



Government Operations Appropriations Committee

Meeting Packet

**March 17, 2015
12:30 p.m. – 2:30 p.m.
Morris Hall**



The Florida House of Representatives

Appropriations Committee

Government Operations Appropriations Subcommittee

Steve Crisafulli
Speaker

Jeanette Nuñez
Chair

March 17, 2015

AGENDA

12:30 p.m. – 2:30 p.m.

Morris Hall

I. Call to Order/Roll Call

II. Consideration of Bills

PCB GOAS 15-01 Florida Business Information Portal by Government Operations Appropriations Subcommittee, Rep. Nuñez

CS/HB 163 Public Records/Contractors by Government Operations Subcommittee, Rep. Beshears

HB 405 Regulation of Not-for-profit Self-Insurance Funds by Rep. La Rosa

CS/HB 707 Real Estate Brokers and Appraisers by Business & Professions Subcommittee, Rep. Burton

HB 719 Florida State Employees' Charitable Campaign by B. Cortes

III. Chair's Budget Proposal for Fiscal Year 2015-16

IV. Closing Remarks/Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GOAS 15-01 Florida Business Information Portal
SPONSOR(S): Government Operations Appropriations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee		White CCW	Topp BDT

SUMMARY ANALYSIS

The Proposed Committee Bill (PCB) directs the Department of Business and Professional Regulation (DBPR) to establish and implement, by June 30, 2017, the Florida Business Information Portal that provides the information needed to start and operate a business in Florida.

Specifically, the Florida Business Information Portal must include:

- A downloadable guide to starting and operating a business in Florida.
- A list of business types and an associated checklist for starting each type of business.
- A mechanism to guide users to the appropriate state licensing, permitting, and registration agencies.
- Information regarding business tax registration and filing.
- Information regarding registering with the Department of State.

The PCB provides the state agencies that shall cooperate with the DBPR in the development, implementation, and ongoing content updates of the Florida Business Information Portal include, but are not limited to: Agency for Health Care Administration, Department of Agriculture and Consumer Services, Department of Economic Opportunity, Department of Environmental Protection, Department of Financial Services, Office of Financial Regulation, Office of Insurance Regulation, Department of Health, Department of Highway Safety and Motor Vehicles, Department of the Lottery, Department of Management Services, Department of Revenue, Department of State, and the Fish and Wildlife Conservation Commission.

The PCB requires the DBPR to submit a report with recommendations and estimated costs for including local government information in the Florida Business Information Portal to the Governor, President of the Senate, and the Speaker of the House of Representatives by October 1, 2017.

The PCB repeals section 215.1995, F.S., which established the One-Stop Business Registration Portal Clearing Trust Fund in the Department of Revenue. The bill terminates the fund.

The PCB repeals section 288.109, F.S., which directed the Department of Revenue to establish and implement the One-Stop Business Registration Portal.

The PCB conforms to the proposed House of Representatives' 2015-2016 General Appropriations Act (GAA), as the GAA contains an appropriation of \$1,462,887 from the General Revenue Fund and 2.00 full-time equivalent positions to build and implement the Florida Business Information Portal.

The PCB has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Currently, an individual desiring to start and operate a business in the State of Florida must interact with several state agencies to register for taxes, request a license or receive certain permits. However, there is no central location where an individual can go to get information on everything needed to start and operate a business in Florida.

Section 288.109, F.S., originally directed the State Technology Office to establish and implement an Internet website for a One-Stop Permitting System, which would allow an applicant to complete and submit application forms for various permits to state agencies and counties by January 1, 2001. However, despite the statutory language, the system was not built and the State Technology Office was later abolished.

Chapter 2012-139, Laws of Florida, substantially reworded section 288.109, F.S., to direct the Department of Revenue by January 1, 2013 to establish and implement the One-Stop Business Registration Portal that, through an Internet website, would provide individuals and businesses with a single point of entry for completing and submitting applications for various licenses, registrations, or permits that must be issued by a state department or agency in order for the applicants to transact business in the state; filing various documents that must be filed with a state department or agency in order for the filers to transact business in the state; and remitting payment for various fees that must be paid to a state department or agency, including but not limited to, application fees, license fees, registration fees, permit fees, and filing fees.

The One-Stop Business Registration Portal project was suspended by the Department of Revenue in March 2014. The Fiscal Year 2014-2015 General Appropriations Act placed the funding for the One-Stop Business Registration Portal in reserve and directed the Department of Revenue to contract for a comprehensive assessment of the project by an independent third party. The results of the assessment were submitted to the Governor, President of the Senate and Speaker of the House of Representatives on November 1, 2014. The Governor's Budget Recommendations for FY 2015-2016 recommended reverting all remaining project funding (\$1.7 million). In addition, the Governor recommended conforming legislation repealing from statute section 288.109, Florida Statutes, which authorized the One-Stop Business Registration Portal. Further, the Governor's recommended conforming legislation that provided for the creation of the Florida Business Information Portal at the Department of Business and Professional Regulation.

Chapter 2012-140, Laws of Florida, created the One-Stop Business Registration Portal Clearing Trust Fund within the Department of Revenue. The trust fund was established for use as a depository for receipts generated through utilization of the One-Stop Business Registration Portal and for subsequent transfer or distribution of such funds to appropriate agencies and accounts. The One-Stop Business Registration Portal never became operational, so no funds were deposited into the trust fund.

Effect of the PCB

The bill creates section 20.166, F.S., as the Florida Business Information Portal.

The bill establishes the Florida Business Information Portal (Portal) within the Department of Business and Professional Regulation (DBPR). By June 30, 2017, the DBPR shall implement the Portal that provides the information needed to start and operate a business in Florida, including information on licenses, permits, or registrations that must be issued by state agencies.

The bill requires the Portal to include, but not be limited to:

- A downloadable guide to starting and operating a business in Florida.
- A list of businesses and an associated checklist for starting each new type of business.
- A mechanism to guide users to the appropriate state licensing, permitting, and registration agencies.
- Information regarding business tax registration and filing.
- Information regarding registering with the Department of State.

The PCB provides the state agencies that shall cooperate with DBPR in the development, implementation, and ongoing content updates of the Portal include, but are not limited to:

- The Agency for Health Care Administration.
- The Department of Agriculture and Consumer Services.
- The Department of Economic Opportunity.
- The Department of Environmental Protection.
- The Department of Financial Services.
- The Office of Financial Regulation.
- The Office of Insurance Regulation.
- The Department of Health.
- The Department of Highway Safety and Motor Vehicles.
- The Department of the Lottery.
- The Department of Management Services.
- The Department of Revenue.
- The Department of State.
- The Fish and Wildlife Conservation Commission.

The bill directs the DBPR to submit a report with recommendations and estimated costs for including local government information in the Portal to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2017.

The bill repeals s. 215.1995, F.S., and terminates the One-Stop Business Registration Portal Clearing Trust Fund within the Department of Revenue and directs the Chief Financial Officer to remove the fund from the various state accounting systems.

The bill repeals s. 288.109, F.S., which directed the Department of Revenue to establish and implement the One-Stop Business Registration Portal.

B. SECTION DIRECTORY:

Section 1. Creates section 20.166, F.S., which establishes the Florida Business Information Portal within the Department of Business and Professional Registration and provides the minimum information to be included in the Portal.

Section 2. Repeals sections 215.1995 and 288.109, F.S.

Section 3. Terminates the One-Stop Business Registration Portal Clearing Trust Fund within the Department of Revenue.

Section 4. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The PCB conforms to the proposed House of Representatives' 2015-2016 General Appropriations Act, as it contains an appropriation of \$1,462,887 (\$750,571 recurring and \$712,316 nonrecurring) from the General Revenue Fund to build and implement the Florida Business Information Portal. Two full-time equivalent positions with salary rate of 144,000 are also provided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals and new businesses starting and operating a business in Florida should receive a positive impact as a result of the passage of this PCB and the implementation of the Florida Business Information Portal.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the Florida Business Information
 3 Portal; creating s. 20.166, F.S.; establishing the
 4 Florida Business Information Portal within the
 5 Department of Business and Professional Regulation;
 6 directing the department to implement the portal by a
 7 specified date; specifying the contents of the portal;
 8 requiring designated state agencies to cooperate with
 9 the department in the development, implementation, and
 10 updating of the portal; requiring the department to
 11 submit to the Governor and Legislature a report of
 12 recommendations and estimated costs for including
 13 local government information in the portal; repealing
 14 ss. 215.1995 and 288.109, F.S., relating to the One-
 15 Stop Business Registration Portal Clearing Trust Fund
 16 within the Department of Revenue and establishment of
 17 the One-Stop Business Registration Portal,
 18 respectively; terminating the One-Stop Business
 19 Registration Portal Clearing Trust Fund; prescribing
 20 procedures for termination of the trust fund;
 21 providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Section 20.166, Florida Statutes, is created to
 26 read:

27 | 20.166 Florida Business Information Portal.—
 28 | (1) The Florida Business Information Portal is established
 29 | within the Department of Business and Professional Regulation.
 30 | (2) By June 30, 2017, the Department of Business and
 31 | Professional Regulation, in collaboration with the state
 32 | agencies identified in subsection (4), shall implement the
 33 | Florida Business Information Portal that provides the
 34 | information needed to start and operate a business in Florida,
 35 | including information regarding licenses, permits, or
 36 | registrations that must be issued by the state agencies
 37 | identified in subsection (4).
 38 | (3) The Florida Business Information Portal shall include,
 39 | but need not be limited to:
 40 | (a) A downloadable guide to starting and operating a
 41 | business in Florida.
 42 | (b) A list of business types and an associated checklist
 43 | for starting each type of business.
 44 | (c) A mechanism to guide users to the appropriate state
 45 | licensing, permitting, and registration agencies.
 46 | (d) Information regarding business tax registration and
 47 | filing.
 48 | (e) Information regarding registering with the Department
 49 | of State.
 50 | (4) The state agencies that shall cooperate with the
 51 | Department of Business and Professional Regulation in the
 52 | development, implementation, and ongoing content updates of the

53 Florida Business Information Portal include, but are not limited
 54 to:

- 55 (a) The Agency for Health Care Administration.
- 56 (b) The Department of Agriculture and Consumer Services.
- 57 (c) The Department of Economic Opportunity.
- 58 (d) The Department of Environmental Protection.
- 59 (e) The Department of Financial Services, including the
 60 Office of Financial Regulation and the Office of Insurance
 61 Regulation.
- 62 (f) The Department of Health.
- 63 (g) The Department of Highway Safety and Motor Vehicles.
- 64 (h) The Department of the Lottery.
- 65 (i) The Department of Management Services.
- 66 (j) The Department of Revenue.
- 67 (k) The Department of State.
- 68 (l) The Fish and Wildlife Conservation Commission.
- 69 (5) By October 1, 2017, the Department of Business and

70 Professional Regulation shall submit to the Governor, the
 71 President of the Senate, and the Speaker of the House of
 72 Representatives a report containing recommendations and
 73 estimated costs for the inclusion of local government
 74 information in the Florida Business Information Portal.

75 Section 2. Sections 215.1995 and 288.109, Florida
 76 Statutes, are repealed.

77 Section 3. The One-Stop Business Registration Portal
 78 Clearing Trust Fund, FLAIR number 73-2-977, within the

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79 | Department of Revenue is terminated. The Chief Financial Officer
80 | shall close out and remove the terminated trust fund from the
81 | various state accounting systems using generally accepted
82 | accounting principles concerning outstanding warrants, assets,
83 | and liabilities.

84 | Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 163 Public Records/Contractors
SPONSOR(S): Government Operations Subcommittee; Beshears and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 224

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

SUMMARY ANALYSIS

The State Constitution and Florida Statutes govern access to records of state and local agencies. Current law in part defines terms, provides for assessment of certain fees associated with responding to public record requests, requires certain contracts with public agencies to contain provisions regarding public records, and provides for the assessment of attorney fees for an agency found in violation of the public records law. Private contractors who act on behalf of a public agency are required to comply with public records laws in the same manner as a public agency.

This bill requires a public agency contract for services to include a statement in large, boldface font informing the contractor of the name and phone number of the public agency's records custodian and to contact the records custodian concerning any questions the contractor may have regarding the contractor's duties to provide public records relating to the contract. The contract also must state that the requirements of s. 119.0701, F.S., apply to the contract unless the agency has determined otherwise.

The bill repeals the requirement that the contract for services require the contractor to transfer its public records to the public agency upon termination of the contract. Instead, the contract must address whether the contractor will retain the public records or transfer the public records to the public agency upon termination of the contract.

The bill requires the public to make all public record requests regarding contracts for services directly to the agency rather than to the contractor. If the public agency does not have the requested records, the agency must immediately notify the contractor of the request, and the contractor must produce the records within a reasonable time. A contractor who fails to produce the requested records within a reasonable time may be subject to criminal penalties.

The bill also provides that costs and attorney fees will not be assessed in a public records enforcement lawsuit relating to a public agency's contract for services unless the plaintiff sends a certified letter to the responsible public agency's records custodian, and the contractor if the contractor is a named party, at least three business days in advance of filing suit.

The bill may have an indeterminate negative fiscal impact on state and local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency¹ to provide access to public records.² Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Public Records and Private Contractors

Section 119.0701, F.S., Contracts and Public Records

Public agencies, which include local and statewide governmental entities, as well as municipal officers, are permitted to hire contractors to provide services or act on behalf of the public agency.³ Contractors can be individuals or business entities.⁴ Private contractors who act on behalf of a public agency are required by the law and the terms of their contracts to comply with public records laws in the same manner as a public agency.⁵

Current law does not provide a definition for "acting on behalf of a public agency." In making the determination in whether a private entity is acting on behalf of a public agency, the courts have relied on a "totality of factors" analysis.⁶ The factors include, but are not limited to, the level of public funding, whether the services contracted for are an integral part of the public agency's decision-making process, whether the private entity is performing a governmental function or a function which the public agency otherwise would perform, and the extent of the public agency's involvement with, regulation of, or control over the private entity.⁷

Section 119.0701, F.S., requires each public agency contract for services to include certain provisions that require the contractor to comply with public records laws. Specifically, the contract must require the contractor to:

- Keep public records that would be required by the agency to perform the service;
- Provide the public access to public records on the same terms as the agency would;

¹ Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

² Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

³ Section 119.0701(1), F.S.; *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So.2d 1029 (Fla. 1992); Op. Att'y Gen. Fla. Informal Opinion dated December 31, 2014.

⁴ Section 119.0701(1)(a), F.S.

⁵ Section 119.0701, F.S.; *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So.2d 1029 (Fla. 1992).

⁶ See, e.g., *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So.2d 1029 (Fla. 1992).

⁷ *Id.*

- Ensure that public records that are exempt or confidential and exempt are not improperly disclosed; and
- Meet certain public records retention and transfer requirements.

Upon the completion of a contract, the contract for services must provide for the transfer of public records from the contractor to the public agency at no cost to the public agency.⁸ The contractor is not permitted to retain any public records that are confidential and exempt or exempt from public records disclosure.⁹ Records that are stored electronically must be transferred to the public agency in a format that is compatible with the public agency's information technology systems.¹⁰

A public agency is required to enforce the terms of its contract if a contractor fails to abide by public records laws.¹¹

Section 287.058, F.S., Contract Document

For state agencies,¹² every procurement of contractual services in excess of \$35,000, except for specified procurements pertaining to health and human services, must be evidenced by a written agreement (contract) embodying all provisions and conditions of such services.¹³ The contract must be signed by the agency head or designee and the contractor before the rendering of any contractual service, except in the case of an emergency.¹⁴

Section 287.058(1), F.S., provides provisions that must be included in the contract document. With regards to public record requirements, the contract document must allow for unilateral cancellation by the state agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from public record requirements.¹⁵

Inspection and Copying of Public Records

Current law describes the duties and responsibilities of a custodian of public records (records custodian). Section 119.07(1), F.S., requires a records custodian to permit records to be inspected and copied by any person, at any reasonable time,¹⁶ under reasonable conditions, and under supervision by the records custodian. Generally, a records custodian may not require that a request for public records be submitted in a specific fashion.¹⁷

An agency is permitted to charge fees for inspection or copying of records. Those fees are prescribed by law and are based upon the nature or volume of the public records requested. Section 119.07(4), F.S., provides if the nature or volume of the request requires extensive use of information technology or extensive clerical or supervisory assistance, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost incurred for the use of information technology and the labor cost that is actually incurred by the agency in responding to the request.¹⁸ The

⁸ Section 119.0701(2)(d), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 119.0701(3), F.S.

¹² For purposes of chapter 287, F.S., agency does not include the university and college boards of trustees or the state universities and colleges.

¹³ Section 287.058(1), F.S.

¹⁴ Section 287.058(2), F.S.

¹⁵ Section 287.058(1)(c), F.S.

¹⁶ There is no specific limit established for compliance with public records requests. A response must be prepared within a reasonable time of the request. *Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla. 1984). What constitutes a reasonable time for a response will depend on such factors as the volume of records that are responsive to a request, as well as the amount of confidential or exempt information contained within the request.

¹⁷ See *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So.2d 302 (Fla. 3d DCA 2001) (holding that public records requests need not be made in writing).

¹⁸ Section 119.07(4)(d), F.S.

term "labor cost" includes the entire labor cost, including benefits in addition to wages or salary.¹⁹ Such service charge may be assessed, and payment may be required, by an agency prior to providing a response to the request.²⁰

Enforcing Public Records Laws and Attorney Fees

If a public agency unlawfully fails to provide a public record, the person making the public records request may sue to have the request enforced.²¹ Whenever such an action is filed, the court must give the case priority over other pending cases and must set an immediate hearing date.²²

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is considered a legal consequence that is independent of the public records request.²³ Once an enforcement action has been filed, a public agency, or a contractor acting on behalf of a public agency, can be held liable for attorney fees even after the public agency has produced the requested records.²⁴ The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial.²⁵ Granting attorney fees also makes it more likely that public agencies will comply with public records laws and deter improper denials of requests.²⁶

If the court finds that the agency unlawfully refused access to a public record, the court will order the public agency to pay for the requestor's reasonable costs of enforcement, including reasonable attorney fees.²⁷ If a contractor acting on behalf of the agency fails to comply with a public records request, the requestor may sue the contractor to enforce his or her rights to have access to records.²⁸ If a court determines that the contractor unlawfully withheld public records, the court must order the contractor to pay for the cost of the enforcement lawsuit and the requestor's attorney fees in the same manner that a public agency would be liable.²⁹ Attorney fees for efforts expended to obtain attorney fees are not currently permitted.³⁰

A court will not take into consideration whether a records custodian intended to violate public records laws or was simply inept,³¹ and it is immaterial if a records custodian did not willfully refuse to provide a public record.³² In addition, to be entitled to attorney fees against the state or any of its agencies, the plaintiff must serve a copy of the pleading claiming the fees on the Department of Financial Services (DFS). DFS is then entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.³³

¹⁹ *Board of County Commissioners of Highlands County v. Colby*, 976 So.2d 31 (Fla. 2d DCA 2008).

²⁰ Section 119.07(4), F.S.; see also *Wootton v. Cook*, 590 So.2d 1039, 1040 (Fla. 1st DCA 1991) (stating if a requestor identifies a record with sufficient specificity to permit [an agency] to identify it and forwards the appropriate fee, [the agency] must furnish by mail a copy of the record).

²¹ Section 119.11, F.S.

²² *Id.*

²³ Section 119.12, F.S.

²⁴ *Mazer v. Orange County*, 811 So.2d 857, 860 (Fla. 5th DCA 2002); *Barfield v. Town of Eatonville*, 675 So.2d 223 (Fla. 5th DCA 1996); *Althouse v. Palm Beach County Sheriff's Office*, 92 So.3d 899, 902 (Fla. 4th DCA 2012).

²⁵ *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So.2d 27, 29 (Fla. 1993).

²⁶ *Id.*

²⁷ Section 119.12, F.S.

²⁸ Section 119.0701(2), F.S.; see also *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So.2d 27 (Fla. 1993).

²⁹ See s. 119.12, F.S.; see also *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So.2d 27, 29 (Fla. 1993).

³⁰ *Downs v. Austin*, 559 So.2d 246, 248 (Fla. 1st DCA 1990).

³¹ *Barfield v. Town of Eatonville*, 675 So.2d 223, 225 (Fla. 5th DCA 1996).

³² *Lilker v. Suwannee Valley Transit Authority*, 133 So.3d 654 (Fla. 1st DCA 2014).

³³ Section 284.30, F.S.

Recent Litigation

On December 1, 2014, a circuit court judge in Duval County denied relief to a plaintiff in a lawsuit to enforce a public records request and for assessment of attorney fees.³⁴ According to the court order, the plaintiff made two separate requests for public records to a nonprofit organization under contract to provide social services for the Department of Children and Families. The contract manager refused to provide the documents because the contract manager believed the documents were not public records. The court found that the manner in which the plaintiff (and his companions) made the request ensured that “they obtained exactly what they wanted, namely an initial denial of an unreasonable and bogus request.”³⁵

The court found that the plaintiff’s method of requesting public records was an abuse of the public records laws noting that the actions of the requester amounted to “nothing more than a scam.”³⁶ The Final Order stated that the plaintiff and his attorney, who had an arrangement to split his attorney fees with the plaintiff, had “a financial interest in assuring that his requests for public records [were] refused.”³⁷ The court noted that in 2014, the plaintiff filed 18 public records lawsuits in Duval County, and that the attorney represented the plaintiff on approximately 13 of those cases; the court noted that all of the cases followed a similar pattern.

The court opined that:

If a private entity must pay an attorney’s fee every time an agent denies a needless request, the cost to the state to provide important services by contracting with private entities will increase; or private entities might discontinue bidding on these contracts. The chilling effect could be disastrous to the State. Further the [Public Records] Act was not designed to create a cottage industry for so-called “civil rights activists” or others who seek to abuse the [Public Records] Act for financial gain.³⁸

The case is currently on appeal.³⁹

Effect of Proposed Changes

The bill amends s. 119.0701, F.S., relating to contracts and public records.

The bill requires a contract for services to include a statement in large, boldface font informing the contractor:

- That the requirements of s. 119.0701, F.S., apply to the contract unless the public agency has determined that the contractor is not a contractor;
- Of the name and phone number of the public agency’s records custodian; and
- To contact the records custodian concerning any questions the contractor may have regarding the contractor’s duties to provide public records relating to the contract.

Essentially, an agency must make a legal determination about whether a contractor is acting on behalf of the agency for purposes of the public records laws. If the public agency determines that the contractor is not acting on its behalf, the public agency must make an express determination in the contract that the contractor “is not a contractor.”

³⁴ *Jeffery Marcus Gray v. Lutheran Social Services of Northeast Florida, Inc.*, Final Order Denying Relief Under Public Records Act, No. 2014-CA-4647 (Fla. 4th Cir. Ct. Dec. 2, 2014).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ A Notice of Appeal was filed with the First District Court of Appeal on December 19, 2014, in *Jeff Gray vs. Lutheran Services of Social Services of Northeast, Inc.*, Case Number 1D14-5793. Appellant’s initial brief must be filed on or before March 21, 2015.

The bill repeals the requirement that the contract for services require the contractor to transfer its public records to the public agency upon termination of the contract. Instead, the contract must address whether the contractor will retain the public records or transfer the public records to the public agency upon termination of the contract. If requested by the public agency, all records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

The bill requires a public records request concerning contracted services to be made to the agency's records custodian. If the request concerns records held by the contractor, the bill requires the agency to immediately notify the contractor. Upon such notification, the contractor must produce the records within a reasonable time. As a result, a member of the public may not make a public records request directly to the contractor. A contractor who fails to produce the records within a reasonable time is subject to the penalties under s. 119.10, F.S. Section 119.10, F.S., provides that a violator may be fined up to \$500.00, subject to impeachment, or held criminally liable.⁴⁰

If a civil action is filed to compel production of public records relating to a public agency's contract for services against a public agency or a contractor that continues to possess such records, the bill provides that a court may only assess and award the reasonable costs of enforcement, including reasonable attorney fees if the plaintiff provided written notice of the public records request by certified mail to the public agency's records custodian at least three business days before filing suit informing the public agency that the contractor has not complied with the public records request. The contractor also must be noticed if the contractor is a named party in the action. The letter must state that the contractor has not complied with a public records request.

B. SECTION DIRECTORY:

Section 1. amends s. 119.0701, F.S., relating to contracts and public records.

Section 2. provides an effective date of upon becoming a law.

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.

⁴⁰ Section 119.10(2)(a), F.S., makes a violation of the public records laws a misdemeanor.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require an individual to provide notice of his or her intent to sue prior to filing suit if the individual wishes to recover attorney fees in certain public records enforcement actions. As such, the bill may have an indeterminate fiscal impact on the private sector related to litigation costs.

In addition, it is unclear what costs might be associated with a contractor maintaining public records upon termination of the contract in lieu of transferring the public records to the records custodian.

D. FISCAL COMMENTS:

The bill amends contract clause provisions relating to public records. As a result, state and local government contracts will have to be revised to include the new language. The changes may increase legal and administrative costs associated with revising the contract documents.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipal mandates provision of Art. VII, s. 18, of the State Constitution may apply because this bill requires public agencies to amend contract documents for services to include new language concerning the applicability of the public records laws; however, an exemption may apply because the fiscal impact will likely be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: "Acting on behalf of a public agency"

The bill requires the public agency to make a legal determination concerning whether a contractor is acting on behalf of the agency. The bill does not address what would occur if the agency declares the contractor is not acting on its behalf for purposes of public records laws and the contractor relies on that determination, but a court later determines the contractor was in fact acting on behalf of the agency. On the other hand, the inclusion of the form language may encourage an agency to declare that the contractor is acting on its behalf, even when the contractor is not legally acting on behalf of the agency.

Other Comments: Retention of Public Records

Current law requires a contract to contain a provision providing for the transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract. The bill revises this contract provision to require the contractor to keep and maintain the public records upon completion of the contract. Under the revised provisions in the bill, the contractor only transfers the public records to the records custodian upon request.

It is unclear what will happen to the public records if the contractor is permitted to retain the public records upon termination of the contract. If the contract provides that the contractor will keep and maintain the public records upon its termination, then the contractor may be required to comply with laws related to retention and disposal of public records.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Government Operations Subcommittee adopted one strike-all amendment and reported the bill favorable with a committee substitute. The committee substitute:

- Removes the definition for “acting on behalf of an agency” and maintains current law regarding the definition of “contractor;”
- Amends the form language that is required to be included in a contract with a contractor to require the agency to identify in the contract if the contractor is acting on behalf of the agency;
- Requires all public requests concerning the contract be sent to the agency, rather than the contractor. The agency must immediately notify the contractor of the request;
- Removes the requirement that a court find the contractor willfully violated the public records laws prior to awarding attorney fees; and
- Shortens the pre-suit notification period from 5 days to 3 days.

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

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.0701, F.S.; requiring that a public agency
 4 contract for services include a statement providing
 5 the name and contact information of the public
 6 agency's custodian of public records; prescribing the
 7 form of the statement; revising required provisions in
 8 a public agency contract for services regarding a
 9 contractor's compliance with public records laws;
 10 requiring that a public records request relating to
 11 records for a public agency contract for services be
 12 made directly to the agency; requiring a contractor to
 13 produce requested records under specified
 14 circumstances; specifying applicable penalties for a
 15 contractor who fails to produce requested records;
 16 specifying circumstances under which a court may
 17 assess and award reasonable costs of enforcement
 18 against a public agency or contractor; providing an
 19 effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 119.0701, Florida Statutes, is amended
 24 to read:

25 119.0701 Contracts; public records.—

26 (1) For purposes of this section, the term:

27 (a) "Contractor" means an individual, partnership,
 28 corporation, or business entity that enters into a contract for
 29 services with a public agency and is acting on behalf of the
 30 public agency as provided under s. 119.011(2).

31 (b) "Public agency" means a state, county, district,
 32 authority, or municipal officer, or department, division, board,
 33 bureau, commission, or other separate unit of government created
 34 or established by law.

35 (2) In addition to other contract requirements provided by
 36 law, each public agency contract for services must include:

37 (a) The following statement, in substantially the
 38 following form, identifying the name and contact information of
 39 the public agency's custodian of public records in boldface and
 40 at least 14-point type:

41
 42 THE REQUIREMENTS OF SECTION 119.0701, FLORIDA STATUTES,
 43 APPLY TO THIS CONTRACT UNLESS ...(name of public agency)...
 44 HAS DETERMINED AND EXPRESSLY STATED IN THIS CONTRACT THAT
 45 ...(name of individual, partnership, corporation, or
 46 business entity)... IS NOT A CONTRACTOR. IF YOU HAVE
 47 QUESTIONS REGARDING THE APPLICABILITY OF SECTION 119.0701,
 48 FLORIDA STATUTES, TO YOUR DUTY TO PROVIDE PUBLIC RECORDS
 49 RELATING TO THIS CONTRACT, CONTACT ...(name of custodian of
 50 public records)... AT ...(telephone number, e-mail address,
 51 and mailing address)....
 52

53 **(b)** A provision that requires the contractor to comply
 54 with public records laws, specifically to:

55 **1. ~~(a)~~** Keep and maintain public records that ordinarily and
 56 necessarily would be required by the public agency in order to
 57 perform the service.

58 **2. ~~(b)~~** Upon request from the public agency's custodian of
 59 public records, provide the public with access to public records
 60 on the same terms and conditions that the public agency would
 61 provide the records and at a cost that does not exceed the cost
 62 provided in this chapter or as otherwise provided by law.

63 **3. ~~(c)~~** Ensure that public records that are exempt or
 64 confidential and exempt from public records disclosure
 65 requirements are not disclosed except as authorized by law.

66 **4. ~~(d)~~** Upon completion of the contract, keep and maintain
 67 public records that ordinarily would be required by the public
 68 agency in order to perform the service, or ~~Meet all requirements~~
 69 ~~for retaining public records and~~ transfer, at no cost, to the
 70 public agency all public records in possession of the contractor
 71 ~~upon termination of the contract~~ and destroy any duplicate
 72 public records that are exempt or confidential and exempt from
 73 public records disclosure requirements. Upon request from the
 74 public agency's custodian of public records, all records stored
 75 electronically must be provided to the public agency in a format
 76 that is compatible with the information technology systems of
 77 the public agency.

78 **(3)** A request for public records relating to a public

79 agency contract for services must be made directly to the public
 80 agency. If the public agency does not possess the requested
 81 records, the public agency shall immediately notify the
 82 contractor of the request, and the contractor must produce the
 83 records within a reasonable time. A contractor who fails to
 84 produce the records within a reasonable time is subject to
 85 penalties under s. 119.10.

86 (4)~~(3)~~ If a contractor does not comply with a public
 87 records request, the public agency shall enforce the contract
 88 provisions in accordance with the contract.

89 (5) If a civil action is filed against a public agency or
 90 a contractor who continues to possess public records to compel
 91 production of such records relating to the public agency
 92 contract for services, the court shall assess and award against
 93 the responsible public agency or contractor the reasonable costs
 94 of enforcement, including reasonable attorney fees, if the party
 95 filing the action provided written notice of the public records
 96 request, including a statement that the contractor has not
 97 complied with the request. This notice must be sent by certified
 98 mail to the public agency's custodian of public records at least
 99 3 business days before filing the action and must be provided to
 100 the contractor if the contractor is a named party in the action.

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

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Appropriations Subcommittee
 3 Representative Beshears offered the following:



Amendment

6 Remove lines 38-51 and insert:
 7 following form, identifying the contact information of the
 8 public agency's custodian of public records in boldface and at
 9 least 14-point type for each public contract for services signed
 10 or amended on or after July 1, 2015:

12 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICABILITY OF
 13 SECTION 119.0701, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY
 14 TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT
 15 THE CUSTODIAN OF PUBLIC RECORDS AT ... (telephone number, e-
 16 mail address, and mailing address)....

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 405 Regulation of Not-for-profit Self-insurance Funds
SPONSOR(S): La Rosa
TIED BILLS: IDEN./SIM. **BILLS:** SB 830

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N	Lloyd	Cooper
2) Government Operations Appropriations Subcommittee		Keith 	Topp 
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

In general, self-insurance is the assumption of some or all financial risk oneself, rather than paying an insurance company to assume it. Florida law recognizes many different types of self-insurance funds. Two or more corporations not for profit wanting to pool together their property or casualty risks can form a self-insurance fund under s. 624.4625, F.S. This statute outlines many requirements and parameters for the fund and the corporation not for profit members. One requirement is that a fund member must receive at least 75 percent of its revenue from local, state, or federal government sources.

There is one corporation not for profit self-insurance fund (fund) in the state, though others may be formed at any time, if done so in compliance with the law. This fund has approximately 150 members. It relies on the member's federal tax returns to determine whether the members meet the governmental revenue threshold. The fund offers: Property General Liability; Professional Liability; Medical Practice Liability; Medical Legal Liability; Directors & Officers Liability; Workers' Compensation; Commercial Automobile; and, Employee Health Benefits.

Members of such a fund are also typically federally tax-exempt organizations. An entity must be determined by the Internal Revenue Service (IRS) to be a tax-exempt organization following the filing of an IRS application form prior to filing its returns as a tax-exempt organization. Most federally tax-exempt organizations must file Form 990 with the IRS. Schedule A to Form 990 or 990EZ requires organizations to indicate the reason the organization is a "public charity" for the tax year, which may be dependent upon public support. Whether an organization is a publically supported organization is determined using Schedule A to IRS Form 990 or 990EZ. The available reasons on Schedule A include organizations that normally receive a substantial part of its support from a governmental unit or from the general public. Presently, only governmental support is considered in regard to revenue for qualification to form a not for profit self-insurance fund.

The bill expands the types of corporations not for profit qualifying for membership in a not for profit self-insurance fund. Specifically, the bill allows a corporation not for profit that is a publically supported organization for IRS purposes due to receipt of a substantial part of support from a governmental unit or from the general public to be a member of a corporation not for profit self-insurance fund. This federal tax return based test is presented as an alternative to qualifying under the standard requirement that 75 percent of the corporation's revenue come from governmental sources (which is retained in the law).

The Revenue Estimating Impact Conference determined that the bill has an insignificant negative fiscal impact to insurance premium tax revenues.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In general, self-insurance is the assumption of some or all financial risk oneself, rather than paying an insurance company to assume it.¹ Florida law recognizes many different types of self-insurance funds.² Two or more corporations not for profit³ wanting to pool their property or casualty risks together can form a self-insurance fund under s. 624.4625, F.S.⁴ This statute outlines many requirements and parameters for the fund and the corporation not for profit members. One requirement set out is that each fund member receives at least 75 percent of its revenue from local, state, or federal government sources.

There is at least one corporation not for profit self-insurance fund in Florida, the Florida Insurance Trust (FIT), with approximately 150 members.⁵ The FIT currently offers multiple lines of coverage in their self-insurance fund.⁶ According to the FIT, Form 990⁷ from the Internal Revenue Service (IRS) is what the fund uses to determine if potential members receive 75 percent of funding from governmental sources. In addition, most current members of the FIT indicate on Schedule A for Form 990 that they are an organization that normally receives a substantial part of its support from a governmental unit or from the general public and qualify as a publically supported organization for IRS purposes.

Members of such a fund are also typically federally tax-exempt organizations. An entity must be determined by the IRS to be a tax-exempt organization following the filing of an IRS application form⁸ prior to filing its returns as a tax-exempt organization. Most federally tax-exempt organizations must file Form 990 with the IRS. Schedule A to Form 990 or 990EZ requires organizations to indicate the reason the organization is a "public charity" for the tax year, which may hinge upon public support. The determination whether a public charity is also a publically supported organization for IRS purposes is determined by the results of a computation of public support percentage set out on Schedule A.⁹ The computation takes into account certain receipts of the public charity for the past five years. Specifically, Schedule A requires organizations to disclose their aggregate receipts from the past five years from gifts; grants; contributions; membership fees; tax revenue; services or facilities furnished to the organization from a governmental unit; gross income from interest, dividends, payments received on securities loans, rents, royalties and income from other sources; net income from unrelated business activities; and other income. The amount of these receipts for certain tax years is used in the computation of a public support percentage, the result of which determines whether the organization qualifies as a publically supported organization for IRS purposes.¹⁰

The bill maintains current law allowing membership for corporations not for profit that receive at least 75 percent of their revenue from local, state, or federal government sources. By retaining current law in this regard, all current members of corporation not for profit self-insurance funds are essentially

¹ Glossary, <http://www.iii.org/services/glossary> (last viewed March 10, 2015).

² See s. 624.462, F.S., relating to commercial self-insurance funds; s. 624.4621, F.S., relating to group self-insurance funds; s. 624.4622, F.S., relating to local government self-insurance funds; s. 624.46226, F.S., relating to public housing authorities self-insurance funds; s. 624.4623, F.S., relating to independent nonprofit colleges or universities self-insurance fund; and s. 624.4626, relating to electric cooperative self-insurance fund.

³ Corporations not for profit are organized under Chapter 617, F.S. A corporation not for profit "means a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under [ch. 617]." s. 617.01401(5), F.S.

⁴ The Office of Insurance Regulation reports that there is only one fund operating under s. 624.4625, F.S. (agency bill analysis on file with the Insurance and Banking Subcommittee).

⁵ <http://floridainsurancetrust.com/index.php> (last viewed March 10, 2015). The FIT has been in existence since 2007.

⁶ The FIT offers: Property General Liability; Professional Liability; Medical Practice Liability; Medical Legal Liability; Directors & Officers Liability; Workers' Compensation; Commercial Automobile; and, Employee Health Benefits. See <http://floridainsurancetrust.com/coverage.html> (last viewed on March 10, 2015).

⁷ Non-profits whose incomes were less than \$500,000 and their assets less than \$1.25 million can file a Form 990EZ.

⁸ Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*.

⁹ There are two ways an organization can qualify as a publically supported one: the 33 1/3 support test and the 10 percent facts and circumstances test. Calculations for both tests are set forth on Schedule A, Form 990 or Form 990EZ).

¹⁰ Schedule A (Form 990 or 990-EZ and Instructions for Schedule A available at [http://www.irs.gov/uac/About-Schedule-A-\(Form-990-or-990EZ\)](http://www.irs.gov/uac/About-Schedule-A-(Form-990-or-990EZ)) (last viewed on March 10, 2015).

grandfathered in and thus, will be able to continue to qualify for fund membership, as long as their governmental funding level does not fall below 75 percent.

Presently, a member qualifies for a corporation not for profit self-insurance fund by drawing at least 75 percent of its revenue from governmental sources. The calculation of public support for purposes of IRS form 1099, Schedule A, includes support from the general public. Accordingly, the bill expands the potential membership of the fund(s) to include corporations not for profit that gather substantial support from the general public, rather than just those that receive at least 75 percent of their revenue from governments. Additionally, current law does not average the threshold 75 percent governmental funding over time. The revision proposed by the bill differs from the current standard in that under Schedule A, Part II, the level of funding necessary to determine public support is averaged over the preceding five tax years.

B. SECTION DIRECTORY:

Section 1: Amends s. 624.4625(1)(b), F.S., relating to corporation not for profit self-insurance funds eligibility criteria.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Revenue Estimating Impact Conference held on March 6, 2015, there will be an insignificant negative fiscal impact¹¹ to insurance premium tax revenue collections¹². Premium tax revenues will be impacted to the extent that increased participation in corporation not for profit self-insurance funds moves premiums from the generally applicable rate of 1.75 percent of premium to the 1.6 percent of premium applicable to funds organized under s. 624.4625, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Corporations not for profit that choose to self-insure their risks by joining or forming a corporation not for profit self-insurance fund should be able to obtain savings over purchasing coverage of these risks in the general market. This would reduce their fundraising burdens and/or allow revenues to be redirected to other purposes. The extent of the savings has not been estimated.

¹¹ The Revenue Estimating Conference denotes that an insignificant negative impact is less than \$50,000.

¹² Revenue Estimating Impact Conference analysis (March 6, 2015) available online at <http://edr.state.fl.us/Content/conferences/revenueimpact/index.cfm> (Last visited March 11, 2015)

D. FISCAL COMMENTS:

The impact to premium tax revenue collections as a result of this legislation could potentially be mitigated if corporations not for profit choose to obtain self-insurance for lines that they do not currently carry, thus increasing premium tax revenue.

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

1 A bill to be entitled
 2 An act relating to the regulation of not-for-profit
 3 self-insurance funds; amending s. 624.4625, F.S.;
 4 revising requirements for the formation of corporation
 5 not for profit self-insurance funds; providing an
 6 effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (b) of subsection (1) of section
 11 624.4625, Florida Statutes, is amended to read:

12 624.4625 Corporation not for profit self-insurance funds.—

13 (1) Notwithstanding any other provision of law, any two or
 14 more corporations not for profit located in and organized under
 15 the laws of this state may form a self-insurance fund for the
 16 purpose of pooling and spreading liabilities of its group
 17 members in any one or combination of property or casualty risk,
 18 provided the corporation not for profit self-insurance fund that
 19 is created:

20 (b) Requires for qualification that each participating
 21 member receive at least 75 percent of its revenues from local,
 22 state, or federal governmental sources or a combination of such
 23 sources or qualify as a publicly supported organization under s.
 24 501(c)(3) or s. 4947(a)(1) of the United States Internal Revenue
 25 Code which normally receives a substantial part of its support
 26 from a governmental unit or from the general public as evidenced

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27 | on the organization's most recently filed Internal Revenue
28 | Service Form 990 or 990EZ, Schedule A.
29 | Section 2. This act shall take effect July 1, 2015.

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	_____	

1 Committee/Subcommittee hearing bill: Government Operations
 2 Appropriations Subcommittee
 3 Representative La Rosa offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
 7 Section 1. Subsection (1) of section 624.4625, Florida
 8 Statutes, is amended to read

9 624.4625 Corporation not for profit self-insurance funds.-

10 (1) Notwithstanding any other provision of law, any two or
 11 more corporations not for profit located in and organized under
 12 the laws of this state may form a self-insurance fund for the
 13 purpose of pooling and spreading liabilities of its group
 14 members in any one or combination of property or casualty risk,
 15 provided the corporation not for profit self-insurance fund that
 16 is created:

Amendment No. 1

17 (b) Requires for qualification that each participating
18 member receive at least 75 percent of its revenues from:

19 1. Local, state, or federal governmental sources or a
20 combination of such sources; or-

21 2. The public as evidenced on the organization's most
22 recent Internal Revenue Service Form 990 or Form 990-EZ, and
23 Schedule A and is a publicly supported organization under
24 s.501(c) (3) of the Internal Revenue Code.

25 (c) Uses a qualified actuary to determine rates using
26 accepted actuarial principles and annually submits to the office
27 a certification by the actuary that the rates are actuarially
28 sound and are not inadequate, as defined in s. 627.062.

29 (d) Uses a qualified actuary to establish reserves for loss
30 and loss adjustment expenses and annually submits to the office
31 a certification by the actuary that the loss and loss adjustment
32 expense reserves are adequate. If the actuary determines that
33 reserves are not adequate, the fund shall file with the office a
34 remedial plan for increasing the reserves or otherwise
35 addressing the financial condition of the fund, subject to a
36 determination by the office that the fund will operate on an
37 actuarially sound basis and the fund does not pose a significant
38 risk of insolvency.

39 (e) A fund with at least one member qualifying solely under
40 subparagraph (b)2. shall:

41 1. Maintain surplus in a positive amount with the loss
42 and loss adjustment expense reserve at the 70 percent confidence

Amendment No. 1

43 level as of the end of the fiscal year as determined by the
44 qualified actuary specified in paragraph (d).

45 2. If a fund does not maintain surplus in a positive amount
46 with the loss and loss adjustment expense reserve at the 70
47 percent confidence level, a fund shall file with the office a
48 remedial plan addressing the financial condition of the fund,
49 subject to a determination by the office that the fund will
50 operate on an actuarially sound basis and the fund does not pose
51 a significant risk of insolvency.

52 (f) A corporation not for profit self-insurance fund
53 operating under this section prior to July 1, 2015 shall have
54 until July 1, 2020 to comply with subsection (e).

55 (g) ~~(e)~~ Maintains a continuing program of excess insurance
56 coverage and reserve evaluation to protect the financial
57 stability of the fund in an amount and manner determined by a
58 qualified actuary. At a minimum, this program must:

59 1. Purchase excess insurance from authorized insurance
60 carriers or eligible surplus lines insurers or reinsurers. Any
61 entity providing such excess insurance shall have a rating of A-
62 or higher from a statistical rating organization deemed
63 acceptable by the commissioner.

64 2. Retain a per-loss occurrence that does not exceed
65 \$350,000

66 Section 2. This act shall take effect July 1, 2015.

67

68

Amendment No. 1

69
70
71
72
73
74

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

Remove everything before the enacting clause and insert:
An act relating to the regulation of not-for-profit self-
insurance funds; amending s. 624.4625, F. S.; revising
requirements for the formation of corporation not for profit
self-insurance funds; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 707 Real Estate Brokers and Appraisers
SPONSOR(S): Business & Professions Subcommittee; Burton
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 608

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Butler	Luczynski
2) Government Operations Appropriations Subcommittee		White <i>CCW</i>	Topp <i>BT</i>
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

This bill amends Florida's Real Estate law related to real estate licensure, rulemaking, and appraisers.

The bill requires the Florida Real Estate Commission to adopt rules to allow a brokerage to register a temporary broker in an emergency situation when the sole broker of a brokerage office dies or unexpectedly cannot remain a broker.

The bill extends the current pre-licensing and post-licensing education exemption for real estate salesperson and broker applicants who hold a four-year degree in real estate to also include applicants who hold a degree in real estate greater than a four-year degree, such as a Master's or Doctorate Degree.

The bill grants authority to the Florida Real Estate Commission to adopt rules to reinstate a license that has become null and void, under certain circumstances. The Commission may reinstate such a license if the request for reinstatement is within six months of the license becoming null and void, and the applicant was unable to comply due to illness or economic hardship.

The bill clarifies several records retention requirements for appraisers and appraisal management companies, to align Florida's retention requirements with the Federal requirements. The bill deletes a limited exception to the restriction on the Department's authority to inspect or copy the records of an appraisal management company and provides full authority to inspect such records.

Finally, the bill removes the authority for the Florida Real Estate Appraisal Board to have a "mutual agreement" with another state for an out-of-state appraiser to become licensed in Florida without having to fulfill all of Florida's education, experience, and examination requirements for licensure.

In order to comply with the Federal requirement for appraiser licensure reciprocity between states, Florida will require out of state licensed appraisers to complete a forty question Florida specific examination to become licensed as an appraiser in Florida.

The bill has a minimal negative fiscal impact on the Department of Business and Professional Regulation; however, the impact can be handled with existing resources. There is no fiscal impact on local funds.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Real Estate Commission (FREC), within the Division of Real Estate (Division), within the Department of Business and Professional Regulation (Department) administers and enforces the real estate license law, ch. 475, Part 1, F.S. The FREC is also empowered to adopt rules that enable it to implement its statutorily authorized duties and responsibilities. The rules are contained in ch. 61J2, F.A.C.

The Florida Real Estate Appraisal Board (FREAB), within the Division of the Department, administers and enforces the real estate appraiser license law within Florida, in conjunction with standards promulgated by the Appraisal Foundation. The FREAB is empowered to pass rules that enable it to implement its statutorily authorized duties and responsibilities to properly protect the health, safety, and welfare of the general public.

The Appraisal Foundation is composed of over eighty organizations, corporations, and government agencies that provide guidelines for uniform standards for appraisers and appraisals. The Appraisal Standards Board within the Foundation adopts the Uniform Standards of Professional Appraisal Practice (USPAP) which is recognized throughout the nation as the generally accepted standards of professional appraisal practice.

The rules of the FREAB, along with the licensing requirements of the FREC, and the standards of the USPAP, provide guidance for appraisers, appraisals, and appraisal management companies (AMC) throughout the nation.

Real Estate Brokerage Registration Requirements

In order for a real estate brokerage to act as a real estate broker in Florida, at least one active member of the brokerage must be licensed or registered as a broker at all times. If the real estate firm does not have at least one broker within the firm, the registration of the firm, usually a corporation, limited liability company, limited liability partnership, or partnership, is canceled automatically during the period of time that no broker is registered.¹ Additionally, all sales associates registered under the brokerage must stop all work during the period when a brokerage has no member broker. The FREC does not have any statutory authority to establish rules regarding vacancies at a real estate firm, should a firm suddenly lose its only broker.

Real Estate Broker Education Requirements

Individuals with a four-year degree in real estate from an accredited institution of higher learning are exempt from the pre-licensing and post-licensing education requirements of licensure as a broker or sales associate.²

This statute allows individuals to avoid retaking real estate education courses if the individual already has a higher education degree focused on real estate; however, if an individual does not have a four-year real estate degree, but has a higher degree, such as a Masters or a Doctorate degree in real estate, that individual is unable to take advantage of this exemption.³

¹ s. 475.15, F.S.

² s. 475.17(6), F.S.

³ Department of Business and Professional Regulation, Agency Analysis of 2015 Senate Bill 680, p. 2 (Feb. 26, 2015) (Senate Bill 680 is identical to House Bill 707).

Reinstatement of Null and Void License

A license is considered in involuntary inactive status when the license is not renewed at the end of the license period prescribed by the Department.⁴ The license may subsequently be renewed only if the licensee meets the educational and other qualifications specified in s. 475.183, F.S. Section 475.183(2)(b), F.S., provides that any license that has been involuntarily inactive for more than two years shall automatically expire and become null and void without further action.

Additionally, a license for a sales associate or broker can become null and void if the sales associate or broker does not complete the post licensure education requirements prior to the first renewal following initial licensure.⁵

Once a license becomes null and void, the licensee is required to re-apply for licensure and meet the initial requirements that a new licensee is required to complete: a new application, fees, fingerprints, pre-licensing education, and successful completion of the state exam.

Appraiser Records Retention

An appraiser or AMC must retain original and true copies of contracts, appraisal reports, supporting documentation, and other documents involved in engaging an appraiser's services for five years or longer, if required by the USPAP.

These documents must be made available to the Department for inspection and copying; however, the Department may only inspect or copy such documents of an AMC if there is a pending investigation or complaint against the AMC.

The Department may inspect the offices of individual appraisers and firms offering appraisal services to determine if the provisions of law governing the practice of appraisers are being upheld.

Mutual Agreements with Other States

The FREAB may enter into written agreements with other states that have similar licensing requirements as Florida to provide out-of-state licensees an opportunity to become licensed in Florida without having to go through the entirety of Florida's licensing process. Absent one of these "mutual agreements," an out-of-state licensee must meet all of Florida's education, experience, and examination requirements to become licensed in Florida as an appraiser.

As part of the Federal reform of financial services, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires that states offer reciprocity to any appraiser licensed or certified by another state, so long as the other state's licensure requirements meet or exceed the host state's requirements.⁶ Furthermore, an appraiser from a state that does not offer reciprocity with appraisers licensed in other states would be prohibited from conducting federally related appraisal transactions.

Licensed or Certified Appraisers

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council, who are charged with monitoring the states' appraisal regulatory programs, have established two title designations for appraisers, "state licensed" and "state certified." The ASC strongly urges states to use

⁴ s. 475.01(g), F.S.

⁵ ss. 475.17(3)(c) & 475.17(4)(c), F.S.

⁶ Dodd-Frank Wall Street Reform and Consumer Protection Act, PL 111-203, July 21, 2010, 124 Stat 1376.

these federally-recognized designations or titles in order to decrease confusion among the states' different regulatory programs.

Since July 1, 2003, Florida does not issue new credentials for "licensed" appraisers. Further, the Appraiser Qualifications Board (AQB) of the Appraisal Foundation, who establishes the minimum education, experience, and examination requirements for appraisers, no longer permits "licensed" appraisers to supervise trainee appraisers. Only "certified" appraisers may act as supervisors of trainee appraisers.

Chapter 2013-144, Laws of Florida, amended Florida law to align with the AQB, and removed "licensed" appraisers from the definition of "supervisor appraiser." Consequently, only "certified" appraisers are recognized to be "supervisor appraisers" in Florida law.

Effect of the Bill

Real Estate Brokerage Registration Requirements

The bill provides authority for the FREC to adopt rules that will allow a real estate brokerage firm to register a broker on a temporary, emergency basis, when the sole broker of a brokerage dies or is unexpectedly unable to remain a broker.

The rules adopted in accordance with this authority should allow businesses and licensees to operate the business without interruption during a period of unexpected loss of its licensed broker.

Real Estate Broker Education Requirements

The bill provides authority for license applicants to be exempt from pre-licensing education requirements and allows licensees to be exempt from the post-licensing education requirement if the applicant holds a degree that is considered higher than a four-year degree, such as a Master or Doctorate degree. Such degree must be in real estate from an accredited institution of higher education.

Reinstatement of Null and Void License

The bill allows the FREC to reinstate the license of an individual whose license has become null and void, if the commission determines that the individual failed to comply within the time requirements and his delay was because of illness or economic hardship. The FREC will define "illness or economic hardship" by rule.

The individual must apply for reinstatement within six months of the license becoming null and void. The bill requires that the individual also meet all continuing education requirements, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure.

Appraiser Records Retention

The bill clarifies what documents, and in what form, an appraiser or AMC must retain records and other specified documents. The bill requires that each appraiser or AMC prepare and retain a work file for each appraisal, appraisal review, or appraisal consulting agreement. The work file must be maintained for at least five years, or for a greater period if specified by the USPAP.

The retained work file shall contain:

- Original or true copies of any contracts engaging the appraiser or AMC's services;
- Appraisal reports;
- Supporting data assembled and formulated by the appraiser or company in preparing appraisal reports or engaging in appraisal management services; and

- All other data, information, and documentation required by the standards for the development or communication of a real estate appraisal as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as established by rule of the FREAB.

Additionally, the bill requires that, in accordance with administrative rules adopted by the FREAB, AMCs shall also retain:

- company accounts;
- correspondence;
- memoranda;
- papers;
- books; and
- other records.

There are pending Federal rules that impose these requirements on AMCs. The proposed language will ensure that Florida is in compliance with Federal law. Failure to comply with the requirements of Federal law could result in sanctions that could prohibit appraisers licensed in Florida from conducting federally related appraisal transactions.

The bill removes the requirement that the Department must have a pending investigation or complaint in order to inspect or copy, upon reasonable notice, any of the above specified records that are retained by an AMC. Further, the bill affirmatively includes AMCs in the list of appraiser offices that employees of the Department may inspect at reasonable hours for the purpose of determining if any provision of statute or rule is being violated.

Mutual Agreements with Other States

The bill repeals the requirement that out-of-state licensees meet all of Florida's education, experience, and examination requirements to become licensed in Florida, absent an authorized "mutual agreement" with the FREAB. Out-of-state licensees who wish to become licensed in Florida must only complete a 40-question Florida supplemental exam on Florida specific appraisal laws to be licensed in Florida.

These changes would bring Florida's appraiser laws in line with the federal requirements of the Dodd-Frank Act, and allow Florida licensed appraisers to continue to conduct federally related appraisal transactions.

Licensed or Certified Appraisers

The bill removes several cross-references to "licensed" appraisers in s. 475.611, F.S. These changes are in line with the requirements of the AQB for a trainee appraiser to be supervised by a "certified" appraiser and not a "licensed" appraiser, and with prior statutory updates in 2013.⁷

B. SECTION DIRECTORY:

Section 1 amends s. 475.15, F.S., requires the FREC to adopt rules to allow a brokerage to register a broker on a temporary, emergency basis, when the sole broker is unexpectedly unable to do so.

Section 2 amends s. 475.17(6), F.S., allows applicants with real estate degrees greater than a four-year degree to be exempt from pre-licensing and post-licensing education requirements.

Section 3 amends s. 475.183, F.S., creates a new subsection (4) to allow the FREC to reinstate an individual with a null and void license under certain conditions.

Section 4 amends s. 476.611, F.S., to clarify the supervision requirements of trainee appraisers.

Section 5 amends s. 475.612(5), F.S., to clarify the supervision requirements of trainee appraisers.

Section 6 amends s. 475.621(2), F.S., to clarify where the annual fee for persons who seek to perform federally related transactions is sent.

Section 7 amends s. 475.629, F.S., to clarify records retention requirements for appraisers and AMCs, and to align with Federal retention requirements.

Section 8 amends s. 475.6295, F.S., to include AMCs in the list of licensees that the Department may inspect at any reasonable time.

Section 9 amends s. 473.631, F.S., to remove the requirements that out-of-state appraisers must be licensed in a state with a mutual agreement with Florida in order to bypass the new licensee education, experience and exam requirements.

Section 10 provides an effective date of July 1, 2015.

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:

This bill has a minimal negative fiscal impact on the Department of Business and Professional Regulation that can be handled with existing resources.⁸

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may prevent a brokerage which would otherwise need to close due to the death or unexpected loss of its only broker from closing by appointing a new, temporary broker in his place. The actual economic impact of such an event is indeterminable.

D. FISCAL COMMENTS:

None.

⁸ February 26, 2015 Department of Business and Professional Regulation Legislative Bill Analysis.

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:

Section 1 would allow the FREC to establish procedures by rule, and allow the amendment of the existing rule. A prior rule was created prior to more stringent rulemaking requirements and the FREC has been unable to amend it. This section would also likely require the FREC to adopt rules to allow a brokerage to register a broker on a temporary basis.

Section 2 would likely require the FREC to amend rules to review and consider education transcripts of graduate degrees in real estate in place of the pre-licensing and post-licensing education requirements of sales associates and brokers.

Section 3 allows the FREC to amend its rules to accommodate licensees that did not previously have the ability to request reinstatement of null and void licenses due to hardship. It will also likely require the commission to adopt a reinstatement fee and define "illness or economic hardship."

Section 7 would require the FREAB to amend its rules to incorporate any finalized federal regulations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Business & Professions Subcommittee adopted three amendments. The amendments clarify the supervision requirements for trainee appraisers, clarify the documents required in an appraiser's work file, and clarify the legislative intent for rulemaking related to reinstating a real estate broker or salesperson license that is null and void. The bill was reported favorably as a committee substitute.

The staff analysis is drafted to reflect the committee substitute.

27 | authorized agents and employees of the department may
 28 | inspect an appraisal management company at all
 29 | reasonable hours; amending s. 475.631, F.S.; removing
 30 | the board's authority to enter into written agreements
 31 | with similar licensing or certification authorities;
 32 | providing an effective date.

33 |
 34 | Be It Enacted by the Legislature of the State of Florida:

35 |
 36 | Section 1. Section 475.15, Florida Statutes, is amended to
 37 | read:

38 | 475.15 Registration and licensing of general partners,
 39 | members, officers, and directors of a firm.—Each partnership,
 40 | limited liability partnership, limited liability company, or
 41 | corporation which acts as a broker shall register with the
 42 | commission and shall renew the licenses or registrations of its
 43 | members, officers, and directors for each license period.
 44 | However, if the partnership is a limited partnership, only the
 45 | general partners must be licensed brokers or brokerage
 46 | corporations registered pursuant to this part. If the license or
 47 | registration of at least one active broker member is not in
 48 | force, the registration of a corporation, limited liability
 49 | company, limited liability partnership, or partnership is
 50 | canceled automatically during that period of time. The
 51 | commission shall adopt rules that allow a brokerage to register
 52 | a broker on a temporary, emergency basis if a sole broker of a

53 brokerage dies or is unexpectedly unable to remain a broker.

54 Section 2. Subsection (6) of section 475.17, Florida
55 Statutes, is amended to read:

56 475.17 Qualifications for practice.—

57 (6) The postlicensure education requirements of this
58 section, and the education course requirements for one to become
59 initially licensed, do not apply to any applicant or licensee
60 who has received a 4-year degree, or higher, in real estate from
61 an accredited institution of higher education.

62 Section 3. Subsection (4) is added to section 475.183,
63 Florida Statutes, to read:

64 475.183 Inactive status.—

65 (4) The commission may reinstate the license of an
66 individual whose license has become void if the commission
67 determines that the individual failed to comply because of
68 illness or economic hardship, as defined by rule. The individual
69 must apply to the commission for reinstatement within 6 months
70 after the date that the license becomes void. Such individual
71 must meet all continuing education requirements prescribed by
72 law, pay appropriate licensing fees, and otherwise be eligible
73 for renewal of licensure under this section.

74 Section 4. Paragraph (r) of subsection (1) of section
75 475.611, Florida Statutes, is amended to read:

76 475.611 Definitions.—

77 (1) As used in this part, the term:

78 (r) "Registered trainee appraiser" means a person who is

79 registered with the department as qualified to perform appraisal
 80 services only under the direct supervision of a ~~licensed or~~
 81 certified appraiser. A registered trainee appraiser may accept
 82 appraisal assignments only from her or his primary or secondary
 83 supervisory appraiser.

84 Section 5. Subsection (5) of section 475.612, Florida
 85 Statutes, is amended to read:

86 475.612 Certification, licensure, or registration
 87 required.—

88 (5) This section does not apply to any full-time graduate
 89 student who is enrolled in a degree program in appraising at a
 90 college or university in this state, if the student is acting
 91 under the direct supervision of a certified ~~or licensed~~
 92 appraiser and is engaged only in appraisal activities related to
 93 the approved degree program. Any appraisal report by the student
 94 must be issued in the name of the supervising individual who is
 95 responsible for the report's content.

96 Section 6. Subsection (2) of section 475.621, Florida
 97 Statutes, is amended to read:

98 475.621 Registry of licensed and certified appraisers.—

99 (2) The department shall collect from such individuals who
 100 perform or seek to perform appraisals in federally related
 101 transactions, an annual fee as set by and transmitted to the
 102 appraisal subcommittee ~~to be transmitted to the Federal~~
 103 ~~Financial Institutions Examinations Council on an annual basis.~~

104 Section 7. Section 475.629, Florida Statutes, is amended

105 to read:

106 475.629 Retention of records.—An appraiser registered,
 107 licensed, or certified under this part or an appraisal
 108 management company registered under this part shall prepare and
 109 retain a work file for each appraisal, appraisal review, or
 110 appraisal consulting assignment. This work file shall be
 111 retained~~7~~ for 5 years or the period specified in the Uniform
 112 Standards of Professional Appraisal Practice, whichever is
 113 greater. The work file shall contain~~7~~ original or true copies of
 114 any contracts engaging the appraiser's or appraisal management
 115 company's services, appraisal reports, and supporting data
 116 assembled and formulated by the appraiser or company in
 117 preparing appraisal reports or engaging in appraisal management
 118 services and all other data, information, and documentation
 119 required by the standards for the development or communication
 120 of a real estate appraisal as approved and adopted by the
 121 Appraisal Standards Board of The Appraisal Foundation, as
 122 established by rule of the board. Except as otherwise specified
 123 in the Uniform Standards of Professional Appraisal Practice, the
 124 period for retention of the records applicable to each
 125 engagement of the services of the appraiser or appraisal
 126 management company runs from the date of the submission of the
 127 appraisal report to the client. Appraisal management companies
 128 shall also retain the company accounts, correspondence,
 129 memoranda, papers, books, and other records in accordance with
 130 administrative rules adopted by the board. These records must be

131 made available by the appraiser or appraisal management company
 132 for inspection and copying by the department upon reasonable
 133 notice to the appraiser or company. ~~However, the department may~~
 134 ~~not inspect or copy the records of an appraisal management~~
 135 ~~company except in connection with a pending investigation or~~
 136 ~~complaint.~~ If an appraisal has been the subject of or has served
 137 as evidence for litigation, reports and records must be retained
 138 for at least 2 years after the trial or the period specified in
 139 the Uniform Standards of Professional Appraisal Practice,
 140 whichever is greater.

141 Section 8. Section 475.6295, Florida Statutes, is amended
 142 to read:

143 475.6295 Authority to inspect.—Duly authorized agents and
 144 employees of the department shall have the power to inspect in a
 145 lawful manner at all reasonable hours any appraisal management
 146 company, appraiser or appraisal office certified, registered, or
 147 licensed under this chapter, for the purpose of determining if
 148 any of the provisions of this chapter, chapter 455, or any rule
 149 promulgated under authority of either chapter is being violated.

150 Section 9. Section 475.631, Florida Statutes, is amended
 151 to read:

152 475.631 Nonresident licenses and certifications.—

153 ~~(1) Notwithstanding the requirements for certification set~~
 154 ~~forth in ss. 475.615 and 475.616, the board may enter into~~
 155 ~~written agreements with similar licensing or certification~~
 156 ~~authorities of other states, territories, or jurisdictions of~~

157 ~~the United States to ensure for state-certified appraisers~~
 158 ~~nonresident licensure or certification opportunities comparable~~
 159 ~~to those afforded to nonresidents by this section. Whenever the~~
 160 ~~board determines that another jurisdiction does not offer~~
 161 ~~nonresident licensure or certification to state-certified~~
 162 ~~appraisers substantially comparable to those afforded to~~
 163 ~~certified appraisers or licensees of that jurisdiction by this~~
 164 ~~section, the board shall require certified appraisers or~~
 165 ~~licensees of that jurisdiction who apply for nonresident~~
 166 ~~certification to meet education, experience, and examination~~
 167 ~~requirements substantially comparable to those required by that~~
 168 ~~jurisdiction with respect to state-certified appraisers who seek~~
 169 ~~nonresident licensure or certification, not to exceed such~~
 170 ~~requirements as are prescribed in ss. 475.615 and 475.616.~~

171 (1)~~(2)(a)~~ Any resident state-certified appraiser who
 172 becomes a nonresident shall, within 60 days, notify the board of
 173 the change in residency and comply with nonresident
 174 requirements. Failure to notify and comply is a violation of the
 175 license law, subject to the penalties in s. 475.624.

176 (2)~~(b)~~ All nonresident applicants, certified appraisers,
 177 and licensees shall comply with all requirements of board rules
 178 and this part. The board may adopt rules pursuant to ss.
 179 120.536(1) and 120.54 necessary for the regulation of
 180 nonresident certified appraisers and licensees.

181 Section 10. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 719 Florida State Employees' Charitable Campaign
SPONSOR(S): Cortes, B.
TIED BILLS: IDEN./SIM. BILLS: SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Toliver	Williamson
2) Government Operations Appropriations Subcommittee		White <i>CCW</i>	Topp <i>BT</i>
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida State Employees' Charitable Campaign (FSECC) is an annual charitable fundraising drive administered by the Department of Management Services (DMS). It is the only authorized charitable fundraising drive directed toward state employees within work areas during works hours, and for which the state will provide payroll deduction. State officer and employee participation is completely voluntary.

During an FSECC fundraising drive a state officer or employee may contribute to various participating charitable organizations; however, the contribution must be designated. In addition, a state officer or employee choosing to donate during an FSECC fundraising drive must specifically designate a participating organization as the recipient of the officer's or employee's contribution.

Participation in the FSECC is limited to any nonprofit charitable organization that meets certain criteria. Current law also provides specific eligibility criteria for an independent unaffiliated agency, national agency, or an international service agency.

The bill allows state officers and employees to contribute undesignated funds to the FSECC as part of a campaign event. It directs the fiscal agent to direct undesignated contributions to participating charitable organizations in proportion to all designated FSECC contributions received by that organization.

The bill eliminates the requirement that local steering committees be established in each fiscal agent area. It also eliminates the additional eligibility requirements for an independent unaffiliated agency, national agency, and international service agency.

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:

The Florida State Employees' Charitable Campaign

Present Situation

The Florida State Employees' Charitable Campaign (FSECC) is an annual charitable fundraising drive administered by the Department of Management Services (DMS).¹ It is the only authorized charitable fundraising drive "directed toward state employees within work areas during works hours, and for which the state will provide payroll deduction."² State officer and employee participation is completely voluntary.³

During an FSECC fundraising drive, a state officer or employee may contribute to various participating charitable organizations; however, the contribution must be designated.⁴ In addition, a state officer or employee choosing to donate during an FSECC fundraising drive must specifically designate a participating organization⁵ as the recipient of the officer's or employee's contribution.

Participation in the FSECC is limited to any nonprofit charitable organization that has as its principal mission public health and welfare, education, environmental restoration and conservation, civil and human rights, or any nonprofit charitable organization engaged in the relief of human suffering and poverty.⁶ Current law provides specific eligibility criteria for an independent unaffiliated agency,⁷ national agency,⁸ or an international service agency.⁹

DMS procures a fiscal agent¹⁰ or agents as it deems necessary, to "receive, account for, and distribute charitable contributions among participating charitable organizations."¹¹ DMS appoints a statewide steering committee to assist it in oversight, development, and administration of the FSECC.¹² DMS also

¹ Section 110.181(1)(a), F.S.

² *Id.*

³ Section 110.181(1)(b), F.S.

⁴ *Id.*

⁵ The FSECC website has a provision within their "FAQs for Donors" regarding designations: "[T]he FSECC is a donor-designated campaign, and it is Florida law that every FSECC donation must have a charity designation. When you complete your FSECC pledge form, you will be asked for a code(s) of the charity/charities of your choice as listed in the FSECC Approved Charity brochure, and this will ensure that your donation goes to support the causes that are important to you." <http://www.fsecc.com/faqs-for-donors/> (last visited Feb. 22, 2015).

⁶ Section 110.181(1)(c), F.S.

⁷ An independent unaffiliated agency must be a statewide entity whose programs provide substantial, direct, hands-on services that meet basic human or environmental needs and extend throughout the year and through the state. Section 110.181(1)(d), F.S. In addition, DMS has promulgated two rules regarding the statewide independent unaffiliated agency. Fla. Admin. Code R. 60L-39.0015(1) (2013) defines an independent unaffiliated agency as a charitable organization that is not an umbrella group or a member of any umbrella group. Fla. Admin. Code R. 60L-39.004(4) (2013) provides that an independent unaffiliated agency will be deemed to be providing services throughout the year and throughout the state in accordance with s. 110.181(1)(d), F.S., if it demonstrates that services were provided every month of the calendar year and in every fiscal agent area.

⁸ A national agency must demonstrate, through a well-defined program, direct services meeting basic human or environmental needs which are readily available, being administered, or providing a substantial direct benefit to the residents of Florida. Section 110.181(f), F.S. DMS further defines a national agency as an "umbrella group or an affiliated member of an umbrella group serving basic human or environmental needs inside the United States. This definition excludes any charitable organization that is a member or affiliate of the United Way of Florida, Inc." Fla. Admin. Code R. 60L-39.0015(n) (2013).

⁹ An international service agency must have well-defined programs that meet basic human or environmental needs outside the United States with no duplication of existing programs. Section 110.181(1)(e), F.S.

¹⁰ The current statewide fiscal agent is Solix, Inc. FLORIDA STATE EMPLOYEES' CHARITABLE CAMPAIGN, <http://www.fsecc.com/administration/> (last visited Feb 23, 2015).

¹¹ Section 110.181(2)(a), F.S.

¹² Section 110.181(4), F.S.; Fla. Admin. Code R. 60L-39.003 (2013).

appoints local steering committees for each fiscal agent area.¹³ The local steering committee is composed of state employees and it is tasked with assisting the fiscal agent with the administration of the FSECC.¹⁴

Background

Prior to 2012, the FSECC could accept non-designated contributions.¹⁵ The local steering committee would direct the allocation of non-designated funds.¹⁶ In 2012, the legislature required that FSECC contributions be designated to a participating charitable organization.¹⁷

Effect of the Bill

The bill allows state officers and employees to contribute undesignated funds to the FSECC as part of a campaign event. The bill directs the fiscal agent to direct undesignated contributions to participating charitable organizations in proportion to all designated FSECC contributions received by that organization. For instance, if a charitable organization receives 10 percent of all designated FSECC contributions then that organization would receive a corresponding 10 percent of all undesignated contributions.

The bill eliminates the requirement that local steering committees be established in each fiscal agent area. It also eliminates the additional eligibility requirements for an independent unaffiliated agency, national agency, and international service agency; thus, making eligibility criteria for participation in the FSECC the same for all charitable organizations.

B. SECTION DIRECTORY:

Section 1: Amends s. 110.181, F.S., relating to the Florida State Employees' Charitable Campaign.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill does not appear to impact local government expenditures.

¹³ Section 110.181(2)(d), F.S.; Fla. Admin. Code R. 60L-39.008 (2013).

¹⁴ *Id.*

¹⁵ *See* s. 110.181(1)(b), F.S. (2011).

¹⁶ *See* s. 110.181(2)(d), F.S. (2011).

¹⁷ *See* Ch. 2012-215, L.O.F.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

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 municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to require any additional rulemaking authority for DMS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Management Services

According to DMS, the bill will allow it to eliminate administratively burdensome and ineffective procedures agencies must follow in order to ensure contributions collected at FSECC fundraising events are designated.¹⁸ Currently, DMS allows small agency fundraising events, wherein small donations are collected and pooled together. According to DMS, requiring these small donations to be specifically designated has abrogated any efficiency initially gained from the designation requirement.¹⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁸ Department of Management Services, Bill Analysis of HB 719 (Feb. 13, 2015), on file with the Government Operations Subcommittee.

¹⁹ *Id.*

1 A bill to be entitled
2 An act relating to the Florida State Employees'
3 Charitable Campaign; amending s. 110.181, F.S.;
4 providing an exception to the requirement that state
5 officers and employees designate a charitable
6 organization to receive their contributions from the
7 Florida State Employees' Charitable Campaign; deleting
8 requirements for independent unaffiliated agencies,
9 international service agencies, and national agencies;
10 requiring the fiscal agent selected by the Department
11 of Management Services to distribute undesignated
12 funds in a specified manner; deleting the requirement
13 that a local steering committee be established in each
14 fiscal agent area; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsections (1) and (2) of section 110.181,
19 Florida Statutes, are amended to read:

20 110.181 Florida State Employees' Charitable Campaign.—

21 (1) CREATION AND ORGANIZATION OF CAMPAIGN.—

22 (a) The Department of Management Services shall establish
23 and maintain, in coordination with the payroll system of the
24 Department of Financial Services, an annual Florida State
25 Employees' Charitable Campaign. Except as provided in subsection
26 (5), this annual fundraising drive is the only authorized

27 | charitable fundraising drive directed toward state employees
 28 | within work areas during work hours, and for which the state
 29 | will provide payroll deduction.

30 | (b) State officers' and employees' contributions toward
 31 | the Florida State Employees' Charitable Campaign must be
 32 | entirely voluntary. State officers and employees shall ~~must~~
 33 | designate a charitable organization to receive their ~~such~~
 34 | contributions unless such contributions are collected as part of
 35 | a campaign event.

36 | (c) Participation in the annual Florida State Employees'
 37 | Charitable Campaign is ~~must be~~ limited to any nonprofit
 38 | charitable organization that ~~which~~ has as its principal mission:

- 39 | 1. Public health and welfare;
- 40 | 2. Education;
- 41 | 3. Environmental restoration and conservation;
- 42 | 4. Civil and human rights; or
- 43 | 5. ~~Any nonprofit charitable organization engaged in~~ The
 44 | relief of human suffering and poverty.

45 | ~~(d) An independent unaffiliated agency must be a statewide~~
 46 | ~~entity whose programs provide substantial, direct, hands-on~~
 47 | ~~services that meet basic human or environmental needs and extend~~
 48 | ~~throughout the year and throughout the state.~~

49 | ~~(e) An international service agency must have well-defined~~
 50 | ~~programs that meet basic human or environmental needs outside~~
 51 | ~~the United States with no duplication of existing programs.~~

52 | ~~(f) A national agency must demonstrate, through a well-~~

53 ~~defined program, direct services meeting basic human or~~
 54 ~~environmental needs which are readily available, being~~
 55 ~~administered, or providing a substantial direct benefit to the~~
 56 ~~residents of this state.~~

57 (d) ~~(g)~~ The financial records of a ~~Any~~ nonprofit charitable
 58 organization participating in the Florida State Employees'
 59 Charitable Campaign must be ~~have its financial records~~ audited
 60 annually by an independent public accountant whose examination
 61 conforms to generally accepted accounting principles.

62 (e) ~~(h)~~ Organizations ineligible to participate in the
 63 Florida State Employees' Charitable Campaign include, but are
 64 not limited to, the following:

65 1. Organizations whose fundraising and administrative
 66 expenses exceed 25 percent, unless extraordinary circumstances
 67 can be demonstrated.

68 2. Organizations whose activities contain an element that
 69 is more than incidentally political in nature or whose
 70 activities are primarily political, religious, professional, or
 71 fraternal in nature.

72 3. Organizations that ~~which~~ discriminate against any
 73 individual or group on account of race, color, religion, sex,
 74 national origin, age, handicap, or political affiliation.

75 4. Organizations not properly registered as a charitable
 76 organization as required by the Solicitation of Contributions
 77 Act, ss. 496.401-496.424.

78 5. Organizations that ~~which~~ have not received tax-exempt

79 status under s. 501(c)(3) of the~~7~~ Internal Revenue Code.

80 (2) SELECTION OF FISCAL AGENTS; COST.—

81 (a) The Department of Management Services shall select
82 through the competitive procurement process a fiscal agent or
83 agents to receive, account for, and distribute charitable
84 contributions among participating charitable organizations.

85 (b) The fiscal agent shall withhold the reasonable costs
86 for conducting the campaign and for accounting and distribution
87 to the participating organizations and shall reimburse the
88 department the actual cost for coordinating the campaign in
89 accordance with the rules of the department. In any fiscal year
90 that ~~in which~~ the Legislature specifically appropriates to the
91 department its total costs for coordinating the campaign from
92 the General Revenue Fund, the fiscal agent is not required to
93 reimburse such costs to the department under this subsection.
94 Otherwise, reimbursement will be the difference between actual
95 costs and the amount appropriated.

96 (c) The fiscal agent shall furnish the department and
97 participating charitable organizations a report of the
98 accounting and distribution activities. Records relating to
99 these activities must ~~shall~~ be open for inspection upon
100 reasonable notice and request.

101 (d) The fiscal agent shall distribute undesignated funds
102 to each participating organization in direct proportion to the
103 percentage of designated funds pledged to the organization ~~A~~
104 ~~local steering committee shall be established in each fiscal~~

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105 | ~~agent area to assist in conducting the campaign. The committee~~
106 | ~~shall be composed of state employees selected by the fiscal~~
107 | ~~agent from among recommendations provided by interested~~
108 | ~~participating organizations, if any, and approved by the~~
109 | ~~Statewide Steering Committee.~~

110 | Section 2. This act shall take effect July 1, 2015.