugs, usually insurance companies or corporations, and use their size to negotiate with drug makers and pharmacies. They are primarily responsible for processing and paying prescription drug claims. They are also responsible for maintaining the formulary of covered drugs, contracting with pharmacies, and negotiating discounts and rebates with drug manufacturers. PBMs currently administer prescription drug plans for more than 210 million people in the U.S. with employer sponsored health care coverage, individual health care coverage, health care coverage through a union, and coverage for prescription drugs through Medicare Part D.[3] Two large PBMs, Express Scripts and CVS/Caremark, control 60 percent of the market and administer prescription drug plans for approximately 240 million people.[4]

Pharmacy benefit managers build networks of retail pharmacies to provide consumers convenient access to prescriptions at discounted rates. The audit process is one means used by pharmacy benefit managers and third-party payors to review pharmacy programs. The audits ensure that procedures and reimbursement mechanisms are consistent with contractual and regulatory requirements. PBMs conduct different types of audits, depending on client and contractual requirements, including:

- Claims analyses to identify payment anomalies;
- Desk audit using documents received from a pharmacy; and
- On-site audit of a pharmacy.[5]

Audit practices, protocols, and requirements vary by PBM and by the client.

Pharmacies have increasingly complained about the perceived onerous and burdensome nature of these audits.[6] In Florida, the primary concerns of pharmacies regarding audits by PBMs are fairness

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[1] U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *National Health Expenditures; Aggregate and Per Capita Amounts, Annual Percent Change and Percent Distribution, by Type of Expenditure: Selected Calendar Years 1960-2012*, Table 2, available at www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/tables.pdf (last viewed on March 22, 2014).

[2] Id. at Table 4.

[3] Pharmaceutical Care Management Association, *About PCMA*, available at www.pcmanet.org/about-pcma/about-pcma (last viewed on March 19, 2014).

[4] The Florida Legislature, Office of Program Policy Analysis and Government Accountability, *Pharmacy Benefit Managers*, December 20, 2013, page 1 (on file with Health Innovation Subcommittee staff).

[5] Id. at page 2.

and lack of consistency in areas such as prior notification, extrapolation,[7] and look-back period of the audit.[8]

Statewide Medicaid Managed Care

In 2011, Florida established the Statewide Medicaid Managed Care (SMMC) program as Part IV of Chapter 409, F.S. The SMMC requires the Agency for Healthcare Administration (AHCA) to create an integrated managed care program for Medicaid enrollees to provide all the mandatory and optional Medicaid benefits for primary and acute care. Each Medicaid recipient will have one managed care organization to coordinate all health care services, rather than various entities as in the current Medicaid program. This comprehensive coordinated system of care was successfully implemented in a 5-county Medicaid reform pilot program which began in 2006.

The SMMC program has two components: the Long-term Care Managed Care Program and the Managed Medical Assistance (MMA) Program. The MMA program provides primary and acute medical assistance and related services, including pharmacy. On December 28, 2012, AHCA released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a statewide basis for the MMA program.[9] AHCA subsequently selected health maintenance organizations and provider service networks via the competitive procurement. On February 6, 2014, AHCA executed contracts with the MMA managed care plans.[10]

AHCA will begin implementing the MMA program in selected regions on May 1, 2014 with the last regions being implemented on August 1, 2014. The program must be fully implemented in all regions by October, 2014, as directed in s. 409.971, F.S.

Once the MMA program is fully implemented, most Medicaid recipients will receive services through managed care rather than fee-for-service.

Medicaid Pharmacy Audits

Section 465.188, F.S., establishes requirements for AHCA and other state agencies when conducting an audit of the Medicaid-related records of a pharmacy licensed under ch. 465, F.S. The audit must meet the following requirements:

- The agency conducting the audit must give the pharmacist at least one week's prior notice of the initial audit for each audit cycle.[11]
- An audit must be conducted by a pharmacist licensed in Florida.[12]
- Any clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error regarding a document or record required under the Medicaid program does not constitute a willful violation and is not subject to criminal penalties without proof of intent to commit fraud.[13]
- A pharmacist may use the physician's record or other order for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug.[14]

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[6] National Community Pharmacists Association, *Survey: Pharmacists Say Patient Care Undermined by Auditing, Payment Practices*, available at www.ncpanet.org/pdf/leg/sep12/pbmsurvey0912final.pdf (last viewed on March 22, 2014).
[7] A PBM audit usually looks at a small sample of the large volume of prescriptions filled by a pharmacy during a certain time period. Some audit practices allow the PBM to apply the error rate found in the sample to the entire volume of prescriptions in order to calculate the repayment.
[8] See supra, FN 4 at page 3.
[9] Id.
[10] AHCA Invitation to Negotiate, *Statewide Medicaid Managed Care*, *Addendum 2* Solicitations Number: AHCA ITN 017-12/13; Feb. 26, 2013, available at: http://myflorida.com/apps/vbs/vbs_www.ad.view_ad?advertisement_key_num=105774 (last visited March 22, 2014); AHCA Invitation to Negotiate, *Statewide Medicaid Managed Care*, Solicitation Number: AHCA ITN 017-12/13, Dec. 28, 2012, available at: http://myflorida.com/apps/vbs/vbs_www.ad.view_ad?advertisement_key_num=105774 (last visited March 22, 2014).
[11] S. 465.188(1)(a), F.S.
[12] S. 465.188(1)(b), F.S.
[13] S. 465.188(1)(c), F.S.

- A finding of an overpayment or underpayment must be based on the actual overpayment or underpayment and may not be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs.[15]
- Each pharmacy shall be audited under the same standards and parameters.[16]
- A pharmacist must be allowed at least 10 days in which to produce documentation to address any discrepancy found during an audit.[17]
- The period covered by an audit may not exceed one calendar year.[18]
- An audit may not be scheduled during the first five days of any month due to the high volume of prescriptions filled during that time.[19]
- The audit report must be delivered to the pharmacist within ninety days after conclusion of the audit.[20]
- A final audit report must be delivered to the pharmacist within six months after receipt of the preliminary audit report or final appeal, whichever is later.[21]
- The agency conducting the audit may not use the accounting practice of extrapolation in calculating penalties for Medicaid audits.[22]

The law requires the AHCA to establish a process that allows a pharmacist to obtain a preliminary review of an audit report and to appeal an unfavorable audit report without the necessity of obtaining legal counsel.[23] The preliminary review and appeal may be conducted by an ad hoc peer review panel, appointed by the AHCA, which consists of pharmacists who maintain an active practice.[24] If, following the preliminary review, the AHCA or the review panel finds that an unfavorable audit report is unsubstantiated, the AHCA must dismiss the audit report without the necessity of any further proceedings.[25]

These requirements do not apply to investigative audits conducted by the Medicaid Fraud Control Unit of the Department of Legal Affairs or to investigative audits conducted by the AHCA when there is reliable evidence that the claim that is the subject of the audit involves fraud, willful misrepresentation, or abuse under the Medicaid program.[26]

Effect of Proposed Changes

House Bill 745 creates a "bill of rights" in chapter 465, F.S., for a pharmacy that applies during an audit by a managed care company, an insurance company, a third-party payor, a PBM, or any entity that represents a party that is responsible for payment of pharmacy benefits. The "bill of rights" addresses many of the complaints expressed by pharmacies in relation to perceived inequity, unfairness, or burdensome practices of third-party payor audits or third-party administrator audits.

The bill provides the following rights to a pharmacy regarding an audit:

- To be given 7 days of notice prior to the initial onsite audit of each audit cycle.
- To have an onsite audit scheduled after the first 5 days of the month, unless the pharmacist consents to an earlier audit date.

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[14] S. 465.188(1)(d), F.S.
[15] S. 465.188(1)(e), F.S.
[16] S. 465.188(1)(f), F.S.
[17] S. 465.188(1)(g), F.S.
[18] S. 465.188(1)(h), F.S.
[19] S. 465.188(1)(i), F.S.
[20] S. 465.188(1)(j), F.S.
[21] Id.
[22] S. 465.188(1)(k), F.S.
[23] S. 465.188(2), F.S.
[24] Id.
[25] Id.
[26] S. 465.188(3) and (4), F.S.

- To limit the audit period to 24 months from the date a claim was submitted to or adjudicated by the entity conducting the audit.
- To have an audit which requires clinical or professional judgment conducted by or in consultation with a pharmacist.
- To use the records of a hospital or authorized practitioner to validate a pharmacy record.
- To be reimbursed for a claim that was retroactively denied for a clerical, scrivener's, typographical, or computer error if the patient received the correct medication, dose, and instructions for administration, unless a pattern of errors exists or fraud is alleged.
- To receive a preliminary audit report within 90 days after completion of the audit.
- To produce documentation to challenge a discrepancy or finding within 10 days after the preliminary audit report is delivered to the pharmacy.
- To receive the final audit report within 6 months of receiving the preliminary audit report.
- To have penalties and recoupments based on actual overpayments.

The bill provides a civil cause of action to a pharmacy that is injured as a result of a willful violation of the "bill of right" outlined in the bill. In addition, the pharmacy may seek treble damages and reasonable attorney fees and costs through the civil cause of action.

The "bill of rights" does not apply to audits in which fraud is suspected or to audits of Medicaid fee-for-service claims, which are governed by s. 465.188, F.S. The bill will apply to managed care plans under contract with the state to provide Medicaid services.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Creates s. 465.1885, F.S., relating to pharmacy audit bill of right.
Section 2: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to AHCA, the bill will not have a direct impact on the Medicaid Program Integrity (MPI) office within AHCA. Under the Statewide Medicaid Managed Care (SMMC) program, MPI will not directly audit pharmacy claims of those providers that contract with MMA plans. In addition, the FFS Medicaid audits or investigation of potential fraudulent claims by the agency is specifically exempted.[27]

   AHCA is required to pay actuarially sound, risk-adjusted rates to managed care plans participating in the MMA program. The bill may impact the prescription drug benefit offered by the MMA plans; however, the impact is indeterminate, but likely insignificant.

   As part of the State Group Insurance Program, the Department of Management Services contracts with a PBM for the State Employees' Prescription Drug Plan. Limiting the audit to a 24-month look

[27] HB 745, Agency Legislative Bill Analysis, Agency for Health Care Administration, February 10, 2014 (on file with Health Care Appropriations Subcommittee).

back period could result in a loss of recouped claims for the trust fund; however, this would have an insignificant, negative, indeterminate impact to the State Employees' Health Insurance Trust Fund.[28]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may limit the ability of managed care organizations, insurance companies, and other third party payors to recoup funds that may have been paid in error to pharmacies.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable. The bill does not require rule-making.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[28] Agency Legislative Bill Analysis, Department of Management Services, March 27, 2014 (on file with Health Care Appropriations Subcommittee).

A bill to be entitled

An act relating to pharmacy audits; creating s. 465.1885, F.S.; providing rights to which a licensed pharmacy is entitled during certain audits of its records; providing for civil damages; providing for applicability; providing an effective date.

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

Section 1. Section 465.1885, Florida Statutes, is created to read:

465.1885 Pharmacy audit bill of rights.—

(1) When an audit of the records of a pharmacy licensed under this chapter is conducted either directly or indirectly by a managed care company, an insurance company, a third-party payor, a pharmacy benefit manager, or any entity that represents responsible parties such as companies or groups, the pharmacy has the following rights:

(a) To be notified at least 7 calendar days before the initial onsite audit for each audit cycle.

(b) To have the onsite audit scheduled after the first 5 calendar days of a month, unless the pharmacist otherwise consents.

(c) To have the audit period limited to 24 months from the date that a claim was submitted to or adjudicated by the entity conducting the audit.

(d) To have an audit that requires clinical or professional judgment conducted by or in consultation with a pharmacist.

(e) To use records of a hospital, physician, or other authorized practitioner, which are transmitted by any means of communication, to validate the pharmacy record.

(f) To be reimbursed for a claim that is retroactively denied for a clerical error, typographical error, scrivener's error, or computer error if the prescription was properly and correctly dispensed, unless a pattern of such errors exists or fraudulent billing is alleged.

(g) To receive the preliminary audit report within 90 days after the audit is completed.

(h) To produce documentation to address a discrepancy or finding in an audit within 10 business days after the preliminary audit report is delivered to the pharmacy.

(i) To receive the final audit report within 6 months after receiving the preliminary audit report.

(j) To have recoupment or penalties based on actual overpayments.

(2) A pharmacy injured as a result of a willful violation of subsection (1) shall have a civil cause of action for treble damages, reasonable attorney fees, and costs.

(3) The rights contained in this section do not apply to audits in which fraudulent activity is suspected or to audits related to Medicaid fee-for-service claims.

Section 2. This act shall take effect July 1, 2014.

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 Cummings offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 465.1885, Florida Statutes, is created to read:

465.1885 Pharmacy audits; rights.—

(1) If an audit of the records of a pharmacy licensed under this chapter is conducted directly or indirectly by a managed care company, an insurance company, a third-party payor, a pharmacy benefit manager, or an entity that represents responsible parties such as companies or groups, referred to as an "entity" in this section, the pharmacy has the following rights:

(a) To be notified at least 7 calendar days before the initial on-site audit for each audit cycle.

(b) To have the on-site audit scheduled after the first 3 calendar days of a month unless the pharmacist consents otherwise.

(c) To have the audit period limited to 24 months after the date a claim is submitted to or adjudicated by the entity.

(d) To have an audit that requires clinical or professional judgment conducted by or in consultation with a pharmacist.

(e) To use the written and verifiable records of a hospital, physician, or other authorized practitioner, which are transmitted by any means of communication, to validate the pharmacy records in accordance with state and federal law.

(f) To be reimbursed for a claim that was retroactively denied for a clerical error, typographical error, scrivener's error, or computer error if the prescription was properly and correctly dispensed, unless a pattern of such errors exists, fraudulent billing is alleged, or the error results in actual financial loss to the entity.

(g) To receive the preliminary audit report within 120 days after the conclusion of the audit.

(h) To produce documentation to address a discrepancy or audit finding within 10 business days after the preliminary audit report is delivered to the pharmacy.

(i) To receive the final audit report within 6 months after receiving the preliminary audit report.

(j) To have recoupment or penalties based on actual overpayments and not according to the accounting practice of extrapolation.

(2) The rights contained in this section do not apply to:

(a) Audits in which suspected fraudulent activity or other intentional or wilful misrepresentation is evidenced by a physical review, review of claims data or statements, or other investigative methods;

(b) Audits of claims paid for by federally funded programs;

or

(c) Concurrent reviews or desk audits that occur within 3 business days of transmission of a claim and where no chargeback or recoupment is demanded.

(3) An entity that audits a pharmacy located within a Health Care Fraud Prevention and Enforcement Action Team (HEAT) Task Force area designated by the United States Department of Health and Human Services and the United States Department of Justice may dispense with the notice requirements of paragraph (1)(a) if such pharmacy has been a member of a credentialed provider network for less than 12 months.

Section 2. This act shall take effect October 1, 2014.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to pharmacy audits; creating s. 465.1885, F.S.; enumerating the rights of pharmacies relating to audits of pharmaceutical services which are conducted by certain entities; providing a list of audits not subject to such rights; providing an exemption from the right to notice of an on-site audit under certain circumstances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 803 Communications Services Tax
SPONSOR(S): Finance & Tax Subcommittee, Boyd and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 898

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee	18 Y, 0 N, As CS	Flieger	Langston
2) Appropriations Committee		Hawkins	Leznoff

SUMMARY ANALYSIS

The bill amends s. 202.11(5), F.S., to add to the definition of "information services," data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information. This has the effect of clarifying that such services are excluded from the definition of communications services and are not subject to state and local communications services taxes.

The bill has no fiscal impact.

The bill has effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 202, F.S., imposes a communications services tax on "retail sales of communications services which originate and terminate in Florida, or originate or terminate in Florida and are billed to a Florida address."[1] Communication services include telecommunications, cable, direct-to-home satellite, and related services.[2] Generally, the communication services tax includes a state tax rate of 6.65 percent and a gross receipts tax rate of 2.52 percent for a combined rate of 9.17 percent.[3] In addition, local governments impose a local tax rate of up to 7.12 percent.[4]

The communications services tax is applied to the retail sales price of each taxable communications service for the purpose of remitting the tax due.[5] The term "sales price" is defined to mean the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other service which is part of the sale and for which the charge is not separately itemized on a customer's bill.[6]

Communications services are defined by s. 202.11(1), F.S., as "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance." That section excludes the following from the definition:

- Information services.
- Installation or maintenance of wiring or equipment on a customer's premises.
- The sale or rental of tangible personal property.
- The sale of advertising, including, but not limited to, directory advertising.
- Bad check charges.
- Late payment charges.
- Billing and collection services.
- Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

"Information services" are defined by s. 202.11(5), F.S. as, "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including, but not limited to, electronic publishing, web-hosting service, and end-user 900 number service." The term does not include video service.

Proposed Changes

The bill amends s. 202.11(5), F.S., to add to the definition of "information services," data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the

[1] Florida Revenue Estimating Conference, 2014 Florida Tax Handbook, 55.
[2] Chapter 202, F.S.
[3] See ss. 202.12(1)(a) and 203.01(1)(b), F.S. The gross receipts tax is 2.37 percent, plus an additional 0.15 percent for certain services. Local, long distance, and toll telephone services sold to a residential household are exempt from the 6.65 percent state tax and 0.15 percent gross receipts tax.
[4] Section 202.19, F.S.
[5] Section 202.12, F.S.
[6] Section 202.11(13), F.S.

underlying transaction is the processed data or information. This has the effect of clarifying that such services are excluded from the definition of communications services and are not subject to state and local communications services taxes.

B. SECTION DIRECTORY:

Section 1. Amending s. 202.11, F.S., revising a definition

Section 2. Providing an effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, the Finance and Tax Subcommittee adopted a strike-all amendment removing the filed bill's revision of the definition of "sales price" and replacing it with a revision to the definition of "information services." This analysis is drafted to the committee substitute.

A bill to be entitled

An act relating to the communications services tax; amending s. 202.11, F.S.; revising the definition of the term "information service" to include certain data processing and other services for purposes of the communications services tax; providing retroactive applicability and construction; providing an effective date.

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

Section 1. Subsection (5) of section 202.11, Florida Statutes, is amended to read:

202.11 Definitions.—As used in this chapter, the term:

(5) "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including, but not limited to, electronic publishing, web-hosting service, and end-user 900 number service. The term includes data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information. The term does not include video service.

Section 2. The amendments made by this act are intended to

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

be remedial in nature and apply retroactively but do not provide a basis for an assessment of any tax not paid, or create a right to a refund or credit of any tax paid, before the effective date of this act.

Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 811 Foreign Investments
SPONSOR(S): Government Operations Subcommittee; Hager
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 948

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	9 Y, 1 N, As CS	Harrington	Williamson
2) Appropriations Committee		Delaney JHD	Leznoff

SUMMARY ANALYSIS

The State Board of Administration (SBA) has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and FRS Investment Plan, which represents approximately $152 billion, or 85 percent, of the $177 billion in assets which are managed by the SBA. The SBA's ability to invest the FRS assets is governed by a "legal list" of the types of investments and the total percentage of funds that may be invested in each type. Currently, the SBA may invest up to 35 percent of any of its funds in foreign corporate securities and obligations.

The Protecting Florida's Investment Act (PFIA) requires the SBA to identify and divest from assets in foreign companies doing business in Iran and Sudan. The PFIA requires the SBA to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list, the SBA and its investment managers are prohibited from acquiring those companies' securities and are required to divest those securities if the companies on the list do not cease the prohibited activities or take certain compensating actions involving petroleum or energy, oil or mineral extraction, power production, or military support activities.

The bill modifies the PFIA to provide that SBA investments in exchange-traded funds will not be subject to divestiture requirements. It also makes terminology changes to reflect that South Sudan is now an independent nation. The bill allows the SBA to invest up to 50 percent of any of its funds in foreign corporate securities and obligations.

The bill requires a domestic insurer to report to the Office of Insurance Regulation, on a quarterly basis, a list of investments the insurer has in companies included on the SBA's Scrutinized Companies list.

The bill has no fiscal impact on the state.

The effective date of the bill is July 1, 2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida State Pension Funds and Annuities

State Board of Administration

The State Board of Administration (SBA or board) is created in s. 4(e), Art. IV of the State Constitution. The Governor, the Chief Financial Officer, and the Attorney General are the trustees. The SBA derives its powers to oversee state funds from s. 9, Art. XII of the State Constitution.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and FRS Investment Plan,[1] which represents approximately $152 billion, or 85 percent, of the $177 billion in assets which are managed by the SBA.[2] The SBA also manages over 30 other investment portfolios, with combined assets of $25 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.[3]

Investments

Investment decisions for the pension plan are made by fiduciaries hired by the state. Under Florida law, an SBA fiduciary charged with an investment decision must act as a prudent expert would under similar circumstances, taking into account all relevant substantive factors. A nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures.[4]

The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides a "legal list" of the types of investments and the total percentage that may be invested in each type. Some "legal list" guidelines specific to the pension plan provide:

- No more than 80 percent of assets should be invested in domestic common stocks.
- No more than 75 percent of assets should be invested in internally managed common stocks.
- No more than 3 percent of equity assets should be invested in the equity securities of any one corporation, except to the extent a higher percentage of the same issue is included in a nationally recognized market index, based on market values, or except upon a specific finding by the board that such higher percentage is in the best interest of the fund.
- No more than 25 percent of assets should be invested in notes issued by FHA-insured or VA-guaranteed first mortgages on real property, or foreign government general obligations.
- No more than 35 percent of assets should be invested in foreign corporate or commercial securities or obligations.
- No more than 20 percent of assets should be invested in alternative investments.

Exchange-Traded Funds

Exchange-traded funds (ETFs) are a type of investment product. ETFs offer investors a way to pool their money in a fund that makes investments in stocks, bonds, or other assets and, in return, to receive an interest in that investment pool. Unlike mutual funds, ETF shares are traded on a national

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[1] Members in the FRS may elect to participate in the pension plan, which is a defined benefit plan, or the investment plan, which is a defined contribution plan.

[2] *Quarterly Performance Report to the Trustees*, December 31, 2013, State Board of Administration. A copy of the report can be found online at: http://www.sbafla.com/fsb/PerformanceReports/2013QuarterlyReporttoTrustees/tabid/1481/Default.aspx (last visited March 15, 2014).

[3] *Monthly Performance Report to the Trustees, Performance through November 30, 2013*, State Board of Administration, issued January 13, 2014. A copy of the report can be found online at: http://www.sbafla.com/fsb/PerformanceReports/2013MonthlyReporttoTrustees/tabid/1480/Default.aspx (last visited March 15, 2014).

[4] Section 215.444, F.S.

stock exchange and at market prices that may or may not be the same as the net asset value of the shares.[5]

State Sponsors of Terrorism

Countries which are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as "State Sponsors of Terrorism" and are subject to sanctions under the Export Administration Act, the Arms Export Control Act, and the Foreign Assistance Act.[6] The four main categories of sanctions resulting from designations under these acts are: restrictions on U.S. foreign assistance, a ban on defense exports and sales, certain controls over exports of dual use items, and miscellaneous financial and other restrictions.

The four countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Cuba, Iran, Sudan, and Syria.[7]

Divestment of Securities

Divestment of securities is one method of applying economic pressures to companies, groups, or countries whose practices are not condoned by shareholders. Divestment may be used in conjunction with or in lieu of other sanctioning methods, such as economic embargoes and diplomatic and military activities. Alternatively, divestment may be used as a protective device if a particular investment carries a high level of risk to the performance of the fund.

Federal Divestment Laws

The Sudan Accountability and Divestment Act of 2007 (SADA) authorizes states to divest – within specified boundaries – from companies that do business in Sudan. SADA provides in pertinent part:

> Authority to Divest—Notwithstanding any other provision of law, a State or local government may adopt and enforce measures that meet the requirements of subsection (e) to divest the assets of the State or local government from, or prohibit investment of the assets of the State or local government in, persons that the State or local government determines, using credible information available to the public, are conducting or have direct investments in business operations described in subsection (d).

The authority of states to divest is limited to companies with business operations in Sudan and to companies with operations in four specified industries: power production activities, mineral extraction activities, oil-related activities, or the production of military equipment. SADA contains other limitations on the divestment of state funds.[8] Additionally, the authority to divest ends 30 days after the President certifies that Sudan has met certain conditions assuring peace and safety for civilian populations.

Similar divestment policy is found in the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA). Title II of CISADA pertains to the divestment from certain companies that invest in Iran. Identical authority for states to divest state funds, as found in SADA, is found in s. 202(b). CISADA prohibits investments in Iran relating to specified amounts invested in the energy sector, including oil and natural gas production. CISADA requires the state or local government to provide notice and opportunity for a hearing.

State Divestment Laws

The state has practiced divestment three times in modern history. From 1986 to 1993, the Legislature directed the SBA to divest of companies doing business with South Africa. From 1997 until 2001, the

[5] More information about ETFs can be found online at: http://www.nasdaq.com/investing/etfs/what-are-ETFs.aspx (last visited March 15, 2014).

[6] U.S. Department of State, Diplomacy in Action can be found online at: http://www.state.gov/j/ct/list/c14151.htm (last visited March 15, 2014).

[7] *Id.*

[8] *See* SADA s. 3(d)(2), (e), and (f).

SBA made a decision to divest of 16 tobacco stocks due to pending litigation involving the state and those companies. In 2007, the Legislature unanimously passed the Protecting Florida's Investment Act (PFIA), which required the SBA to divest of companies with certain business operations in the countries of Sudan or Iran. The PFIA requires the SBA to assemble and publish a list of "Scrutinized Companies"[9] that have prohibited business operations in Sudan and Iran. Once placed on the list, the SBA and its investment managers are prohibited from acquiring those companies' securities and are required to divest those securities if the companies on the list do not cease the prohibited activities or take certain compensating actions involving petroleum or energy, oil or mineral extraction, power production, or military support activities.

Sudan and South Sudan

Sudan was engaged in a civil war between north and south Sudan until 2005 when a Comprehensive Peace Agreement was signed. Southern Sudan was granted a six-year period of autonomy to be followed by a referendum on independence. That referendum was held in January 2011, and resulted in a vote in favor of succession from Sudan. The southern region attained independence on July 9, 2011.[10] As a result, the PFIA contains references to Sudan that are now inaccurate.

Office of Insurance Regulation

The Financial Services Commission (commission) is created within the Department of Financial Services, and is comprised of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The Office of Insurance Regulation, within the commission, is responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision.[11] Chapter 625, F.S., governs accounting, investments, and deposits by insurers and specifies the assets that are allowed and not allowed for purposes of determining the financial condition of an insurer. Insurer is defined as "every person

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[9] Section 215.473(1)(t), F.S., defines "Scrutinized Company" as any company that meets any of the following criteria:

1. The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan , and:

a. More than 10 percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral-extraction activities; less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral-extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action; or

b. More than 10 percent of the company's revenues or assets linked to Sudan involve power-production activities; less than 75 percent of the company's power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action.

2. The company is complicit in the Darfur genocide.

3. The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

4. The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran, or companies involved in consortiums or projects commissioned by the government of Iran and:

a. More than 10 percent of the company's total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities; and the company has failed to take substantial action; or

b. The company has, with actual knowledge, on or after August 5, 1996, made an investment of $20 million or more, or any combination of investments of at least $10 million each, which in the aggregate equals or exceeds $20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

[10] More information can be found on the CIA World Factbook, located online at: https://www.cia.gov/library/publications/the-world-factbook/geos/od.html (last visited March 13, 2014).

[11] Section 20.121(3)(a), F.S.

engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity."[12]

Chapter 625, F.S., provides for the calculation of assets to determine the financial condition of an insurer. Section 625.012, F.S., provides for certain allowable assets, which include cash, investments, interest, and premiums due. Section 625.031, F.S., provides a list of assets that are not allowed, including trade names, patents, advances to officers or employees, and furniture and fixtures.

Effect of Proposed Changes

The bill amends current law to allow the SBA to invest up to 50 percent of any of its funds in foreign corporate securities and obligations, which is an increase from the current maximum of 35 percent.

The bill changes references to Sudan to reflect Sudan and South Sudan.

The bill provides that SBA investments in exchange-traded funds are not subject to the divestiture requirements.

The bill creates s. 624.449, F.S., relating to insurers invested in companies doing business in Sudan and Iran. It requires a domestic insurer to report a list of investments that the insurer has in companies included on the Scrutinized Companies with Activities in Sudan List or Scrutinized Companies with Activities in Iran Petroleum Energy Sector List. The list must be reported quarterly to the Office of Insurance Regulation.

The bill provides that the invalidation of any one provision of the act does not affect other provisions that could still be given legal effect.

B. SECTION DIRECTORY:

Section 1. amends s. 215.47, F.S., revising the percentage of investments that the SBA may invest in foreign securities.

Section 2. amends s. 215.473, F.S., revising and providing definitions with respect to requirements that the board divest securities in which public moneys are invested in certain companies doing specified types of businesses in or with Sudan or Iran; revising exclusions from the divestment requirements; conforming cross-references.

Section 3. creates s. 624.449, F.S., requiring domestic insurers to report quarterly on specified investments to the Office of Insurance Regulation.

Section 4. provides severability.

Section 5. provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

[12] Section 624.03, F.S.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires domestic insurers to file quarterly reports to the Office of Insurance Regulation on certain investments imposing some administrative burden on those companies.

D. FISCAL COMMENTS:

The SBA noted that expanding the investment opportunities available by providing more flexibility to invest and manage global assets by increasing the permitted holdings of foreign investments from 35 to 50 percent could positively impact fund earnings. There is no fiscal impact on the SBA itself.

According to staff in the Office of Insurance Regulation the bill will have no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Federal Preemption

   While federal and state governments have their respective spheres of sovereignty, the United States Constitution, and laws made pursuant to it, is the supreme law of the United States.[13] State law may be expressly preempted if federal law explicitly prohibits any state action on a matter. State law also may be preempted by implication if either the federal government has expressed intent to restrict regulation of a certain field to the federal level, or if a state law conflicts with a federal law.[14]

   In *American Insurance Ass'n v. Garamendi*, the Supreme Court invalidated a Holocaust Victim Insurance Relief Act in California, which required insurers to disclose information about all policies sold in Europe between certain years as a violation of Presidential preemption.[15] The court reasoned that executive power includes the power to conduct foreign affairs on behalf of the nation and applied a two-prong test to justify preemption: whether an express federal law was in place at the time state law was enacted, and whether the conflict between the two was sufficient to permit preemption of the state law.

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[13] Article VI, cl. 2, U.S. Constitution.

[14] *State v. Harden*, 938 So.2d 480, 485 (Fla. 2006) (stating that "[u]nder the Supremacy Clause, a federal law may expressly or impliedly preempt state law. A state cannot assert jurisdiction where Congress clearly intended to preempt a field of law.") *citing Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311 (1981).

[15] 539 U.S. 396 (2003).

The federal government has expressed foreign policy concerning Iran and Sudan through CISADA and SADA, which authorizes states to divest in certain circumstances. A reviewing court may find that the bill is preempted under the United States Constitution if it finds the requirement that domestic insurers report on specified assets conflicts with the federal policy, or if the court determines the federal policies are intended to regulate the field of sanctions against Iran and Sudan.

Dormant Foreign Affairs Doctrine

The United States Constitution grants the federal government various powers related to foreign affairs, such as the power to declare war,[16] maintain a military,[17] enter into treaties and other international agreements,[18] regulate foreign commerce,[19] and to hear cases involving foreign states and citizens.[20] These grants of power have been interpreted to grant the federal government the exclusive power to act in the area of foreign affairs.[21] The federal government's exclusive authority to act in the area of foreign affairs is known as the dormant foreign affairs doctrine.

When a state law operates in the field of foreign affairs without federal authorization, a reviewing court might find the state law to be invalid as a violation of the dormant foreign affairs doctrine.[22] If the purpose of the bill is to impact foreign affairs,[23] or if the effects of the bill have a sufficiently serious impact on foreign policy,[24] the bill may be found in violation of the dormant foreign affairs doctrine.[25]

Case law indicates that in the absence of federal authority authorizing a restriction on foreign commerce, state laws may be preempted by the dormant federal foreign affairs powers. In 2000, the United States Supreme Court unanimously held in *Crosby v. National Foreign Trade Council* that a Massachusetts law restricting state transactions with firms doing business in Burma was preempted by a federal Burma statute.[26] The Court noted that the state law penalized private action differently than the federal law, which results in an "unyielding application" that compromises the President's authority over foreign affairs. Without control, the "President has less to offer and less economic and diplomatic leverage" when utilizing the coercive powers of the national economy.[27]

The federal government has expressly given state and local governments the authority to divest from companies directly invested in certain Sudanese and Iranian sectors. A reviewing court may

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[16] Section 8, Art. I, U.S. Constitution.
[17] *Id.*
[18] Section 2, Art. II, U.S. Constitution.
[19] Section 8, Art. I, U.S. Constitution.
[20] Section 2, Art. III, U.S. Constitution.
[21] *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (stating that the "Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties.").
[22] *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003).
[23] *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 381 (2000) (pointing out that a congressional invocation of exclusively national powers with respect to addressing human rights violations in Burma precluded Massachusetts from restricting its agencies from purchasing goods or services from companies that did business with Burma; the case, however, was decided on the basis that a federal law preempted the state law.).
[24] *Clark v. Allen*, 331 U.S. 503, 517-518 (1947) (finding a state law that addressed the disposition of personal property of alien decedents valid, in spite of noting that the law would "have some incidental or indirect effect in foreign countries."); *Zschernig v. Miller*, 389 U.S. 429 (1968).
[25] Matthew Shaefer, *Constraints on State-Level Foreign Policy: (Re) Justifying, Refining, and Distinguishing the Dormant Foreign Affairs Doctrine*, 41 SETON HALL L. REV. 201, 237-239 (2011).
[26] 530 U.S. 363 (2003). *But see Faculty Senate of Fla. Int'l Univ. v. Winn*, 616 F.3d 1206 (11th Cir. 2010)(upholding a Florida law that prohibited state and nonstate university funding to be used on activities related to travel to a "terrorist state" as designated by the United States Department of State. The 11th Circuit distinguished the case from *Crosby* by stating that the travel act did not name a specific country and did not penalize or prohibit anyone from traveling to any place. Instead, the Florida law established how funds would be used to facilitate university travel.).
[27] *Crosby*. at 377.

determine that requiring domestic insurers to report on specified foreign assets may be preempting foreign affairs policy. "Courts have consistently struck down state laws which purport to regulate an area of traditional state competence, but in fact, affect foreign affairs."[28]

Dormant Foreign Commerce Clause

The Commerce Clause authorizes Congress to regulate foreign and interstate commerce. Under judicial construction, it also has dormant or negative aspects that limit state interference with foreign and interstate commerce even in the absence of Congressional action.

The U.S. District of the Northern District of Illinois, Eastern Division, ruled that Illinois legislation that required broad divestment in the banking sector, as well as prohibitions in state and local pension funds, was unconstitutional in violation of the foreign commerce clause of the United States Constitution.[29] The court denied the defendant's assertion that the state was merely acting as a market participant because the divestment policy impacted more than just the state.

Single Subject

Article III, s. 6 of the State Constitution provides that "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." The single subject clause contains three requirements: that each law embrace only one subject, that the law may include any matter that is properly connected with the subject, and that the subject be briefly expressed in the title.[30] The single subject must be derived from the short title. "A connection between a provision [in the act] and the subject is proper (1) if the connection is natural or logical, or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject."[31]

The short title of this bill is "[a]n act relating to foreign investments," and the bill contains provisions relating to the proportion of funds that the SBA may invest in foreign securities, provisions pertaining to the divestment of SBA funds in ETFs, and regulatory requirements for insurers with investments in scrutinized companies. If the bill was challenged as a violation of the single subject provision of the State Constitution, a court would apply a highly deferential standard of review.[32]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The amendment:

- Maintained current law definitions for "business operations" and "company;"
- Required a domestic insurer to report only certain investments to the Office of Insurance Regulation; and

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[28] *Movsesian v. Versicherung AG*, 670 F.3d 1067, 1074 (9th Cir. 2012); *quoting Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 964 (9th Cir. 2010); *see also American Insurance Association v. Garamedndi*, 539 U.S. 396 (2003); *Crosby v. National Foreign Affairs Trade Council*, 530 U.S. 363, 373 (2000); *Zschernig v. Miller*, 389 U.S. 429, 437-38 (1968).

[29] *National Foreign Trade Council, Inc. v. Giannoulias,* 523 F.Supp.2d 731 (N.D. Ill 2007). The court noted that even though the state law appeared to have good motives, the law violated federal constitutional provisions, which preclude states from taking action that may interfere with the President's authority over foreign affairs and commerce with foreign countries.

[30] *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2004).

[31] *Id.* at 1078.

[32] *Id.* at 1073.

- Removed the requirement that the domestic insurer divest of such investments within a specified period of time.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

A bill to be entitled

An act relating to foreign investments; amending s. 215.47, F.S.; revising the percentage of investments that the State Board of Administration may invest in foreign securities; amending s. 215.473, F.S.; revising and providing definitions with respect to requirements that the board divest securities in which public moneys are invested in certain companies doing specified types of business in or with Sudan or Iran; revising exclusions from the divestment requirements; conforming cross-references; creating s. 624.449, F.S.; requiring domestic insurers to report quarterly on specified investments to the Office of Insurance Regulation; providing severability; providing an effective date.

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

Section 1. Subsection (20) of section 215.47, Florida Statutes, is amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(20) Notwithstanding the provisions in subsection (5)

limiting such investments to 25 percent of any fund, the board may invest up to 50 ~~no more than 35~~ percent of any fund in corporate obligations and securities of any kind of a foreign corporation or a foreign commercial entity having its principal office located in any country other than the United States or its possessions or territories, not including United States dollar-denominated securities listed and traded on a United States exchange that are a part of the ordinary investment strategy of the board.

Section 2. Subsections (1) and (2), paragraph (e) of subsection (3), and subsection (5) of section 215.473, Florida Statutes, are amended to read:

215.473 Divestiture by the State Board of Administration; Sudan; Iran.—

(1) DEFINITIONS.—As used in this section ~~act~~, the term:

(a) "Active business operations" means all business operations that are not inactive business operations.

(b) "Business operations" means engaging in commerce in any form in Sudan or Iran, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(c) "Company" means a ~~any~~ sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership,

limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit.

(d) "Complicit" means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur, including~~, but not limited to,~~ preventing Darfur's victimized population from communicating with each other; encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur; actively working to deny, cover up, or alter the record on human rights abuses in Darfur; or other similar actions.

(e) "Direct holdings" in a company means all securities of that company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

(f) "Government of Iran" means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

(g) "Government of South Sudan" means the Republic of South Sudan that has its capital in Juba, South Sudan.

(h)~~(g)~~ "Government of Sudan" means the Republic of the Sudan that has its capital ~~government~~ in Khartoum, Sudan~~, that is led by the National Congress Party, formerly known as the National Islamic Front, or any successor government formed on or~~

~~after October 13, 2006, including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan, and does not include the regional government of southern Sudan~~.

(i) ~~(h)~~ "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(j) ~~(i)~~ "Indirect holdings" in a company means all securities of that company that are held in a commingled ~~an account or~~ fund or other collective investment, such as a mutual fund, ~~managed by one or more persons not employed by the public fund,~~ in which the public fund owns shares or interests together with other investors not subject to ~~the provisions of~~ this section ~~act~~.

(k) ~~(j)~~ "Iran" means the Islamic Republic of Iran.

(l) ~~(k)~~ "Marginalized populations of Sudan" include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of South ~~southern~~ Sudan victimized by Sudan's north-south civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(m) ~~(l)~~ "Military equipment" means weapons, arms, military

supplies, and equipment that may readily be used for military purposes, including, but not limited to, radar systems, military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(n) ~~(m)~~ "Mineral-extraction activities" include the exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including providing supplies or services in support of such activities.

(o) ~~(n)~~ "Oil-related activities" include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including providing supplies or services in support of such activities, except that the mere retail sale of gasoline and related consumer products is not considered an oil-related activity.

(p) ~~(o)~~ "Petroleum resources" means petroleum, petroleum byproducts, or natural gas.

(q) ~~(p)~~ "Power-production activities" means any business operation that involves a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar entity

of the government of Sudan whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including providing supplies or services in support of such activities.

(r) ~~(q)~~ "Public fund" means all funds, assets, trustee, and other designates under the State Board of Administration pursuant to chapter 121.

(s) ~~(r)~~ "Scrutinized active business operations" means active business operations that result ~~have resulted~~ in a company becoming a scrutinized company.

(t) ~~(s)~~ "Scrutinized business operations" means business operations that result ~~have resulted~~ in a company becoming a scrutinized company.

(u) ~~(t)~~ "Scrutinized company" means a ~~any~~ company that meets any of the following criteria:

1. The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has a ~~any~~ direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan, and:

a. More than 10 percent of the company's revenues or

assets linked to Sudan involve oil-related activities or mineral-extraction activities; less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral-extracting products or services to the ~~regional~~ government of South ~~southern~~ Sudan ~~or a project or consortium created exclusively by that regional government~~; and the company has failed to take substantial action; or

b. More than 10 percent of the company's revenues or assets linked to Sudan involve power-production activities; less than 75 percent of the company's power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action.

2. The company is complicit in the Darfur genocide.

3. The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the ~~regional~~ government of South ~~southern~~ Sudan or any internationally recognized peacekeeping

force or humanitarian organization.

4. The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran, or companies involved in consortiums or projects commissioned by the government of Iran and:

a. More than 10 percent of the company's total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities, ~~;~~ and the company has failed to take substantial action; or

b. The company has, with actual knowledge, on or after August 5, 1996, made an investment of $20 million or more, or any combination of investments of at least $10 million each, which in the aggregate equals or exceeds $20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

(v) ~~(u)~~ "Social-development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment; agricultural supplies or infrastructure; educational opportunities; journalism-related activities; information or information materials; spiritual-related activities; services of a purely clerical or reporting nature; food, clothing, or general

consumer goods that are unrelated to oil-related activities; mineral-extraction activities; or power-production activities.

(w) ~~(v)~~ "Substantial action specific to Iran" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from ~~any~~ such new business operations.

(x) ~~(w)~~ "Substantial action specific to Sudan" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from ~~any~~ such new business operations; undertaking humanitarian efforts in conjunction with an international organization, the government of Sudan, the ~~regional~~ government of South ~~southern~~ Sudan, or a nonprofit entity evaluated and certified by an independent third party to be substantially in a relationship to the company's Sudan business operations and of benefit to one or more marginalized populations of Sudan; or, through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

(2) IDENTIFICATION OF COMPANIES.—

(a) Within 90 days after June 8, 2007 ~~the effective date of this act~~, the public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future. Such efforts include:

1. Reviewing and relying, as appropriate in the public fund's judgment, on publicly available information regarding

companies having business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

2. Contacting asset managers contracted by the public fund which ~~that~~ invest in companies having business operations in Sudan; or

3. Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

4. Reviewing the laws of the United States regarding the levels of business activity that would cause application of sanctions for companies conducting business or investing in countries that are designated state sponsors of terror.

(b) By the first meeting of the public fund following the 90-day period described in paragraph (a), the public fund shall assemble all scrutinized companies that fit criteria specified in subparagraphs (1)(u)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ into a "Scrutinized Companies with Activities in Sudan List" and ~~shall assemble~~ all scrutinized companies that fit criteria specified in subparagraph (1)(u)4. ~~(1)(t)4.~~ into a "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List."

(c) The public fund shall update and make publicly available quarterly the Scrutinized Companies with Activities in Sudan List and the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List based on evolving information

from, among other sources, those listed in paragraph (a).

(d) Notwithstanding the provisions of this section ~~act~~, a social-development company that is not complicit in the Darfur genocide is not considered a scrutinized company under subparagraph (1)(u)1. ~~(1)(t)1.~~, subparagraph (1)(u)2. ~~(1)(t)2.~~, or subparagraph (1)(u)3 ~~(1)(t)3~~.

(3) REQUIRED ACTIONS.—The public fund shall adhere to the following procedure for assembling companies on the Scrutinized Companies with Activities in Sudan List and the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

(e) Excluded securities.—

1. Notwithstanding the provisions of this section ~~act~~, paragraphs (b) and (c) do not apply to indirect holdings in actively managed investment funds. However, the public fund shall submit letters to the managers of such investment funds containing companies that have scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively managed fund having indirect holdings devoid of such companies. If the manager creates a similar fund, the public fund shall replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards. For the purposes of this section, a private equity fund is deemed to be an actively managed investment fund.

2. Notwithstanding the provisions of this section,

paragraphs (b) and (c) do not apply to exchange-traded funds.

(5) EXPIRATION.—This section ~~act~~ expires upon the occurrence of all of the following:

(a) If any of the following occur, the public fund shall no longer scrutinize companies according to subparagraphs (1)(u)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ and shall no longer assemble the Scrutinized Companies with Activities in Sudan List, shall cease engagement and divestment of such companies, and may reinvest in such companies if ~~as long as~~ such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

1. The Congress or President of the United States, affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the Darfur genocide has been halted for at least 12 months;

2. The United States revokes all sanctions imposed against the government of Sudan;

3. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for

deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons; or

4. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this section ~~act~~ interferes with the conduct of United States foreign policy.

(b) If any of the following occur, the public fund shall no longer scrutinize companies according to subparagraph (1)(u)4. ~~(1)(t)4.~~ and shall no longer assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and shall cease engagement, investment prohibitions, and divestment. The public fund may reinvest in such companies if ~~as long as~~ such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in Sudan List:

1. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;

2. The United States revokes all sanctions imposed against the government of Iran; or

3. The Congress or President of the United States

affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this section ~~act~~ interferes with the conduct of United States foreign policy.

Section 3. Section 624.449, Florida Statutes, is created to read:

624.449 Insurer investment in foreign companies.—A domestic insurer must provide to the office on a quarterly basis a list of investments that the domestic insurer has in companies included on the Scrutinized Companies with Activities in Sudan List and the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List compiled by the State Board of Administration pursuant to s. 215.473. This list must include the name of the issuer and the stock, bond, security, and other evidence of indebtedness.

Section 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 5. This act shall take effect July 1, 2014.

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 Hager offered the following:

Amendment (with title amendment)

Remove lines 19-35

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

Remove lines 3-5 and insert:

215.473, F.S.;

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Appropriations Committee

Representative Hager offered the following:

Amendment (with title amendment)

Remove line 347 and insert:

domestic insurer must provide to the office on an annual basis

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

Remove line 12 and insert:

F.S.; requiring domestic insurers to report annually

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 979 Homelessness
SPONSOR(S): Economic Development & Tourism Subcommittee; Peters
TIED BILLS: **IDEN./SIM. BILLS:** SB 1090

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N, As CS	Duncan	West
2) Appropriations Committee		Proctor TP	Leznoff
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Office of Homelessness (Office) within the Department of Children and Families (DCF) is responsible for coordinating resources and programs that serve the homeless across all levels of government and with private providers. The Office also manages targeted state grants to support the implementation of local homeless service continuum of care (CoC) plans.

The Office, with the concurrence of the Homelessness Council, is authorized to accept and administer moneys appropriated to it to provide "Challenge Grants" annually to lead agencies for homeless assistance CoCs designated by the Office. The Department of Economic Opportunity (DEO) is required to secure the necessary expertise to provide training and technical assistance to local government and state agency staffs, community-based organizations, and to persons forming community-based organizations for the purpose of developing new housing or rehabilitating existing housing.

The bill modifies the training and technical assistance program under the Affordable Housing Planning and Community Assistance Act (Act), to provide that an acceptable use of the Act is to meet the needs of the homeless. The bill amends the Act to provide that training and technical assistance is available for designated lead agencies of homeless assistance CoCs to provide or secure housing and other services for the homeless and directs DEO to contract with a nonprofit entity to provide such training and technical assistance. The bill modifies qualifications and eligible activities for "Challenge Grants" administered by the Office.

The bill provides that the funding authorized pursuant to this act is subject to legislative appropriation, and has no direct impact to state or local government revenues.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State Office on Homelessness and the Council on Homelessness

In 2001, the Legislature established the State Office on Homelessness (Office) and the Council on Homelessness (Council) within the Department of Children and Families (DCF).[1] The Office's duties are based on the policies established by the Council and funding availability and include coordinating state, local, and private agencies and providers to produce a program and plan to meet the needs of persons who are experiencing homelessness. The Office also collects and disseminates data and public information, monitors and provides technical assistance to local coalitions, develops policy and legislative proposals, serves as an advocate for issues related to homelessness, and prepares an annual report and recommendations to the Legislature and Governor.[2]

The Council, which is required to develop policy and advise the Office, consists of 17 members representing state agencies, local governments, homeless advocacy organizations, and private entities. Council members are appointed for two-year terms and the Council is required to meet at least four times a year.[3]

Local Coalitions for the Homeless/Local Homeless Assistance Continuums of Care

A local CoC is a framework for a comprehensive and seamless array of emergency, transitional and permanent housing, and services to address the various needs of the homeless and those at risk of homelessness.[4] The purpose of a CoC is to help communities or regions envision, plan, and implement comprehensive and long-term solutions in a community or region.[5]

DCF interacts with the state's 28 CoCs through the Office, which serves as the state's central point of contact on homelessness. The Office has recognized and designated local entities to serve as lead agencies for local planning efforts to create homeless assistance CoC systems. The Office has made these designations in consultation with the local homeless coalitions and the Florida offices of the U.S. Department of Housing and Urban Development (HUD).

The CoC planning effort is an ongoing process that addresses all subpopulations of the homeless. Participation of all interested individuals and organizations is encouraged, including those who are or have been homeless. Faith-based organizations are encouraged to participate, along with state and regional offices that administer mainstream program resources such as Medicaid, food stamps, employment assistance, welfare assistance, and mental health services.[6]

The development of a local CoC plan is a prerequisite to applying for federal housing grants through HUD. The plan also makes a community eligible to compete for the state's "Challenge Grant" and Homeless Housing Assistance Grant.[7]

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[1] Section 10, ch. 2001-98, L.O.F., codified at s. 420.622, F.S.
[2] *See* s. 420.622(3) and (9), F.S.
[3] Section 420.622(2), F.S.
[4] Section 420.624(1), F.S.
[5] Section 420.624(2), F.S.
[6] Florida Department of Children and Families, Lead Agencies, *available at*: http://www.myflfamilies.com/service-programs/homelessness/lead-agencies) last accessed on February 8, 2014.
[7] *Id.*

Challenge Grant

The Office, with the concurrence of the Council, is authorized to accept and administer moneys appropriated to it to provide "Challenge Grants" annually to designated lead agencies for local homeless assistance CoCs. A lead agency may be a local homeless coalition, municipal or county government, public agency, or private, not-for-profit corporation. The Office may award grants in an amount of up to $500,000 per lead agency and eight percent of the grant award may be used for administrative expenses.[8] To qualify for the grant, a lead agency must develop and implement a local homeless assistance CoC plan for its designated catchment area.[9] Preference must be given to lead agencies that:[10]

- have demonstrated the ability of their CoC to provide quality of services to homeless persons and the ability to leverage federal homeless-assistance funding under the Stewart B. McKinney Act and private funding for services provided to homeless persons; and
- are located in catchment areas with the greatest need for housing and services to the homeless, relative to the population of the catchment area.

Homeless Housing Assistance Grant

The Office, with the concurrence of the Council, is authorized to accept and administer moneys appropriated to it to provide homeless housing assistance grants annually to lead agencies for local homeless assistance CoCs. The grants may not exceed $750,000 per project and an applicant may spend a maximum of five percent of its funding on administrative costs. The grant funds must be used to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons. The funds may be appropriated or donated from any public or private source.[11]

2013 Annual Report - Council on Homelessness[12]

In its 2013 Annual Report, the Council on Homelessness issued the following recommendations:

- The state should appropriate resources to the Florida Housing Finance Corporation to produce housing for households with extremely low income, homeless households, and persons with special needs.
- The state should continue recurring funding for local homeless coalitions and lead agencies sufficient to ensure capacity to secure federal resources targeted to reduce homelessness.
- The state should provide a flexible source of financial aid to local homeless coalitions and lead agencies to fund priority services and housing for the homeless.
- Prioritize a state pilot program to conduct a cost benefit analysis of providing affordable housing linked with support services for high utilizers of crisis services.

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC) operates as a public corporation within the Department of Economic Opportunity (DEO) and is the state's affordable housing finance agency.[13] The FHFC works to increase the supply of safe, affordable housing for households with very low to moderate incomes by stimulating the investment of private capital and encouraging public and private sector housing partnerships. The FHFC administers federal and state resources to finance the

[8] Section 420.622(4), F.S.
[9] *Id.*
[10] *Id.*
[11] Section 420.602(5), F.S.
[12] Department of Children and Families, Florida's Council on Homelessness, 2013 Report, June 2013, *available at* http://www.dcf.state.fl.us/programs/homelessness/docs/2013CouncilReport.pdf.
[13] The Florida Housing Finance Corporation is a separate budget entity and is not subject to the control, supervision, or direction of the Department of Economic Opportunity. *See* s. 420.504, F.S.

development and preservation of affordable homeowner and rental housing and assists homebuyers with financing and Down Payment Assistance.[14]

Affordable Housing – Training and Technical Assistance[15]

Training and Technical Assistance Program

The Legislature established the Training and Technical Assistance Program (Program) to provide community-based organizations and state and local government staff with the necessary training and technical assistance to meet the needs of very low- and low-income persons for standard affordable housing.[16]

The training component must be designed to build the housing development capacity of community-based organizations and local governments as a permanent resource for the benefit of communities in the state. Training activities may include workshops, seminars, and programs developed in conjunction with state universities and community colleges.[17]

The technical assistance component must be designed to assist applicants for state-administered programs in developing applications and in expediting project implementation. Technical assistance activities for the staffs of community-based organizations and local governments who are directly involved in the production of affordable housing may include workshops for program applicants, onsite visits, and guidance in achieving project completion.[18]

DEO is required to secure the necessary expertise to provide training and technical assistance to local government and state agency staffs, community-based organizations, and to persons forming community-based organizations for the purpose of developing new housing or rehabilitating existing housing. Such housing must be affordable for moderate income-, low- and very low-income persons.[19] To meet these requirements, DEO is authorized to:

- enter into contacts with the federal government or with other state agencies, local governments, or with any other person, association, or corporation, or entity;
- seek and accept funding from any public or private source; and
- adopt and enforce rules consistent with the Program.

Affordable Housing Catalyst Program

The FHFC is required to operate the Affordable Housing Catalyst Program (Catalyst Program) for the purpose of securing the expertise necessary to provide specialized technical support to local governments and community-based organizations to implement affordable housing programs such as the State Housing Initiatives Program (SHIP).[20] Providing affordable housing training and technical assistance must be the primary mission of the non-profit tax exempt entity selected by the FHFC. The entity must have the ability to provide training and technical assistance statewide and a proven track record of successfully providing training and technical assistance under the Catalyst Program. The technical support must, at a minimum, include training relating to the following key elements:[21]

- formulation of local and regional housing partnerships as a means of bringing together resources to provide affordable housing;

[14] *See* ss. 420.501-420.55, F.S., relating to the Florida Housing Finance Corporation.
[15] Sections 420.601, F.S. – 420.609, F.S., are known as the "Affordable Housing Planning and Community Assistance Act."
[16] Section 420.606(2), F.S.
[17] Section 420.606(3)(a), F.S.
[18] Section 420.606(3)(b), F.S.
[19] Section 420.606(3), F.S.
[20] Section 420.531, F.S.
[21] Section 420.531 (1)-(4), F.S.

- implementation of regulatory reforms to reduce the risk and cost of developing affordable housing;
- implementation of affordable housing programs included in local government comprehensive plans; and
- compliance with requirements of federally funded housing programs.

In 2004,[22] the Legislature transferred the Catalyst Program from the Department of Community Affairs[23] to the FHFC. According to the FHFC, in October 2004, the FHFC Board approved a three-year contract with the Florida Housing Coalition as the provider under the Catalyst Program. In subsequent years (2007, 2010, and 2013), the FHFC Board issued solicitations for new Catalyst Program contracts. In each of those three years, the Florida Housing Coalition was the only respondent and was awarded the contract each time.[24]

Effect of Proposed Changes

Training and Technical Assistance Program

The bill adds provisions to provide designated lead agencies of homeless CoCs with training and technical assistance to meet the needs of the homeless as a purpose of the Program.

DEO is directed to provide training and technical assistance to designated lead agencies of homeless assistance CoCs, which receive operating or other support from the SHIP Local Government Housing Trust Fund through DCF to provide or secure housing, programs, and other services for homeless persons. Such training and technical assistance must be provided by a nonprofit entity that meets the requirements for providing training and technical assistance under the Catalyst Program.

Challenge Grant

The bill modifies the requirements for Challenge Grants, as follows:

- Local homeless coalitions, municipal or county government, or other public agencies, or private not-for-profit corporations are no longer explicitly authorized to act as a lead agency.
- DCF must establish varying levels of grant awards up to $500,000 per lead agency. The award levels must be based upon the total population within the CoC catchment area and reflect the differing degrees of homelessness in the catchment planning areas.
- DCF, in consultation with the Council, must specify a grant award level in the notice of the solicitation of grant applications.
- The CoC plan must implement a coordinated assessment or central intake system to screen, assess, and refer persons seeking assistance to the appropriate service provider.

The lead agency is required to:

- document the commitment of local government and private organizations to provide matching funds in an amount to the requested amount of the grant; and
- submit a final report to DCF documenting the outcomes achieved by the grant in enabling homeless persons to return to permanent housing.

The lead agency is authorized to:

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[22] Section 3, ch. 2004-243, L.O.F.

[23] The Department of Community Affairs was abolished by the Legislature during the 2011 legislative session and most of its programs and functions were incorporated into the newly created Department of Economic Opportunity. *See* ch. 2011-142, L.O.F.

[24] Florida Housing Finance Corporation, Email to House Economic Development & Tourism Subcommittee staff – March 7, 2014. Email on file.

- allocate the grant to programs, services, or housing providers that implement the local homeless assistance CoC plan; and
- provide subgrants to a local agency to implement programs or services or provide housing identified for funding in the lead agency's application to DCF.

Funding

The bill provides that the funding authorized pursuant to this act is subject to legislative appropriation.

B. SECTION DIRECTORY:

Section 1: Amends s. 420.606 (1)–(3), F.S., relating to training and technical assistance program.

Section 2: Amends s. 420.622(4), F.S., relating to the State Office on Homelessness; and the Council on Homelessness.

Section 3: Provides that the funding authorized pursuant to this act is subject to legislative appropriation.

Section 4: Provides that the bill is effective July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill provides that the funding authorized pursuant to this act is subject to legislative appropriation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2014, the House Economic Development & Tourism Subcommittee adopted an amendment and passed the bill as a committee substitute. The committee substitute:

- removes the provision in the bill, which directed the FHFC to distribute four percent of the total amount distributed each fiscal year from the Local Government Housing Trust Fund to DCF and DEO; and
- provides that the funding authorized pursuant to this act is subject to legislative appropriation.

The analysis has been updated to reflect the amendment.

A bill to be entitled

An act relating to homelessness; amending s. 420.606, F.S.; revising legislative findings; requiring the Department of Economic Opportunity to provide training and technical assistance to certain designated lead agencies of homeless assistance continuums of care; requiring that the provision of such training and assistance be delegated to certain nonprofit entities; conforming provisions to changes made by the act; amending s. 420.622, F.S.; requiring the department to establish award levels for "Challenge Grants"; specifying criteria to determine award levels; requiring the department, after consultation with the Council on Homelessness, to specify a grant award level in the notice of solicitation of grant applications; revising qualifications for the grant; specifying authorized uses of grant funds; requiring a lead agency that receives a grant to submit a report to the department; providing that funding authorized pursuant to this act is subject to legislative appropriation; providing an effective date.

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

Section 1. Subsections (1) through (3) of section 420.606, Florida Statutes, are amended to read:

420.606 Training and technical assistance program.—

(1) LEGISLATIVE FINDINGS.—In addition to the legislative findings set forth in s. 420.6015, the Legislature finds and declares that:

(a) Housing in economically declining or distressed areas is frequently substandard and is often unaffordable or unavailable to homeless persons, very-low-income persons, and low-income persons;

(b) Community-based organizations often have limited experience in development of quality housing for homeless persons, very-low-income persons, and low-income persons in economically declining or distressed areas; ~~and~~

(c) The staffs and board members of community-based organizations need additional training in housing development as well as technical support to assist them in gaining the experience they need to better serve their communities; and~~.~~

(d) The staffs of state agencies and local governments, whether directly involved in the production of affordable or available housing or acting in a supportive role, can better serve the goals of state and local governments if their expertise in housing development is expanded.

(2) PURPOSE.—The purpose of this section is to provide community-based organizations, ~~and~~ staff of state and local governments, and designated lead agencies of homeless assistance continuums of care with the necessary training and technical assistance to meet the needs of homeless persons, very-low-

income persons, low-income persons, and moderate-income persons for standard, affordable housing.

(3) TRAINING AND TECHNICAL ASSISTANCE PROGRAM.—The Department of Economic Opportunity shall be responsible for securing the necessary expertise to provide training and technical assistance to:

(a) Staff of local governments, to staff of state agencies, as appropriate, ~~and~~ to community-based organizations, and to persons forming such organizations, which are formed for the purpose of developing new housing and rehabilitating existing housing that ~~which~~ is affordable for very-low-income persons, low-income persons, and moderate-income persons.

1.~~(a)~~ The training component of the program shall be designed to build the housing development capacity of community-based organizations and local governments as a permanent resource for the benefit of communities in this state.

a.~~1.~~ The scope of training must ~~shall~~ include, but need not be limited to, real estate development skills related to affordable housing, including the construction process and property management and disposition, the development of public-private partnerships to reduce housing costs, model housing projects, and management and board responsibilities of community-based organizations.

b.~~2.~~ Training activities may include, but are not limited to, materials for self-instruction, workshops, seminars, internships, coursework, and special programs developed in

conjunction with state universities and community colleges.

2.~~(b)~~ The technical assistance component of the program shall be designed to assist applicants for state-administered programs in developing applications and in expediting project implementation. Technical assistance activities for the staffs of community-based organizations and local governments who are directly involved in the production of affordable housing may include, but are not limited to, workshops for program applicants, onsite visits, guidance in achieving project completion, and a newsletter to community-based organizations and local governments.

(b) Designated lead agencies of homeless assistance continuums of care which receive operating or other support under s. 420.9073(7) from the Department of Children and Families to provide or secure housing, programs, and other services for homeless persons. Such training and technical assistance must be provided by a nonprofit entity that meets the requirements for providing training and technical assistance under s. 420.531.

Section 2. Subsection (4) of section 420.622, Florida Statutes, is amended to read:

420.622 State Office on Homelessness; Council on Homelessness.—

(4) ~~Not less than 120 days after the effective date of this act,~~ The State Office on Homelessness, with the concurrence of the Council on Homelessness, may accept and administer moneys

appropriated to it to provide annual "Challenge Grants" ~~annually~~ to lead agencies of ~~for~~ homeless assistance continuums of care designated by the State Office on Homelessness pursuant to s. 420.624. ~~A lead agency may be a local homeless coalition, municipal or county government, or other public agency or private, not-for-profit corporation.~~ The department shall establish varying levels of grant awards ~~Such grants may be~~ up to $500,000 per lead agency. Award levels shall be based upon the total population within the continuum of care catchment area and reflect the differing degrees of homelessness in the catchment planning areas. The department, in consultation with the Council on Homelessness, shall specify a grant award level in the notice of the solicitation of grant applications.

(a) To qualify for the grant, a lead agency must develop and implement a local homeless assistance continuum of care plan for its designated catchment area. The continuum of care plan must implement a coordinated assessment or central intake system to screen, assess, and refer persons seeking assistance to the appropriate service provider. The lead agency shall also document the commitment of local government and private organizations to provide matching funds in an amount equal to the grant requested.

(b) Preference must be given to those lead agencies that have demonstrated the ability of their continuum of care to provide quality services to homeless persons and the ability to leverage federal homeless-assistance funding under the Stewart

B. McKinney Act and private funding for the provision of services to homeless persons.

(c) Preference must be given to lead agencies in catchment areas with the greatest need for the provision of housing and services to the homeless, relative to the population of the catchment area.

(d) The grant may be used to fund any of the housing, program, or service needs included in the local homeless assistance continuum of care plan. The lead agency may allocate the grant to programs, services, or housing providers that implement the local homeless assistance continuum care plan. The lead agency may provide subgrants to a local agency to implement programs or services or provide housing identified for funding in the lead agency's application to the department. A lead agency may spend a maximum of 8 percent of its funding on administrative costs.

(e) The lead agency shall submit a final report to the department documenting the outcomes achieved by the grant in enabling persons who are homeless to return to permanent housing thereby ending such person's episode of homelessness.

Section 3. Funding authorized pursuant to this act is subject to legislative appropriation.

Section 4. This act shall take effect July 1, 2014.

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 Peters offered the following:

Amendment

Remove lines 90-97 and insert:

(b) Designated lead agencies of homeless assistance continuums of care which receive funding from the Department of Children and Families to provide or secure housing, programs, and other services for homeless persons. Such training and technical assistance are subject to a specific appropriation in the General Appropriations Act for that purpose and must be provided by a nonprofit entity that meets the requirements for providing training and technical assistance under s. 420.531.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Appropriations Committee

Representative Peters offered the following:

Amendment

Remove line 125 and insert:

organizations to provide matching funds or in-kind support in an amount equal to

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Appropriations Committee

Representative Peters offered the following:

Amendment

Remove lines 151-152 and insert:

Section 3. The provisions authorized in this act are contingent upon a specific legislative appropriation.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1385 Inspectors General
SPONSOR(S): Government Operations Subcommittee; Raulerson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N, As CS	Harrington	Williamson
2) Appropriations Committee		Kramer	Leznoff

SUMMARY ANALYSIS

The Office of Inspector General is established in each agency to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Inspector generals are appointed by the agency head, and may only be removed by the agency head. The Office of the Chief Inspector General (CIG) within the Executive Office of the Governor provides oversight and monitors the activities of the agency inspector generals under the Governor's jurisdiction.

The bill provides that the CIG must be appointed by the Governor, subject to Senate confirmation. Upon a change in Governors or a reelection of Governors, the Governor must appoint, or reappoint, a CIG before adjournment sine die of the first regular session of the Legislature that convenes after such change in Governors or reelection.

The bill increases the independence of each inspector general in a state agency under the jurisdiction of the Governor. Such inspector generals must report to the CIG, may only be hired by the CIG, and may receive independent legal counsel from the office of the CIG. Such inspector general may only be removed from the office for cause by the CIG.

In addition, the bill requires each agency office of inspector general to have its own budget, within the state agency, to meet its mission developed in consultation with the CIG.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Inspector Generals

Authorized under s. 20.055, F.S., the Office of Inspector General is established in each state agency[1] to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Section 14.32, F.S., creates the Office of the Chief Inspector General (CIG) within the Executive Office of the Governor. The CIG monitors the activities of the agency inspector generals under the Governor's jurisdiction.

Each agency inspector general office is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and reviews relating to the operations of the state agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Providing central coordination of efforts to identify and remedy waste, abuse, and deficiencies to the agency head,[2] and recommending corrective action concerning fraud, abuses, and deficiencies, and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.[3]

Inspectors general are appointed by the agency head.[4] For agencies under the direction of the Governor, the appointment must be made after notifying the Governor and the Chief Inspector General in writing, at least seven days prior to an offer of employment, of the agency head's intention to hire the

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[1] Section 20.055(1)(a), F.S., defines "state agency" as each department created pursuant to chapter 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, and the state court system.

[2] Section 20.055(1)(b), F.S., defines "agency head" as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, and the Chief Justice of the State Supreme Court.

[3] Section 20.055(2), F.S.

[4] Section 20.055(3)(a), F.S.

inspector general.[5] Each inspector general must report to and be under the general supervision of the agency head and is not subject to supervision by any other employee of the state agency.[6]

Inspectors general may be removed only by the agency head.[7] For agencies under the direction of the Governor, the agency head must notify the Governor and the CIG in writing of the intention to terminate the inspector general, at least seven days prior to the removal. For state agencies under the direction of the Governor and Cabinet, the agency head must notify the Governor and Cabinet in writing of the intention to terminate the inspector general at least seven days prior to removal.[8]

Auditing Standards

Inspectors general must possess minimum education and experience qualifications, and the investigations they conduct must adhere to specific internal auditing standards.[9] Final reports are submitted to the agency head and the Auditor General, whose office is directed to give official recognition to their findings and recommendations as part of its post-audit responsibilities.[10]

Each auditor general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.[11] The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The performance of the audit must be under the direction of the inspector general, except that if the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.[12]

Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards published by the Institute of Internal Auditors, Inc., or where appropriate, in accordance with generally accepted governmental auditing standards. All audit reports issued by internal audit staff must include a statement that the audit was conducted pursuant to the appropriate standards.[13]

Audit work papers and reports are considered public records to the extent they do not include information that has been made confidential and exempt from the provisions of s. 119.07(1), F.S., or contain information protected under the Whistle-blower's Act.[14]

The inspector general must have access to any records, data, and other information of the state agency he or she deems necessary to carry out his or her duties. The inspector general is also authorized to request such information or assistance as may be necessary from the state agency or from any federal, state, or local governmental entity.[15]

At the conclusion of each audit, the inspector general must submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit

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[5] *Id.*
[6] Section 20.055(3)(b), F.S.
[7] Section 20.055(3)(c), F.S.
[8] *Id.*
[9] *See* s. 20.055(4), F.S.
[10] Section 20.055(5)(f) and (g), F.S.
[11] Section 20.055(5), F.S.
[12] *Id.*
[13] Section 20.055(5)(a), F.S.
[14] Section 20.055(5)(b), F.S. Sections 112.3187 – 112.31895, F.S., may be cited as the "Whistle-blower's Act." According to the act, it is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of government office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee. Section 112.3187(2), F.S.
[15] Section 20.055(5)(c), F.S.

who must respond to any adverse findings within 20 working days after receipt of the preliminary findings. Such response, and the inspector general's rebuttal to the response, must be included in the final audit report.[16]

The Auditor General, in connection with the independent post-audit of the same agency, must give appropriate consideration to internal audit reports and the resolution of findings therein. The Legislative Auditing Committee may inquire into the reasons or justifications for failure of the agency head to correct the deficiencies reported in internal audits that are also reported by the Auditor General and must take appropriate action.[17]

The inspector general must monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability (OPPAGA). No later than six months after the Auditor General or OPPAGA publishes a report on the state agency, the inspector general must provide a written response to the agency head on the status of corrective actions taken. The inspector general must file a copy of such response with the Legislative Auditing Committee.[18]

The inspector general must develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include post-audit samplings of payments and accounts. For state agencies under the Governor, the audit plans must be submitted to the Governor's CIG. The plan must be submitted to the agency head for approval, and a copy of the approved plan must be submitted to the Auditor General.[19]

In carrying out its investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, management, misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act[20] and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate;
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law;
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information;
- At the conclusion of an audit the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report; and
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.[21]

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[16] Section 20.055(5)(d), F.S.
[17] Section 20.055(5)(g), F.S.
[18] Section 20.055(5)(h), F.S.
[19] Section 20.055(5)(i), F.S.
[20] Sections 112.3187 – 112.31895, F.S.
[21] Section 20.055(6), F.S.

Annually, each inspector general must submit a report to the agency head on its activities.[22]

Effect of the Proposed Changes

Chief Inspector General
The bill provides that a CIG must be appointed or reappointed after a gubernatorial election, subject to Senate confirmation. Upon a change in Governors or reelection of the Governor, the Governor must appoint, or may reappoint, a CIG before adjournment sine die of the first regular session of the Legislature that convenes after the change in Governors or reelection.

The CIG must coordinate complaint-handling activities with agencies and provide for independent legal counsel for inspector generals in state agencies under the jurisdiction of the Governor.

Agency Inspector General
Each inspector general in an agency under the jurisdiction of the Governor must keep the CIG, rather than the agency head, informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency; recommend corrective action concerning fraud, abuses, and deficiencies; and report on the progress made in implementing corrective action.

An inspector general for a state agency under the jurisdiction of the Governor must be appointed by the CIG, rather than the agency head. Such inspector general is under the general supervision of the agency head, reports to the CIG, and may hire and remove staff within his or her office in consultation with the CIG, but independently of the agency.

An inspector general for a state agency under the jurisdiction of the Governor may only be removed from office for cause by the CIG. Cause includes concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties. All intentions to remove an agency inspector general, regardless of whether the position is under the jurisdiction of the Governor, must provide 21 days' notice, rather than seven of such intention to remove. If the inspector general disagrees with the removal, such inspector general may present objections in writing to the agency head or Governor within the 21-day period.

Each agency office of inspector general must have its own budget within the state agency, developed in consultation with the CIG, to meet its mission.

Audits
Each agency inspector general must submit a final audit report to the agency head, Auditor General, and, for state agencies under the jurisdiction of the Governor, the CIG. When responding to a report by the Auditor General or OPPAGA, the inspector general must provide a written response to the agency head or, for state agencies under the jurisdiction of the Governor, the CIG on the status of the corrective action taken. Long term auditing plans of agencies under the jurisdiction of the Governor must be submitted to the agency head for review, but to the CIG for approval.

B. SECTION DIRECTORY:

Section 1. amends s. 14.32, F.S., revising provisions relating to the duties, appointment, and removal of the Chief Inspector General.

Section 2. amends s. 20.055, F.S., revising provisions relating to the duties, appointment, and removal of agency inspectors general.

Section 3. provides an effective date of July 1, 2014.

[22] Section 20.055(7), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Lines 131-133
The bill is unclear how the budget must be calculated and if the intent is to create a separate budget entity[23] for the office of the inspector general within the state agencies.

Other Comments: Removal "For Cause"
The bill provides that for state agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the CIG for cause. Inspector generals under the jurisdiction of the Governor and Cabinet, however, may be removed for any reason.

[23] Section 216.011(1)(f), F.S., defines "budget entity" as a unit or function at the lowest level to which funds are specifically appropriated in the appropriations act.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2014, the Government Operations Subcommittee adopted two amendments and reported the bill favorably with committee substitute. The amendments:

- Clarify that the agency inspector general must create a budget in consultation with the CIG that conforms to the agency mission; and
- Clarify that the changes in the bill apply to agencies under the jurisdiction of the Governor and not to agencies under the jurisdiction of the Governor and Cabinet or Cabinet.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

A bill to be entitled

An act relating to inspectors general; amending s. 14.32, F.S.; revising provisions relating to the duties, appointment, and removal of the Chief Inspector General; amending s. 20.055, F.S.; revising provisions relating to the duties, appointment, and removal of agency inspectors general; updating a cross-reference; providing an effective date.

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

Section 1. Subsection (1) and paragraph (e) of subsection (2) of section 14.32, Florida Statutes, are amended to read:

14.32 Office of Chief Inspector General.—

(1) There is created in the Executive Office of the Governor the Office of Chief Inspector General. The Chief Inspector General is ~~shall be~~ responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor. The Chief Inspector General shall be appointed by the Governor, subject to confirmation by the Senate, and shall serve at the pleasure of the Governor. However, upon a change in Governors or reelection of the Governor, the Governor shall appoint, or may reappoint, a Chief Inspector General before adjournment sine die of the first regular session of the Legislature that convenes after such change in Governors or reelection of the Governor.

(2) The Chief Inspector General shall:

(e) Coordinate complaint-handling activities with agencies and provide for independent legal counsel for inspectors general in agencies under the jurisdiction of the Governor.

Section 2. Subsections (2) and (3), paragraphs (f), (h), and (i) of subsection (5), paragraph (c) of subsection (7), and subsection (8) of section 20.055, Florida Statutes, are amended to read:

20.055 Agency inspectors general.—

(2) The Office of Inspector General is ~~hereby~~ established in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. It is ~~shall be~~ the duty and responsibility of each inspector general, with respect to the state agency in which the office is established, to:

(a) Advise in the development of performance measures, standards, and procedures for the evaluation of state agency programs.

(b) Assess the reliability and validity of the information provided by the state agency on performance measures and standards, and make recommendations for improvement, if necessary, before ~~prior to~~ submission of such information ~~those measures and standards to the Executive Office of the Governor~~ pursuant to s. 216.1827 ~~216.0166(1)~~.

(c) Review the actions taken by the state agency to

improve program performance and meet program standards and make recommendations for improvement, if necessary.

(d) Provide direction for, supervise, and coordinate audits, investigations, and management reviews relating to the programs and operations of the state agency, except that when the inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall conduct such audits.

(e) Conduct, supervise, or coordinate other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.

(f) Keep the ~~such~~ agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action.

(g) Ensure effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication.

(h) Review, as appropriate, rules relating to the programs and operations of such state agency and make recommendations concerning their impact.

(i) Ensure that an appropriate balance is maintained between audit, investigative, and other accountability activities.

(j) Comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.

(3)(a) For state agencies under the jurisdiction of the Cabinet or the Governor and Cabinet, the inspector general shall be appointed by the agency head. For state agencies under the jurisdiction ~~direction~~ of the Governor, the inspector general shall be appointed by the Chief Inspector General. The agency head or Chief Inspector General shall notify ~~appointment shall be made after notifying~~ the Governor ~~and the Chief Inspector General~~ in writing~~, at least 7 days prior to an offer of employment,~~ of his or her ~~the agency head's~~ intention to hire the inspector general at least 7 days before an offer of employment. The inspector general shall be appointed without regard to political affiliation.

(b) The ~~Each~~ inspector general shall report to and be under the general supervision of the agency head and is ~~shall~~ not ~~be~~ subject to supervision by any other employee of the state agency in which the office is established. For state agencies under the jurisdiction of the Governor, the inspector general shall be under the general supervision of the agency head, shall report to the Chief Inspector General, and may hire and remove staff within the office of the inspector general in consultation

with the Chief Inspector General but independently of the agency. ~~The inspector general shall be appointed without regard to political affiliation.~~

(c) For state agencies under the jurisdiction of the Cabinet or the Governor and Cabinet, the ~~an~~ inspector general may be removed from office by the agency head. For state agencies under the jurisdiction ~~direction~~ of the Governor, the inspector general may only be removed from office by ~~the agency head shall notify the Governor and~~ the Chief Inspector General for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties under this section. The Chief Inspector General shall notify the Governor~~,~~ in writing~~,~~ of his or her ~~the~~ intention to remove ~~terminate~~ the inspector general at least 21 ~~7~~ days before ~~prior to~~ the removal. For state agencies under the jurisdiction ~~direction~~ of the Governor and Cabinet, the agency head shall notify the Governor and Cabinet in writing of his or her ~~the~~ intention to remove ~~terminate~~ the inspector general at least 21 ~~7~~ days before ~~prior to~~ the removal. If the inspector general disagrees with the removal, the inspector general may present objections in writing to the agency head or the Governor within the 21-day period.

(d) The Governor, the Governor and Cabinet, the agency head, or agency staff may ~~shall~~ not prevent or prohibit the inspector general from initiating, carrying out, or completing any audit or investigation.

(e) The office of the inspector general shall have its own budget within the state agency, developed in consultation with the Chief Inspector General, sufficient to meet its mission.

(5) In carrying out the auditing duties and responsibilities of this act, each inspector general shall review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general shall conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The scope and assignment of the audits shall be determined by the inspector general; however, the agency head may at any time direct the inspector general to perform an audit of a special program, function, or organizational unit. The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall perform the functions listed in this subsection.

(f) The inspector general shall submit the final report to the agency head, ~~and to~~ the Auditor General, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(h) The inspector general shall monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability. No later than 6 months

after the Auditor General or the Office of Program Policy Analysis and Government Accountability publishes a report on the state agency, the inspector general shall provide a written response to the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General on the status of corrective actions taken. The inspector general shall file a copy of such response with the Legislative Auditing Committee.

(i) The inspector general shall develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include postaudit samplings of payments and accounts. The plan shall show the individual audits to be conducted during each year and related resources to be devoted to the respective audits. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands pursuant to s. 17.03(1), and examining, auditing, adjusting, and settling accounts pursuant to s. 17.04, may use ~~utilize~~ audits performed by the inspectors general and internal auditors. For state agencies under the jurisdiction of the Governor, the audit plans shall be submitted to the ~~Governor's~~ Chief Inspector General. The plan shall be submitted to the agency head for review and to the Chief Inspector General for approval. A copy of the approved plan shall be submitted to the Auditor General.

(7)

(c) The final reports prepared pursuant to paragraphs (a) and (b) shall be provided ~~furnished~~ to the heads of the respective agencies and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. Such reports shall include, but need not be limited to:

1. A description of activities relating to the development, assessment, and validation of performance measures.

2. A description of significant abuses and deficiencies relating to the administration of programs and operations of the agency disclosed by investigations, audits, reviews, or other activities during the reporting period.

3. A description of the recommendations for corrective action made by the inspector general during the reporting period with respect to significant problems, abuses, or deficiencies identified.

4. The identification of each significant recommendation described in previous annual reports on which corrective action has not been completed.

5. A summary of each audit and investigation completed during the reporting period.

(8) The inspector general in each state agency shall provide to the agency head, upon receipt, all written complaints concerning the duties and responsibilities in this section or any allegation of misconduct related to the office of the inspector general or its employees, if received from subjects of audits or investigations who are individuals substantially

affected or entities contracting with the state, as defined in this section. For state agencies ~~solely~~ under the jurisdiction ~~direction~~ of the Governor, the inspector general shall also provide the complaint to the Chief Inspector General.

Section 3. This act shall take effect July 1, 2014.

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 Raulerson offered the following:

Amendment

Remove lines 28-30 and insert:

(e) Coordinate complaint-handling activities with agencies.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Appropriations Committee

Representative Raulerson offered the following:

Amendment

Remove lines 131-133

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Appropriations Committee

Representative Raulerson offered the following:

Amendment

Remove lines 178-180 and insert:

~~Governor's~~ Chief Inspector General. The plan shall be submitted to the agency head for approval. A copy of the approved plan shall be submitted to

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7157 PCB HHSC 14-01 State Group Insurance Program
SPONSOR(S): Health & Human Services Committee, Brodeur
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Committee	16 Y, 1 N	Shaw	Calamas
1) Appropriations Committee		Delaney JnD	Leznoff

SUMMARY ANALYSIS

The State Group Insurance Program (program), administered by the Department of Management Services (DMS), is an optional benefit for employees that includes health, life, dental, vision, disability, and other supplemental insurance benefits. The program offers employees a choice among a health maintenance organization (HMO) plan, preferred provider plan (PPO) plan, and a high-deductible health plan (HDHP) with a health saving account (HSA). However, only one benefit level is offered for each plan type. Additionally, the employee's premium for the HMO and PPO are the same, even though the HMO provides greater benefits.

The bill directs DMS to establish employee contribution rates for the 2015 plan year that reflect the full actuarial benefit difference between the HMO and the PPO. The PPO contribution rate must be less than the employee contribution level for the 2014 plan year. Consequently, next year employees will be given a choice between paying more for the higher value HMO and paying less, compared to the prior year, for the lower value PPO. Employees will have a choice between richer benefits and greater take-home pay.

The bill adds new products and services to the program by giving DMS broad authority to contract for a wide variety of additional products and services. Employees will be able to purchase these new products as optional benefits. DMS is directed to contract with at least one entity that provides comprehensive pricing and inclusive services for surgery and other types of medical procedures.

Beginning in 2015, DMS is directed to implement a 3-year price transparency pilot project in at least one, but no more than three areas of the state. The purpose of the pilot is to reward value-based pricing by publishing the prices of certain diagnostic and surgical procedures and sharing any savings generated by the enrollee's choice of providers. Participation in the project will be voluntary for state employees.

Beginning in the 2017 plan year, the bill provides that state employees will have health plan choices at four different benefit levels. If the state's contribution for premium is more than the cost of the plan selected by the employee, then the employee may use the remainder to:

- Fund a flexible spending arrangement.
- Fund a health savings account.
- Purchase additional benefits offered through the state group insurance program.
- Increase the employee's salary.

The bill directs DMS to hire an independent benefits consultant (IBC). The IBC will assist DMS in developing a plan for the implementation of the new benefit levels in the state program. The plan shall be submitted to the Governor, the President of the Senate and the Speaker of the House of Representatives no later than January 1, 2016. The IBC will also provide ongoing assessments and analysis for the program.

The Department of Management Services indicated the need for four FTEs with an associated recurring cost of $336,000 and an $800,000 non-recurring cost for consulting and legal fees. See fiscal comments.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

State Group Insurance Program

Overview

The State Group Insurance Program (program) is created by s. 110.123, F.S., and is administered by the Division of State Group Insurance (DSGI) within the Department of Management Services (DMS or department).

The program is an optional benefit for all state employees including all state agencies, state universities, the court system, and the Legislature. The program includes health, life, dental, vision, disability, and other supplemental insurance benefits.

The health insurance benefit for active employees has premium rates for single, spouse program[1], or family coverage regardless of plan selection. The state contributes approximately 90% toward the total annual premium for active employees for a total of $1.55 billion out of total premium of $2 billion for FY 2013-14[2]. The enrollees contribute $393 million and remaining $89 million is from other sources such as interest, refunds, and rebates.

Cafeteria Plans

A cafeteria plan is a plan that offers flexible benefits under the Internal Revenue Code Section 125. Employees choose from a "menu" of benefits. A cafeteria plan can offer a number of options, including medical, accident, disability, vision, dental and group term life insurance. A cafeteria plan can also reimburse actual medical expenses or pay children's day care expenses.

A cafeteria plan reduces both the employer's and employee's tax burden. Contributions by the employer are not subject to the employer social security contribution. Contributions made by the employee are not subject to federal income or social security taxes.

The employer chooses the range of benefits it wishes to offer in a cafeteria plan. The plan can be a simple premium only plan where the only health insurance is offered. Full flex plans, which offer a wide variety of benefits and choices, are more often offered by large employers and allow for more consumer-directed consumption of benefits. In some full flex plans, the employee is offered the choice between receiving additional compensation in lieu of benefits.

The state program qualifies as a cafeteria plan[3] even though the program offers relatively narrow health plan options compared to other cafeteria plans.

Health Plan Options

The program provides limited options for employees to choose as their health plans. The preferred provider organization (PPO) plan is the statewide, self-insured health plan administered by Florida Blue, whose current contract runs through plan year 2014 and has been renewed for the 2015 through

[1] The Spouse Program provides discounted rates for family coverage when both spouses work for the state.
[2] Fiscal information provided by DSGI.
[3] 26 USC sec. 125 requires that a cafeteria plan allow its members to choose between two or more benefits "consisting of cash and qualified benefits." The proposed regulations define "cash" to include a "salary reduction arrangement" whereby salary is deducted pre-tax to pay the employee's share of the insurance premium. Since the state program allows a "salary reduction arrangement", the program qualifies as a cafeteria plan. 26 C.F.R. ss. 1.125-1, et seq.

2018 plan years. The administrator is responsible for processing health claims, providing access to a Preferred Provider Care Network, and managing customer service, utilization review, and case management functions. The standard health maintenance organization (HMO) plan is an insurance arrangement in which the state has contracted with multiple statewide and regional HMOs[4].

Prior to the 2012 plan year, the participating HMOs were fully insured; in other words, the HMOs assumed all financial risk for the covered benefits. During the 2010 session, the Legislature enacted s. 110.12302, F.S., which directed DMS to require costing options for both fully insured and self-insured plan designs as part of the department's solicitation for health maintenance organization contracts for the 2012 plan year and beyond. The department included these costing options in its Invitation to Negotiate[5] to HMOs for contracts for plans years beginning January 1, 2012. The department entered into contracts for the 2012 and 2013 plan years with two HMOs with a fully insured plan design and four with a self-insured plan design. The contracts with the HMOs have been renewed for the 2014 and 2015 plan years.

Additionally, the program offers two high-deductible health plans (HDHP[6]) with health savings accounts[7]. The Health Investor PPO Plan is the statewide, high deductible health plan and includes an integrated health saving account. It is also administered by Florida Blue. The Health Investor HMO Plan is a high deductible health plan with an integrated health saving account in which the state has contracted with multiple state and regional HMOs. Both have a deductible of $1,250 for individual coverage and $2,500 for family coverage for network providers. The state makes a $500 per year contribution to the health savings account for participants with individual coverage and a $1,000 per year contribution for those with family coverage. The employee may make additional annual contributions[8] to a limit of $3,330 for individual coverage and $6,550 for family coverage. Both the employer and employee contributions are not subject to federal income tax. Unused funds roll over automatically every year. A health savings account is owned by the employee and is portable.

The following charts illustrate the benefit design of each of the plan choices:

	HMO Standard	PPO Standard	
	In Network Only	In Network	Out-of-Network
Deductible	None	$250 | $500 Individual | Family	$750 | $1,500 Individual | Family
Primary Care	$20 copayment	$15 copayment	40% of out-of-network allowance plus the amount between the charge and the allowance
Specialist	$40 copayment	$25 copayment	
Urgent Care	$25 copayment	$25 copayment	
Emergency Room	$100 copayment	$100 copayment	
Hospital Stay	$250 copayment	20% after $250 copayment	40% after $500 copayment plus the difference between the charge and the allowance

[4]The HMOs include Aetna, AvMed, Capital Health Plan, Coventry Health Care of Florida, and UnitedHealthcare.
[5] ITN NO.: DMS 10/11-011
[6] High-deductible health plans with linked health savings accounts are also call consumer-directed health plans (CDHP) because costs of health care are more visible to the enrollee.
[7] 26 USC sec. 223. To qualify as a high-deductible plan, the annual deductible must be at least $1,250 for individual plans and $2,500 for family coverage, but annual out-of-pocket expenses cannot exceed $6,350 for individual and $12,700 for family coverage. These amounts are adjusted annually by the IRS.
[8] The IRS annually sets the contribution limit as adjusted by inflation.

Generic | Preferred | Non-Preferred Prescriptions	$7 | $30 | $50 Retail	$7 | $30 | $50 Retail	Pay in full, file claim
	$14 | $60 | $100 Mail Order	$14 | $60 | $100 Mail Order	
Out-of-Pocket Maximum	$1,500 | $3,000 Individual | Family	$2,500 | $5,000 (coinsurance only) Single | Family	

	PPO and HMO Health Investor	
	In Network	Out-of-Network (PPO Only)
Deductible	$1,250 | $2,500 Individual | Family	$2,500 | $5,000 Individual | Family
Primary Care Specialist Urgent Care Emergency Room	After meeting deductible, 20% of network allowed amount	After meeting deductible, 40% of out-of-network allowance plus the difference between the charge and the allowance
Hospital Stay		After meeting deductible, 40% after $1,000 copayment plus the difference between the charge and the allowance
Generic | Preferred | Non-Preferred Prescriptions	After meeting deductible , 30% | 30% | 50% Retail and Mail Order	Pay in full, file claim
Out-of-Pocket Maximum	$3,000 | $6,000 (coinsurance only) Individual | Family	$7,500 | $15,000 (coinsurance only) Individual | Family

Flexible Spending Accounts

Currently, the state program offers flexible spending accounts (FSAs)[9] as an optional benefit for employees. The FSA is funded though pre-tax payroll deductions from the employee's salary[10]. The funds can be used to pay for medical expenses that are not covered by the employees' health plan. Prior to 2013, there was no limit on the contribution to a FSA; however, the contribution is now limited to $2,500 and is subsequently adjusted for inflation. Unlike a HSA, a FSA is a "use it or lose it" arrangement.[11] If the employee does not annually use the contributions to the FSA, the contributions are forfeited.

[9] Sec. 125 I.R.C.; see IRS Publication 969 (2013) available at http://www.irs.gov/publications/p969/ar02.html#en_US_2013_publink1000204174 (last viewed 3/16/14).
[10] Employers are also allowed to contribute to FSAs.
[11] Beginning in 2013, an employee may carryover up to $500 into the next calendar year.

Employer and Employee Contributions

The state program is considered employer-sponsored since the state contracts with providers and contributes a substantial amount on behalf of the employee toward the cost of the insurance premium. The state program is a defined-benefit program. The employee pays a set monthly premium for either a single or family plan. The state pays the reminder of the cost of the premium. In a defined-contribution program, the employer pays a set amount toward the monthly premium and the employee pays the reminder.

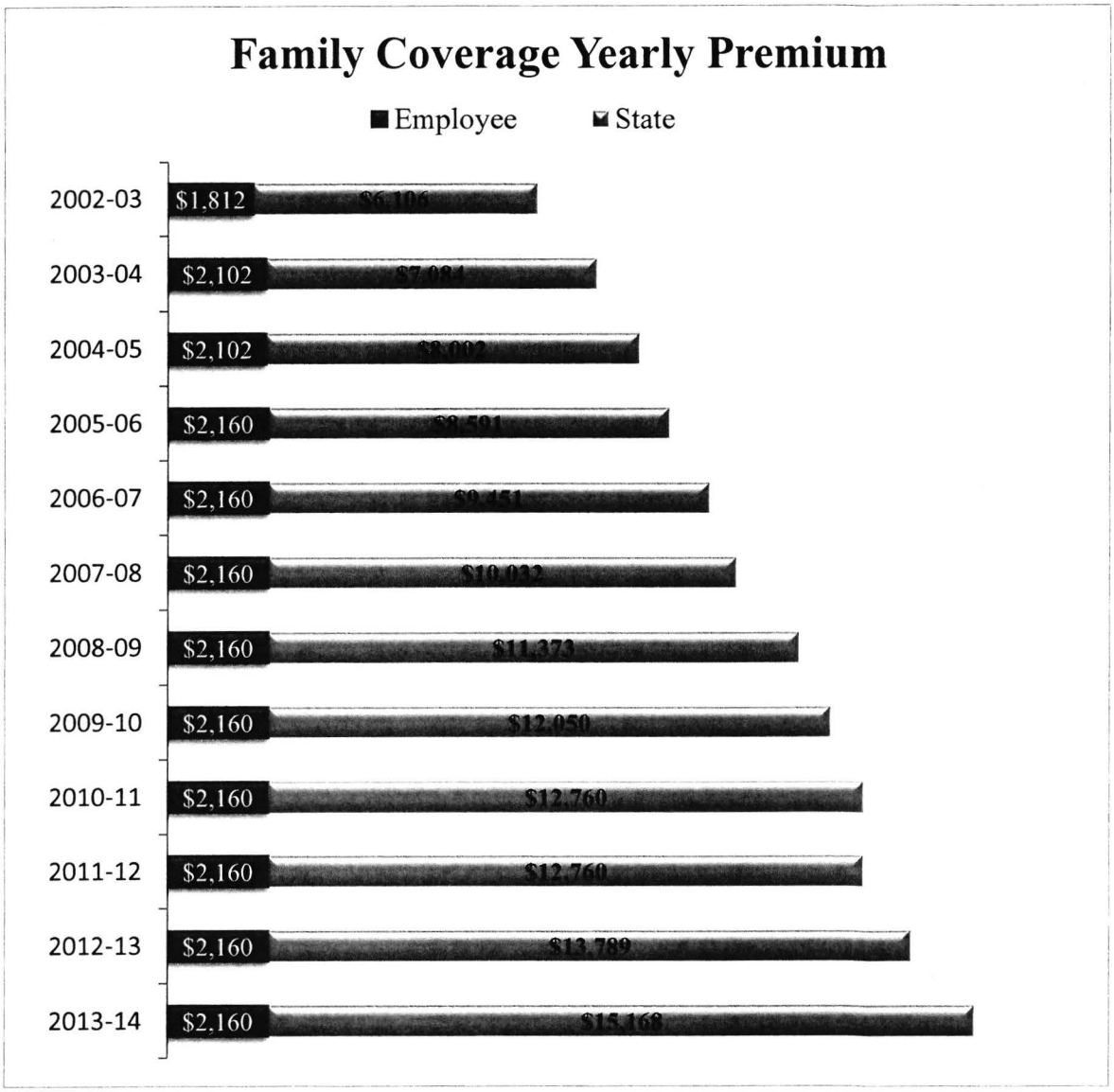
The following chart shows the monthly contributions[12] for the state and the employee to employee health insurance premiums.

Subscriber Category	Coverage Type	PPO and HMO Standard			PPO and HMO Health Investor		
		Employer	Enrollee	Total	Employer*	Enrollee	Total
Career Service /OPS	Individual	591.52	50.00	641.52	591.52	15.00	606.52
	Family	1,264.06	180.00	1,444.06	1,264.06	64.30	1,328.36
	Spouse	1,429.08	30.00	1,459.08	1,298.36	30.00	1,328.36
"Payalls" (SES/SMS)	Individual	637.34	8.34	645.68	598.18	8.34	606.52
	Family	1,429.06	30.00	1,459.06	1,298.36	30.00	1,328.36

* Includes employer tax-free Health Savings Account (HSA) contribution - $41.66 and $83.33 per month for single and family coverage, respectively

The state program is estimated to spend $2 billion in FY 2014 in health benefit costs.[13] The aggregate annual spending growth rate of the program is 8.7%. The state has absorbed almost all of the cost of the increase and employee contributions have remained the same for the last nine years as illustrated by the following chart.[14]

[12] State Employees' Group Health Self-Insurance Trust Fund, Report on the Financial Outlook, March 4, 2014.
[13] Id.
[14] Fiscal information provided by DSGI.



Plan Enrollment

The state program has 361,482 covered lives and 173,127 policyholders. Currently, 50.2% of enrollees chose the standard HMO and 48.6% chose the standard PPO. Only 1.2% of enrollees chose either HDHP.[15] During the most recent open enrollment, PPO enrollment decreased by 1.3% and HMO enrollment increased by 3.3%. Five year Open Enrollment trends show that annual enrollment in the PPO plans decreased an average of 0.9% and HMO membership increased 2.5%.[16]

Employer Sponsored Insurance Trends

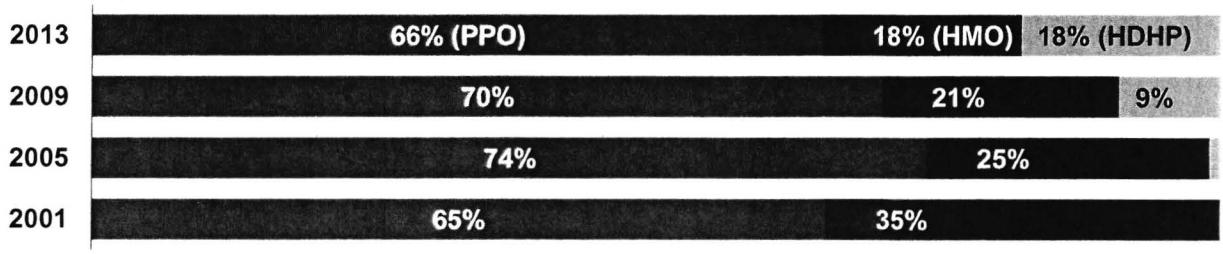
In 2010, DSGI contracted with Mercer Consulting to prepare a Benchmarking Report[17] (report) for the state group insurance program. The report compares Florida's state group insurance program to the

[15] Overview of the State Group Health Insurance Program, Department of Management Services, presentation to the Health and Human Services Committee on January 16, 2014.
[16] State Employees' Group Health Self-Insurance Trust Fund, Report on the Financial Outlook, March 4, 2014
[17] Mercer Consulting, State of Florida Benchmarking Report (March 24, 2011), available at: http://www.dms.myflorida.com/index.php/content/download/81470/468862/version/1/file/2010+Benchmarking+Report+for+State+of+Florida.pdf

programs of other large employers[18], both in the public and in the private sectors. The report found that the State of Florida contributes a higher percentage of the premium to employee health benefits than other states and private employers. At the time, Florida paid 84% of the monthly premium for a family PPO plan, but the average for large national employers was 69%. This results in Florida state employees paying less in monthly premiums than other states' and private industry employees. For example, the monthly premium for a family PPO plan for a Florida state employee is $180 and in 2011, the average premium for large national employers was $361.

Today, the monthly premium for a family PPO plan for a Florida state employee is still $180; however, the state now pays 88% of the premium[19] and the benchmark premium for large national employers ranges from $270 to $391 with the company paying 71% to 79% of the premium.[20]

The national trend among large employer health plans is increasing enrollment in high-deductible health plans (HDHP) and declining enrollment in HMOs as illustrated in the following chart[21]:



The state program's trend is the reverse of the national trend in HMO, PPO, and HDHP plans primarily due to the HMO's high actuarial value and the same employee premiums for the HMO and PPO. The actuarial value (AV) measures the percentage of expected medical costs that a health plan will cover and is generally considered a measure of the health plan's generosity. The state program's standard HMO as an AV of 93%, the standard PPO has an AV of 86%, and the HDHP has an AV of 80%.[22] Accordingly, enrollees in the state program gravitate toward the high value, low cost HMO because they experience no price difference between the plans..

Employee Choice

The FY 11-12 General Appropriations Act directed DMS to develop a report of plan alternatives and options for the state program. DMS contracted with Buck Consultants which released its report[23] on September 29, 2011. The report concludes:

> The state's current approach to its health plan is best described as paternalistic, whereby the state serves as the architect/custodian of the plan, providing generous benefits and allowing employees to be passive and perhaps even entitled, with little concern about costs. Historically prevalent among large and governmental employers, this approach is rapidly being replaced by initiatives that focus on increasing and improving consumerism behaviors. In the consumerism approach the employer and employees maintain

[18] For the purpose of the report, "large employers" had 500 or more employees.
[19] The state contributes 92% of the premium for the individual PPO plan.
[20] Market-Based Framework for Health Plan Program Changes, Mercer Health & Benefits, presentation to the Health and Human Services Committee on January 16, 2014, at slide 18.
[21] Mercer at slide 6.
[22] Mercer at slide 20.
[23] Buck Consultants, Strategic Health Plan Options for the State of Florida (September 29, 2011), available at: http://www.dms.myflorida.com/index.php/content/download/81468/468856/version/1/file/Strategic+Health+Plan+Options+for+the+State+of+Florida+9-30-11+-+Final.pdf

> shared accountability, with the employer providing a supportive environment, partnering with employees and enabling them to make informed decisions, considering costs and outcomes of the health care services they seek and receive.

In a presentation before the Health and Human Services Committee on January 16, 2014, Mercer Health & Benefits (Mercer) reported that the state program is behind other large employers in key survey trends[24]. The state program has plans with lower premiums and higher benefits than industry benchmarks.[25] There is virtually no enrollment in HDHPs and limited growth versus significant growth nationally.[26] Florida's plan costs and annual cost trends are higher than national survey data.[27] State employees have little real choice among health plan options since there is only a 7% difference in the "richness of the benefits" between the HMO and PPO, and the price is the same.[28] Consequently, 99% of enrollees chose the HMO or PPO with little to no incentive to choose the HDHP.[29]

Effect of the Bill

Premium Adjustments

Current law provides that "the state contribution toward the cost of any plan in the state group insurance program shall be uniform with respect to all state employees . . .participating in the same coverage tier[30] in the same plan."[31] Since there is a 7% difference in the actuarial value between the HMO and the PPO, the state likely pays more in costs from the State Employees' Group Health Self-Insurance Trust Fund (Trust Fund) for the HMO benefits. However, each year the Legislature sets uniform premium amounts in the General Appropriations Act for state paid premiums. The premiums are deposited into the Trust Fund and used to pay the expenses of the state program.

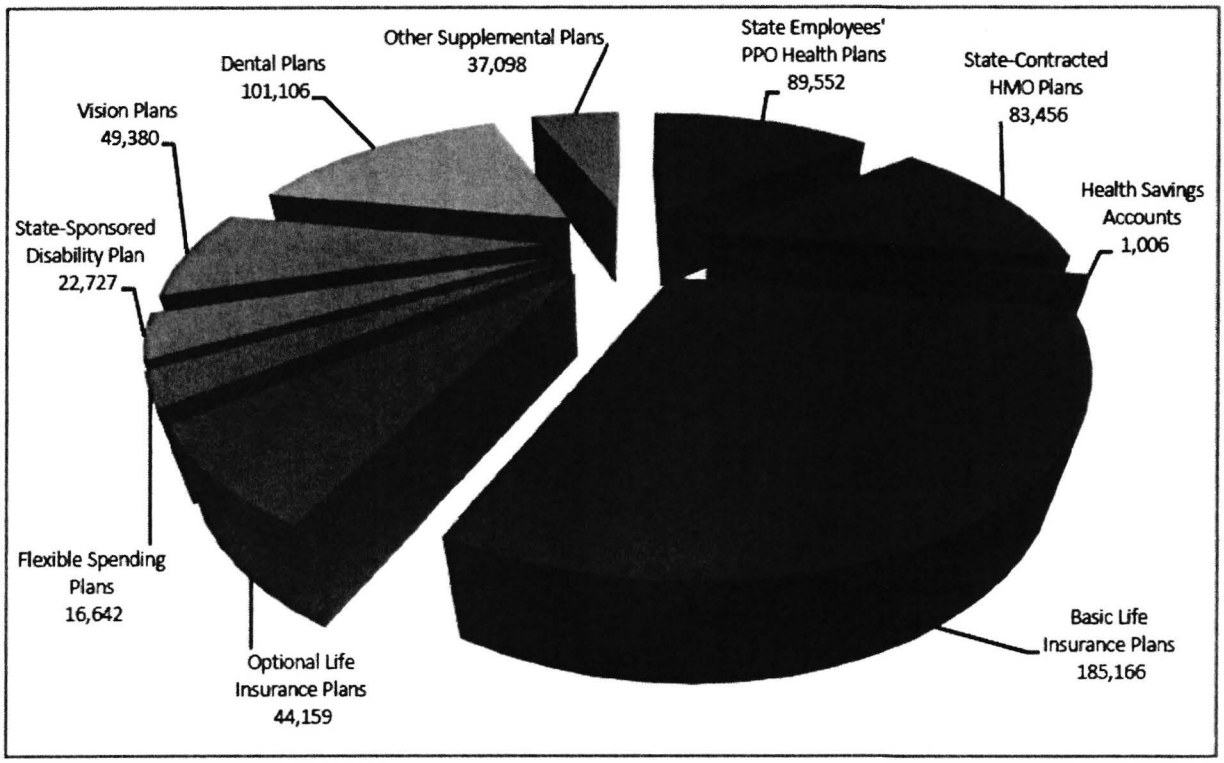
The bill directs DMS to establish employee contribution rates for the 2015 plan year that reflect the full actuarial benefit difference between the HMO and the PPO. The rates must be revenue neutral to the Trust Fund and the PPO contribution rate must be less than the employee contribution level for the 2014 plan year. Consequently, next year employees will have a choice between paying more for the higher value HMO and paying less for the lower value PPO. Employees will have a choice between richer benefits and greater take-home pay and state will make a uniform contribution on behalf of each employee.

Additional Benefits

The following chart illustrates that many state employees enroll in products offered by the state program other than health insurance.

[24] Mercer at slide 5.
[25] Mercer at slide 5.
[26] Mercer at slide 5.
[27] Mercer at slide 6.
[28] Mercer at slide 9.
[29] Mercer at slide 9.
[30] The coverage tier is either individual or family.
[31] S. 110.123(3)(f), F.S.

Insurance Plans Average Enrollment FY 2011-12



The bill allows DMS to contract for additional products to be included in the state program. These include:

- Prepaid limited health service organizations as authorized under part I of chapter 636.
- Discount medical plan organizations as authorized under part II of chapter 636.
- Prepaid health clinic service providers licensed under part II of chapter 641.
- Health care providers, including hospitals and other licensed health facilities, health care clinics, licensed health professionals, and other licensed health care providers, who sell service contracts and arrangements for a specified amount and type of health services.
- Provider organizations, including service networks, group practices, professional associations, and other incorporated organizations of providers, who sell service contracts and arrangements for a specified amount and type of health services.
- Corporate entities that provide specific health services in accordance with applicable state law and sell service contracts and arrangements for a specified amount and type of health services.
- Entities that provide health services or treatments through a bidding process.
- Entities that provide health services or treatments through bundling or aggregating the health services or treatments.
- Entities that provide other innovative and cost-effective health service delivery methods.

The bill also directs DMS to contract with at least one entity that provides comprehensive pricing and inclusive services for surgery and other medical procedures. These bundled services will be another option for state employees. The entity will be required to have procedures and evidence-based standards to assure only high quality health care providers. Assistance must be provided to the enrollee in accessing care and in the coordination of the care. The bundled services must provide cost savings to the state program and the enrollee. The selected entity must provide an educational campaign for employees to learn about the offered services.

By January 15 of each year, DMS must report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the participation level and cost-savings to both the enrollee and the state resulting from the contract.

Price Transparency Pilot Project

The costs of health care procedures are often unknown and unknowable to consumers and can vary dramatically among providers.[32] The following chart shows the extreme price differences across the country of the average cost to Medicare for a joint replacement.

	Hospital Charges	Actual Payment
Maryland	$21,230	$20,048
Delaware	$32,629	$14,765
Hawaii	$39,463	$18,512
Georgia	$46,856	$13,303
Pennsylvania	$51,014	$13,679
South Carolina	$57,557	$13,651
Arkansas	$63,290	$21,160
New Jersey	$66,639	$15,059
Nevada	$71,782	$13,621
California	$88,238	$17,187

Note: This includes all joints other than hips.
Source: *Centers for Medicare & Medicaid Services, May 8, 2013*

California Public Employees' Retirement System (CalPERS), the second largest benefits program in the country started a "reference pricing" initiative in 2011. CalPERS set a threshold of $30,000 for hospital payments for both for inpatient hip and knee replacements and designated certain hospitals where enrollees could get care at or below that price. If enrollees had surgery at designated hospitals, they paid only their plans' typical deductible and coinsurance up to the out-of-pocket maximum. Patients could go to other in-network hospitals for care but were responsible for both the typical cost sharing and all allowed amounts exceeding the $30,000 threshold, which were not subject to an out-of-pocket maximum. The initiative resulted in $2.8 million for CalPERS and $300,000 in savings for enrollees in 2011 without sacrificing quality.[33]

The bill directs DMS to implement beginning in 2015 a 3-year price transparency pilot project. The purpose of the pilot is to reward value-based pricing by publishing the prices of certain diagnostic and surgical procedures and sharing any savings generated by the enrollee's choice of providers. Participation in the project will be voluntary for state employees.

DMS must select between one and three areas of the state for the project. DMS will designate between 20 and 50 diagnostic procedures and elective surgical procedures that are commonly utilized by enrollees. The health plans will provide to DMS the contracted prices by provider for these procedures. DMS shall designate a benchmark price for each procedure.

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[32] How to Bring the Price of Health Care Into the Open, The Wall Street Journal, Melinda Beck, February 23, 2014, available at: http://online.wsj.com/news/articles/SB10001424052702303650204579375242842086688?mod=trending_now_5 (last viewed March 17, 2014). Does Knowing Medical Prices Save Money? CalPERS Experiment Says Yes, Kaiser Health New, Ankita Rao, December 6, 2013, available at: http://capsules.kaiserhealthnews.org/index.php/2013/12/does-knowing-medical-prices-save-money-calpers-experiment-says-yes/ (last viewed March 17, 2014).

[33] The Potential of Reference Pricing to Generate Health Care Savings: Lessons from a California Pioneer, Center for Studying Health System Change, Amanda E. Lechner, Rebecca Gourevitch, Paul B. Ginsburg, Research Brief No. 30, December 2013, available at: http://www.hschange.org/CONTENT/1397/#ib6 (last viewed March 17, 2014).

If an employee participating in the project selects a provider who offers the procedure at a price below the benchmark, the state shall pay the employee fifty percent of the difference between the benchmark and the price paid. The payment will be taxable income to the employee.

By January 1 of 2016, 2017, and 2018, the department shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the participation level, the amount paid to enrollees, and cost-savings to both the enrollees and the state resulting from the price transparency pilot project.

Additional Benefit Choices

Beginning in the 2017 plan year, the bill provides that state employees will have health plan choices at four different benefit levels. These levels are:

- Platinum Level (at least 90% AV)
- Gold Level (at least 80% AV)
- Silver Level (at least 70% AV)
- Bronze Level (at least 60% AV)

The state will make a defined contribution for each employee toward the cost of purchasing a health plan. Employees will have the following options:

- Use the entire employer contribution to pay for health insurance and pay any additional premium if the cost of the plan exceeds the employer contribution.
- Use part of the employer contribution to pay for health insurance and have the balance credited to a flexible spending arrangement.
- Use part of the employer contribution to pay for health insurance and have the balance credited to a health savings account.
- Use part of the employer contribution to pay for health insurance and use the balance to purchase additional benefits offered through the state group insurance program.
- Use part of the employer contribution to pay for health insurance and have the balance used to increase the employees pay[34].

The state currently pays 92 percent of the employee's premium for an individual plan and 88 percent for a family plan for a 93% AV plan (HMO) or an 86% AV plan (PPO). If the state continued this level contribution, it would give each career service employee a contribution of $7,098.24 for individual and $15,168.72 per family.

The following chart illustrates a hypothetical[35] example for a Career Service employee with a family plan and a defined contribution benchmarked using the current state contribution, current employee contribution, and the current plan cost:

[34] The employee must use part of the employer contribution to purchase health insurance. The employee may not receive pay in lieu of benefits.

[35] All examples must be hypothetical since the 2017 benefit structure and plan actuarial values cannot be known at this time.

Family Coverage	Current Plan (86% - 93% AV)	80% AV Coverage	70% AV Coverage	60% AV Coverage
State Contribution	$15,168	$15,168	$15,168	$15,168
Plan Cost	$17,328	$14,344	$12,852	$11,361
Employee Contribution	$2,160	$0	$0	$0
Employee Receives	$0	$824	$2,316	$3,807

Under this hypothetical, the employee may choose the same value health plan as the employee has today and pay the same amount as today. Unlike today, the employee may also choose a different health plan and use the remainder toward other health benefits or receive additional salary.

Independent Benefits Consultant

The bill also directs DMS to competitively procure an independent benefits consultant (IBC). The IBC must not be, or have a financial relationship, in an HMO or insurer. Additionally, the IBC must have substantial experience in designing and administering benefit plans for large employers and public employers.

The IBC will assist DMS in developing a plan for the implementation of the new benefit levels in the state program. The plan shall be submitted to the Governor, the President of the Senate and the Speaker of the House of Representatives no later than January 1, 2016, and include recommendations for:

- Employer and employee contribution policies.
- Steps necessary for maintaining or improving total employee compensation levels when the transition is initiated.
- An education strategy to inform employees on the additional choices available in the state group insurance program.

The ongoing duties of the IBC include:

- Providing assessments of trends in benefits and employer sponsored insurance that affect the state group insurance program.
- Conducting comprehensive analysis of the state group insurance program including available benefits, coverage options, and claims experience.
- Identifying and establishing appropriate adjustment procedures necessary to respond to any risk segmentation that may occur when increased choices are offered to employees.
- Assist the department with:
    - The submission of any needed plan revisions for federal review.
    - Ensuring compliance with applicable federal and state regulations.
    - Monitoring the adequacy of funding and reserves for the state self-insured plan.

The IBC will assist DMS in preparing recommendations for any modifications to the state group insurance program no later than January 1 of each year which shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

B. SECTION DIRECTORY:

Section 1: Amends s. 110.123, F.S., relating to the State Group Insurance Program.
Section 2: Creates s. 110.12303, F.S., relating to the State Group Insurance Program; additional benefits; price transparency pilot program; reporting.
Section 3: Creates s. 110.12301, F.S., relating to Independent Benefits Consultant.
Section 4: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide additional opportunities for private companies to contract to provide services to the state and to state employees.

D. FISCAL COMMENTS:

The Department of Management Services' bill analysis indicated that the overall fiscal impact of the bill was indeterminate. However, the Department indicated a need for an additional four staff (two in fiscal year 2014-15 and two that could be postponed until fiscal year 2015-16). Total estimated salary and benefit needs are $336,000. In addition, the department estimated that the Division would need $750,000 to contract with an independent benefit advisor and $50,000 for outside counsel.

The department indicated that the fiscal impact of the price transparency pilot project is indeterminate. The number and availability of providers willing to provide transparent pricing in the select pilot areas is unknown. Limited competition may inhibit the ability of the pilot project to influence competition and limit employee's selection of vendors. Additionally, the methodology used by DMS to determine appropriate benchmarks will be critical in the amount of 'savings' that will be shared with the employee, and ultimately any potential savings or costs to the state.

The department indicated that the fiscal impact of the development of the tiered premium structure in plan year 2017 is indeterminate. The cost or savings to the state produced will be dependent on the specifics of the premium and cost-sharing arrangement ultimately established by the Legislature in developing the tiered premium structure. The tiers and premium cost-sharing can be designed to be essentially cost-neutral to the state.

The Department noted some concerns that various provisions included in the bill could put the tax favored status of the plan at risk if implemented without due caution.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Department of Management Services has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the state group insurance program; amending s. 110.123, F.S.; revising applicability of certain definitions; defining the term "plan year"; authorizing the program to include additional benefits; authorizing an employee to use a certain portion of the state's contribution to purchase additional program benefits and supplemental benefits under specified circumstances; providing for the program to offer health plans in specified benefit levels; providing for the Department of Management Services to develop a plan for implementation of the benefit levels; providing reporting requirements; providing for expiration of the implementation plan; creating s. 110.12303, F.S.; authorizing additional benefits to be included in the program; providing that the department shall contract with at least one entity that provides comprehensive pricing and inclusive services for surgery and other medical procedures; providing contract requirements; providing reporting requirements; providing for the department to establish a 3-year price transparency pilot project in certain areas of the state; providing project requirements; providing reporting requirements; creating s. 110.12304, F.S.; directing the department to contract with an independent benefits consultant;

providing qualifications and duties of the independent benefits consultant; providing reporting requirements; requiring the department to adjust certain health plan contribution rates; providing requirements for such adjustments; providing an effective date.

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

Section 1. Subsection (2) and paragraphs (b), (f), (h), and (j) of subsection (3) of section 110.123, Florida Statutes, are amended, and paragraph (k) is added to subsection (3) of that section, to read:

110.123 State group insurance program.—

(2) DEFINITIONS.—As used in sections 110.123-110.1239 ~~this section~~, the term:

(a) "Department" means the Department of Management Services.

(b) "Enrollee" means all state officers and employees, retired state officers and employees, surviving spouses of deceased state officers and employees, and terminated employees or individuals with continuation coverage who are enrolled in an insurance plan offered by the state group insurance program. "Enrollee" includes all state university officers and employees, retired state university officers and employees, surviving spouses of deceased state university officers and employees, and terminated state university employees or individuals with

continuation coverage who are enrolled in an insurance plan offered by the state group insurance program.

(c) "Full-time state employees" means employees of all branches or agencies of state government holding salaried positions who are paid by state warrant or from agency funds and who work or are expected to work an average of at least 30 or more hours per week; employees paid from regular salary appropriations for 8 months' employment, including university personnel on academic contracts; and employees paid from other-personal-services (OPS) funds as described in subparagraphs 1. and 2. The term includes all full-time employees of the state universities. The term does not include seasonal workers who are paid from OPS funds.

1. For persons hired before April 1, 2013, the term includes any person paid from OPS funds who:

a. Has worked an average of at least 30 hours or more per week during the initial measurement period from April 1, 2013, through September 30, 2013; or

b. Has worked an average of at least 30 hours or more per week during a subsequent measurement period.

2. For persons hired after April 1, 2013, the term includes any person paid from OPS funds who:

a. Is reasonably expected to work an average of at least 30 hours or more per week; or

b. Has worked an average of at least 30 hours or more per week during the person's measurement period.

(d) "Health maintenance organization" or "HMO" means an entity certified under part I of chapter 641.

(e) "Health plan member" means any person participating in a state group health insurance plan, a TRICARE supplemental insurance plan, or a health maintenance organization plan under the state group insurance program, including enrollees and covered dependents thereof.

(f) "Part-time state employee" means an employee of any branch or agency of state government paid by state warrant from salary appropriations or from agency funds, and who is employed for less than an average of 30 hours per week or, if on academic contract or seasonal or other type of employment which is less than year-round, is employed for less than 8 months during any 12-month period, but does not include a person paid from other-personal-services (OPS) funds. The term includes all part-time employees of the state universities.

(g) "Plan year" means a calendar year.

(h) ~~(g)~~ "Retired state officer or employee" or "retiree" means any state or state university officer or employee who retires under a state retirement system or a state optional annuity or retirement program or is placed on disability retirement, and who was insured under the state group insurance program at the time of retirement, and who begins receiving retirement benefits immediately after retirement from state or state university office or employment. The term also includes any state officer or state employee who retires under the

Florida Retirement System Investment Plan established under part II of chapter 121 if he or she:

1. Meets the age and service requirements to qualify for normal retirement as set forth in s. 121.021(29); or

2. Has attained the age specified by s. 72(t)(2)(A)(i) of the Internal Revenue Code and has 6 years of creditable service.

(i) ~~(h)~~ "State agency" or "agency" means any branch, department, or agency of state government. "State agency" or "agency" includes any state university for purposes of this section only.

(j) ~~(i)~~ "Seasonal workers" has the same meaning as provided under 29 C.F.R. s. 500.20(s)(1).

(k) ~~(j)~~ "State group health insurance plan or plans" or "state plan or plans" mean the state self-insured health insurance plan or plans offered to state officers and employees, retired state officers and employees, and surviving spouses of deceased state officers and employees pursuant to this section.

(l) ~~(k)~~ "State-contracted HMO" means any health maintenance organization under contract with the department to participate in the state group insurance program.

(m) ~~(l)~~ "State group insurance program" or "programs" means the package of insurance plans offered to state officers and employees, retired state officers and employees, and surviving spouses of deceased state officers and employees pursuant to this section, including the state group health insurance plan or plans, health maintenance organization plans, TRICARE

supplemental insurance plans, and other plans required or authorized by law.

(n) ~~(m)~~ "State officer" means any constitutional state officer, any elected state officer paid by state warrant, or any appointed state officer who is commissioned by the Governor and who is paid by state warrant.

(o) ~~(n)~~ "Surviving spouse" means the widow or widower of a deceased state officer, full-time state employee, part-time state employee, or retiree if such widow or widower was covered as a dependent under the state group health insurance plan, ~~a~~ TRICARE supplemental insurance plan, or a health maintenance organization plan established pursuant to this section at the time of the death of the deceased officer, employee, or retiree. "Surviving spouse" also means any widow or widower who is receiving or eligible to receive a monthly state warrant from a state retirement system as the beneficiary of a state officer, full-time state employee, or retiree who died prior to July 1, 1979. For the purposes of this section, any such widow or widower shall cease to be a surviving spouse upon his or her remarriage.

(p) ~~(o)~~ "TRICARE supplemental insurance plan" means the Department of Defense Health Insurance Program for eligible members of the uniformed services authorized by 10 U.S.C. s. 1097.

(3) STATE GROUP INSURANCE PROGRAM.—

(b) It is the intent of the Legislature to offer a

comprehensive package of health insurance and retirement benefits and a personnel system for state employees which are provided in a cost-efficient and prudent manner, and to allow state employees the option to choose benefit plans which best suit their individual needs. ~~Therefore,~~ The state group insurance program ~~is established which~~ may include the state group health insurance plan or plans, health maintenance organization plans, group life insurance plans, TRICARE supplemental insurance plans, group accidental death and dismemberment plans, ~~and~~ group disability insurance plans,~~.~~ ~~Furthermore, the department is additionally authorized to establish and provide as part of the state group insurance program any~~ other group insurance plans or coverage choices, and other benefits authorized by law ~~that are consistent with the provisions of this section~~.

(f) Except as provided for in subparagraph (h)2., the state contribution toward the cost of any plan in the state group insurance program shall be uniform with respect to all state employees in a state collective bargaining unit participating in the same coverage tier in the same plan. This section does not prohibit the development of separate benefit plans for officers and employees exempt from the career service or the development of separate benefit plans for each collective bargaining unit. For the 2017 plan year and thereafter, if the state's contribution is more than the premium cost of the health plan selected by the employee, subject to any federal

limitations, the employee may elect to have the balance:

1. Credited to the employee's flexible spending account.

2. Credited to the employee's health savings account.

3. Used to purchase additional benefits offered through the state group insurance program.

4. Used to increase the employee's salary.

(h)1. A person eligible to participate in the state group insurance program may be authorized by rules adopted by the department, in lieu of participating in the state group health insurance plan, to exercise an option to elect membership in a health maintenance organization plan which is under contract with the state in accordance with criteria established by this section and by said rules. The offer of optional membership in a health maintenance organization plan permitted by this paragraph may be limited or conditioned by rule as may be necessary to meet the requirements of state and federal laws.

2. The department shall contract with health maintenance organizations seeking to participate in the state group insurance program through a request for proposal or other procurement process, as developed by the Department of Management Services and determined to be appropriate.

a. The department shall establish a schedule of minimum benefits for health maintenance organization coverage, and that schedule shall include: physician services; inpatient and outpatient hospital services; emergency medical services, including out-of-area emergency coverage; diagnostic laboratory

and diagnostic and therapeutic radiologic services; mental health, alcohol, and chemical dependency treatment services meeting the minimum requirements of state and federal law; skilled nursing facilities and services; prescription drugs; age-based and gender-based wellness benefits; and other benefits as may be required by the department. Additional services may be provided subject to the contract between the department and the HMO. As used in this paragraph, the term "age-based and gender-based wellness benefits" includes aerobic exercise, education in alcohol and substance abuse prevention, blood cholesterol screening, health risk appraisals, blood pressure screening and education, nutrition education, program planning, safety belt education, smoking cessation, stress management, weight management, and women's health education.

b. The department may establish uniform deductibles, copayments, coverage tiers, or coinsurance schedules for all participating HMO plans.

c. The department may require detailed information from each health maintenance organization participating in the procurement process, including information pertaining to organizational status, experience in providing prepaid health benefits, accessibility of services, financial stability of the plan, quality of management services, accreditation status, quality of medical services, network access and adequacy, performance measurement, ability to meet the department's reporting requirements, and the actuarial basis of the proposed

rates and other data determined by the director to be necessary for the evaluation and selection of health maintenance organization plans and negotiation of appropriate rates for these plans. Upon receipt of proposals by health maintenance organization plans and the evaluation of those proposals, the department may enter into negotiations with all of the plans or a subset of the plans, as the department determines appropriate. Nothing shall preclude the department from negotiating regional or statewide contracts with health maintenance organization plans when this is cost-effective and when the department determines that the plan offers high value to enrollees.

d. The department may limit the number of HMOs that it contracts with in each service area based on the nature of the bids the department receives, the number of state employees in the service area, or any unique geographical characteristics of the service area. The department shall establish by rule service areas throughout the state.

e. All persons participating in the state group insurance program may be required to contribute towards a total state group health premium that may vary depending upon the plan, coverage level, and coverage tier selected by the enrollee and the level of state contribution authorized by the Legislature.

3. The department is authorized to negotiate and to contract with specialty psychiatric hospitals for mental health benefits, on a regional basis, for alcohol, drug abuse, and mental and nervous disorders. The department may establish,

subject to the approval of the Legislature pursuant to subsection (5), any such regional plan upon completion of an actuarial study to determine any impact on plan benefits and premiums.

4. In addition to contracting pursuant to subparagraph 2., the department may enter into contract with any HMO to participate in the state group insurance program which:

a. Serves greater than 5,000 recipients on a prepaid basis under the Medicaid program;

b. Does not currently meet the 25-percent non-Medicare/non-Medicaid enrollment composition requirement established by the Department of Health excluding participants enrolled in the state group insurance program;

c. Meets the minimum benefit package and copayments and deductibles contained in sub-subparagraphs 2.a. and b.;

d. Is willing to participate in the state group insurance program at a cost of premiums that is not greater than 95 percent of the cost of HMO premiums accepted by the department in each service area; and

e. Meets the minimum surplus requirements of s. 641.225.

The department is authorized to contract with HMOs that meet the requirements of sub-subparagraphs a.-d. prior to the open enrollment period for state employees. The department is not required to renew the contract with the HMOs as set forth in this paragraph more than twice. Thereafter, the HMOs shall be

eligible to participate in the state group insurance program only through the request for proposal or invitation to negotiate process described in subparagraph 2.

5. All enrollees in a state group health insurance plan, a TRICARE supplemental insurance plan, or any health maintenance organization plan have the option of changing to any other health plan that is offered by the state within any open enrollment period designated by the department. Open enrollment shall be held at least once each calendar year.

6. When a contract between a treating provider and the state-contracted health maintenance organization is terminated for any reason other than for cause, each party shall allow any enrollee for whom treatment was active to continue coverage and care when medically necessary, through completion of treatment of a condition for which the enrollee was receiving care at the time of the termination, until the enrollee selects another treating provider, or until the next open enrollment period offered, whichever is longer, but no longer than 6 months after termination of the contract. Each party to the terminated contract shall allow an enrollee who has initiated a course of prenatal care, regardless of the trimester in which care was initiated, to continue care and coverage until completion of postpartum care. This does not prevent a provider from refusing to continue to provide care to an enrollee who is abusive, noncompliant, or in arrears in payments for services provided. For care continued under this subparagraph, the program and the

provider shall continue to be bound by the terms of the terminated contract. Changes made within 30 days before termination of a contract are effective only if agreed to by both parties.

7. Any HMO participating in the state group insurance program shall submit health care utilization and cost data to the department, in such form and in such manner as the department shall require, as a condition of participating in the program. The department shall enter into negotiations with its contracting HMOs to determine the nature and scope of the data submission and the final requirements, format, penalties associated with noncompliance, and timetables for submission. These determinations shall be adopted by rule.

8. The department may establish and direct, with respect to collective bargaining issues, a comprehensive package of insurance benefits that may include supplemental health and life coverage, dental care, long-term care, vision care, and other benefits it determines necessary to enable state employees to select from among benefit options that best suit their individual and family needs. Beginning with the 2015 plan year, the package of benefits may also include products and services described in s. 110.12303.

a. Based upon a desired benefit package, the department shall issue a request for proposal or invitation to negotiate for ~~health insurance~~ providers interested in participating in the state group insurance program, and the department shall

issue a request for proposal or invitation to negotiate for ~~insurance~~ providers interested in participating in the non-health-related components of the state group insurance program. Upon receipt of all proposals, the department may enter into contract negotiations with ~~insurance~~ providers submitting bids or negotiate a specially designed benefit package. Insurance providers offering or providing supplemental coverage as of May 30, 1991, which qualify for pretax benefit treatment pursuant to s. 125 of the Internal Revenue Code of 1986, with 5,500 or more state employees currently enrolled may be included by the department in the supplemental insurance benefit plan established by the department without participating in a request for proposal, submitting bids, negotiating contracts, or negotiating a specially designed benefit package. These contracts shall provide state employees with the most cost-effective and comprehensive coverage available; however, except as provided in subparagraph (f)3., no state or agency funds shall be contributed toward the cost of any part of the premium of such supplemental benefit plans. With respect to dental coverage, the division shall include in any solicitation or contract for any state group dental program made after July 1, 2001, a comprehensive indemnity dental plan option which offers enrollees a completely unrestricted choice of dentists. If a dental plan is endorsed, or in some manner recognized as the preferred product, such plan shall include a comprehensive indemnity dental plan option which provides enrollees with a

completely unrestricted choice of dentists.

b. Pursuant to the applicable provisions of s. 110.161, and s. 125 of the Internal Revenue Code of 1986, the department shall enroll in the pretax benefit program those state employees who voluntarily elect coverage in any of the supplemental ~~insurance~~ benefit plans as provided by sub-subparagraph a.

c. Nothing herein contained shall be construed to prohibit insurance providers from continuing to provide or offer supplemental benefit coverage to state employees as provided under existing agency plans.

(j) For the 2017 plan year and thereafter, health plans shall be offered in the following benefit levels:

1. Platinum level, which shall have an actuarial value of at least 90 percent.

2. Gold level, which shall have an actuarial value of at least 80 percent.

3. Silver level, which shall have an actuarial value of at least 70 percent.

4. Bronze level, which shall have an actuarial value of at least 60 percent ~~Notwithstanding paragraph (f) requiring uniform contributions, and for the 2011-2012 fiscal year only, the state contribution toward the cost of any plan in the state group insurance plan is the difference between the overall premium and the employee contribution. This subsection expires June 30, 2012~~.

(k) In consultation with the independent benefits

consultant described in s. 110.12304, the department shall develop a plan for the implementation of the benefit levels described in paragraph (j). The plan shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2016, and include recommendations for:

1. Employer and employee contribution policies.

2. Steps necessary for maintaining or improving total employee compensation levels when the transition is initiated.

3. An education strategy to inform employees of the additional choices available in the state group insurance program.

This paragraph expires July 1, 2016.

Section 2. Section 110.12303, Florida Statutes, is created to read:

110.12303 State group insurance program; additional benefits; price transparency pilot program; reporting.—Beginning with the 2015 plan year:

(1) In addition to the comprehensive package of health insurance and other benefits required or authorized to be included in the state group insurance program, the package of benefits may also include products and services offered by:

(a) Prepaid limited health service organizations as authorized by part I of chapter 636.

(b) Discount medical plan organizations as authorized by

part II of chapter 636.

(c) Prepaid health clinics licensed under part II of chapter 641.

(d) Licensed health care providers, including hospitals and other health facilities, health care clinics, and health professionals, who sell service contracts and arrangements for a specified amount and type of health services.

(e) Provider organizations, including service networks, group practices, professional associations, and other incorporated organizations of providers, who sell service contracts and arrangements for a specified amount and type of health services.

(f) Corporate entities that provide specific health services in accordance with applicable state law and sell service contracts and arrangements for a specified amount and type of health services.

(g) Entities that provide health services or treatments through a bidding process.

(h) Entities that provide health services or treatments through bundling or aggregating the health services or treatments.

(i) Entities that provide other innovative and cost-effective health service delivery methods.

(2)(a) The department shall contract with at least one entity that provides comprehensive pricing and inclusive services for surgery and other medical procedures which may be

accessed at the option of the enrollee. The contract shall require the entity to:

1. Have procedures and evidence-based standards to ensure the inclusion of only high-quality health care providers.

2. Provide assistance to the enrollee in accessing and coordinating care.

3. Provide cost savings to the state group insurance program to be shared with both the state and the enrollee.

4. Provide an educational campaign for employees to learn about the services offered by the entity.

(b) On or before January 15 of each year, the department shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the participation level and cost-savings to both the enrollee and the state resulting from the contract or contracts described in subsection (2).

(3) The department shall establish a 3-year price transparency pilot project in at least one area, but not more than three areas, of the state where a substantial percentage of the state group insurance program enrollees live. The purpose of the project is to reward value-based pricing by publishing the prices of certain diagnostic and elective surgical procedures and sharing with the enrollee and the state any savings generated by the enrollee's choice of providers.

(a) Participation in the project shall be voluntary for enrollees.

(b) The department shall designate between 20 and 50 diagnostic procedures and elective surgical procedures that are commonly utilized by enrollees.

(c) Health plans shall provide the department with the contracted price by provider for each designated procedure. The department shall post the prices on its website and shall designate one price per procedure as the benchmark price, using a mean, average, or other method of comparing the prices.

(d) If an enrollee participating in the project selects a provider that performs the designated procedure at a price below the benchmark price for that procedure, the enrollee shall receive from the state 50 percent of the difference between the price of the procedure by the selected provider and the benchmark price.

(e) On or before January 1 of 2016, 2017, and 2018, the department shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the participation level, amount paid to enrollees, and cost-savings to both the enrollees and the state resulting from the price transparency pilot project.

Section 3. Section 110.12304, Florida Statutes, is created to read:

110.12304 Independent benefits consultant.—

(1) The department shall competitively procure an independent benefits consultant.

(2) The independent benefits consultant may not:

(a) Be owned or controlled by a health maintenance organization or insurer.

(b) Have an ownership interest in a health maintenance organization or insurer.

(c) Have a direct or indirect financial interest in a health maintenance organization or insurer.

(3) The independent benefits consultant must have substantial experience in consultation and design of employee benefit programs for large employers and public employers, including experience with plans that qualify as cafeteria plans pursuant to s. 125 of the Internal Revenue Code of 1986.

(4) The independent benefits consultant shall:

(a) Provide an ongoing assessment of trends in benefits and employer-sponsored insurance that affect the state group insurance program.

(b) Conduct a comprehensive analysis of the state group insurance program, including available benefits, coverage options, and claims experience.

(c) Identify and establish appropriate adjustment procedures necessary to respond to any risk segmentation that may occur when increased choices are offered to employees.

(d) Assist the department with the submission of any needed plan revisions for federal review.

(e) Assist the department in ensuring compliance with applicable federal and state regulations.

(f) Assist the department in monitoring the adequacy of

funding and reserves for the state self-insured plan.

(g) Assist the department in preparing recommendations for any modifications to the state group insurance program which shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1 of each year.

Section 4. Beginning with the 2015 plan year, the Department of Management Services shall adjust the standard health maintenance organization plan employee contribution rates and the standard preferred provider option plan employee contribution rates to reflect the full actuarial benefit difference between the plans. The adjustment must be revenue neutral to the State Employees' Group Health Self-Insurance Trust Fund and must result in a decrease in employee contribution levels from the 2014 plan year for the standard preferred provider option plan.

Section 5. This act shall take effect July 1, 2014.

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 Brodeur offered the following:

Amendment (with title amendment)

Remove lines 527-536 and insert:

Section 4. (1) For the 2016 plan year, the Department of Management Services shall recommend premium alternatives with amounts normalized to reflect benefit design and value for the state group health insurance plans and the fully insured HMO plans. The premium alternatives shall be provided for both individual and family coverage. The recommended premiums shall reflect the costs to the program for the medical and prescription drug benefits with associated administrative costs and fees. Each alternative shall be presented:

(a) Separately for the self-insured PPO and for each self-insured HMO plan;

(b) Separately for each fully insured HMO plan; and

(c) As a pooling of all self-insured HMO plans.

Prescription drug benefits shall be incorporated into the recommended premiums based on the enrolled health plan membership.

(2) The Department shall provide the premium alternatives to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than December 1, 2014.

(3) For the 2016 plan year, the General Appropriations Act shall establish premiums for enrollees that reflect the differences in benefit design and value among the HMO plan options and the preferred provider plan options offered in the State Group Insurance Program.

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

Remove lines 29-31 and insert:
directing the department to provide premium alternatives to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than December 1, 2014; providing criteria for calculating the premium alternatives; providing that the General Appropriations Act shall establish premiums for enrollees that reflect the differences in benefit

design and value among the HMO plan options and the preferred provider plan options; providing an effective date.

Amendment No. 2

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

Committee/Subcommittee hearing bill: Appropriations Committee
Representative Brodeur offered the following:

Amendment (with title amendment)

Between lines 536 and 537, insert:

Section 5. (1) For the 2014-2015 fiscal year, the sums of $151,216 in recurring funds and $507,546 in nonrecurring funds are appropriated from the State Employees Health Insurance Trust Fund to the Department of Management Services, and 2 full-time equivalent positions and associated salary rate of 120,000 are authorized, for the purpose of implementing this act.

(2)(a) The recurring funds appropriated in this section shall be allocated to the following specific appropriation categories within the Insurance Benefits Administration Program: $150,528 in Salaries and Benefits and $688 in Special Categories Transfer to Department of Management Services - Human Resources Purchased per Statewide Contract.

(b) The nonrecurring funds appropriated in this section shall be allocated to the following specific appropriation categories: $500,000 in Special Categories Contracted Services and $7,546 in Expenses.

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

Remove line 31 and insert:

adjustments; providing appropriation and authorizing positions; providing an effective date.

Amendment No. 3

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

Committee/Subcommittee hearing bill: Appropriations Committee
Representative Jones, M. offered the following:

Amendment (with title amendment)

Between lines 526 and 527, insert:

Section 1. Section 110.12315, Florida Statutes, is amended to read:

110.12315 Prescription drug program.—The state employees' prescription drug program is established. This program shall be administered by the Department of Management Services, according to the terms and conditions of the plan as established by the relevant provisions of the annual General Appropriations Act and implementing legislation, subject to the following conditions:

(1) The department ~~of Management Services~~ shall allow prescriptions written by health care providers under the plan to be filled by any licensed pharmacy pursuant to contractual

claims-processing provisions. Nothing in this section may be construed as prohibiting a mail order prescription drug program distinct from the service provided by retail pharmacies.

(2) In providing for reimbursement of pharmacies for prescription medicines dispensed to members of the state group health insurance plan and their dependents under the state employees' prescription drug program:

(a) Retail pharmacies participating in the program must be reimbursed at a uniform rate and subject to uniform conditions, according to the terms and conditions of the plan.

(b) There shall be a 30-day supply limit for prescription card purchases, a 90-day supply limit for maintenance prescription drug purchases, and a 90-day supply limit for mail order ~~or mail order~~ prescription drug purchases. ~~The Department of Management Services may implement a 90-day supply limit program for certain maintenance drugs as determined by the department at retail pharmacies participating in the program if the department determines it to be in the best financial interest of the state.~~

(c) The ~~current~~ pharmacy dispensing fee shall be negotiated by the department ~~remains in effect~~.

(3) Pharmacy reimbursement rates shall be as follows:

(a) For mail order and specialty pharmacies contracting with the department, reimbursement rates shall be as established in the contract.

(b) For retail pharmacies, the reimbursement rate shall be at the same rate as mail order pharmacies under contract with the department.

(4) The department shall maintain the preferred brand name drug list to be used in the administration of the state employees' prescription drug program.

(5) The department shall maintain a list of maintenance drugs.

(a) Preferred provider organization health plan members may have prescriptions for maintenance drugs filled up to three times as a 30-day supply through a retail pharmacy; thereafter, prescriptions for the same maintenance drug must be filled as a 90-day supply either through the department's contracted mail order pharmacy or through a retail pharmacy.

(b) Health maintenance organization health plan members may have prescriptions for maintenance drugs filled as a 90-day supply either through a mail order pharmacy or through a retail pharmacy.

(6) Copayments made by health plan members for a 90-day supply through a retail pharmacy shall be the same as copayments made for a 90-day supply through the department's contracted mail order pharmacy.

(7)~~(3)~~ The department ~~of Management Services~~ shall establish the reimbursement schedule for prescription pharmaceuticals dispensed under the program. Reimbursement rates for a prescription pharmaceutical must be based on the cost of

the generic equivalent drug if a generic equivalent exists, unless the physician prescribing the pharmaceutical clearly states on the prescription that the brand name drug is medically necessary or that the drug product is included on the formulary of drug products that may not be interchanged as provided in chapter 465, in which case reimbursement must be based on the cost of the brand name drug as specified in the reimbursement schedule adopted by the department ~~of Management Services~~.

(8) ~~(4)~~ The department ~~of Management Services~~ shall conduct a prescription utilization review program. In order to participate in the state employees' prescription drug program, retail pharmacies dispensing prescription medicines to members of the state group health insurance plan or their covered dependents, or to subscribers or covered dependents of a health maintenance organization plan under the state group insurance program, shall make their records available for this review.

(9) ~~(5)~~ The department ~~of Management Services~~ shall implement such additional cost-saving measures and adjustments as may be required to balance program funding within appropriations provided, including a trial or starter dose program and dispensing of long-term-maintenance medication in lieu of acute therapy medication.

(10) ~~(6)~~ Participating pharmacies must use a point-of-sale device or an online computer system to verify a participant's eligibility for coverage. The state is not liable for reimbursement of a participating pharmacy for dispensing

prescription drugs to any person whose current eligibility for coverage has not been verified by the state's contracted administrator or by the department ~~of Management Services~~.

(11) ~~(7)~~ Under the state employees' prescription drug program copayments must be made as follows:

(a) Effective January 1, 2013, for the State Group Health Insurance Standard Plan:

1. For generic drug with card ..... $7.
2. For preferred brand name drug with card ..... $30.
3. For nonpreferred brand name drug with card ..... $50.
4. For generic mail order drug ..... $14.
5. For preferred brand name mail order drug ..... $60.
6. For nonpreferred brand name mail order drug ..... $100.

(b) Effective January 1, 2006, for the State Group Health Insurance High Deductible Plan:

1. Retail coinsurance for generic drug with card ..... 30%.
2. Retail coinsurance for preferred brand name drug with card 30%.
3. Retail coinsurance for nonpreferred brand name drug with card ..... 50%.
4. Mail order coinsurance for generic drug ..... 30%.
5. Mail order coinsurance for preferred brand name drug30%.
6. Mail order coinsurance for nonpreferred brand name drug50%.

(c) The department ~~of Management Services~~ shall create a preferred brand name drug list to be used in the administration of the state employees' prescription drug program.

Section 2. Subsection (1) of section 54 of chapter 2013-41, Laws of Florida, is repealed.

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

Remove line 28 and insert:

benefits consultant; reenacting and amending s. 110.12315(2), F.S., relating to the state employees' prescription drug program; deleting a requirement that the department base its decision as to whether to implement a certain 90-day supply limit on a determination that it would be in the best financial interest of the state; revising the pharmacy dispensing fee; authorizing a retail pharmacy to fill a 90-day supply of certain drugs; repealing s. 54(1), ch. 2013-41, Laws of Florida, providing for the reversion of provisions relating to the state employees' prescription drug program; providing reporting requirments;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7173 PCB SAC 14-02 Florida Retirement System
SPONSOR(S): State Affairs Committee, Boyd
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	11 Y, 6 N	Harrington	Camechis
1) Appropriations Committee		Delaney	Leznoff

SUMMARY ANALYSIS

The Florida Retirement System (FRS) is a multiple-employer, contributory plan that provides retirement income benefits to 621,774 active members, 347,962 retired members and beneficiaries, and 38,724 members of the Deferred Retirement Option Program. It is the primary retirement plan for employees of the state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 186 cities and 267 independent hospitals and special districts that have elected to join the system.

Members of the FRS have two plan options available for participation: the defined benefit plan, also known as the pension plan, and the defined contribution plan, also known as the investment plan. In addition to the two primary plans, some eligible members have the choice of participating in optional retirement plans, which include the Senior Management Service Optional Annuity Program, State Community College System Optional Retirement Program, and the State University System Optional Retirement Program.

This bill makes the following changes to the FRS, effective July 1, 2015:

- Increases the vesting period for members enrolled in the pension plan from eight years to 10 years;
- Increases the disability vesting period for all new enrollees from eight years to 10 years;
- Prohibits members initially enrolled in a position covered by the Elected Officers' Class or Senior Management Service Class from participating in the pension plan and requires participation in the investment plan;
- Changes the default from the pension plan to the investment plan for members who do not affirmatively choose a plan;
- Extends the time period for member's to make a plan selection from the last day of the fifth month after the month of hire to the last day of the eighth month after the month of hire;
- Closes the Senior Management Service Optional Annuity Program to new participants; and
- Prohibits elected officials from joining the Senior Management Service Class in lieu of participation in the Elected Officers' Class.

The bill makes changes to the FRS; however, benefits of current members and retirees are not affected by changes in this bill. Rather, changes included in the bill only pertain to members initially enrolled in the system on or after July 1, 2015.

The bill provides that a proper and legitimate state purpose is served, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

Based on the results of special actuarial studies performed by the Milliman actuarial and consulting firm in 2013, the bill will have no fiscal impact on state or local governments for fiscal year 2014-15. It has a projected positive fiscal impact in fiscal year 2015-16 of $500,000 and a projected negative fiscal impact of $900,000 for all participating entities in fiscal year 2016-17. In fiscal year 2017-18, the bill is projected to have a positive fiscal impact with savings continuing to increase each subsequent year over the period covered by the study for a projected total cumulative savings of $28.6 billion. *See* Fiscal Comments section for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.[1]

The FRS is governed by the Florida Retirement System Act.[2] The FRS, which is a multiple-employer, contributory plan,[3] provides retirement income benefits to 621,774 active members,[4] 347,962 retired members and beneficiaries, and 38,724 members of the Deferred Retirement Option Program (DROP).[5] It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 186 cities and 267 independent hospitals and special districts that have elected to join the system.[6]

The membership of the FRS is divided into five membership classes:[7]

- Regular Class[8] consists of 536,506 members (86.3 percent of the membership);
- Special Risk Class[9] includes 68,800 members (11.1 percent);
- Special Risk Administrative Support Class[10] has 58 members (.009 percent);
- Elected Officers' Class[11] has 2,094 members (0.35 percent); and
- Senior Management Service Class[12] has 7,450 members (1.2 percent).

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined benefit plan, also known as the pension plan; and

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[1] *The Florida Retirement System Annual Report*, July 1, 2012 – June 30, 2013, at 18. A copy of the report can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports (last visited March 21, 2014).

[2] Chapter 121, F.S.

[3] Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after June 30, 2011.

[4] As of June 30, 2013, the FRS defined benefit plan, also known as the pension plan, had 514,436 members, and the defined contribution plan, also known as the investment plan, had 107,338 members. *Supra* at FN 1.

[5] *Id.* at 10.

[6] Florida Retirement System Participating Employers for Plan Year 2013-14, prepared by the Department of Management Services, Division of Retirement, Revised January 2014, at 8. A copy of the document can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications (last visited March 21, 2014).

[7] *Supra* at FN 1.

[8] The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

[9] The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

[10] The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

[11] The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

[12] The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

- The defined contribution plan, also known as the investment plan.

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.

FRS Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan. The earliest that any member could participate in the investment plan was July 1, 2002.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.[13] With respect to the employer contributions, a member vests after completing one work year with an FRS employer.[14] Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.[15]

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.[16] The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.[17]

FRS Pension Plan

The pension plan is a defined benefit plan that is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement (division).[18] Investment management is handled by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.[19] For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.[20] A member vests immediately in all employee contributions paid to the pension plan.

Benefits payable under the pension plan are calculated based on years of service x accrual rate x average final compensation.[21] The accrual rate varies by class as follows:

Membership Class	Accrual Rate
Regular Class	1.60%
Special Risk Class	3.00%
Special Risk Administrative Support Class	1.60%
Elected Officer's Class • Justices and Judges • Others	 3.33% 3.00%

[13] Section 121.4501(6)(a), F.S.

[14] If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

[15] Section 121.591, F.S.

[16] Section 121.4501(8), F.S.

[17] Section 4, Art. IV, Fla. Const.

[18] Section 121.025, F.S.

[19] Section 121.021(45)(a), F.S.

[20] Section 121.021(45)(b), F.S.

[21] Section 121.091, F.S.

Membership Class	Accrual Rate
Senior Management Service Class	2.00%

For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.[22] For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.[23] Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service or attain age 65, and members in the Special Risk and Special Risk Administrative Support Classes must complete 30 years of service or attain age 60.[24]

Default and Second Election

A new enrollee has until the last business day of the fifth month following the employee's month of hire to make a plan selection. If the member fails to make a selection, the member defaults to participation in the pension plan.[25]

After the initial election or default election to participate in either the pension plan or investment plan, a member has one opportunity, at the member's discretion and prior to termination or retirement, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan.[26]

Disability and Death Benefits

Disability retirement benefits are provided for both in-line-of-duty and regular disability. Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability,[27] compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for Special Risk Class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If a disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. An FRS member who qualifies for disability while enrolled in the investment plan may apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.[28]

If the member is terminated by reason of death prior to becoming vested in the FRS, the member's beneficiary is only entitled to the member's accumulated contributions.[29] Under the pension plan, if the member has vested at the time of his or her death, the member's joint annuitant[30] is entitled to receive the optional form[31] of payment for the annuitant's lifetime.[32] If the designated beneficiary does not qualify as a joint annuitant, the member's beneficiary is only entitled to the return of the member's personal contributions, if any.[33] If the member dies in the line of duty, the surviving spouse of the member is entitled to receive a monthly benefit equal to one-half of the monthly salary being received

[22] Section 121.021(29)(a)1., F.S.
[23] Section 121.021(29)(b)1., F.S.
[24] Sections 121.021(29)(a)2. and (b)2., F.S.
[25] Section 121.4501(4), F.S.
[26] Section 121.4501(4)(g), F.S.
[27] *See* s. 121.4501(16), F.S.
[28] Section 121.091(4)(f), F.S.
[29] For purposes of disbursement of benefits, a member is considered retired as of the date of the death.
[30] A joint annuitant is considered to be the member's spouse, natural or legally adopted child who is either under age 25 or is physically or mentally disabled and incapable of self-support (regardless of age), or any person who is financially dependent upon the member for one-half or more of his or her support and is the member's parent, grandparent, or person for whom the member is the legal guardian. Section 121.021(28), F.S.
[31] Under the pension plan, a member has a choice of payment options. If the member dies prior to retirement, the member's joint annuitant is entitled to select either to receive the member's contributions or a reduced monthly benefit payment for life.
[32] Section 121.091(7)(b)1., F.S.
[33] Section 121.091(7)(b)2., F.S.

by the member at the time of death for the rest of the surviving spouse's lifetime.[34] Members in the investment plan are not entitled to these death benefits; instead, the member's beneficiary is entitled to the balance of the member's investment plan account, provided the member has met the one-year vesting requirement.[35]

DROP

All membership classes in the FRS Pension Plan may participate in DROP, which allows a member to retire without terminating employment; a member who enters DROP may extend employment for an additional five years.[36] While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.[37]

Members in the FRS Investment Plan may not participate in DROP; investment plan members are considered retired from the FRS when the member takes a distribution from his or her account.[38]

Health Insurance Subsidy

Upon the conclusion of DROP, or upon service retirement or disability retirement, a retiree is eligible to receive the Health Insurance Subsidy (HIS), which assists retired members in paying for the costs of health insurance.[39] Eligible retirees receive $5 per month for each year of creditable service used to calculate the retirement benefit. The HIS payment must be at least $30, but not more than $150 per month.[40]

Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;[41]
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;[42] and
- Members of a Florida college may elect to enroll in the State Community College System Optional Retirement Program.[43]

Contribution Rates

FRS employers are responsible for contributing a set percentage of the member's monthly compensation to the division to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage

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[34] Section 121.091(7)(d)1., F.S. If the surviving spouse dies, or if the member is not married, the monthly payment that would have otherwise gone to the surviving spouse must be paid for the use and benefit of the member's child or children that are under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Section 121.091(7)(d)2. and 3., F.S.

[35] *See* s. 121.591(3)(b), F.S.

[36] Section 121.091(13)(a) and (b), F.S. Instructional personnel may extend employment for an additional eight years under certain circumstances.

[37] If DROP participation began prior to July 1, 2011, the effective annual interest rate was 6.5 percent. On or after July 1, 2011, the annual interest rate for DROP was reduced to 1.3 percent.

[38] *See* s. 121.4501(2)(k) and (4)(f), F.S.

[39] Sections 112.363(1) and (2), F.S.

[40] Section 112.363(3)(e), F.S.

[41] The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

[42] Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

[43] If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

regardless of whether the member participates in the pension plan or the investment plan.[44] The rate is determined annually based on an actuarial study by DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

The following are the current employer contribution rates for each class:[45]

Membership Class	Effective July 1, 2013
Regular Class	3.53%
Special Risk Class	11.00%
Special Risk Administrative Support Class	4.17%
Elected Officer's Support Class • Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders • Justices and Judges • County Officers	 6.52% 10.05% 8.44%
Senior Management Service Class	4.81%

Regardless of employee class, all employees contribute 3 percent of their compensation towards retirement.[46]

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be placed in the employee's individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.[47]

Effect of the Bill

The bill makes changes to the FRS; however, benefits of current members and retirees are not affected by changes in this bill. In addition, employees initially enrolled in the FRS before July 1, 2015, will not have their retirement choices affected.

Effective July 1, 2015, the bill makes the following changes to the FRS:

- Increases the vesting period for members newly enrolled in the pension plan from eight years to 10 years;
- Increases the disability vesting period for all new enrollees from eight years to 10 years;
- Prohibits members initially enrolled in a position covered by the Elected Officers' Class or Senior Management Service Class from participating in the pension plan and requires participation in the investment plan;
- Changes the default from the pension plan to the investment plan for members who do not affirmatively choose a plan;
- Extends the time period for member's to make a plan selection from the last day of the fifth month after the month of hire to the last day of the eighth month after the month of hire;
- Closes the Senior Management Service Optional Annuity Program to new participants; and
- Prohibits elected officials from joining the Senior Management Service Class in lieu of participation in the Elected Officers' Class.

[44] Section 121.70(1), F.S.
[45] Section 121.71(4), F.S.
[46] Section 121.71(3), F.S.
[47] *See* ss. 121.4503 and 121.72(1), F.S.

Elected Officers' Class and Senior Management Service Class
The bill provides that members initially enrolled in the FRS on or after July 1, 2015, in a position covered by the Elected Officers' Class or Senior Management Service Class may not participate in the pension plan. Instead of having a choice between two plans, such members must participate in the investment plan and may not utilize a second election option to become a member of the pension plan. Investment plan membership continues even if subsequent employment results in the member becoming covered by another membership class.

For a member initially enrolled in the FRS on or after July 1, 2015, in a position covered by another class, the member may choose to participate in the pension plan or the investment plan. If the member chooses to participate in the pension plan and subsequently participates in a position covered by the Elected Officers' Class or Senior Management Service Class, the member may continue to participate in the pension plan. Therefore, the prohibition against participation in the pension plan only affects members initially enrolling in the FRS on or after July 1, 2015, in positions covered by the Elected Officers' Class or Senior Management Service Class.

Default
Members initially enrolled on or after July 1, 2015, have until the last day of the eighth month after hire to choose between participation in the investment plan or pension plan, except that members of the Elected Officers' Class and Senior Management Service Class may not participate in the pension plan. If the member does not make a selection, the member will default to the investment plan.

Vesting
For members initially enrolled in the FRS Pension Plan on or after July 1, 2015, the bill extends the vesting period from eight years to 10 years of creditable service. The vesting period for members of the investment plan remains at one year of creditable service.

The bill also extends the disability vesting period for non-duty disability from eight years to 10 years for all members initially enrolled in the FRS on or after July 1, 2015.

Optional Retirement Programs
The bill closes the Senior Management Service Optional Annuity Program to new members on July 1, 2015. Any member may elect to participate in the annuity program before July 1, 2015, and members currently enrolled in the annuity program may continue to participate in that program. However, no new members may join the program on or after July 1, 2015.

Elected Officials
The bill prohibits elected officials from joining the Senior Management Service Class in lieu of participating in the Elected Officers' Class. Because the Senior Management Service Optional Annuity Program will not be offered on or after July 1, 2015, elected officers will no longer be able to switch service classes for the purpose of participating in the optional annuity program. Instead, elected officials can participate in the FRS or withdraw from the system.[48]

Important State Interest
The bill provides a statement of important state interest. It provides that a proper and legitimate state purpose is served, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

B. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., revising the definition of "vested" or "vesting"; providing that a member initially enrolled in the FRS Pension Plan after a certain date is vested after 10 years of creditable service.

[48] Members of the Elected Officers' Class may withdraw from the FRS. Section 121.052(3), F.S.

Section 2 amends s. 121.051, F.S., providing for compulsory membership in the FRS Investment Plan for employees in the Elected Officers' Class or the Senior Management Service Class initially enrolled on or after a specified date; conforming cross-references to changes made by the act.

Section 3 amends s. 121.052, F.S., prohibiting members of the Elected Officers' Class from joining the Senior Management Service Class on a specified date.

Section 4 amends s. 121.055, F.S., prohibiting an elected official eligible for membership in the Elected Officers' Class from enrolling in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program; closing the Senior Management Service Optional Annuity Program to new members after a specified date.

Section 5 amends s. 121.091, F.S., providing that certain members are entitled to a monthly disability benefit; revising provisions to conform to changes made by the act.

Section 6 amends s. 121.4501, F.S., requiring certain employees initially enrolled in the FRS on or after a specified date to be compulsory members of the investment plan; revising the definition of "member" or "employee"; revising a provision relating to acknowledgment of an employee's election to participate in the investment plan; placing certain employees in the pension plan from their date of hire until they are automatically enrolled in the investment plan or timely elect enrollment in the pension plan; providing certain members with a specified time to choose participation in the pension plan or investment plan; providing for the transfer of certain contributions; revising the education component; conforming provisions and cross-references to changes made by the act.

Section 7 amends s. 121.591, F.S., revising provisions relating to disability retirement benefits.

Sections 8 through 11 amend ss. 121.35, 238.072, 413.051, 1012.875, F.S., conforming cross references.

Section 12 provides that the act fulfills an important state interest.

Section 13 provides an effective date of July 1, 2014, unless otherwise expressly provided in the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

During the 2013 Legislative Session, the Milliman actuarial and consulting firm conducted several actuarial studies at the request of the Speaker of the House of Representatives and the President of the Senate. The purpose of the studies was to determine the fiscal impact of requiring new enrollees who participate in the Elected Officers' Class or Senior Management Service Class to participate in the investment plan, increasing the vesting period for the pension plan, and changing the default for employees who fail to make a plan selection. The studies provided a comparison between continuing the current plan and making the above changes to the FRS.

The relevant 2013 studies were compared to determine the projected fiscal impact of this bill, because no major changes have been made to the FRS since those studies were performed. However, this bill may not necessarily produce the same projected midterm and long term results as predicted in the relevant 2013 studies.

Based on the results of the comparison between the applicable studies, the bill is projected to have no fiscal impact in fiscal year 2014-15. The projected (costs)/savings for select subsequent years are summarized in the table below (in millions $):

Employer Funded by State	FY 2014-15		FY 2015-16		FY 2016-17		FY 2017-18		FY 2018-19	
	GR	TF	GR	TF	GR	TF	GR	TF	GR	TF
State	-	-	0.1	0.1	(0.1)	(0.1)	1.0	0.9	1.9	1.9
School Boards	-		-		-		6.4		9.6	
State Universities	-		-		-		1.1		1.7	
State Colleges	-		-		-		0.5		0.8	
Total	**-**	**-**	**0.1**	**0.1**	**(0.1)**	**(0.1)**	**9.0**	**0.9**	**14.0**	**1.9**
Employers **Not** Funded by State										
Counties	-		0.3		(0.6)		2.2		4.6	
Cities/Other	-		-		(0.1)		0.7		1.1	
Subtotal			0.3		(0.7)		2.9		5.7	
Grand Total	**-**	**-**	**0.4**	**0.1**	**(0.8)**	**(0.1)**	**11.9**	**0.9**	**19.7**	**1.9**

Employer Funded by State	FY 2019-20		FY 2024-25		FY 2029-30		FY 2034-35		FY 2039-40	
	GR	TF	GR	TF	GR	TF	GR	TF	GR	TF
State	3.4	3.4	14.8	14.8	35.6	35.5	75.9	75.9	178.1	178.1
School Boards	17.1		68.4		168.6		372.2		877.5	
State Universities	3.0		13.8		39.2		89.8		208.3	
State Colleges	1.4		5.8		14.5		32.0		74.5	
Total	**24.9**	**3.4**	**102.8**	**14.8**	**257.9**	**35.5**	**569.9**	**75.9**	**1,338.4**	**178.1**
Employers **Not** Funded by State										
Counties	8.5		41.2		106.0		244.7		604.6	
Cities/Other	2.0		8.5		21.8		48.2		113.2	
Subtotal	10.5		49.7		127.8		292.9		717.8	
Grand Total	**35.4**	**3.4**	**152.5**	**14.8**	**385.7**	**35.5**	**862.8**	**75.9**	**2,056.2**	**178.1**

The comparison of the actuarial studies projects increasing savings over the long-term for a total cumulative savings of $28.6 billion. However, the actuary cautioned that projections become increasing unreliable, particularly after the fifth year. Variances from plan assumptions invariably occur

which may become magnified over time. Nonetheless, the rates produced by the comparative analysis to the baseline plan, using the same assumptions, yield the above theoretical savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of Art. VII, s. 18, of the State Constitution may apply because this bill requires cities and counties to spend money or take action that requires the expenditure of money; however, an exception applies as the Legislature has determined that this bill satisfies an important state interest. In addition, similarly situated persons are all required to comply.

2. Other:

Actuarial Requirements
Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

> SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

Contractual Obligations
Article I, s. 10 of the State Constitution prohibits any bill of attainder, ex post facto law, or law impairing the obligation of contracts from being passed by the Florida Legislature.

The Florida Statutes provide that the rights of members of the FRS are of a contractual nature, entered into between the member and the state, and such rights are legally enforceable as valid contractual rights and may not be abridged in any way.[49] This "preservation of rights" provision[50] was established by the Florida Legislature with an effective date of July 1, 1974.

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.[51] The prospective application would only alter future benefits. Those benefits previously earned or accrued by the member, under the previous benefit structure, remain untouched and the member continues to enjoy that level of benefit for the period of time up until the effective date of the proposed changes. Further, once the participating member reaches retirement

[49] Section 121.011(3)(d), F.S.
[50] The "preservation of rights" provision vests all rights and benefits already earned under the present retirement plan so the legislature may now only alter the benefits prospectively. *Florida Sheriffs Association v. Department of Administration, Division of Retirement*, 408 So.2d 1033, 1037 (Fla. 1981).
[51] *Id.* at 1035.

status, the benefits under the terms of the FRS in effect at the time of the member's retirement vest.[52]

The Florida Supreme Court further held that the "preservation of rights" provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service.[53] More recently, the Florida Supreme Court reaffirmed the previous holding, finding that the Legislature can alter the terms of the FRS, so long as the changes to the FRS are prospective.[54]

This bill does not change any benefits that a member earned prior to July 1, 2015. In fact, members enrolled in the FRS before July 1, 2015, should experience no change in the benefits available under the FRS. The bill only changes the FRS system for new enrollees, enrolling in the system on or after July 1, 2015.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[52] *Id.* at 1036.
[53] *Id.* at 1037.
[54] *Rick Scott, et al. v. George Williams, et al.*, 107 So.3d 379 (Fla. 2013).

A bill to be entitled

An act relating to the Florida Retirement System; amending s. 121.021, F.S.; revising the definition of "vested" or "vesting"; providing that a member initially enrolled in the Florida Retirement System after a certain date is vested in the pension plan after 10 years of creditable service; amending s. 121.051, F.S.; providing for compulsory membership in the Florida Retirement System Investment Plan for employees in the Elected Officers' Class or the Senior Management Service Class initially enrolled after a specified date; amending s. 121.052, F.S.; prohibiting members of the Elected Officers' Class from joining the Senior Management Service Class after a specified date; amending s. 121.055, F.S.; prohibiting an elected official eligible for membership in the Elected Officers' Class from enrolling in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program; closing the Senior Management Optional Annuity Program to new members after a specified date; amending s. 121.091, F.S.; increasing the service time required to qualify for disability benefits to 10 years for members enrolled in the pension plan on or after a specified date; revising provisions to conform to changes made by the act; amending s. 121.4501, F.S.; requiring certain

employees initially enrolled in the Florida Retirement System on or after a specified date to be compulsory members of the investment plan; revising the definition of "member" or "employee"; enrolling certain employees in the pension plan from their date of hire until they are automatically enrolled in the investment plan or timely elect enrollment in the pension plan; providing certain members with a specified time to choose participation in the pension plan or the investment plan; providing for the transfer of certain contributions; revising a provision relating to acknowledgement of an employee's election to participate in the investment plan; revising the education component; conforming provisions and cross-references to changes made by the act; amending s. 121.591, F.S.; increasing the service time required to qualify for disability benefits to 10 years for members enrolled in the investment plan on or after a specified date; amending ss. 238.072 and 413.051, F.S.; conforming cross-references; providing that the act fulfills an important state interest; providing an effective date.

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

Section 1. Subsection (45) of section 121.021, Florida

Statutes, is amended to read:

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(45) "Vested" or "vesting" means the guarantee that a member is eligible to receive a future retirement benefit upon completion of the required years of creditable service for the employee's class of membership, even though the member may have terminated covered employment before reaching normal or early retirement date. Being vested does not entitle a member to a disability benefit. Provisions governing entitlement to disability benefits are set forth under s. 121.091(4).

(a) Effective July 1, 2001, through June 30, 2011, a 6-year vesting requirement shall be implemented for the Florida Retirement System Pension Plan:

1. Any member employed in a regularly established position on July 1, 2001, who completes or has completed a total of 6 years of creditable service is considered vested.

2. Any member initially enrolled in the Florida Retirement System before July 1, 2001, but not employed in a regularly established position on July 1, 2001, shall be deemed vested upon completion of 6 years of creditable service if such member is employed in a covered position for at least 1 work year after July 1, 2001. However, a member is not required to complete more years of creditable service than would have been required for that member to vest under retirement laws in effect before July

1, 2001.

3. Any member initially enrolled in the Florida Retirement System on July 1, 2001, through June 30, 2011, shall be deemed vested upon completion of 6 years of creditable service.

(b) Any member initially enrolled in the Florida Retirement System on ~~or after~~ July 1, 2011, through June 30, 2015, shall be vested in the pension plan upon completion of 8 years of creditable service.

(c) Any member initially enrolled in the Florida Retirement System on or after July 1, 2015, shall be vested in the pension plan upon completion of 10 years of creditable service.

Section 2. Subsections (3) through (9) of section 121.051, Florida Statutes, are renumbered as subsections (4) through (10), respectively, and a new subsection (3) is added to that section, to read:

121.051 Participation in the system.—

(3) INVESTMENT PLAN MEMBERSHIP COMPULSORY.—

(a) Employees initially enrolled on or after July 1, 2015, in positions covered by the Elected Officers' Class or the Senior Management Service Class are compulsory members of the investment plan, except those who withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2., or those who participate in an optional retirement program under paragraph (1)(a), paragraph (2)(c), or s. 121.35. Investment plan membership continues if there is subsequent employment in a position

covered by another membership class. Membership in the pension plan is not permitted except as provided in s. 121.591(2). Employees initially enrolled in the Florida Retirement System prior to July 1, 2015, may retain their membership in the pension plan or investment plan and are eligible to use the election opportunity specified in s. 121.4501(4)(f). Employees initially enrolled on or after July 1, 2015, in positions covered by the Elected Officers' Class or the Senior Management Service Class are not eligible to use the election opportunity specified in s. 121.4501(4)(f).

(b) Employees eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2. may choose to withdraw from the system or to participate in the investment plan as provided in these sections. Employees eligible for optional retirement programs under paragraph (2)(c) or s. 121.35 may choose to participate in the optional retirement program or the investment plan as provided in this paragraph or this section. Eligible employees required to participate pursuant to (1)(a) in the optional retirement program as provided under s. 121.35 must participate in the investment plan when employed in a position not eligible for the optional retirement program.

Section 3. Paragraph (c) of subsection (3) of section 121.052, Florida Statutes, is amended to read:

121.052 Membership class of elected officers.—

(3) PARTICIPATION AND WITHDRAWAL, GENERALLY.—Effective July 1, 1990, participation in the Elected Officers' Class shall

be compulsory for elected officers listed in paragraphs (2)(a)-(d) and (f) assuming office on or after said date, unless the elected officer elects membership in another class or withdraws from the Florida Retirement System as provided in paragraphs (3)(a)-(d):

(c) Before July 1, 2015, any elected officer may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers, elect membership in the Senior Management Service Class as provided in s. 121.055 in lieu of membership in the Elected Officers' Class. Any such election made by a county elected officer shall have no effect upon the statutory limit on the number of nonelective full-time positions that may be designated by a local agency employer for inclusion in the Senior Management Service Class under s. 121.055(1)(b)1.

Section 4. Paragraph (f) of subsection (1) and paragraph (c) of subsection (6) of section 121.055, Florida Statutes, are amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(f) Effective July 1, 1997, through June 30, 2015:

1. Except as provided in subparagraphs ~~subparagraph~~ 3. and 4., an elected state officer eligible for membership in the

Elected Officers' Class under s. 121.052(2)(a), (b), or (c) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office or within 6 months after this act becomes a law for serving elected state officers, elect to participate in the Senior Management Service Optional Annuity Program, as provided in subsection (6), in lieu of membership in the Senior Management Service Class.

2. Except as provided in subparagraphs ~~subparagraph~~ 3. and 4., an elected officer of a local agency employer eligible for membership in the Elected Officers' Class under s. 121.052(2)(d) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers of a local agency employer, elect to withdraw from the Florida Retirement System, as provided in subparagraph (b)2., in lieu of membership in the Senior Management Service Class.

3. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, as an elected official eligible for the Elected Officers' Class may not be enrolled in renewed membership in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6), and may not withdraw from the Florida Retirement System as a renewed member as provided in subparagraph (b)2., as applicable, in lieu of membership in the

Senior Management Service Class.

4. On or after July 1, 2015, an elected official eligible for membership in the Elected Officers' Class may not enroll in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6).

(6)

(c) Participation.—

1. An eligible employee who is employed on or before February 1, 1987, may elect to participate in the optional annuity program in lieu of participating in the Senior Management Service Class. Such election must be made in writing and filed with the department and the personnel officer of the employer on or before May 1, 1987. An eligible employee who is employed on or before February 1, 1987, and who fails to make an election to participate in the optional annuity program by May 1, 1987, shall be deemed to have elected membership in the Senior Management Service Class.

2. Except as provided in subparagraph 6., an employee who becomes eligible to participate in the optional annuity program by reason of initial employment commencing after February 1, 1987, may, within 90 days after the date of commencing employment, elect to participate in the optional annuity program. Such election must be made in writing and filed with the personnel officer of the employer. An eligible employee who does not within 90 days after commencing employment elect to participate in the optional annuity program shall be deemed to

have elected membership in the Senior Management Service Class.

3. A person who is appointed to a position in the Senior Management Service Class and who is a member of an existing retirement system or the Special Risk or Special Risk Administrative Support Classes of the Florida Retirement System may elect to remain in such system or class in lieu of participating in the Senior Management Service Class or optional annuity program. Such election must be made in writing and filed with the department and the personnel officer of the employer within 90 days after such appointment. An eligible employee who fails to make an election to participate in the existing system, the Special Risk Class of the Florida Retirement System, the Special Risk Administrative Support Class of the Florida Retirement System, or the optional annuity program shall be deemed to have elected membership in the Senior Management Service Class.

4. Except as provided in subparagraph 5., an employee's election to participate in the optional annuity program is irrevocable if the employee continues to be employed in an eligible position and continues to meet the eligibility requirements set forth in this paragraph.

5. Effective from July 1, 2002, through September 30, 2002, an active employee in a regularly established position who has elected to participate in the Senior Management Service Optional Annuity Program has one opportunity to choose to move from the Senior Management Service Optional Annuity Program to

the Florida Retirement System Pension Plan.

a. The election must be made in writing and must be filed with the department and the personnel officer of the employer before October 1, 2002, or, in the case of an active employee who is on a leave of absence on July 1, 2002, within 90 days after the conclusion of the leave of absence. This election is irrevocable.

b. The employee shall receive service credit under the pension plan equal to his or her years of service under the Senior Management Service Optional Annuity Program. The cost for such credit is the amount representing the present value of that employee's accumulated benefit obligation for the affected period of service.

c. The employee must transfer the total accumulated employer contributions and earnings on deposit in his or her Senior Management Service Optional Annuity Program account. If the transferred amount is not sufficient to pay the amount due, the employee must pay a sum representing the remainder of the amount due. The employee may not retain any employer contributions or earnings from the Senior Management Service Optional Annuity Program account.

6. A retiree of a state-administered retirement system who is initially reemployed on or after July 1, 2010, may not renew membership in the Senior Management Service Optional Annuity Program.

7. Effective July 1, 2015, the Senior Management Service

Optional Annuity Program is closed to new members. Members enrolled in the Senior Management Service Optional Annuity Program before July 1, 2015, may retain their membership in the annuity program.

Section 5. Paragraph (a) of subsection (4) of section 121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(4) DISABILITY RETIREMENT BENEFIT.—

(a) Disability retirement; entitlement and effective date.—

1.a. A member who becomes totally and permanently disabled, as defined in paragraph (b), after completing 5 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service,

is entitled to a monthly disability benefit; except that any member with less than 5 years of creditable service on July 1, 1980, or any person who becomes a member of the Florida Retirement System on or after such date must have completed 10 years of creditable service before becoming totally and permanently disabled in order to receive disability retirement benefits for any disability which occurs other than in the line of duty. However, if a member employed on July 1, 1980, who has less than 5 years of creditable service as of that date becomes totally and permanently disabled after completing 5 years of creditable service and is found not to have attained fully insured status for benefits under the federal Social Security Act, such member is entitled to a monthly disability benefit.

b. Effective July 1, 2001, a member of the pension plan initially enrolled before July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (b), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

c. Effective July 1, 2015, a member of the pension plan initially enrolled on or after July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (b), after completing 10 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability

benefit.

2. If the division has received from the employer the required documentation of the member's termination of employment, the effective retirement date for a member who applies and is approved for disability retirement shall be established by rule of the division.

3. For a member who is receiving Workers' Compensation payments, the effective disability retirement date may not precede the date the member reaches Maximum Medical Improvement (MMI), unless the member terminates employment before reaching MMI.

Section 6. Subsection (1), paragraph (i) of subsection (2), paragraph (b) of subsection (3), subsection (4), paragraph (c) of subsection (5), subsection (8), and paragraphs (a), (b), (c), and (h) of subsection (10) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Florida Retirement System Investment Plan.—

(1) The Trustees of the State Board of Administration shall establish a defined contribution program called the "Florida Retirement System Investment Plan" or "investment plan" for members of the Florida Retirement System under which retirement benefits will be provided for eligible employees who elect to participate in the program and for employees initially enrolled on or after July 1, 2015, in positions covered by the Elected Officers' Class or the Senior Management Service Class and are compulsory members of the investment plan unless the

member withdraws from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2., or participates in an optional retirement program under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35. Investment plan membership continues if there is subsequent employment in a position covered by another membership class. The retirement benefits shall be provided through member-directed investments, in accordance with s. 401(a) of the Internal Revenue Code and related regulations. The employer and employee shall make contributions, as provided in this section and ss. 121.571 and 121.71, to the Florida Retirement System Investment Plan Trust Fund toward the funding of benefits.

(2) DEFINITIONS.—As used in this part, the term:

(i) "Member" or "employee" means an eligible employee who enrolls in, or is defaulted into, the investment plan as provided in subsection (4), a terminated Deferred Retirement Option Program member as described in subsection (21), or a beneficiary or alternate payee of a member or employee.

(3) RETIREMENT SERVICE CREDIT; TRANSFER OF BENEFITS.—

(b) Notwithstanding paragraph (a), an eligible employee who elects to participate in, or is defaulted into, the investment plan and establishes one or more individual member accounts may elect to transfer to the investment plan a sum representing the present value of the employee's accumulated benefit obligation under the pension plan, except as provided in paragraph (4)(b). Upon transfer, all service credit earned under the pension plan is nullified for purposes of entitlement to a

future benefit under the pension plan. A member may not transfer the accumulated benefit obligation balance from the pension plan after the time period for enrolling in the investment plan has expired.

1. For purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated creditable service and estimated average final compensation under the pension plan, subject to recomputation under subparagraph 2. For state employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on June 30, 2002; for district school board employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on September 30, 2002; and for local government employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on December 31, 2002. The dates specified are the "estimate date" for these employees. The actuarial present value of the employee's accumulated benefit obligation shall be based on the following:

a. The discount rate and other relevant actuarial assumptions used to value the Florida Retirement System Trust Fund at the time the amount to be transferred is determined, consistent with the factors provided in sub-subparagraphs b. and c.

b. A benefit commencement age, based on the member's estimated creditable service as of the estimate date.

c. Except as provided under sub-subparagraph d., for a member initially enrolled:

(I) Before July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 62; or

(B) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

(II) On or after July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 65; or

(B) The age the member would attain if the member completed 33 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

d. For members of the Special Risk Class and for members of the Special Risk Administrative Support Class entitled to retain the special risk normal retirement date:

(I) Initially enrolled before July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 55; or

(B) The age the member would attain if the member completed 25 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

(II) Initially enrolled on or after July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 60; or

(B) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

e. The calculation must disregard vesting requirements and early retirement reduction factors that would otherwise apply under the pension plan.

2. For each member who elects to transfer moneys from the pension plan to his or her account in the investment plan, the division shall recompute the amount transferred under subparagraph 1. within 60 days after the actual transfer of funds based upon the member's actual creditable service and actual final average compensation as of the initial date of participation in the investment plan. If the recomputed amount

differs from the amount transferred by $10 or more, the division shall:

a. Transfer, or cause to be transferred, from the Florida Retirement System Trust Fund to the member's account the excess, if any, of the recomputed amount over the previously transferred amount together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon the effective annual interest equal to the assumed return on the actuarial investment which was used in the most recent actuarial valuation of the system, compounded annually.

b. Transfer, or cause to be transferred, from the member's account to the Florida Retirement System Trust Fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon 6 percent effective annual interest, compounded annually, pro rata based on the member's allocation plan.

3. If contribution adjustments are made as a result of employer errors or corrections, including plan corrections, following recomputation of the amount transferred under subparagraph 1., the member is entitled to the additional contributions or is responsible for returning any excess contributions resulting from the correction. However, any return of such erroneous excess pretax contribution by the plan must be made within the period allowed by the Internal Revenue Service. The present value of the member's accumulated benefit obligation

shall not be recalculated.

4. As directed by the member, the state board shall transfer or cause to be transferred the appropriate amounts to the designated accounts within 30 days after the effective date of the member's participation in the investment plan unless the major financial markets for securities available for a transfer are seriously disrupted by an unforeseen event that causes the suspension of trading on any national securities exchange in the country where the securities were issued. In that event, the 30-day period may be extended by a resolution of the state board. Transfers are not commissionable or subject to other fees and may be in the form of securities or cash, as determined by the state board. Such securities are valued as of the date of receipt in the member's account.

5. If the state board or the division receives notification from the United States Internal Revenue Service that this paragraph or any portion of this paragraph will cause the retirement system, or a portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, the portion that will cause the disqualification does not apply. Upon such notice, the state board and the division shall notify the presiding officers of the Legislature.

(4) PARTICIPATION; ENROLLMENT.—

(a)1. Effective June 1, 2002, through February 28, 2003, a 90-day election period was provided to each eligible employee participating in the Florida Retirement System, preceded by a

90-day education period, permitting each eligible employee to elect membership in the investment plan, and an employee who failed to elect the investment plan during the election period remained in the pension plan. An eligible employee who was employed in a regularly established position during the election period was granted the option to make one subsequent election, as provided in paragraph (f). With respect to an eligible employee who did not participate in the initial election period or who is initially ~~employee who is~~ employed in a regularly established position after the close of the initial election period but before July 1, 2015, ~~on June 1, 2002, by a state employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by August 31, 2002, or, in the case of an active employee who is on a leave of absence on April 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of~~

~~the month for which a full month's employer contribution is made to the investment plan.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer commencing after April 1, 2002:~~

~~a. Any~~ such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (f) ~~(g)~~.

a.~~b.~~ If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The retirement contributions paid through the month of the employee plan change shall be transferred to the investment program, and, effective the first day of the next month, the employer and employee must pay the applicable contributions based on the employee

membership class in the program.

b.~~c.~~ An employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.

2.~~3.~~ With respect to employees who become eligible to participate in the investment plan pursuant to s. 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to participate in the investment plan in lieu of retaining his or her membership in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program. The election must be made in writing or by electronic means and must be filed with the third-party administrator. This election is irrevocable, except as provided in paragraph (f) ~~(g)~~. Upon making such election, the employee shall be enrolled as a member in the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's participation in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program terminates. The employee's enrollment in the investment plan is effective on the first day of the month for which a full month's employer and employee contribution is made to the investment plan.

(b)1. With respect to employees who become eligible to

participate in the investment plan, except as provided in paragraph (g), by reason of employment in a regularly established position commencing on or after July 1, 2015, any such employee shall be enrolled in the pension plan at the commencement of employment and may, by the last business day of the 8th month following the employee's month of hire, elect to participate in the pension plan or the investment plan. Eligible employees may make a plan election only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay.

2. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the pension plan or investment plan is irrevocable, except as provided in paragraph (f).

3. If the employee fails to make an election of the pension plan or investment plan within 8 months following the month of hire, the employee is deemed to have elected the investment plan and will be defaulted into the investment plan retroactively to the employee's date of employment. The employee's option to participate in the pension plan is forfeited, except as provided in paragraph (f).

4. The amount of the employee and employer contributions paid before the default to the investment plan shall be transferred to the investment plan and shall be placed in a default fund as designated by the State Board of Administration.

The employee may move the contributions once an account is activated in the investment plan.

5. Effective the first day of the month after an eligible employee makes a plan election of the pension plan or investment plan, or after the month of default to the investment plan, the employee and employer shall pay the applicable contributions based on the employee membership class in the program.

~~4. For purposes of this paragraph, "state employer" means any agency, board, branch, commission, community college, department, institution, institution of higher education, or water management district of the state, which participates in the Florida Retirement System for the benefit of certain employees.~~

~~(b)1. With respect to an eligible employee who is employed in a regularly established position on September 1, 2002, by a district school board employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by November 30, or, in the case of an active employee who is on a leave of absence on July 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member of the investment plan,~~

~~the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment program.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a district school board employer commencing after July 1, 2002:~~

~~a. Any such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (g).~~

~~b. If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The employer~~

~~retirement contributions paid through the month of the employee plan change shall be transferred to the investment plan, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the investment plan.~~

~~c. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~3. For purposes of this paragraph, "district school board employer" means any district school board that participates in the Florida Retirement System for the benefit of certain employees, or a charter school or charter technical career center that participates in the Florida Retirement System as provided in s. 121.051(2)(d).~~

~~(c)1. With respect to an eligible employee who is employed in a regularly established position on December 1, 2002, by a local employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by February 28, 2003, or, in the case of an active employee who is on a leave of absence on October 1, 2002, by the last business day of the 5th month following the month the leave~~

~~of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a participant of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment plan.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a local employer commencing after October 1, 2002:~~

~~a. Any such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (g).~~

~~b. If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the investment plan, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the investment plan.~~

~~c. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~3. For purposes of this paragraph, "local employer" means any employer not included in paragraph (a) or paragraph (b).~~

(c) ~~(d)~~ Contributions available for self-direction by a member who has not selected one or more specific investment products shall be allocated as prescribed by the state board. The third-party administrator shall notify the member at least quarterly that the member should take an affirmative action to make an asset allocation among the investment products.

(d) ~~(e)~~ On or after July 1, 2011, a member of the pension plan who obtains a refund of employee contributions retains his or her prior plan choice upon return to employment in a regularly established position with a participating employer.

(e) ~~(f)~~ A member of the investment plan who takes a

distribution of any contributions from his or her investment plan account is considered a retiree. A retiree who is initially reemployed in a regularly established position on or after July 1, 2010, is not eligible to be enrolled in renewed membership.

(f) ~~(g)~~ After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator. This paragraph is contingent upon approval by the Internal Revenue Service. This paragraph does not apply to compulsory investment plan members under paragraph (g).

1. If the employee chooses to move to the investment plan, the provisions of subsection (3) govern the transfer.

2. If the employee chooses to move to the pension plan, the employee must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the investment plan. Benefit commencement occurs on the first date the employee is eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. For any employee who, at the time of the second election, already maintains an accrued benefit amount in the pension plan, the then-present value of the accrued benefit is deemed part of the required transfer amount. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

3. Notwithstanding subparagraph 2., an employee who chooses to move to the pension plan and who became eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer after June 1, 2002; a district school board employer after September 1,

2002; or a local employer after December 1, 2002, must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the employee's actuarial accrued liability. A refund of any employee contributions or additional member ~~participant~~ payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

4. An employee's ability to transfer from the pension plan to the investment plan pursuant to paragraphs (a) and (b) ~~(a)-(d)~~, and the ability of a current employee to have an option to later transfer back into the pension plan under subparagraph 2., shall be deemed a significant system amendment. Pursuant to s. 121.031(4), any resulting unfunded liability arising from actual original transfers from the pension plan to the investment plan must be amortized within 30 plan years as a separate unfunded actuarial base independent of the reserve stabilization mechanism defined in s. 121.031(3)(f). For the first 25 years, a direct amortization payment may not be calculated for this base. During this 25-year period, the separate base shall be used to offset the impact of employees exercising their second program election under this paragraph. The actuarial funded status of the pension plan will not be affected by such second program elections in any significant manner, after due recognition of the separate unfunded actuarial base. Following the initial 25-year period, any remaining balance of the original separate base

shall be amortized over the remaining 5 years of the required 30-year amortization period.

5. If the employee chooses to transfer from the investment plan to the pension plan and retains an excess account balance in the investment plan after satisfying the buy-in requirements under this paragraph, the excess may not be distributed until the member retires from the pension plan. The excess account balance may be rolled over to the pension plan and used to purchase service credit or upgrade creditable service in the pension plan.

(g)1. All employees initially enrolled on or after July 1, 2015, in positions covered by the Elected Officers' Class or the Senior Management Service Class are compulsory members of the investment plan, except those who withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2., or those who participate in an optional retirement program under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35. Employees eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2. may choose to withdraw from the system or to participate in the investment plan as provided in those sections. Employees eligible for optional retirement programs under s. 121.051(2)(c) or s. 121.35, except as provided in s. 121.051(1)(a), may choose to participate in the optional retirement program or the investment plan as provided in those sections. Investment plan membership continues if there is subsequent employment in a position covered by another membership class. Membership in the

pension plan is not permitted except as provided in s. 121.591(2). Employees initially enrolled in the Florida Retirement System prior to July 1, 2015, may retain their membership in the pension plan or investment plan and are eligible to use the election opportunity specified in s. 121.4501(4)(f).

2. Employees initially enrolled on or after July 1, 2015, in a position covered by the Elected Officers' Class or the Senior Management Service Class are not permitted to use the election opportunity specified in paragraph (f).

3. The amount of retirement contributions paid by the employee and employer, as required under s. 121.72, shall be placed in a default fund as designated by the state board, until an account is activated in the investment plan, at which time the member may move the contributions from the default fund to other funds provided in the investment plan.

(5) CONTRIBUTIONS.—

(c) The state board, acting as plan fiduciary, must ensure that all plan assets are held in a trust, pursuant to s. 401 of the Internal Revenue Code. The fiduciary must ensure that such contributions are allocated as follows:

1. The employer and employee contribution portion earmarked for member accounts shall be used to purchase interests in the appropriate investment vehicles as specified by the member, or in accordance with paragraph (4)(c) ~~(4)(d)~~.

2. The employer contribution portion earmarked for

administrative and educational expenses shall be transferred to the Florida Retirement System Investment Plan Trust Fund.

3. The employer contribution portion earmarked for disability benefits shall be transferred to the Florida Retirement System Trust Fund.

(8) INVESTMENT PLAN ADMINISTRATION.—The investment plan shall be administered by the state board and affected employers. The state board may require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its statutory duties and responsibilities for the investment plan. An oath, by affidavit or otherwise, may not be required of a member at the time of enrollment. Acknowledgment of an employee's election to participate in the program shall be no greater than necessary to confirm the employee's election except for members initially enrolled on or after July 1, 2015, as provided in paragraph (4)(g). The state board shall adopt rules to carry out its statutory duties with respect to administering the investment plan, including establishing the roles and responsibilities of affected state, local government, and education-related employers, the state board, the department, and third-party contractors. The department shall adopt rules necessary to administer the investment plan in coordination with the pension plan and the disability benefits available under the investment plan.

(a)1. The state board shall select and contract with a third-party administrator to provide administrative services if

those services cannot be competitively and contractually provided by the division. With the approval of the state board, the third-party administrator may subcontract to provide components of the administrative services. As a cost of administration, the state board may compensate any such contractor for its services, in accordance with the terms of the contract, as is deemed necessary or proper by the board. The third-party administrator may not be an approved provider or be affiliated with an approved provider.

2. These administrative services may include, but are not limited to, enrollment of eligible employees, collection of employer and employee contributions, disbursement of contributions to approved providers in accordance with the allocation directions of members; services relating to consolidated billing; individual and collective recordkeeping and accounting; asset purchase, control, and safekeeping; and direct disbursement of funds to and from the third-party administrator, the division, the state board, employers, members, approved providers, and beneficiaries. This section does not prevent or prohibit a bundled provider from providing any administrative or customer service, including accounting and administration of individual member benefits and contributions; individual member recordkeeping; asset purchase, control, and safekeeping; direct execution of the member's instructions as to asset and contribution allocation; calculation of daily net asset values; direct access to member account information; or

periodic reporting to members, at least quarterly, on account balances and transactions, if these services are authorized by the state board as part of the contract.

(b)1. The state board shall select and contract with one or more organizations to provide educational services. With approval of the state board, the organizations may subcontract to provide components of the educational services. As a cost of administration, the state board may compensate any such contractor for its services in accordance with the terms of the contract, as is deemed necessary or proper by the board. The education organization may not be an approved provider or be affiliated with an approved provider.

2. Educational services shall be designed by the state board and department to assist employers, eligible employees, members, and beneficiaries in order to maintain compliance with United States Department of Labor regulations under s. 404(c) of the Employee Retirement Income Security Act of 1974 and to assist employees in their choice of pension plan or investment plan retirement alternatives. Educational services include, but are not limited to, disseminating educational materials; providing retirement planning education; explaining the pension plan and the investment plan; and offering financial planning guidance on matters such as investment diversification, investment risks, investment costs, and asset allocation. An approved provider may also provide educational information, including retirement planning and investment allocation

information concerning its products and services.

(c)1. In evaluating and selecting a third-party administrator, the state board shall establish criteria for evaluating the relative capabilities and qualifications of each proposed administrator. In developing such criteria, the state board shall consider:

a. The administrator's demonstrated experience in providing administrative services to public or private sector retirement systems.

b. The administrator's demonstrated experience in providing daily valued recordkeeping to defined contribution programs.

c. The administrator's ability and willingness to coordinate its activities with employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, monthly management reports, quarterly member reports, and ad hoc reports requested by the department or state board.

d. The cost-effectiveness and levels of the administrative services provided.

e. The administrator's ability to interact with the members, the employers, the state board, the division, and the providers; the means by which members may access account information, direct investment of contributions, make changes to their accounts, transfer moneys between available investment

vehicles, and transfer moneys between investment products; and any fees that apply to such activities.

f. Any other factor deemed necessary by the state board.

2. In evaluating and selecting an educational provider, the state board shall establish criteria under which it shall consider the relative capabilities and qualifications of each proposed educational provider. In developing such criteria, the state board shall consider:

a. Demonstrated experience in providing educational services to public or private sector retirement systems.

b. Ability and willingness to coordinate its activities with the employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, reports on educational contacts.

c. The cost-effectiveness and levels of the educational services provided.

d. Ability to provide educational services via different media, including, but not limited to, the Internet, personal contact, seminars, brochures, and newsletters.

e. Any other factor deemed necessary by the state board.

3. The establishment of the criteria shall be solely within the discretion of the state board.

(d) The state board shall develop the form and content of any contracts to be offered under the investment plan. In developing the contracts, the board shall consider:

1. The nature and extent of the rights and benefits to be afforded in relation to the contributions required under the plan.

2. The suitability of the rights and benefits provided and the interests of employers in the recruitment and retention of eligible employees.

(e)1. The state board may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan. The state board may enter into a contract with one or more vendors to provide low-cost investment advice to members, supplemental to education provided by the third-party administrator. All fees under any such contract shall be paid by those members who choose to use the services of the vendor.

2. The department may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan in coordination with the pension plan. The department, in coordination with the state board, may enter into a contract with the third-party administrator in order to coordinate services common to the various programs within the Florida Retirement System.

(f) The third-party administrator may not receive direct or indirect compensation from an approved provider, except as specifically provided for in the contract with the state board.

(g) The state board shall receive and resolve member

complaints against the program, the third-party administrator, or any program vendor or provider; shall resolve any conflict between the third-party administrator and an approved provider if such conflict threatens the implementation or administration of the program or the quality of services to employees; and may resolve any other conflicts. The third-party administrator shall retain all member records for at least 5 years for use in resolving any member conflicts. The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to a member if the action occurred 5 or more years before the complaint is submitted to the state board. It is presumed that all action taken 5 or more years before the complaint is submitted was taken at the request of the member and with the member's full knowledge and consent. To overcome this presumption, the member must present documentary evidence or an audio recording demonstrating otherwise.

(10) EDUCATION COMPONENT.—

(a) The state board, in coordination with the department, shall provide for an education component for eligible employees ~~system members~~ in a manner consistent with the provisions of this subsection ~~section~~. ~~The education component must be available to eligible employees at least 90 days prior to the beginning date of the election period for the employees of the respective types of employers.~~

(b) The education component must provide system members

with impartial and balanced information about plan choices except for members initially enrolled on or after July 1, 2015, as provided in paragraph (4)(g). The education component must involve multimedia formats. Program comparisons must, to the greatest extent possible, be based upon the retirement income that different retirement programs may provide to the member. The state board shall monitor the performance of the contract to ensure that the program is conducted in accordance with the contract, applicable law, and the rules of the state board.

(c) The state board, in coordination with the department, shall provide for an initial and ongoing transfer education component to provide system members except for those members initially enrolled on or after July 1, 2015, as provided in paragraph (4)(g), with information necessary to make informed plan choice decisions. The transfer education component must include, but is not limited to, information on:

1. The amount of money available to a member to transfer to the defined contribution program.

2. The features of and differences between the pension plan and the defined contribution program, both generally and specifically, as those differences may affect the member.

3. The expected benefit available if the member were to retire under each of the retirement programs, based on appropriate alternative sets of assumptions.

4. The rate of return from investments in the defined contribution program and the period of time over which such rate

of return must be achieved to equal or exceed the expected monthly benefit payable to the member under the pension plan.

5. The historical rates of return for the investment alternatives available in the defined contribution programs.

6. The benefits and historical rates of return on investments available in a typical deferred compensation plan or a typical plan under s. 403(b) of the Internal Revenue Code for which the employee may be eligible.

7. The program choices available to employees of the State University System and the comparative benefits of each available program, if applicable.

8. Payout options available in each of the retirement programs.

~~(h) Pursuant to subsection (8), all Florida Retirement System employers have an obligation to regularly communicate the existence of the two Florida Retirement System plans and the plan choice in the natural course of administering their personnel functions, using the educational materials supplied by the state board and the Department of Management Services.~~

Section 7. Paragraph (b) of subsection (2) of section 121.591, Florida Statutes, is amended to read:

121.591 Payment of benefits.—Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department.

Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code. The state board or department, as appropriate, may cancel an application for retirement benefits if the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities, the state board and the department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application if the required information or documents are not received. The state board and the department, as appropriate, are authorized to cash out a de minimis account of a member who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account containing employer and employee contributions and accumulated earnings of not more than $5,000 made under the provisions of this chapter. Such cash-out must be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum

direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the member. Any nonvested accumulations and associated service credit, including amounts transferred to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6), shall be forfeited upon payment of any vested benefit to a member or beneficiary, except for de minimis distributions or minimum required distributions as provided under this section. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the state board shall cancel the instrument and credit the amount of the instrument to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6). Any amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings attributable to employer contributions shall be forfeited. Any forfeited amounts are assets of the trust fund and are not subject to chapter 717.

(2) DISABILITY RETIREMENT BENEFITS.—Benefits provided under this subsection are payable in lieu of the benefits that

would otherwise be payable under the provisions of subsection (1). Such benefits must be funded from employer contributions made under s. 121.571, transferred employee contributions and funds accumulated pursuant to paragraph (a), and interest and earnings thereon.

(b) Disability retirement; entitlement.—

1.a. A member of the investment plan initially enrolled before July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (d), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of length of service, is entitled to a monthly disability benefit.

b. A member of the investment plan initially enrolled on or after July 1, 2015, who becomes totally and permanently disabled, as defined in paragraph (d), after completing 10 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

2. In order for service to apply toward the ~~8~~ years of creditable service required for regular disability benefits, or toward the creditable service used in calculating a service-based benefit as provided under paragraph (g), the service must be creditable service as described below:

a. The member's period of service under the investment plan shall be considered creditable service, except as provided in subparagraph d.

b. If the member has elected to retain credit for service under the pension plan as provided under s. 121.4501(3), all such service shall be considered creditable service.

c. If the member elects to transfer to his or her member accounts a sum representing the present value of his or her retirement credit under the pension plan as provided under s. 121.4501(3), the period of service under the pension plan represented in the present value amounts transferred shall be considered creditable service, except as provided in subparagraph d.

d. If a member has terminated employment and has taken distribution of his or her funds as provided in subsection (1), all creditable service represented by such distributed funds is forfeited for purposes of this subsection.

Section 8. Section 238.072, Florida Statutes, is amended to read:

238.072 Special service provisions for extension personnel.—All state and county cooperative extension personnel holding appointments by the United States Department of Agriculture for extension work in agriculture and home economics in this state who are joint representatives of the University of Florida and the United States Department of Agriculture, as provided in s. 121.051(8) ~~121.051(7)~~, who are members of the Teachers' Retirement System, chapter 238, and who are prohibited from transferring to and participating in the Florida Retirement System, chapter 121, may retire with full benefits upon

completion of 30 years of creditable service and shall be considered to have attained normal retirement age under this chapter, any law to the contrary notwithstanding. In order to comply with the provisions of s. 14, Art. X of the State Constitution, any liability accruing to the Florida Retirement System Trust Fund as a result of the provisions of this section shall be paid on an annual basis from the General Revenue Fund.

Section 9. Subsection (11) of section 413.051, Florida Statutes, is amended to read:

413.051 Eligible blind persons; operation of vending stands.—

(11) Effective July 1, 1996, blind licensees who remain members of the Florida Retirement System pursuant to s. 121.051(7)(b)1. ~~121.051(6)(b)1.~~ shall pay any unappropriated retirement costs from their net profits or from program income. Within 30 days after the effective date of this act, each blind licensee who is eligible to maintain membership in the Florida Retirement System under s. 121.051(7)(b)1. ~~121.051(6)(b)1.~~, but who elects to withdraw from the system as provided in s. 121.051(7)(b)3. ~~121.051(6)(b)3.~~, must, on or before July 31, 1996, notify the Division of Blind Services and the Department of Management Services in writing of his or her election to withdraw. Failure to timely notify the divisions shall be deemed a decision to remain a compulsory member of the Florida Retirement System. However, if, at any time after July 1, 1996, sufficient funds are not paid by a blind licensee to cover the

required contribution to the Florida Retirement System, that blind licensee shall become ineligible to participate in the Florida Retirement System on the last day of the first month for which no contribution is made or the amount contributed is insufficient to cover the required contribution. For any blind licensee who becomes ineligible to participate in the Florida Retirement System as described in this subsection, no creditable service shall be earned under the Florida Retirement System for any period following the month that retirement contributions ceased to be reported. However, any such person may participate in the Florida Retirement System in the future if employed by a participating employer in a covered position.

Section 10. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems. These persons must be provided benefits that are fair and adequate and that are managed, administered, and funded in an actuarially sound manner, as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 11. This act shall take effect July 1, 2014.