# State Administration Council

**Wednesday, April 19, 2006**
**3:30 PM – 5:00 PM**
**MORRIS HALL (17 HOB)**

**Allan G. Bense**
**Speaker**

**Donald "Don" Brown**
**Chair**

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

**Speaker Allan G. Bense**

## State Administration Council

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| **Start Date and Time:** | Wednesday, April 19, 2006 03:30 pm |
| **End Date and Time:** | Wednesday, April 19, 2006 05:00 pm |
| **Location:** | Morris Hall (17 HOB) |
| **Duration:** | 1.50 hrs |

**Consideration of the following bill(s):**

HB 13 CS Department of Elderly Affairs by Robaina
HB 133 CS Student Voter Education by Anderson
HB 373 CS Tuition Waivers by Harrell
HB 493 CS Ethics for Public Officers and Employees by Ryan
HB 1037 CS Campaign Financing by Rivera
HB 7081 Administrative Procedures by Governmental Operations Committee
HB 7233 CS Review under the Open Government Sunset Review Act regarding the Communications Services Tax Simplification Law by Governmental Operations Committee

**NOTICE FINALIZED on 04/17/2006 16:12 by ELLINOR.MARTHA**

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 13 CS Department of Elderly Affairs
**SPONSOR(S):** Robaina and others
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1330

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Governmental Operations Committee | 6 Y, 0 N, w/CS | Brown | Williamson |
| 2) Elder & Long-Term Care Committee | 8 Y, 0 N | DePalma | Walsh |
| 3) Health Care Appropriations Committee | 12 Y, 0 N | Massengale | Massengale |
| 4) State Administration Council | | Brown RLB | Bussey JCB |
| 5) | | | |

## SUMMARY ANALYSIS


The bill specifies that if the Department of Elderly Affairs takes any intermediate measures against an area agency on aging for failing to provide certain contract services, and if the area agency on aging fails to improve service delivery after at least 90 days, the department may terminate the relevant contract(s) and re-contract for the service or provide the service directly to the affected population. The bill requires an evaluation before terminating an area agency.

Subsequent contracts must be made competitively, in accordance with chapter 287, F.S. The department may temporarily provide the service, but the competitive procurement process must begin within 180 days.

The department has said there is no fiscal impact associated with the bill.

The effective date of the bill is July 1, 2006.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard individual liberty**—The bill provides for more immediate termination and re-bidding of poorly-operating contracts for programs delivering services to the elderly.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Elderly Affairs (hereinafter the department) assists and protects the state's elderly citizens "to the fullest extent."[1] One of the primary duties of the department is the delivery of federally-funded programs and services,[2] and the administration of "human services programs" for the elderly.[3] These programs and services are coordinated with area agencies on aging, groups organized at the regional level,[4] which in turn directly contract for particular services.[5]

The department is tasked with ensuring that each area agency on aging (hereinafter AAA or agency) "operates in a manner to ensure that the elderly of this state receive the best services possible."[6] The department monitors the AAAs to ensure that none of the following problems arise:[7]

- An intentional or negligent act of the agency has materially affected the health, welfare, or safety of clients, or substantially and negatively affected the operation of an aging services program.
- The agency lacks financial stability sufficient to meet contractual obligations or that contractual funds have been misappropriated.
- The agency has committed multiple or repeated violations of legal and regulatory requirements or department standards.
- The agency has failed to continue the provision or expansion of services after the declaration of a state of emergency.
- The agency has exceeded its authority or otherwise failed to adhere to the terms of its contract with the department or has exceeded its authority or otherwise failed to adhere to the provisions specifically provided by statute or rule adopted by the department.
- The agency has failed to properly determine client eligibility as defined by the department or efficiently manage program budgets.
- The agency has failed to implement and maintain a department-approved client grievance resolution procedure.

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[1] Section 430.02(1), F.S.
[2] Section 430.02(2), F.S.
[3] Section 430.03(1), F.S.
[4] The State of Florida is currently divided into 11 Planning and Service Areas, according to the *2005 Annual Report Summarizing DOEA's Monitoring Activities of Area Agencies on Aging* (hereinafter the *2005 Annual Report*).
[5] *2005 Annual Report,* p. 1
[6] Section 430.04(2), F.S.
[7] Section 430.04(2)(a) – (f), F.S.

In the event any of these problems occur, the department may rescind an AAAs official status or take intermediate measures including:[8]

- Corrective actions.
- Unannounced special monitoring.
- Temporary assumption of operations.
- Placement on probationary status.
- Moratorium on agency action.
- Financial penalties for non-performance.
- Other administrative action pursuant to chapter 120, F.S.

Proposed Changes

The bill modifies s. 430.04(2), F.S., to specify that administrative action pursuant to chapter 120, F.S., can be taken only after an evaluation.

The bill also provides that, in the event the Department takes any "intermediate measures" against an AAA for services not funded under the federal Older Americans Act,[9] and the AAA fails to improve service delivery after at least 90 days, the department may terminate the relevant contract(s) and re-contract for the service or provide the service directly to the affected population.

If the department elects to re-contract for the service previously provided by the AAA, the subsequent contract must be made competitively, in accordance with chapter 287, F.S.[10] The department may provide the affected service directly, for a limited time, but the competitive procurement process must begin within 180 days of the termination of the AAA.

In addition to these safeguards, any contracts made with a service provider by the AAA after July 1, 2006, must contain an assignment clause allowing the department or another designee to become the assignee of the contract, to ensure continuity of service.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 430.04, F.S., requiring an evaluation before the department can take action against an area agency on aging; permitting the department to terminate contracts and provide for alternative methods of service delivery under certain circumstances; and requiring assignment clauses in future contracts between AAAs and service providers.

**Section 2.** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a state expenditure.

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[8] Section 430.04(2), F.S.

[9] Services "not funded under the federal Older Americans Act" refers to services funded through the state's General Revenue Fund or the Tobacco Settlement Trust Fund.

[10] Generally speaking, chapter 287, F.S., mandates competitive open bidding for all commodities and services purchased by agencies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Governmental Operations Committee adopted a proposed committee substitute and reported the bill favorably with committee substitute. The bill completely overhauled chapter 430, F.S. The committee substitute limited the changes to the following:

- The department may take intermediate measures against an AAA after an evaluation.
- The department may terminate a contract with an AAA under certain circumstances.
- Re-procurement of services must be made in accordance with chapter 287, F.S., and must begin within 180 days of termination.
- Assignment clauses are required in future contracts between AAAs and service providers.

CHAMBER ACTION

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1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to the Department of Elderly Affairs;
7 amending s. 430.04, F.S.; requiring the Department of
8 Elderly Affairs to conduct an evaluation prior to
9 rescinding designation of or taking certain measures
10 against an area agency on aging; providing circumstances
11 under which the department may terminate an area agency on
12 aging contract; authorizing the department to contract
13 with certain entities to provide programs and services
14 under certain circumstances; requiring the department to
15 initiate a competitive procurement process to replace an
16 area agency on aging within a specified time period;
17 providing for certain contracts and agreements to be
18 assignable to the department and, subsequently, to an
19 entity selected to replace the area agency on aging;
20 providing an effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. Subsection (2) of section 430.04, Florida
25 Statutes, is amended, subsections (3) through (16) are
26 renumbered as subsections (4) through (17), respectively, and a
27 new subsection (3) is added to that section, to read:
28 430.04 Duties and responsibilities of the Department of
29 Elderly Affairs.--The Department of Elderly Affairs shall:
30 (2) Be responsible for ensuring that each area agency on
31 aging operates in a manner to ensure that the elderly of this
32 state receive the best services possible. The department shall
33 rescind designation of an area agency on aging or take
34 intermediate measures against the agency, including corrective
35 action, unannounced special monitoring, temporary assumption of
36 operation of one or more programs by the department, placement
37 on probationary status, imposing a moratorium on agency action,
38 imposing financial penalties for nonperformance, or other
39 administrative action pursuant to chapter 120, if, after an
40 evaluation, the department finds that:
41 (a) An intentional or negligent act of the agency has
42 materially affected the health, welfare, or safety of clients,
43 or substantially and negatively affected the operation of an
44 aging services program;~~.~~
45 (b) The agency lacks financial stability sufficient to
46 meet contractual obligations or that contractual funds have been
47 misappropriated;~~.~~
48 (c) The agency has committed multiple or repeated
49 violations of legal and regulatory requirements or department
50 standards;~~.~~

51 (d) The agency has failed to continue the provision or
52 expansion of services after the declaration of a state of
53 emergency;~~.~~
54 (e) The agency has exceeded its authority or otherwise
55 failed to adhere to the terms of its contract with the
56 department or has exceeded its authority or otherwise failed to
57 adhere to the provisions specifically provided by statute or
58 rule adopted by the department;~~.~~
59 (f) The agency has failed to properly determine client
60 eligibility as defined by the department or efficiently manage
61 program budgets; or~~.~~
62 (g) The agency has failed to implement and maintain a
63 department-approved client grievance resolution procedure.
64 (3) If the department takes an intermediate measure
65 against an area agency on aging as provided in subsection (2)
66 and the department determines, at least 90 days after such
67 measure is taken, that the agency has failed to effectively
68 plan, fund, or administer contracts for programs and services
69 not funded by the federal Older Americans Act, the department
70 may terminate an agency's contract for such programs or
71 services. Notwithstanding any law to the contrary, in the event
72 of the termination of a contract with an agency, the department
73 shall contract, in accordance with chapter 287, with an entity
74 to plan, fund, and administer the programs and services
75 previously under contract in the affected planning and service
76 area. The department may directly provide the affected program
77 or service for a limited period of time but shall initiate a
78 competitive procurement process to replace the agency within 180

79 days after the termination of the agency's contract. Any
80 contract or referral agreement effective on or after July 1,
81 2006, between an area agency on aging and a lead agency or
82 service provider must be assignable to the department and
83 subsequently to an entity competitively selected under this
84 subsection.
85 Section 2. This act shall take effect July 1, 2006.

HB 133 CS

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 133 CS Student Voter Education
**SPONSOR(S):** Anderson and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 110

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Ethics & Elections Committee | 10 Y, 0 N, w/CS | Mitchell | Mitchell |
| 2) Education Appropriations Committee | 14 Y, 0 N | Eggers | Hamon |
| 3) State Administration Council | | Mitchell | Bussey |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


HB 133 CS permits district school boards and county supervisors of elections to cooperate in conducting voter education for high school students in grade 12. The education is voluntary for public and private high school students. The supervisors of elections may conduct the program for public schools and, if requested, for private schools.

Division of Elections Rule 1S-2.033, F.A.C., currently requires each supervisor of elections to conduct a voter registration/education program at least once per year in each public high school and college campus in the county.

The bill does not appear to have a fiscal impact.

If enacted, HB 133 CS is effective July 1, 2006.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – HB 133 CS permits supervisors of elections to provide voter education to public high school students once during each term of the school year. In addition, supervisors of elections may provide voter education to a private school, if requested. This raises the possibility of additional government involvement in student education, but makes such involvement optional at the local level.

**Promote personal responsibility** – The bill seeks to encourage high school seniors to register to vote and become active in state and local elections.

B. EFFECT OF PROPOSED CHANGES:

In 1994, Florida implemented the National Voter Registration Act of 1993, also know as the *"Motor Voter"* law because it allows people to register to vote at the same time they apply for a driver's license. The Motor Voter law was targeted at increasing voter turnout by increasing voter registration, premised upon the belief that simplifying and expanding opportunities for voter registration would translate into greater turnout at the polls.

Indeed, since the passage of the implementing legislation[1] in 1994, registration numbers have experienced a robust increase. As of January 2006, there were 11,391,734 registered voters in Florida.[2] To date, the *Motor Voter* law has succeeded in increasing the number of registered voters, but has not affected voter turnout.

A person must be 18 years of age to register to vote in Florida, but pre-registration is allowed at age 17. [3] A person who is otherwise qualified may pre-register on or after that person's 17th birthday and may vote in any election occurring on or after his or her 18th birthday.[4]

The Secretary of State is responsible for providing technical assistance to the supervisors of elections on voter education and for providing voter education assistance to the public. As part of its election reform package, the 2001 Legislature made revisions to the provisions in the Florida Election Code (ch. 2001-40, Laws of Fla., effective January 1, 2002) pertaining to voter education. Current law requires the adoption of administrative rules by the Secretary that prescribe minimum standards for nonpartisan voter education. The standards must include the following subjects:

- Voter registration;
- Balloting procedures, absentee and polling place;
- Voter rights and responsibilities;
- Distribution of sample ballots; and
- Public service announcements.

Supervisors of elections are charged with implementing the minimum voter education standards and conducting additional nonpartisan education efforts to ensure that voters have a working

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[1] Florida Voter Registration Act; ch. 94-224, Laws of Fla.
[2] *Voter Registration Report*, January 2006, Florida Department of State.
[3] s. 97.041, F.S.
[4] s. 97.041(1)(b), F.S.

knowledge of the voting process. Division of Elections Rule 1S-2.033, F.A.C., provides general standards for nonpartisan voter education. Subsections (3) and (4) of the rule require each supervisor of elections to conduct a voter registration/education program at least once a year in each public high school and college campus in the county.

HB 133 CS would permit supervisors of elections to provide voter education in public *and* nonpublic high school students in grade 12, and require that the following subjects be addressed in the program, if provided:

- How to register and pre-register to vote;
- The operation of voting machines;
- How, when and where to vote; and
- The importance of voting.

Supervisors of elections would be permitted to conduct the presentation for eligible public high school students, and if requested to do so, for nonpublic high school students. Any presentations would further be conducted during school hours and once per term of the school year.

Finally, the bill requires that any program provide students with sufficient opportunity, information and time to complete a voter registration application for submission to the supervisor of elections. Again, this is because a person who is otherwise qualified may pre-register on or after that person's 17th birthday and may vote in any election occurring on or after his or her 18th birthday.[5]

The provisions of HB 133 CS are effective July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law authorizing district school boards and county supervisors of elections to cooperate to provide a program of voter education for high school seniors in public and private schools.

Section 2: Provides an effective date of July 1, 2006.

## 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.

[5] s. 97.041(1)(b), F.S.

2. Expenditures:

None. Supervisors of elections are currently required to provide voter registration/education to high school students once per year, pursuant to Division of Elections' rule.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Ethics & Elections Committee adopted a strike-all amendment on March 29, 2006, which has been incorporated into HB 133 CS. The bill, as amended, now *permits*, rather than requires, supervisors of elections to conduct voter education programs in high schools, and imposes no additional requirements on supervisors or district school boards.

CHAMBER ACTION

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1 The Ethics & Elections Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to student voter education; authorizing
7 district school boards and county supervisors of elections
8 to cooperate to provide a program of voter education for
9 high school seniors; providing guidelines for the content
10 of the educational program; requiring that the program of
11 voter education be conducted during school hours;
12 providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. (1) Each district school board and county
17 supervisor of elections may cooperate to provide voter education
18 to high school students who are in grade 12. The voter education
19 may be in the form of a presentation and is voluntary for public
20 high schools and nonpublic high schools. Each supervisor of
21 elections may conduct the presentation for the public high
22 schools and, upon request, for the nonpublic high schools.

23 (2) If provided, the voter education must include
24 information concerning:
25 (a) How to register and preregister to vote.
26 (b) The operation of voting machines.
27 (c) How, when, and where to vote.
28 (d) The importance of voting.
29 (3) If provided, the voter education program must provide
30 students with the opportunity, sufficient information, and
31 sufficient time to complete and hand in to the supervisor of
32 elections applications for voter registration.
33 (4) If provided, the voter education program shall be
34 conducted during school hours each term of the school year in
35 order to reach a maximum number of students in the most
36 effective and efficient manner.
37 (5) If voter education is provided, a student may not be
38 excluded from the voter education program due to an irregular
39 class schedule, and students enrolled in a magnet school must be
40 provided the same opportunity for voter education.
41 Section 2. This act shall take effect July 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 373 CS Tuition Waivers
**SPONSOR(S):** Harrell and others
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 122

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Military & Veteran Affairs Committee | 8 Y, 0 N | Marino | Cutchins |
| 2) Community Colleges & Workforce Committee | 7 Y, 0 N, w/CS | Thomas | Ashworth |
| 3) Education Appropriations Committee | 16 Y, 0 N, w/CS | Hamon | Hamon |
| 4) State Administration Council | | Marino | Bussey |
| 5) | | | |

## SUMMARY ANALYSIS


The bill establishes a new tuition fee waiver for recipients of the Purple Heart or other combat decoration superior in precedence in s. 1009.26, F.S. Section 1009.26, F.S. specifically provides fee waivers for universities and community colleges.

The bill allows state universities and community colleges to waive undergraduate tuition for a recipient of a Purple Heart or other combat decoration superior in precedence who:

- Is admitted as a full-time, part-time, or summer-school student in an undergraduate program of study leading to a degree or certificate.
- Is currently a Florida resident, and was a Florida resident at the time of the military action that resulted in them receiving the award.
- Submits to the state university and community college the DD-214 form issued at the time of separation from service as documentation verifying that they are a recipient of an award.

The actual number of recipients of the Purple Heart or other combat decoration superior in precedence currently residing in Florida is difficult to determine. The Florida Department of Veteran Affairs has reported that 2,482 Purple Heart recipients are registered members of the Florida Chapter of the Military Order of the Purple Heart. However, it is unknown how many recipients there are, how many are not registered, and how many of those registered still reside in Florida.

The fiscal impact is indeterminate due to the uncertainty of the number of recipients and the number of recipients that would take advantage of the fee waiver. The fiscal impact has been based on the 783 Purple Heart recipients registered for the three recent major conflicts (Operation Iraqi Freedom, Operation Enduring Freedom and Persian Gulf War/Desert Shield/Storm) involving the Armed Forces at proposed fiscal year 2006-2007 tuition rates. If all estimated 783 Florida recipients of the Purple Heart participated in the fee waiver, the fiscal year 2006-2007 cost could range from $577,000 to $1.8 million depending on whether the recipients attend full-time or part-time at a community college or university. It is believed that combat decorations superior in precedence to the Purple Heart would be nominal and consequently would have an insignificant fiscal.

The bill would take effect July 1, 2006.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Ensure Lower Taxes** – This bill would waive undergraduate tuition fees for Purple Heart recipients in Florida.

**Empower Families** – This bill would increase the opportunity for recipients of the Purple Heart who return home wounded to learn a new skill to support family and find self worth.

B. EFFECT OF PROPOSED CHANGES:

**Present Situation:**

**Fee Waivers**
Section 1009.26, F.S., lists fee waivers for postsecondary educational institutions. School districts, community colleges, university boards of trustees, the State Board of Education, and state universities may waive certain fees, such as tuition or application fees, charged to students and, in some cases, only on a space-available basis.

Those eligible for certain fee waivers under this section can include: persons who supervise student interns for a state university; full-time university employees; Florida residents 60 years of age or older; graduate students enrolled in certain state-approved school psychology training programs; certain out-of-state nondegree-seeking students; certain spouses of deceased state employees; and some active members of the Florida National Guard (FNG). Section 1009.26(8), F.S., specifically mentions the fee waiver for certain members of the FNG and references s. 250.10(8), F.S., which establishes the State Tuition Exemption Program (STEP) program. The Florida Department of Education reports that 82[1] community college students used the National Guard Fee Waiver in 2004-2005.

**Purple Heart and Combat Decoration Superior in Precedence**
The U.S. military recognizes order of precedence of awards for both service and combat. Each award carries a level of significance and its own eligibility requirements. The combat decoration awards in precedence according to Army Regulation 670-1, updated February 2005, are:

(1) Medal of Honor (Army, Navy, Air Force)
(2) Distinguished Service Cross
(3) Navy Cross
(4) Air Force Cross
(5) Silver Star
(6) Distinguished Flying Cross
(7) Bronze Star Medal
(8) Purple Heart

The Purple Heart was established by General George Washington during the Revolutionary War. The Purple Heart is awarded to any member of the Armed Forces or any civilian national of the United States who has been wounded in combat. A wound can be an injury to any part of the body from an outside force or agent. Injuries which clearly justify receiving the Purple heart include, but are not limited to, injury caused by mine or trap, or enemy released chemical, biological, or nuclear agent. A person will not be eligible for the Purple Heart for certain wounds or injuries such as battle fatigue, heat stroke, or disease not directly caused by enemy agents. The Purple Heart is unique among other military awards, in that an individual is not recommended for, but rather is entitled to the decoration.

[1] Florida Department of Education correspondence. January 13, 2006.

The actual number of recipients of the Purple Heart is difficult to determine. Of the recent three major conflicts (Operation Iraqi Freedom, Operation Enduring Freedom and Persian Gulf War/Desert Shield/Storm) involving the Armed Forces an estimated 783 Florida residents have been wounded in action (WIA) and would be recipients of the Purple Heart. The number of recipients of the Purple Heart during the Vietnam War is undeterminable at this time.

| CONFLICTS | FLORIDA WIA | UNITED STATES TOTAL WIA |
|---|---|---|
| Operation Iraqi Freedom | 733 [2] | 16,825 |
| Operation Enduring Freedom | 32 | 690 |
| Persian Gulf War / Desert Shield/Storm (1990-1991) | 18 [3] | 467 |
| Vietnam (1964 – 1973) | unavailable | 153,303 |
| Korean War (1950 – 1953) | unavailable | 103,284 |
| World War II (1941 – 1946) | unavailable | 671,846 |
| World War I (1917 – 1918) | unavailable | 204,002 |

(WIA = Wounded In Action)

The Florida Department of Veterans Affairs reported that 2,482 Purple Heart recipients are registered members of the Florida Chapter of the Military Order of the Purple Heart and currently reside in Florida. They are unable to provide an actual number of recipients who are not registered or how many resided in Florida at the time they were awarded the Purple Heart.

**Effect of Proposed Changes:**

The bill establishes a new tuition fee waiver for recipients of a Purple Heart or other combat decoration superior in precedence in s. 1009.26, F.S. Section 1009.26, F.S. specifically provides fee waivers for universities and community colleges.

The bill allows state universities and community colleges to waive undergraduate tuition for a recipient of a Purple Heart or other combat decoration superior in precedence who:

- Is admitted as a full-time, part-time, or summer-school student in an undergraduate program of study leading to a degree or certificate.
- Is currently a Florida resident, and was a Florida resident at the time of the military action that resulted in them receiving the award.
- Submits to the state university or community college the DD-214 form issued at the time of separation from service as documentation verifying that they are a recipient of an award.

The bill would take effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Creates 1009.26(9), F.S., establishing a Purple Heart or other combat decoration superior in precedence recipient undergraduate tuition waiver for state universities or community colleges beginning in the 2007-2008 academic year under certain circumstances.

Section 2: Provides an effective date of July 1, 2006.

[2] Between January 14, 2006 and February 18, 2006 the number of WIA increased by 30

[3] Estimated 4% from the United States Department of Defense

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   The fiscal impact is indeterminate due to the uncertainty of the number of recipients of the Purple Heart and other combat decorations superior in precedence and the number of recipients that would take advantage of the fee waiver.

   The fiscal impact has been based on the 783 Purple Heart recipients registered for the three recent major conflicts (Operation Iraqi Freedom, Operation Enduring Freedom and Persian Gulf War/Desert Shield/Storm) involving the Armed Forces at proposed fiscal year 2006-2007 tuition rates. If all estimated 783 Florida recipients of the Purple Heart participated in the fee waiver the fiscal year 2006-2007 cost could range from $577,000 to $1.8 million depending on whether the recipients attend part-time or full-time at a community college or university. It is believed that combat decorations superior in precedence would be nominal and consequently would have an insignificant fiscal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The chart shows the possible annual savings for a full-time (30 semester hours) and part-time (15 semester hours).

| | Community College $49.15 per credit hour | State University $75.15 per credit hour |
|---|---|---|
| Full-time (30 hours) | $1,474.50 | $2,254.50 |
| Part-time (15 hours) | $737.25 | $1,127.25 |

D. FISCAL COMMENTS:

The costs per credit hour as listed in HB 5001, 2006 General Appropriations Act, for community colleges and state universities for the 2006-2007 fall/spring terms are $49.15 and $75.15 respectively.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 7, 2006, the Community College and Workforce Committee adopted two amendments. HB 373 CS has the following changes:

- Requires the documentation to the state university or community college to be the DD-214 form issued at the time of separation from service.
- Removes the 2007-2008 beginning academic year, therefore making the benefits effective July 1, 2006.
- Clarifies language.

On April 11, 2006, the Education Appropriations Committee adopted an amendment to expand the tuition waivers to recipients of the Purple Heart *or other combat decoration superior in precedence.*

The awards in precedence are:

(1) Medal of Honor (Army, Navy, Air Force)
(2) Distinguished Service Cross
(3) Navy Cross
(4) Air Force Cross
(5) Silver Star
(6) Distinguished Flying Cross
(7) Bronze Star Medal
(8) Purple Heart

CHAMBER ACTION

The Education Appropriations Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to tuition waivers; amending s. 1009.26, F.S.; requiring state universities and community colleges to waive tuition for a recipient of a Purple Heart or other combat decoration superior in precedence who fulfills specified criteria; providing a percentage cap on the number of required credit hours for which a tuition waiver may be received; providing an effective date.

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

Section 1. Subsection (9) is added to section 1009.26, Florida Statutes, to read:

1009.26 Fee waivers.--

(9) A state university or community college shall waive undergraduate tuition for each recipient of a Purple Heart or other combat decoration superior in precedence who:

22 (a) Is enrolled as a full-time, part-time, or summer-
23 school student in an undergraduate program that terminates in a
24 degree or certificate;
25 (b) Is currently, and was at the time of the military
26 action that resulted in the awarding of the Purple Heart or
27 other combat decoration superior in precedence, a resident of
28 this state; and
29 (c) Submits to the state university or the community
30 college the DD-214 form issued at the time of separation from
31 service as documentation that the student has received a Purple
32 Heart or other combat decoration superior in precedence.
33
34 Such a waiver for a recipient of a Purple Heart or other combat
35 decoration superior in precedence shall be applicable for 110
36 percent of the number of required credit hours of the degree or
37 certificate program for which the student is enrolled.
38 Section 2. This act shall take effect July 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 493 CS Ethics for Public Officers and Employees
**SPONSOR(S):** Ryan
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Ethics & Elections Committee | 10 Y, 0 N, w/CS | Shaffer | Mitchell |
| 2) Governmental Operations Committee | 6 Y, 0 N, w/CS | Brown/Williamson | Williamson |
| 3) Fiscal Council | 21 Y, 0 N | Dobbs | Kelly |
| 4) State Administration Council | | Shaffer | Bussey |
| 5) | | | |

## SUMMARY ANALYSIS


The bill clarifies and revises portions of the Code of Ethics of the State of Florida, and provides for additional restrictions on the conduct of current and former government employees and elected officials. The bill:

- Prohibits government employees from working in political campaigns while on duty.
- Allows Selected Exempt employees, transferred from Career Service under Service First, to lobby their former agency immediately upon termination, instead of having to wait two years.
- Changes the method for disclosing assets and liabilities.
- Requires disclosure of gifts by those leaving employment the previous calendar year by July 1.
- Allows the Attorney General to collect costs incurred in bringing a civil action to recover penalties.
- Allows disaffected state employees to work for the private entity who assumes the employees' former duties.
- Increases the rulemaking authority of the Commission on Ethics (commission).
- Suspends a lobbyist's registration if the lobbyist fails to pay a fine until the fine is paid or waived.

The bill also entitles a witness required to travel outside of the county of his or her residence in order to testify before the commission to be reimbursed for per diem and travel expenses at the same rate as state employees.

The certified reminder mailing sent to delinquent filers in July of each year by the commission and each supervisor of elections must have a return receipt.

The bill provides an effective date of October 1, 2006.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill increases the rulemaking authority of the commission.

**Promote Personal Responsibility** – The bill requires principled behavior by those serving in the public sector.

B. EFFECT OF PROPOSED CHANGES:

**Background**

The Code of Ethics for Public Officers and Employees (code)[1] sets forth certain requirements and guidelines governing the conduct of public officers and employees. Section 112.311, F.S., outlines three basic objectives of the code:

- Requires that the law protect against any conflict of interest and that it establish standards for the conduct of elected officials and government employees.
- Recognizes that government must attract those citizens best qualified to serve.
- Provides that it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions be disclosed to the public in order to preserve and maintain the integrity of the governmental process.

It is the policy of the state that no officer or employee of the state, a local government, or the Legislature has any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature that is in substantial conflict with the proper discharge of his or her duties. Public officers and employees of the state or of a local government are agents of the people and hold their positions for the benefit of the public. Such persons are bound to observe, in their official acts, the highest standards of ethics consistent with the code regardless of personal considerations.[2]

A person elected to any county, municipality, special district, or school district office may not personally represent another person or entity for compensation before the governing body of which the person was an officer for a period of two years after vacating that office.[3] This only applies to former office holders lobbying current office holders. Public officers, agency employees, and local government attorneys also are barred from disclosing or using information not available to the public and gained because of that person's official position, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.[4]

Office holders must annually file statements of their personal financial interests. The failure to file a timely report results in a fine of $25 per day, with a maximum aggregate penalty of $1,500. Any reporting person may appeal or dispute a fine, and may base that appeal upon unusual circumstances surrounding the failure to file on the designated date. The person is entitled to a hearing before the Commission on Ethics (commission), which is permitted to waive the fine in whole or in part for good cause shown.[5]

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[1] Chapter 112, Part III, F.S.
[2] Section 112.311, F.S.
[3] Section 112.313, F.S.
[4] *Id.*
[5] Section 112.3145, F.S.

The commission has the duty of receiving and investigating sworn complaints of violations of the code. The commission is authorized only to investigate alleged violations of the code upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person.[6] The commission has the power to subpoena witnesses.[7] Violations of any provision of the code can result in various penalties, which include requiring the violator to pay restitution of any pecuniary benefits received because of the violations committed.[8]

HB 1377 CS, which was similar to the current bill, passed the Legislature in 2005 and was vetoed by the Governor. The Governor's veto message stated "the bill contains ambiguous language that could unduly punish state employees who seek to transition to the private sector . . . Government employees come into contact daily with actions and issues with which they are not necessarily actively engaged on behalf of the agency; they should not be restricted from future employment in these tangential subject matters as a result. This legislation could have a draconian impact on the ability of the State to recruit employees who eventually aspire to return to the private sector. I am also concerned by a provision in the bill that carves out an exemption to lobbying laws for a handful of state employees . . . Florida's lobbying laws should be applied uniformly. Creating exemptions sets a bad precedent." Veto letter by Governor Bush, HB 1377, June 15, 2005. This bill attempts to address the Governor's concerns.

**Effects of Proposed Changes**

The bill prohibits all state and political subdivision employees from participating in a political campaign for an elective office while on duty.

The bill amends the prohibition against using "inside" information gained while in a public position to benefit oneself or another to clarify that it does not apply to information relating exclusively to governmental practices.

The bill amends the two-year "revolving door" prohibition against representing a client before one's former agency. It allows Selected Exempt employees, transferred from Career Service under Service First, to lobby their former agency immediately upon termination, instead of having to wait two years. The bill also clarifies that the revolving door prohibition against representing a client before one's former agency applies to other-personal-services (OPS) employees who had conferred upon them the same powers as the individuals covered in the prohibition.

Conflict of interest disclosure statements (applicable for competitive bidding) must be filed with the commission instead of the Department of State. For two years after leaving office local elected officials are prohibited from personally representing another person or entity for compensation before the agency for which they were an officer.

The certified reminder mailing sent to delinquent filers in July of each year by the commission and each supervisor of elections must have a return receipt. This allows the commission to determine whether the mailing was actually received and by whom. The bill also allows the commission to waive the penalty for failure to timely file a statement of financial interests only when the person did not receive proper notice of the requirements of filing an annual disclosure.

By October 1 of each year, all supervisors of election must certify to the commission a list of names and addresses of all persons failing to timely file a statement of financial interests. Current law requires such certification by November 15. The bill also provides that a $1,500 limitation on automatic fines for failing to file a financial statement does not limit the civil penalty that may be imposed if the statement is filed more than 60 days after the deadline.

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[6] Section 112.324, F.S.
[7] Section 112.322, F.S.
[8] Section 112.317, F.S.

The bill requires the filing of gift disclosure forms for the last portion of one's term of office or employment, and allows quarterly gift disclosure forms to be considered timely filed if postmarked on or before the due date. Honorarium-expense disclosure forms must be filed for the last portion of one's term of office or employment.

The bill authorizes the commission to recommend payment of any restitution penalty to the agency where the employee worked, where the officer was deemed an employee, or to the General Revenue Fund. Further, when the Attorney General is required to file a civil action to collect a penalty, the Attorney General shall collect any costs incurred in bringing the action.

The bill deletes s. 112.317(6), F.S., which the federal courts have declared unconstitutional (this section provided that breaching confidentiality of an ethics proceeding was a misdemeanor).

The bill eases existing post-employment restrictions for state employees whose jobs are privatized and who are employed by that private entity.

The bill prohibits an individual who qualifies as a lobbyist under ss. 11.045 or 112.3215, F.S., or a local government charter or ordinance from serving on the commission except for those individuals who are members of the commission on October 1, 2006, until the expiration of their current term. A member of the commission may not lobby any state or local government entity as provided by ss. 11.045 or 112.3215, F.S., or a local government charter or ordinance. The same exception applies.

The bill also defines "government body or agency" for various situations. Specifically:

- For a board of county commissioners, "government body or agency" means the commission, the chief administrative officer or employee of the county, and their immediate support staff.
- For any other elected county officer, the phrase includes the office or department headed by that officer and all subordinate employees.
- For an elected municipal officer, the phrase covers the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.
- For an elected special district officer, the phrase refers to the special district.
- For an elected school district officer, the phrase refers to the school district.

The bill increases the commission's rule-making authority regarding the grounds for waiving a fine and the procedure for appealing that fine.

A witness required by the commission to testify outside the county of his or her residence is entitled to per diem and travel expenses reimbursed at the state rate.

Finally, the bill provides that an official investigation includes an investigation instituted by the commission and that an official proceeding includes a proceeding before the commission.

C. SECTION DIRECTORY:

Section 1 amends s. 104.31, F.S., prohibiting employees of the state and its political subdivisions from participating in a political campaign while on duty.

Section 2 amends s. 112.313, F.S., relating to standards of conduct for public officers, employees of agencies, and local government attorneys.

Section 3 amends s. 112.3144, F.S., specifying how a reporting individual reports assets and liabilities valued in excess of a specified amount.

Section 4 amends s. 112.3145, F.S., requiring that a delinquency notice be sent to certain officeholders by certified mail, return receipt requested.

Section 5 amends s. 112.3147, F.S., deleting provisions relating to the reporting of assets and liabilities valued in excess of a specified amount, to conform.

Section 6 amends s. 112.3148, F.S., regarding filing a report relating to gifts.

Section 7 amends s. 112.3149, F.S., requiring the filing of a report of honoraria by a specified date.

Section 8 amends s. 112.317, F.S., regarding penalties.

Section 9 amends s. 112.3185, F.S., providing additional standards for former state agency employees doing business with their former agency.

Section 10 amends s. 112.321, F.S., prohibiting an individual who qualifies as a lobbyist from serving on the commission; prohibiting a member of the commission from lobbying any state or local governmental entity; providing exceptions.

Section 11 amends s. 112.3215, F.S., increasing the rulemaking authority of the commission.

Section 12 amends s. 112.322, F.S., authorizing reimbursement of travel and per diem expenses for certain witnesses.

Section 13 amends s. 914.21, F.S., amending definitions.

Section 14 provides an effective date of October 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   An officer or employee violating ch. 112, F.S., could be required to pay a civil or restitution penalty to the agency for which the violating officer was a member or the employee was employed, or pay the penalty to the General Revenue Fund. The attorney general is entitled to collect any costs, attorney's fees, expert witness fees, or other costs incurred in bringing a civil action to recover such penalties.

2. Expenditures:

   A witness, required to travel outside the county of his or her residence in order to testify before the commission, is entitled to per diem and travel expenses at the same rate as state employees. The commission rarely pays for the travel of witnesses because the hearings are usually held locally.

   The commission is required to pay the cost of return receipt mail ($1.85 per item) to send delinquency notices. The commission already sends the notices with return receipt.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Each election supervisor is required to pay the cost of return receipt mail ($1.85 per item) to send delinquency notices. All but two election supervisors currently sends notices with return receipt.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The additional cost to the commission and to the elections supervisors will be absorbed within existing budget.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does require counties or municipalities to spend funds for return receipt mailings, however, the estimated expenditure amount is expected to be less than $1.8 million and is insignificant. The bill is therefore exempt from the provisions of Section 18(b), Article VII of the State Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill increases the rulemaking authority of the commission. The commission must adopt rules to provide grounds for waiving a fine and the procedures associated with appealing that fine when a lobbyist fails to timely file a report. Current law already authorizes the commission to adopt a rule to provide a procedure for notifying a lobbyist who fails to timely file a report.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Ethics & Elections Committee

The Ethics & Elections Committee adopted an amendment to the bill on January 25, 2006. The amendment changes section 112.3215, F.S., so that it tracks similar language in section 11.045, F.S., which was added by SB 6-B during Special Session 2005 B. HB 493 had been filed before SB 6-B was enacted.

The amendment further amends subsection (5) of section 112.3215, F.S., to clarify that lobbyist registrations for all "partners, owners, officers, or employees" are automatically suspended until a fine is paid or waived.

Governmental Operations Committee

At its meeting on March 22, 2006, the Governmental Operations Committee adopted three amendments addressing the following concerns:

- Clarifies the grandfathering clause applying to agency employees who were employed on July 1, 2001 in a Career Service System position that was transferred to the Selected Exempt Service System.
- Defining "government body or agency" in various ways, for varying situations. Specifically:
    - For a board of county commissioners, "government body or agency" means the commission, the chief administrative officer or employee of the county, and their immediate support staff.
    - For any other elected county officer, the phrase includes the office or department headed by that officer and all subordinate employees.

- For an elected municipal officer, the phrase covers the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.
- For an elected special district officer, the phrase refers to the special district.
- For an elected school district officer, the phrase refers to the school district.

- Removes one particular prohibition deemed overly-broad. The prohibition barred former employees from representing any entity for compensation, in any matter in which the employee "participated personally and substantially in his or her official capacity through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee."

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to ethics for public officers and
7 employees; amending s. 104.31, F.S.; prohibiting employees
8 of the state and its political subdivisions from
9 participating in a political campaign, for which there are
10 penalties; amending s. 112.313, F.S.; prohibiting certain
11 disclosures by a former public officer, agency employee,
12 or local government attorney, for which there are
13 penalties; redefining the term "employee" to include
14 certain other-personal-services employees for certain
15 postemployment activities; exempting certain agency
16 employees from applicability of postemployment
17 restrictions; providing an exemption from provisions
18 prohibiting conflicts in employment to a person who, after
19 serving on an advisory board, files a statement with the
20 Commission on Ethics relating to a bid or submission;
21 providing definitions; amending s. 112.3144, F.S.;
22 specifying how assets valued in excess of a specified
23 amount are to be reported by a reporting individual;

24 amending s. 112.3145, F.S.; requiring that a delinquency
25 notice be sent to certain officeholders by certified mail,
26 return receipt requested; amending s. 112.3147, F.S.;
27 deleting provisions relating to the reporting of assets
28 valued in excess of a specified amount, to conform;
29 amending s. 112.3148, F.S.; providing requirements for
30 persons who have left office or employment as to filing a
31 report relating to gifts; providing requirements relating
32 to the deadline for and timeliness of gift reports;
33 amending s. 112.3149, F.S.; requiring that a report of
34 honoraria by a person who left office or employment be
35 filed by a specified date; amending s. 112.317, F.S.;
36 authorizing the commission to recommend a restitution
37 penalty be paid to the agency of which the public officer
38 was a member or by which the public employee was employed
39 or to the General Revenue Fund; authorizing the Attorney
40 General to recover costs for filing suit to collect
41 penalties and fines; deleting provisions imposing a
42 penalty for the disclosure of information concerning a
43 complaint or an investigation; amending s. 112.3185, F.S.;
44 providing additional standards for state agency employees
45 relating to procurement of goods and services by a state
46 agency; authorizing an employee whose position was
47 eliminated to engage in certain contractual activities;
48 amending s. 112.321, F.S.; prohibiting an individual who
49 qualifies as a lobbyist from serving on the commission;
50 prohibiting a member of the commission from lobbying any
51 state or local governmental entity; providing exceptions

52 for individuals who are members of the commission on the
53 effective date of the act until the expiration of their
54 current terms; amending s. 112.3215, F.S.; requiring the
55 commission to adopt a rule detailing the grounds for
56 waiving a fine and the procedures to be followed when a
57 lobbyist fails to timely file his or her report; requiring
58 automatic suspension of certain lobbyist registrations if
59 the fine is not timely paid; requiring the commission to
60 provide written notice to any lobbyist whose registration
61 is automatically suspended; amending s. 112.322, F.S.;
62 authorizing travel and per diem expenses for certain
63 witnesses; amending s. 914.21, F.S.; redefining the terms
64 "official investigation" and "official proceeding," for
65 purposes of provisions relating to tampering with
66 witnesses, to include an investigation by the commission;
67 providing an effective date.
68
69 Be It Enacted by the Legislature of the State of Florida:
70
71 Section 1. Present subsections (2) and (3) of section
72 104.31, Florida Statutes, are renumbered as subsections (3) and
73 (4), respectively, and a new subsection (2) is added to that
74 section to read:
75 104.31 Political activities of state, county, and
76 municipal officers and employees.--
77 <u>(2) An employee of the state or any political subdivision</u>
78 <u>may not participate in any political campaign for an elective</u>
79 <u>office while on duty.</u>

80 Section 2. Subsection (8), paragraph (a) of subsection
81 (9), paragraph (b) of subsection (12), and subsection (14) of
82 section 112.313, Florida Statutes, are amended to read:
83 112.313 Standards of conduct for public officers,
84 employees of agencies, and local government attorneys.--
85 (8) DISCLOSURE OR USE OF CERTAIN INFORMATION.--No current
86 or former public officer, employee of an agency, or local
87 government attorney shall disclose or use information not
88 available to members of the general public and gained by reason
89 of his or her official position, except for information relating
90 exclusively to governmental practices, for his or her personal
91 gain or benefit or for the personal gain or benefit of any other
92 person or business entity.
93 (9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR
94 LEGISLATORS AND LEGISLATIVE EMPLOYEES.--
95 (a)1. It is the intent of the Legislature to implement by
96 statute the provisions of s. 8(e), Art. II of the State
97 Constitution relating to legislators, statewide elected
98 officers, appointed state officers, and designated public
99 employees.
100 2. As used in this paragraph:
101 a. "Employee" means:
102 (I) Any person employed in the executive or legislative
103 branch of government holding a position in the Senior Management
104 Service as defined in s. 110.402 or any person holding a
105 position in the Selected Exempt Service as defined in s. 110.602
106 or any person having authority over policy or procurement
107 employed by the Department of the Lottery.

108 (II) The Auditor General, the director of the Office of
109 Program Policy Analysis and Government Accountability, the
110 Sergeant at Arms and Secretary of the Senate, and the Sergeant
111 at Arms and Clerk of the House of Representatives.
112 (III) The executive director of the Legislative Committee
113 on Intergovernmental Relations and the executive director and
114 deputy executive director of the Commission on Ethics.
115 (IV) An executive director, staff director, or deputy
116 staff director of each joint committee, standing committee, or
117 select committee of the Legislature; an executive director,
118 staff director, executive assistant, analyst, or attorney of the
119 Office of the President of the Senate, the Office of the Speaker
120 of the House of Representatives, the Senate Majority Party
121 Office, Senate Minority Party Office, House Majority Party
122 Office, or House Minority Party Office; or any person, hired on
123 a contractual basis, having the power normally conferred upon
124 such persons, by whatever title.
125 (V) The Chancellor and Vice Chancellors of the State
126 University System; the general counsel to the Board of Regents;
127 and the president, vice presidents, and deans of each state
128 university.
129 (VI) Any person, including an other-personal-services
130 employee, having the power normally conferred upon the positions
131 referenced in this sub-subparagraph.
132 b. "Appointed state officer" means any member of an
133 appointive board, commission, committee, council, or authority
134 of the executive or legislative branch of state government whose
135 powers, jurisdiction, and authority are not solely advisory and

136 include the final determination or adjudication of any personal
137 or property rights, duties, or obligations, other than those
138 relative to its internal operations.
139 c. "State agency" means an entity of the legislative,
140 executive, or judicial branch of state government over which the
141 Legislature exercises plenary budgetary and statutory control.
142 3. No member of the Legislature, appointed state officer,
143 or statewide elected officer shall personally represent another
144 person or entity for compensation before the government body or
145 agency of which the individual was an officer or member for a
146 period of 2 years following vacation of office. No member of the
147 Legislature shall personally represent another person or entity
148 for compensation during his or her term of office before any
149 state agency other than judicial tribunals or in settlement
150 negotiations after the filing of a lawsuit.
151 4. No agency employee shall personally represent another
152 person or entity for compensation before the agency with which
153 he or she was employed for a period of 2 years following
154 vacation of position, unless employed by another agency of state
155 government.
156 5. Any person violating this paragraph shall be subject to
157 the penalties provided in s. 112.317 and a civil penalty of an
158 amount equal to the compensation which the person receives for
159 the prohibited conduct.
160 6. This paragraph is not applicable to:
161 a. A person employed by the Legislature or other agency
162 prior to July 1, 1989;

163 b. A person who was employed by the Legislature or other
164 agency on July 1, 1989, whether or not the person was a defined
165 employee on July 1, 1989;
166 c. A person who was a defined employee of the State
167 University System or the Public Service Commission who held such
168 employment on December 31, 1994;
169 d. A person who has reached normal retirement age as
170 defined in s. 121.021(29), and who has retired under the
171 provisions of chapter 121 by July 1, 1991; or
172 e. Any appointed state officer whose term of office began
173 before January 1, 1995, unless reappointed to that office on or
174 after January 1, 1995.
175 7. This paragraph does not apply to an agency employee who
176 was employed on July 1, 2001, in a Career Service System
177 position that was transferred to the Selected Exempt Service
178 System under chapter 2001-43, Laws of Florida.
179 (12) EXEMPTION.--The requirements of subsections (3) and
180 (7) as they pertain to persons serving on advisory boards may be
181 waived in a particular instance by the body which appointed the
182 person to the advisory board, upon a full disclosure of the
183 transaction or relationship to the appointing body prior to the
184 waiver and an affirmative vote in favor of waiver by two-thirds
185 vote of that body. In instances in which appointment to the
186 advisory board is made by an individual, waiver may be effected,
187 after public hearing, by a determination by the appointing
188 person and full disclosure of the transaction or relationship by
189 the appointee to the appointing person. In addition, no person

190 shall be held in violation of subsection (3) or subsection (7)
191 if:
192 (b) The business is awarded under a system of sealed,
193 competitive bidding to the lowest or best bidder and:
194 1. The official or the official's spouse or child has in
195 no way participated in the determination of the bid
196 specifications or the determination of the lowest or best
197 bidder;
198 2. The official or the official's spouse or child has in
199 no way used or attempted to use the official's influence to
200 persuade the agency or any personnel thereof to enter such a
201 contract other than by the mere submission of the bid; and
202 3. The official, prior to or at the time of the submission
203 of the bid, has filed a statement with the Commission on Ethics
204 ~~Department of State~~, if the official is a state officer or
205 employee, or with the supervisor of elections of the county in
206 which the agency has its principal office, if the official is an
207 officer or employee of a political subdivision, disclosing the
208 official's interest, or the interest of the official's spouse or
209 child, and the nature of the intended business.
210 (14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.--A
211 person who has been elected to any county, municipal, special
212 district, or school district office may not personally represent
213 another person or entity for compensation before the government
214 ~~governing~~ body or agency of which the person was an officer for
215 a period of 2 years after vacating that office. For purposes of
216 this subsection:

217 (a) The "government body or agency" of a member of a board
218 of county commissioners consists of the commission, the chief
219 administrative officer or employee of the county, and their
220 immediate support staff.
221 (b) The "government body or agency" of any other county
222 elected officer is the office or department headed by that
223 officer, including all subordinate employees.
224 (c) The "government body or agency" of an elected
225 municipal officer consists of the governing body of the
226 municipality, the chief administrative officer or employee of
227 the municipality, and their immediate support staff.
228 (d) The "government body or agency" of an elected special
229 district officer is the special district.
230 (e) The "government body or agency" of an elected school
231 district officer is the school district.
232 Section 3. Present subsections (4), (5), and (6) of
233 section 112.3144, Florida Statutes, are renumbered as
234 subsections (5), (6), and (7), respectively, paragraph (g) of
235 present subsection (4) is amended, and a new subsection (4) is
236 added to that section, to read:
237 112.3144 Full and public disclosure of financial
238 interests.--
239 (4)(a) With respect to reporting, on forms prescribed
240 under this section, assets valued in excess of $1,000 that the
241 reporting individual holds jointly with another person, the
242 amount reported shall be based on the reporting individual's
243 legal percentage of ownership in the property. However, assets
244 that are held jointly with right of survivorship must be

245 reported at 100 percent of the value of the asset. For purposes
246 of this subsection, a reporting individual is deemed to own a
247 percentage of a partnership that is equal to the reporting
248 individual's interest in the capital or equity of the
249 partnership.
250 (b)1. With respect to reporting, on forms prescribed under
251 this section, liabilities valued in excess of $1,000 for which
252 the reporting individual is jointly and severally liable, the
253 amount reported shall be based on the reporting individual's
254 percentage of liability rather than the total amount of the
255 liability. However, liability for a debt that is secured by
256 property owned by the reporting individual but that is held
257 jointly with right of survivorship must be reported at 100
258 percent of the total amount owed.
259 2. A separate section of the form shall be created to
260 provide for the reporting of the amounts of joint and several
261 liability of the reporting individual not otherwise reported in
262 subparagraph 1.
263 (5) ~~(4)~~ Forms for compliance with the full and public
264 disclosure requirements of s. 8, Art. II of the State
265 Constitution shall be created by the Commission on Ethics. The
266 commission shall give notice of disclosure deadlines and
267 delinquencies and distribute forms in the following manner:
268 (g) The notification requirements and fines of this
269 subsection do not apply to candidates or to the first filing
270 required of any person appointed to elective constitutional
271 office or other position required to file full and public
272 disclosure, unless the person's name is on the commission's

273 notification list and the person received notification from the
274 commission. The appointing official shall notify such newly
275 appointed person of the obligation to file full and public
276 disclosure by July 1. The notification requirements and fines of
277 this subsection do not apply to the final filing provided for in
278 subsection (6) ~~(5)~~.
279 Section 4. Paragraph (c) of subsection (6) of section
280 112.3145, Florida Statutes, is amended to read:
281 112.3145 Disclosure of financial interests and clients
282 represented before agencies.--
283 (6) Forms for compliance with the disclosure requirements
284 of this section and a current list of persons subject to
285 disclosure shall be created by the commission and provided to
286 each supervisor of elections. The commission and each supervisor
287 of elections shall give notice of disclosure deadlines and
288 delinquencies and distribute forms in the following manner:
289 (c) Not later than 30 days after July 1 of each year, the
290 commission and each supervisor of elections shall determine
291 which persons required to file a statement of financial
292 interests in their respective offices have failed to do so and
293 shall send delinquency notices by certified mail, return receipt
294 requested, to these ~~such~~ persons. Each notice shall state that a
295 grace period is in effect until September 1 of the current year;
296 that no investigative or disciplinary action based upon the
297 delinquency will be taken by the agency head or commission if
298 the statement is filed by September 1 of the current year; that,
299 if the statement is not filed by September 1 of the current
300 year, a fine of $25 for each day late will be imposed, up to a

301 maximum penalty of $1,500; for notices sent by a supervisor of
302 elections, that he or she is required by law to notify the
303 commission of the delinquency; and that, if upon the filing of a
304 sworn complaint the commission finds that the person has failed
305 to timely file the statement within 60 days after September 1 of
306 the current year, such person will also be subject to the
307 penalties provided in s. 112.317.
308 Section 5. Section 112.3147, Florida Statutes, is amended
309 to read:
310 112.3147 Forms.--
311 ~~(1)~~ All information required to be furnished by ss.
312 112.313, 112.3143, 112.3144, 112.3145, 112.3148, and 112.3149
313 and by s. 8, Art. II of the State Constitution shall be on forms
314 prescribed by the Commission on Ethics.
315 ~~(2)(a) With respect to reporting assets valued in excess~~
316 ~~of $1,000 on forms prescribed pursuant to s. 112.3144 which the~~
317 ~~reporting individual holds jointly with another person, the~~
318 ~~amount reported shall be based on the reporting individual's~~
319 ~~legal percentage of ownership in the property, except that~~
320 ~~assets held jointly with the reporting individual's spouse shall~~
321 ~~be reported at 100 percent of the value of the asset. For~~
322 ~~purposes of this subsection, a reporting individual is deemed to~~
323 ~~own an interest in a partnership which corresponds to the~~
324 ~~reporting individual's interest in the capital or equity of the~~
325 ~~partnership.~~
326 ~~(b)1. With respect to reporting liabilities valued in~~
327 ~~excess of $1,000 on forms prescribed pursuant to s. 112.3144 for~~
328 ~~which the reporting individual is jointly and severally liable,~~

329 ~~the amount reported shall be based upon the reporting~~
330 ~~individual's percentage of liability rather than the total~~
331 ~~amount of the liability, except, a joint and several liability~~
332 ~~with the reporting individual's spouse for a debt which relates~~
333 ~~to property owned by both as tenants by the entirety shall be~~
334 ~~reported at 100 percent of the total amount owed.~~
335 ~~2. A separate section of the form shall be created to~~
336 ~~provide for the reporting of the amounts of joint and several~~
337 ~~liability of the reporting individual not otherwise reported in~~
338 ~~paragraph (a).~~
339 Section 6. Paragraph (d) of subsection (6) and subsection
340 (8) of section 112.3148, Florida Statutes, are amended to read:
341 112.3148 Reporting and prohibited receipt of gifts by
342 individuals filing full or limited public disclosure of
343 financial interests and by procurement employees.--
344 (6)
345 (d) No later than July 1 of each year, each reporting
346 individual or procurement employee shall file a statement
347 listing each gift having a value in excess of $100 received by
348 the reporting individual or procurement employee, either
349 directly or indirectly, from a governmental entity or a direct-
350 support organization specifically authorized by law to support a
351 governmental entity. The statement shall list the name of the
352 person providing the gift, a description of the gift, the date
353 or dates on which the gift was given, and the value of the total
354 gifts given during the calendar year for which the report is
355 made. The reporting individual or procurement employee shall
356 attach to <u>the</u> ~~such~~ statement any report received by him or her

357 in accordance with paragraph (c), which report shall become a
358 public record when filed with the statement of the reporting
359 individual or procurement employee. The reporting individual or
360 procurement employee may explain any differences between the
361 report of the reporting individual or procurement employee and
362 the attached reports. The annual report filed by a reporting
363 individual shall be filed with the financial disclosure
364 statement required by either s. 8, Art. II of the State
365 Constitution or s. 112.3145, as applicable to the reporting
366 individual. The annual report filed by a procurement employee
367 shall be filed with the Commission on Ethics. The report filed
368 by a reporting individual or procurement employee who left
369 office or employment during the calendar year covered by the
370 report shall be filed by July 1 of the year after leaving office
371 or employment at the same location as his or her final financial
372 disclosure statement or, in the case of a former procurement
373 employee, with the Commission on Ethics.
374 (8)(a) Each reporting individual or procurement employee
375 shall file a statement with the Commission on Ethics not later
376 than ~~on~~ the last day of each calendar quarter, for the previous
377 calendar quarter, containing a list of gifts which he or she
378 believes to be in excess of $100 in value, if any, accepted by
379 him or her, for which compensation was not provided by the donee
380 to the donor within 90 days of receipt of the gift to reduce the
381 value to $100 or less, except the following:
382 1. Gifts from relatives.
383 2. Gifts prohibited by subsection (4) or s. 112.313(4).

384 3. Gifts otherwise required to be disclosed by this
385 section.
386 (b) The statement shall include:
387 1. A description of the gift, the monetary value of the
388 gift, the name and address of the person making the gift, and
389 the dates thereof. If any of these facts, other than the gift
390 description, are unknown or not applicable, the report shall so
391 state.
392 2. A copy of any receipt for such gift provided to the
393 reporting individual or procurement employee by the donor.
394 (c) The statement may include an explanation of any
395 differences between the reporting individual's or procurement
396 employee's statement and the receipt provided by the donor.
397 (d) The reporting individual's or procurement employee's
398 statement shall be sworn to by such person as being a true,
399 accurate, and total listing of all such gifts.
400 (e) Statements must be filed not later than 5 p.m. on the
401 due date. However, any statement that is postmarked by the
402 United States Postal Service by midnight on the due date is
403 deemed to have been filed in a timely manner, and a certificate
404 of mailing obtained from and dated by the United States Postal
405 Service at the time of the mailing, or a receipt from an
406 established courier company that bears a date on or before the
407 due date, constitutes proof of mailing in a timely manner.
408 (f) ~~(e)~~ If a reporting individual or procurement employee
409 has not received any gifts described in paragraph (a) during a
410 calendar quarter, he or she is not required to file a statement
411 under this subsection for that calendar quarter.

412 Section 7. Subsection (6) of section 112.3149, Florida
413 Statutes, is amended to read:
414 112.3149 Solicitation and disclosure of honoraria.--
415 (6) A reporting individual or procurement employee who
416 receives payment or provision of expenses related to any
417 honorarium event from a person who is prohibited by subsection
418 (4) from paying an honorarium to a reporting individual or
419 procurement employee shall publicly disclose on an annual
420 statement the name, address, and affiliation of the person
421 paying or providing the expenses; the amount of the honorarium
422 expenses; the date of the honorarium event; a description of the
423 expenses paid or provided on each day of the honorarium event;
424 and the total value of the expenses provided to the reporting
425 individual or procurement employee in connection with the
426 honorarium event. The annual statement of honorarium expenses
427 shall be filed by July 1 of each year for those ~~such~~ expenses
428 received during the previous calendar year. The reporting
429 individual or procurement employee shall attach to the annual
430 statement a copy of each statement received by him or her in
431 accordance with subsection (5) regarding honorarium expenses
432 paid or provided during the calendar year for which the annual
433 statement is filed. The ~~Such~~ attached statement shall become a
434 public record upon the filing of the annual report. The annual
435 statement of a reporting individual shall be filed with the
436 financial disclosure statement required by either s. 8, Art. II
437 of the State Constitution or s. 112.3145, as applicable to the
438 reporting individual. The annual statement of a procurement
439 employee shall be filed with the Commission on Ethics. The

440 statement filed by a reporting individual or procurement
441 employee who left office or employment during the calendar year
442 covered by the statement shall be filed by July 1 of the year
443 after leaving office or employment at the same location as his
444 or her final financial disclosure statement or, in the case of a
445 former procurement employee, with the Commission on Ethics.
446 Section 8. Subsections (1), (2), (6), (7), and (8) of
447 section 112.317, Florida Statutes, are amended to read:
448 112.317 Penalties.--
449 (1) Violation of any provision of this part, including,
450 but not limited to, any failure to file any disclosures required
451 by this part or violation of any standard of conduct imposed by
452 this part, or violation of any provision of s. 8, Art. II of the
453 State Constitution, in addition to any criminal penalty or other
454 civil penalty involved, shall, under ~~pursuant to~~ applicable
455 constitutional and statutory procedures, constitute grounds for,
456 and may be punished by, one or more of the following:
457 (a) In the case of a public officer:
458 1. Impeachment.
459 2. Removal from office.
460 3. Suspension from office.
461 4. Public censure and reprimand.
462 5. Forfeiture of no more than one-third salary per month
463 for no more than 12 months.
464 6. A civil penalty not to exceed $10,000.
465 7. Restitution of any pecuniary benefits received because
466 of the violation committed. The commission may recommend that

467 the restitution penalty be paid to the agency of which the
468 public officer was a member or to the General Revenue Fund.
469 (b) In the case of an employee or a person designated as a
470 public officer by this part who otherwise would be deemed to be
471 an employee:
472 1. Dismissal from employment.
473 2. Suspension from employment for not more than 90 days
474 without pay.
475 3. Demotion.
476 4. Reduction in salary level.
477 5. Forfeiture of no more than one-third salary per month
478 for no more than 12 months.
479 6. A civil penalty not to exceed $10,000.
480 7. Restitution of any pecuniary benefits received because
481 of the violation committed. The commission may recommend that
482 the restitution penalty be paid to the agency by which the
483 public employee was employed, or of which the officer was deemed
484 to be an employee, or to the General Revenue Fund.
485 8. Public censure and reprimand.
486 (c) In the case of a candidate who violates the provisions
487 of this part or s. 8(a) and (i), Art. II of the State
488 Constitution:
489 1. Disqualification from being on the ballot.
490 2. Public censure.
491 3. Reprimand.
492 4. A civil penalty not to exceed $10,000.
493 (d) In the case of a former public officer or employee who
494 has violated a provision applicable to former officers or

495 employees or whose violation occurred before the ~~prior to such~~
496 officer's or employee's leaving public office or employment:
497 1. Public censure and reprimand.
498 2. A civil penalty not to exceed $10,000.
499 3. Restitution of any pecuniary benefits received because
500 of the violation committed. The commission may recommend that
501 the restitution penalty be paid to the agency by which the
502 public employee was employed, or of which the officer was deemed
503 to be an employee, or to the General Revenue Fund.
504 (2) In any case in which the commission finds a violation
505 of this part or of s. 8, Art. II of the State Constitution and
506 the proper disciplinary official or body under s. 112.324
507 imposes ~~recommends~~ a civil penalty or restitution penalty, the
508 Attorney General shall bring a civil action to recover such
509 penalty. No defense may be raised in the civil action to enforce
510 the civil penalty or order of restitution that could have been
511 raised by judicial review of the administrative findings and
512 recommendations of the commission by certiorari to the district
513 court of appeal. The Attorney General shall collect any costs,
514 attorney's fees, expert witness fees, or other costs of
515 collection incurred in bringing the action.
516 ~~(6) Any person who willfully discloses, or permits to be~~
517 ~~disclosed, his or her intention to file a complaint, the~~
518 ~~existence or contents of a complaint which has been filed with~~
519 ~~the commission, or any document, action, or proceeding in~~
520 ~~connection with a confidential preliminary investigation of the~~
521 ~~commission, before such complaint, document, action, or~~
522 ~~proceeding becomes a public record as provided herein commits a~~

523 ~~misdemeanor of the first degree, punishable as provided in s.~~
524 ~~775.082 or s. 775.083.~~
525 (6) ~~(7)~~ In any case in which the commission finds probable
526 cause to believe that a complainant has committed perjury in
527 regard to any document filed with, or any testimony given
528 before, the commission, it shall refer such evidence to the
529 appropriate law enforcement agency for prosecution and taxation
530 of costs.
531 (7) ~~(8)~~ In any case in which the commission determines that
532 a person has filed a complaint against a public officer or
533 employee with a malicious intent to injure the reputation of
534 such officer or employee by filing the complaint with knowledge
535 that the complaint contains one or more false allegations or
536 with reckless disregard for whether the complaint contains false
537 allegations of fact material to a violation of this part, the
538 complainant shall be liable for costs plus reasonable attorney's
539 fees incurred in the defense of the person complained against,
540 including the costs and reasonable attorney's fees incurred in
541 proving entitlement to and the amount of costs and fees. If the
542 complainant fails to pay such costs and fees voluntarily within
543 30 days following such finding by the commission, the commission
544 shall forward such information to the Department of Legal
545 Affairs, which shall bring a civil action in a court of
546 competent jurisdiction to recover the amount of such costs and
547 fees awarded by the commission.
548 Section 9. Section 112.3185, Florida Statutes, is amended
549 to read:

550 112.3185 Additional standards for state agency employees
551 ~~Contractual services~~.--
552 (1) For the purposes of this section:
553 (a) "Contractual services" shall be defined as set forth
554 in chapter 287.
555 (b) "Agency" means any state officer, department, board,
556 commission, or council of the executive or judicial branch of
557 state government and includes the Public Service Commission.
558 (2) No agency employee who participates through decision,
559 approval, disapproval, recommendation, preparation of any part
560 of a purchase request, influencing the content of any
561 specification or procurement standard, rendering of advice,
562 investigation, or auditing or in any other advisory capacity in
563 the procurement of contractual services shall become or be,
564 while an agency employee, the employee of a person contracting
565 with the agency by whom the employee is employed.
566 (3) No agency employee shall, after retirement or
567 termination, have or hold any employment or contractual
568 relationship with any business entity other than an agency in
569 connection with any contract in which the agency employee
570 participated personally and substantially through decision,
571 approval, disapproval, recommendation, rendering of advice, or
572 investigation while an officer or employee. When the agency
573 employee's position is eliminated and his or her duties are
574 performed by the business entity, this subsection does not
575 prohibit his or her employment or contractual relationship with
576 the business entity if the employee's participation in the
577 contract was limited to recommendation, rendering of advice, or

578 investigation and if the agency head determines that the best
579 interests of the state will be served thereby and provides prior
580 written approval for the particular employee.
581 (4) No agency employee shall, within 2 years after
582 retirement or termination, have or hold any employment or
583 contractual relationship with any business entity other than an
584 agency in connection with any contract for contractual services
585 which was within his or her responsibility while an employee. If
586 the agency employee's position is eliminated and his or her
587 duties are performed by the business entity, the provisions of
588 this subsection may be waived by the agency head through prior
589 written approval for a particular employee if the agency head
590 determines that the best interests of the state will be served
591 thereby.
592 (5) The sum of money paid to a former agency employee
593 during the first year after the cessation of his or her
594 responsibilities, by the agency with whom he or she was
595 employed, for contractual services provided to the agency, shall
596 not exceed the annual salary received on the date of cessation
597 of his or her responsibilities. ~~The provisions of~~ This
598 subsection may be waived by the agency head for a particular
599 contract if the agency head determines that such waiver will
600 result in significant time or cost savings for the state.
601 (6) No agency employee acting in an official capacity
602 shall directly or indirectly procure contractual services for
603 his or her own agency from any business entity of which a
604 relative is an officer, partner, director, or proprietor or in

605 which the ~~such~~ officer or employee or his or her spouse or
606 child, or any combination of them, has a material interest.
607 (7) A violation of any provision of this section is
608 punishable in accordance with s. 112.317.
609 (8) This section is not applicable to any employee of the
610 Public Service Commission who was so employed on or before
611 December 31, 1994.
612 Section 10. Subsection (1) of section 112.321, Florida
613 Statutes, is amended to read:
614 112.321 Membership, terms; travel expenses; staff.--
615 (1) The commission shall be composed of nine members. Five
616 of these members shall be appointed by the Governor, no more
617 than three of whom shall be from the same political party,
618 subject to confirmation by the Senate. One member appointed by
619 the Governor shall be a former city or county official and may
620 be a former member of a local planning or zoning board which has
621 only advisory duties. Two members shall be appointed by the
622 Speaker of the House of Representatives, and two members shall
623 be appointed by the President of the Senate. Neither the Speaker
624 of the House of Representatives nor the President of the Senate
625 shall appoint more than one member from the same political
626 party. Of the nine members of the commission, no more than five
627 members shall be from the same political party at any one time.
628 No member may hold any public employment. An individual who
629 qualifies as a lobbyist pursuant to s. 11.045 or s. 112.3215 or
630 pursuant to any local government charter or ordinance may not
631 serve as a member of the commission, except that this
632 prohibition does not apply to an individual who is a member of

633 the commission on October 1, 2006, until the expiration of his
634 or her current term. A member of the commission may not lobby
635 any state or local governmental entity as provided in s. 11.045
636 or s. 112.3215 or as provided by any local government charter or
637 ordinance, except that this prohibition does not apply to an
638 individual who is a member of the commission on October 1, 2006,
639 until the expiration of his or her current term. All members
640 shall serve 2-year terms. No member shall serve more than two
641 full terms in succession. Any member of the commission may be
642 removed for cause by majority vote of the Governor, the
643 President of the Senate, the Speaker of the House of
644 Representatives, and the Chief Justice of the Supreme Court.
645 Section 11. Paragraph (e) of subsection (5) of section
646 112.3215, Florida Statutes, as amended by chapter 2005-359, Laws
647 of Florida, is amended to read:
648 112.3215 Lobbying before the executive branch or the
649 Constitution Revision Commission; registration and reporting;
650 investigation by commission.--
651 (5)
652 (e) The commission shall provide by rule the grounds for
653 waiving a fine, the procedures ~~a procedure~~ by which a lobbying
654 firm that fails to timely file a report shall be notified and
655 assessed fines, and the procedure for appealing the fines. The
656 rule shall provide for the following:
657 1. Upon determining that the report is late, the person
658 designated to review the timeliness of reports shall immediately
659 notify the lobbying firm as to the failure to timely file the
660 report and that a fine is being assessed for each late day. The

661 fine shall be $50 per day per report for each late day up to a
662 maximum of $5,000 per late report.
663 2. Upon receipt of the report, the person designated to
664 review the timeliness of reports shall determine the amount of
665 the fine due based upon the earliest of the following:
666 a. When a report is actually received by the lobbyist
667 registration and reporting office.
668 b. When the report is postmarked.
669 c. When the certificate of mailing is dated.
670 d. When the receipt from an established courier company is
671 dated.
672 3. Such fine shall be paid within 30 days after the notice
673 of payment due is transmitted by the Lobbyist Registration
674 Office, unless appeal is made to the commission. The moneys
675 shall be deposited into the Executive Branch Lobby Registration
676 Trust Fund.
677 4. A fine shall not be assessed against a lobbying firm
678 the first time any reports for which the lobbying firm is
679 responsible are not timely filed. However, to receive the one-
680 time fine waiver, all reports for which the lobbying firm is
681 responsible must be filed within 30 days after the notice that
682 any reports have not been timely filed is transmitted by the
683 Lobbyist Registration Office. A fine shall be assessed for any
684 subsequent late-filed reports.
685 5. Any lobbying firm may appeal or dispute a fine, based
686 upon unusual circumstances surrounding the failure to file on
687 the designated due date, and may request and shall be entitled
688 to a hearing before the commission, which shall have the

689 authority to waive the fine in whole or in part for good cause
690 shown. Any such request shall be made within 30 days after the
691 notice of payment due is transmitted by the Lobbyist
692 Registration Office. In such case, the lobbying firm shall,
693 within the 30-day period, notify the person designated to review
694 the timeliness of reports in writing of his or her intention to
695 bring the matter before the commission.
696 6. The person designated to review the timeliness of
697 reports shall notify the commission of the failure of a lobbying
698 firm to file a report after notice or of the failure of a
699 lobbying firm to pay the fine imposed. All lobbyist
700 registrations for lobbyists who are partners, owners, officers,
701 or employees of a lobbying firm that fails to timely pay a fine
702 are automatically suspended until the fine is paid or waived,
703 and the commission shall promptly notify all affected principals
704 of any suspension or reinstatement.
705 7. Notwithstanding any provision of chapter 120, any fine
706 imposed under this subsection that is not waived by final order
707 of the commission and that remains unpaid more than 60 days
708 after the notice of payment due or more than 60 days after the
709 commission renders a final order on the lobbying firm's appeal
710 shall be collected by the Department of Financial Services as a
711 claim, debt, or other obligation owed to the state, and the
712 department may assign the collection of such fine to a
713 collection agent as provided in s. 17.20.
714 Section 12. Subsection (4) of section 112.322, Florida
715 Statutes, is amended to read:
716 112.322 Duties and powers of commission.--

717 (4) The commission has the power to subpoena, audit, and
718 investigate. The commission may subpoena witnesses and compel
719 their attendance and testimony, administer oaths and
720 affirmations, take evidence, and require by subpoena the
721 production of any books, papers, records, or other items
722 relevant to the performance of the duties of the commission or
723 to the exercise of its powers. The commission may delegate to
724 its investigators the authority to administer oaths and
725 affirmations. The commission may delegate the authority to issue
726 subpoenas to its chair, and may authorize its employees to serve
727 any subpoena issued under this section. In the case of a refusal
728 to obey a subpoena issued to any person, the commission may make
729 application to any circuit court of this state which shall have
730 jurisdiction to order the witness to appear before the
731 commission and to produce evidence, if so ordered, or to give
732 testimony touching on the matter in question. Failure to obey
733 the order may be punished by the court as contempt. Witnesses
734 shall be paid mileage and witnesses fees as authorized for
735 witnesses in civil cases, except that a witness who is required
736 to travel outside the county of his or her residence to testify
737 is entitled to per diem and travel expenses at the same rate
738 provided for state employees under s. 112.061, to be paid after
739 the witness appears.
740 Section 13. Subsections (3) and (4) of section 914.21,
741 Florida Statutes, are amended to read:
742 914.21 Definitions.--As used in ss. 914.22-914.24, the
743 term:

744 (3) "Official investigation" means any investigation
745 instituted by a law enforcement agency or prosecuting officer of
746 the state or a political subdivision of the state or the
747 Commission on Ethics.
748 (4) "Official proceeding" means:
749 (a) A proceeding before a judge or court or a grand jury;
750 (b) A proceeding before the Legislature; ~~or~~
751 (c) A proceeding before a federal agency which is
752 authorized by law; or~~.~~
753 (d) A proceeding before the Commission on Ethics.
754 Section 14. This act shall take effect October 1, 2006.

HB 1037 CS

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1037 CS Campaign Financing
**SPONSOR(S):** Rivera and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2156

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Ethics & Elections Committee | 6 Y, 5 N, w/CS | Shaffer | Mitchell |
| 2) Transportation & Economic Development Appropriations Committee | 17 Y, 1 N, w/CS | McAuliffe | Gordon |
| 3) State Administration Council | | Shaffer | Bussey |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


HB 1037 allows candidates for the Florida House of Representatives to transfer or retain a maximum per election of $50,000 in a campaign account for the same office to which the candidate was elected by virtue of being unopposed. The bill allows candidates for the Florida Senate to transfer or retain a maximum per election of $150,000 in a campaign account for the same office to which the candidate was elected by virtue of being unopposed.

The bill prohibits an unopposed candidate for the House of Representatives who exercises this option from accepting campaign contributions for one year after the date of qualifying, and an unopposed candidate for the Senate for two years after the date of qualifying.

HB 1037 is effective July 1, 2006.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

HB 1037 does not appear to implicate any House principle.

B. EFFECT OF PROPOSED CHANGES:

**Background**

Section 106.141, F.S., currently provides for disposition of surplus campaign funds by candidates. Any candidate required to dispose of surplus funds may dispose of them in a variety of ways:

- Return pro rata to each contributor the funds that have not been spent or obligated;
- Donate to a charitable organization or organizations that meet the qualifications of s. 501(c) (3) of the Internal Revenue Code the funds that have not been spent or obligated;
- Give a portion of the funds that have not been spent or obligated to their political party, candidates for the House may give up to $10,000 and candidates for the Senate may give up to $30,000;
- Give the funds in the case of a candidate for state office, to general revenue or the Election Campaign Financing Trust Fund; or
- Give the funds in the case of a candidate for an office of a political subdivision, to such political subdivision.

Section 106.011(15), F.S. defines an "unopposed candidate" as a "candidate for nomination or election to an office who, after the last day on which any person, including a write-in candidate, may qualify, is without opposition in the election at which the office is to be filled or who is without such opposition after such date as a result of any primary election or of withdrawal by other candidates seeking the same office."

An unopposed candidate may transfer a prescribed amount of funds to an office account. A House candidate may transfer up to $10,000; and a Senate candidate $20,000. (s.106.141(5)(c), F.S., provides for funding an office account up to $5,000 multiplied by the number of years in the term of office for which elected.)

If any funds have been received from general revenue as a participant in the matching funds program they must be returned.

**Effects of Proposed Changes**

HB 1037 allows candidates for the Florida House of Representatives to transfer or retain a maximum per election of $50,000 in a campaign account for the same office to which the candidate was elected by virtue of being unopposed. The bill also allows candidates for the Florida Senate to transfer or retain a maximum per election of $150,000 in a campaign account for the same office to which the candidate was elected by virtue of being unopposed.

Candidates will continue to be able to exercise other options for disposing of surplus funds prescribed in s. 106.141(4), F.S. HB 1037 will provide another option for disposal for unopposed candidates campaign contributions. The bill prohibits an unopposed candidate for the House of Representatives who exercises this option from accepting campaign contributions for one year after the date of qualifying, and an unopposed candidate for the Senate for two years after the date of qualifying.

Candidates cannot transfer or retain more than the amounts provided therein ($50,000; $150,000) from one election year to another. For example, an unopposed House candidate in 2006 could retain up to $50,000, but if running unopposed again in 2008 could not transfer or retain another $50,000 for a total of $100,000.

The following table shows the number of unopposed candidates for the three previous election cycles.

| Election Year | House candidates elected without opposition |
|---|---|
| 2000 | 14 |
| 2002 | 18 |
| 2004 | 52 |

C. SECTION DIRECTORY:

Section 1: Amends s. 106.141, F.S., to allow unopposed candidates for the House of Representatives or the Senate to transfer the funds or to retain the funds in a campaign account for the same office to which the candidate was elected by virtue of being unopposed with a maximum per election of $50,000 for a candidate for the House of Representatives and $150,000 for a candidate for the Senate.

Section 2: Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 1037 may have a fiscal impact on charitable and other organizations. The current law, s. 106.141, F.S., requires candidates to dispose of funds in several specified ways, including donating the funds that have not been spent or obligated to a charitable organization or to the candidate's political party, or returning the contributions pro rata to contributors or by giving them to the General Revenue Fund. These entities, which may have otherwise received funds, may not receive them from legislative candidates if the bill is enacted.

D. FISCAL COMMENTS:

HB 1037 will have no significant fiscal impact.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

HB 1037 does not grant any rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006 the Committee on Ethics & Elections adopted one amendment. The amendment prohibits an unopposed candidate who exercises this option from accepting campaign contributions for one year after the date of qualifying.

At the April 4, 2006 meeting, the Transportation and Economic Development Appropriations Committee approved HB 1037 with one amendment. The amendment clarified an unopposed candidate for the Florida Senate who exercises this option is prohibited from accepting campaign contributions for two years after the date of qualifying.

CHAMBER ACTION

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1 The Transportation & Economic Development Appropriations
2 Committee recommends the following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to campaign financing; amending s.
8 106.141, F.S.; allowing unopposed legislative candidates
9 to transfer surplus campaign funds to or retain such funds
10 in a campaign account for reelection to the same office;
11 establishing limits on the transferable amount of such
12 funds; providing a prohibition from fundraising under
13 certain conditions; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Paragraph (a) of subsection (4) of section
18 106.141, Florida Statutes, is amended to read:
19 106.141 Disposition of surplus funds by candidates.--
20 (4)(a) Except as provided in paragraph (b), any candidate
21 required to dispose of funds pursuant to this section shall, at
22 the option of the candidate, dispose of such funds by any of the
23 following means, or any combination thereof:

24 1. Return pro rata to each contributor the funds that have
25 not been spent or obligated.
26 2. Donate the funds that have not been spent or obligated
27 to a charitable organization or organizations that meet the
28 qualifications of s. 501(c)(3) of the Internal Revenue Code.
29 3. Give not more than $10,000 of the funds that have not
30 been spent or obligated to the political party of which such
31 candidate is a member, except that a candidate for the ~~Florida~~
32 Senate may give not more than $30,000 of such funds to the
33 political party of which the candidate is a member.
34 4. Give the funds that have not been spent or obligated:
35 a. In the case of a candidate for state office, to the
36 state, to be deposited in either the Election Campaign Financing
37 Trust Fund or the General Revenue Fund, as designated by the
38 candidate; or
39 b. In the case of a candidate for an office of a political
40 subdivision, to such political subdivision, to be deposited in
41 the general fund thereof.
42 5. With respect to an unopposed candidate for the House of
43 Representatives or the Senate, transfer the funds to or retain
44 the funds in a campaign account for the same office to which the
45 candidate was elected by virtue of being unopposed, with a
46 maximum per election of $50,000 for a candidate for the House of
47 Representatives and $150,000 for a candidate for the Senate. An
48 unopposed candidate for the House of Representatives who
49 exercises this option is prohibited from accepting campaign
50 contributions for the same office for 1 year after the date of
51 qualifying. An unopposed candidate for the Senate who exercises

52 this option is prohibited from accepting campaign contributions
53 for the same office for 2 years after the date of qualifying.
54 Section 2. This act shall take effect July 1, 2006.

HB 7081

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7081 PCB GO 06-25 Administrative Procedures
**SPONSOR(S):** Governmental Operations Committee, Rivera
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 262

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Governmental Operations Committee | 6 Y, 0 N | Brown | Williamson |
| 1) Transportation & Economic Development Appropriations Committee | 17 Y, 0 N | McAuliffe | Gordon |
| 2) State Administration Council | | Brown | Bussey |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


The bill increases the Department of State's administrative responsibilities regarding the Florida Administrative Code and Florida Administrative Weekly website, requiring that the site contain several new features. The Department of State has estimated its costs of implementing the website provisions at $450,000 over a three-year period.

The bill modifies the Administrative Procedure Act as follows:

- Provides for a continuous review of agency rulemaking;
- Revises agency rulemaking duties regarding Notices of Change and forms incorporated by reference;
- Expands access to the Florida Equal Access to Justice Act to certain petitioners, by expanding the definition of "small business party" to include an individual whose net worth is less than $2M;
- Revises provisions relating to the timing and substance of petitions for administrative hearings;
- Requires the agency to make an explicit ruling on each exception filed by any party following the submission of a recommended order; and
- Requires the Division of Administrative Hearings and agencies to file certain reports with the Administration Commission and the Joint Administrative Procedures Committee.

The bill grants rulemaking authority to the Administration Commission for prescribing the form and substantive provisions of a protest bond.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill requires the Department of State to publish on an Internet website the Florida Administrative Weekly (FAW) accessible free of charge to the public, and to continue publishing the FAW in print format.

The bill increases the rulemaking authority of the Administration Commission for the limited purpose of prescribing the form and substantive provisions of bid-protest bonds.

B. EFFECT OF PROPOSED CHANGES:

**Administrative Procedure Act**

**Background**

The Administrative Procedure Act (APA)[1] allows persons substantially affected by the preliminary decisions of administrative agencies to challenge those decisions. The Division of Administrative Hearings (DOAH), which consists of an independent group of administrative law judges, conducts hearings under chapter 120, F.S., when certain agency decisions[2] are challenged by substantially affected persons.[3]

Current law provides that a person substantially affected by a rule or proposed rule may file a petition seeking an administrative determination of the invalidity of a rule or proposed rule on the ground that the rule is an invalid exercise of delegated legislative authority. It also provides a mechanism for a substantially affected person to seek an administrative determination that an agency statement of generally applicable policy should have been adopted as a rule.[4]

A party wishing to challenge an agency determination of his or her substantial interests must file a petition for hearing with the agency. The agency must then request, from DOAH, an administrative hearing within 15 days. The APA also provides notice and pleading requirements, and the time parameters within which a final order must be completed.[5]

Current law requires the Administration Commission[6] to enact uniform rules of procedure governing DOAH. These uniform rules of procedure are analogous to the Florida Rules of Civil Procedure, used by the judicial branch. Legislation passed in 1998[7] clarified that the uniform rules of procedure for the filing of all petitions for administrative hearing under ss. 120.569 or 120.57, F.S., must include:

- The identification of the petitioner;
- A statement of when and how the petitioner received notice of the agency's action or proposed action;
- An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action;
- A statement of all material facts disputed by the petitioner or a statement that there are no disputed facts;

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[1] Ch. 120, F.S.
[2] For example, rules and determinations of a party's substantial interest.
[3] DOAH proceedings are conducted like nonjury trials and are governed by chapter 120, F.S.
[4] Sec. 120.56, F.S.
[5] Sec. 120.569, F.S.
[6] The Governor and the Cabinet make up the members of the Administration Commission. Sec. 14.202, F.S.
[7] Ch. 1998-200, Laws of Florida, sec. 3.

- A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes;[8] and
- A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the agency to take with respect to the proposed action.[9]

There is a Joint Administrative Procedures Committee (JAPC), within the Legislature, made up of six members; three members of the House of Representatives and three members of the Senate. JAPC undertakes and maintains a systematic and continuous review of the statutes authorizing agencies to adopt rules. It makes recommendations to the appropriate standing committees of the Legislature regarding delegated legislative authority to adopt rules.[10]

**Effect of Bill**

Duties of JAPC

The bill requires JAPC to maintain a continuous review of statutes that authorize agencies to adopt rules and to make recommendations to appropriate standing committees. It removes the requirement that the committee "undertake a systematic review" of the statues. According to JAPC, it is a more efficient use of committee resources to review statutes in the course of the rule review process.

Agency Rulemaking

The bill locates all important rulemaking timeframes and deadlines in one section of the APA for improved accessibility. The bill also clarifies that an agency must file a Notice of Change after a final rulemaking hearing, if non-technical changes are made, and that the notice must be published in the FAW.

Appeal of Administrative Determinations

The bill further provides that the filing of a petition for administrative determination of a proposed rule must toll the 90-day period during which a rule must be filed for adoption until 30 days after rendition of the final order, or until any judicial review of the final order is complete. Unless the decision of the administrative law judge is reversed on appeal, the proposed rule or provision of a proposed rule declared invalid will not be adopted. It clarifies that the term "administrative determination" does not include subsequent judicial review.

Petitions for Administrative Hearing

The bill grants rulemaking authority to the Administration Commission in order to create a separate set of pleading requirements for those hearings filed by the respondent in an agency enforcement or disciplinary action. Uniform rules for this type of request require:

- The name, address and telephone number of the party making the request and the name, address and telephone number of the party's counsel or qualified representative upon whom service of pleadings and other papers will be made;
- A statement that the respondent is requesting an administrative hearing and disputes the material facts alleged by the petitioner, in which case the respondent must identify those material facts that are in dispute, or that the respondent is requesting an administrative hearing and does not dispute the material facts alleged by the petitioner; and

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[8] The underlined text was not part of the 1998 amendment, but was inserted by chapter 2003-94, Laws of Florida, sec. 2.
[9] Sec. 120.54(5)(b)4., F.S.
[10] Sec. 11.60, F.S.

- A reference by file number to the administrative complaint that the party has received from the agency, and the date on which the agency pleading was received.

The pleading requirements are codified in the Florida Administrative Code at Uniform Rule 28-107.004(3), F.A.C., which was promulgated *before* the 1998 legislative amendment. The rulemaking authority granted to the Administration Commission serves to resolve the confusion between rule and statute.

Equitable Tolling

The bill extends the deadline for filing a petition, if the petitioner has:

- Been misled or lulled into action;
- In some extraordinary way been prevented from asserting his or her rights; or
- Timely asserted his or her rights mistakenly in the wrong forum.

As reported by JAPC, these changes address concerns expressed in recent judicial decisions and by the administrative law judges and practitioners.

Bid Protest Bonds

The bill provides rulemaking authority to the Administration Commission for the purpose of prescribing the form and substantive provisions of a bond required pursuant to a bid protest. According to JAPC, the Administration Commission already has adopted such form; however, the commission did not have proper rulemaking authority. This change merely puts the commission's rule in compliance with the Florida Statutes.

Current law requires an agency to include in its notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase the following statement: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes." The bill requires that the notice also state that "failure to post the bond or other security required by law within the time allowed for filing a bond" constitutes a waiver of proceedings under the APA.

Final Orders

The bill provides additional requirements for final orders issued after a DOAH hearing under s. 120.57(1), F.S. The bill requires the agency to make an explicit ruling on each exception filed by any party after the recommended order is submitted by DOAH. The agency must report to DOAH its exceptions to the recommended order, and file a copy of the final order with DOAH.[11]

Agency and DOAH Reporting

The bill requires DOAH and agencies to file certain reports with the Administration Commission and JAPC. DOAH and agencies must issue recommendations regarding the types of cases that should be conducted by the summary hearing process in s. 120.574, F.S. DOAH must report on agency compliance with the requirement to file final orders and exceptions with the division within 15 days of issuance.

The bill requires each agency to file its report of the agency's formal rule review with JAPC in addition to the President of the Senate and the Speaker of the House of Representatives.[12] As with DOAH, the report must include recommendations regarding the types of cases that should be conducted by the summary hearing process.

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[11] Sec. 120.57(1)(m), F.S.
[12] See s. 120.65(10), F.S.

Equal Access to Justice Act

The bill expands access to the Florida Equal Access to Justice Act, which allows certain small business owners to recover attorneys' fees when the agency action against the business entity is deemed not "substantially justified." The bill expands the definition of "small business party" to include individuals with a net worth of less than $2M, when the agency makes a claim against that individual's license rather than a claim against the business entity. This change appears to address *Daniels v. Fla. Dep't of Health*, SC 04-230 (Fla. 2005), in which the sole proprietor of an S-Corporation was deemed not a small business party because the agency's claim was made against the owner's individual license rather than against her corporate entity.[13]

**Florida Administrative Weekly and Florida Administrative Code**

**Background**

Current law requires the Department of State (DOS) to publish rulemaking and public meetings notices, and various other materials filed by the state's administrative agencies, in the *Florida Administrative Weekly* (FAW).[14] DOS contracts with LexisNexis Matthew Bender for publication of the FAW in a printed format.[15] The FAW is published on Fridays and distributed for free to administrative agencies, courts, libraries, law schools, and legislative offices. The FAW has approximately 369 paid subscribers.[16] In addition to the paper version, DOS also posts copies of the FAW on its Internet website accessible to the public free of charge.

DOS is required to publish the Florida Administrative Code (FAC), which contains all rules adopted by agencies, together with references to rulemaking authority and history notes. The FAC must be supplemented at least monthly.[17] DOS also contracts with LexisNexis Matthew Bender for the printing of the FAC.

Current law creates the Publication Revolving Trust Fund, and specifies that all fees and moneys collected by DOS under the Administrative Procedure Act (APA) be deposited in the fund for the purpose of paying for the publication of the FAC and FAW, and for associated costs incurred by DOS in administering APA requirements. Unencumbered balances at the beginning of each fiscal year, which exceed $300,000, are transferred to the General Revenue Fund.[18]

DOS is authorized to: (a) make subscriptions of the FAW available for a price computed as a pro rata share of 50 percent of the costs related to the publication of the FAW; and (b) charge agencies using the FAW a space rate (line charge) computed to cover a pro rata share of 50 percent of the costs related to publication of the FAW.[19] Subscription fees charged to FAW subscribers are retained by the publisher as compensation for printing the FAW. DOS does not receive royalties from FAW subscriptions.

Internet Publication Pilot Project

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[13] Circuit appeals courts previously split on allowing fees under the Equal Access to Justice Act for petitioners in this situation. The 1st and 3rd DCA denied such claims while recognizing the unfairness of the result; the 4th DCA allowed the fees.
[14] According to DOS, approximately 600 entities publish notices in the FAW. These entities include state agencies, other units of state and local governments, and nongovernmental entities. Email from Dep't. of State, Feb. 9, 2006.
[15] *Report on Internet Noticing of the Florida Administrative Weekly*, Florida Joint Administrative Procedures Committee, October 2003, pp. 2-3.
[16] Telephone conversation with Department of State, Administrative Code and Weekly Unit, February 10, 2006. DOS indicated information was based on a recent report from FAW publisher.
[17] Sec. 120.55(1)(a), F.S.
[18] Sec. 120.55(5), F.S.
[19] Sec. 120.55(1), F.S.

In 2001, the Legislature authorized the Department of Environmental Protection (DEP) and the State Technology Office (STO) to establish an Internet publication pilot project for the purpose of determining the cost-effectiveness of publishing administrative notices on the Internet, rather than in the FAW, and to submit a report containing findings regarding the cost-effectiveness of Internet publication.[20] The report indicated that DEP paid $44,179 for FAW line charges during calendar year 2001 and would have paid approximately $32,100 for FAW line charges during calendar year 2002 if Internet publication had not been permitted. Nonrecurring costs to establish Internet publication were $10,200 to develop the computer software application, and $20,000 to program the e-mail registration service enhancement. The report indicated that the computer software application may be shared with other agencies at no cost and recommended that the Legislature permit all agencies to elect Internet publication in lieu of publication in the paper version of the FAW, given the potential for substantial agency savings.[21]

2003 Interim Study on FAW Internet Noticing

During the 2003 Legislative Interim, JAPC studied the feasibility of Internet noticing for all state agencies and other entities that advertise in the FAW.[22] In October 2003, the results were published in the "Report on Internet Noticing of the Florida Administrative Weekly." The report recommended publication of the FAW on a centralized website managed by DOS. Further, it was recommended that DOS continue to collect the space rate charge to fund its functions related to publication of the FAW and FAC.

**Effect of Bill**

The bill requires DOS, effective December 31, 2007, to publish electronically the FAW on an Internet website managed by the department, which will serve as the official Internet website for such publication. The website is free to the public and must allow users to:

- Search for notices by type, publication date, rule number, word, subject, or agency.
- Search a database that makes available all notices published on the website for a period of at least five years.
- Subscribe to an automated e-mail notification of selected notices.
- View agency forms incorporated by reference in proposed rules.

The bill requires DOS to continue to publish the printed version of the FAW and to make copies available on an annual subscription basis.

The bill:

- Requires DOS to review agency notices for compliance with format and numbering requirements before publication on the FAW Internet website.
- Extends the DEP Internet Publication Pilot Project from its current termination date of July 1, 2006, to December 31, 2007, when Internet publication of the FAW is required to begin.
- Requires DOS to make training courses available to assist agencies in the transition to publication on the FAW Internet website.

The bill removes current requirements that the annual subscription price and the space rate be computed to cover only costs related to the FAW. Instead, the space rate that may be charged is to cover the costs related to the FAW and the FAC, and no exact basis for determining an annual subscription price for the printed FAW is specified. It also amends current law to provide that the trust fund must fund the costs incurred by DOS in carrying out the APA.

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[20] Ch. 2001-278, L.O.F.; s. 120.551, F.S.

[21] *Joint Report and Recommendations of the Department of Environmental Protection, The State Technology Office, and The Department of State on the Internet Publication Pilot Project under Sec. 120.551, F.S.*, Jan. 31, 2003.

[22] This study included conducting surveys and consulting with DOS, DEP, STO, and an independent technology expert to determine specific technology requirements and estimates of potential costs.

The bill provides that agency forms incorporated by reference into a rule noticed pursuant to s. 120.55(1)(a), F.S., after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated. It requires the FAW to contain: (1) the text of all proposed rules, rather than permitting a reference to that text in a prior edition of the FAW; and (2) a cumulative list of all rules that have been proposed, but not filed for adoption. The bill requires an agency, upon request, to provide copies of its rules with citations to, "the grant of rulemaking authority and the specific law implemented for each rule." It also requires DOS to maintain a permanent record of all notices published in the FAW.

The bill does not preclude publication of FAW materials on an agency's website or by other means.

C. SECTION DIRECTORY:

Section 1 amends s. 11.60, F.S., revising duties of the Joint Administrative Procedures Committee.

Section 2 amends s. 57.111, F.S., expanding the definition of "small business party."

Section 3 amends s. 120.54, F.S., relating to rulemaking and rule adoption procedures.

Section 4 amends s. 120.55, F.S., requiring Internet publication of the FAW.

Section 5 amends s. 120.551, F.S., postponing the repeal of the section.

Section 6 amends s. 120.56, F.S., revising provisions relating to withdrawal of challenged rules.

Section 7 amends s. 120.569, F.S., prescribing circumstances under which the time for filing a petition for hearing must be extended.

Section 8 amends s. 120.57, F.S., requiring the inclusion of additional information in final orders and modifying the required notice relating to protests of contract solicitations or awards.

Section 9 amends s. 120.65, F.S., requiring additional reports from DOAH and agencies regarding the administrative hearing process.

Section 10 amends s. 120.74, F.S., requiring the filing of agency reports with JAPC, in addition to the President and Speaker.

Section 11 requires DOS to provide certain assistance to agencies in their transition to publishing on the FAW Internet website.

Section 12 provides an effective date of July 1, 2006, unless otherwise expressly provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   It has not been determined how much agencies will save after the second year that the FAW Internet website is operational.

2. Expenditures:

It is estimated that the FAW Internet website will require a non-recurring cost over three years of $450,000 for DOS to comply with the proposed implementation timeline.[23] Per DOS, the Records Management Trust Fund cash balance and anticipated revenue is sufficient to support this project.[24]

DOS indicates that it will continue to charge 99 cents per line to agencies using the FAW from now through the second year that the FAW Internet website is operational. DOS also states that these revenues will be used to fund all costs associated with the Law, Code, and Administrative Weekly section within the Division of Library and Information Services.[25]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

Per DOS, local governments advertising on the FAW Internet website will pay the current space rate charge of 99 cents per line until implementation of the new services is complete.[26]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, DOS publishes the FAW on its Internet website. The website is accessible by the public free of charge, but cannot be searched by topic. The bill provides for a free, fully searchable FAW Internet website, the ability for users to have selected notices e-mailed to users, and the ability for users to access forms incorporated by reference in rules. Accordingly, the bill will provide the public with greater access to the FAW and with advanced search capabilities.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the Administration Commission for the purpose of prescribing the form and substantive provisions of a protest bond. The bond form currently exists in rule;[27] however, there has been an outstanding objection from the Joint Administrative Procedures Committee

[23] Telephone conversation with the Department of State, Administrative Code and Weekly Unit, February 10, 2006.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] Ch. 28-110.005, *Fla. Admin. Code.*

since its promulgation.[28] The rulemaking authority granted by the bill specifically addresses the JAPC objection.

The bill provides additional rulemaking authority regarding a specific class of respondents requesting an administrative hearing. The Administration Commission currently has rulemaking authority to promulgate uniform rules applicable to requests for administrative hearings under ss. 120.569 and 120.57, F.S. The additional authority granted in this bill specifies the pleading requirements for a respondent requesting an administrative hearing as part of an agency enforcement or disciplinary action.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Environmental Protection (DEP) has maintained a "pilot project" regarding online publication of FAW materials. Under current statutes, this pilot project[29] expires on July 1, 2006.[30] The Department of State has indicated that the new Florida Administrative Weekly and Florida Administrative Code Internet website is substantially complete. As a result, the extension of the DEP pilot project[31] no longer appears necessary.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably as amended.

In addition to the provisions provided in the bill, the amendment expands access to the Florida Equal Access to Justice Act by expanding the definition of "small business party" to include an individual whose net worth is less than $2M, when an agency claim is made against that individual's license, and the agency's action is deemed not "substantially justified."

The amendment also:

- Provides additional requirements for final orders issued after a DOAH hearing under s. 120.57(1), F.S.
- Requires DOAH and agencies to file certain reports with the Administration Commission and JAPC.
- Includes additional requirements (beyond those in the original bill) regarding the timing and substance of requests for administrative hearing.

In relation to agency rulemaking, the amendment clarifies that an agency must file a Notice of Change after a final rulemaking hearing, if non-technical changes are made, and requires publication of the notice in the FAW.

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[28] See *Fla. Admin. Weekly*, Vol. 24, No. 20, May 15, 1998.
[29] S. 120.551(1), *et seq.*, F.S.
[30] *Id.* at paragraph (3).
[31] Section 5, amending s. 120.551(3), F.S.

1 A bill to be entitled
2 An act relating to administrative procedures; amending s.
3 11.60, F.S.; revising duties of the Administrative
4 Procedures Committee with respect to its review of
5 statutes; amending s. 57.111, F.S.; redefining the term
6 "small business party" to include certain individuals
7 whose net worth does not exceed a specified amount;
8 amending s. 120.54, F.S.; requiring an agency to file a
9 notice of rule change with the Administrative Procedures
10 Committee; revising times for filing rules for adoption;
11 providing an exception to the term "administrative
12 determination" for purposes of rule adoption; providing
13 for the form and provisions of bonds; providing an
14 additional type of uniform rules of procedure to be
15 adopted by the commission; providing requirements with
16 respect to the contents thereof; providing an additional
17 requirement with respect to specified uniform rules of
18 procedure; amending s. 120.55, F.S.; requiring that
19 certain information be included in forms incorporated by
20 reference in rules; requiring the Florida Administrative
21 Weekly to be published electronically on an Internet
22 website; providing additional duties of the Department of
23 State with respect to publication of notices; providing
24 requirements for the Florida Administrative Weekly
25 Internet website; providing that publication of specified
26 material on the website does not preclude other
27 publication; amending s. 120.551, F.S.; postponing the
28 repeal of provisions relating to Internet publication of

29 specified notices; amending s. 120.56, F.S.; revising
30 provisions relating to challenged proposed rules that are
31 declared invalid; amending s. 120.569, F.S.; prescribing
32 circumstances under which the time for filing a petition
33 for hearing must be extended; amending s. 120.57, F.S.;
34 requiring a final order to include an explicit ruling on
35 each exception to the recommended order; requiring that
36 additional information be included in notices relating to
37 protests of contract solicitations or awards; amending s.
38 120.65, F.S.; requiring the Division of Administrative
39 Hearings to include certain recommendations and
40 information in its annual report to the Administrative
41 Procedures Committee and the Administration Commission;
42 amending s. 120.74, F.S.; requiring agency reports to be
43 filed with the Administrative Procedures Committee;
44 requiring that the annual report filed by an agency
45 identify the types of cases or disputes in which it is
46 involved which should be conducted under the summary
47 hearing process; requiring the Department of State to
48 provide certain assistance to agencies in their transition
49 to publishing on the Florida Administrative Weekly
50 Internet website; providing effective dates.
51
52 Be It Enacted by the Legislature of the State of Florida:
53
54 Section 1. Subsection (4) of section 11.60, Florida
55 Statutes, is amended to read:
56 11.60 Administrative Procedures Committee; creation;

57 membership; powers; duties.--
58 (4) The committee shall ~~undertake and~~ maintain a
59 ~~systematic and~~ continuous review of statutes that authorize
60 agencies to adopt rules and shall make recommendations to the
61 appropriate standing committees of the Senate and the House of
62 Representatives as to the advisability of considering changes to
63 the delegated legislative authority to adopt rules in specific
64 circumstances. The annual report submitted pursuant to paragraph
65 (2)(f) shall include ~~a schedule for the required systematic~~
66 ~~review of existing statutes, a summary of the status of this~~
67 ~~review, and~~ any recommendations provided to the standing
68 committees during the preceding year.
69 Section 2. Paragraph (d) of subsection (3) of section
70 57.111, Florida Statutes, is amended to read:
71 57.111 Civil actions and administrative proceedings
72 initiated by state agencies; attorneys' fees and costs.--
73 (3) As used in this section:
74 (d) The term "small business party" means:
75 1.a. A sole proprietor of an unincorporated business,
76 including a professional practice, whose principal office is in
77 this state, who is domiciled in this state, and whose business
78 or professional practice has, at the time the action is
79 initiated by a state agency, not more than 25 full-time
80 employees or a net worth of not more than $2 million, including
81 both personal and business investments; ~~or~~
82 b. A partnership or corporation, including a professional
83 practice, which has its principal office in this state and has
84 at the time the action is initiated by a state agency not more

85 than 25 full-time employees or a net worth of not more than $2
86 million; or
87 c. An individual whose net worth did not exceed $2 million
88 at the time the action is initiated by a state agency when the
89 action is brought against that individual's license to engage in
90 the practice or operation of a business, profession, or trade;
91 or
92 2. Any ~~Either~~ small business party as defined in
93 subparagraph 1., without regard to the number of its employees
94 or its net worth, in any action under s. 72.011 or in any
95 administrative proceeding under that section to contest the
96 legality of any assessment of tax imposed for the sale or use of
97 services as provided in chapter 212, or interest thereon, or
98 penalty therefor.
99 Section 3. Paragraphs (d) and (e) of subsection (3) and
100 paragraph (b) of subsection (5) of section 120.54, Florida
101 Statutes, are amended to read:
102 120.54 Rulemaking.--
103 (3) ADOPTION PROCEDURES.--
104 (d) Modification or withdrawal of proposed rules.--
105 1. After the final public hearing on the proposed rule, or
106 after the time for requesting a hearing has expired, if the rule
107 has not been changed from the rule as previously filed with the
108 committee, or contains only technical changes, the adopting
109 agency shall file a notice to that effect with the committee at
110 least 7 days prior to filing the rule for adoption. Any change,
111 other than a technical change that does not affect the substance
112 of the rule, must be supported by the record of public hearings

113 held on the rule, must be in response to written material
114 received on or before the date of the final public hearing, or
115 must be in response to a proposed objection by the committee. In
116 addition, when any change is made in a proposed rule, other than
117 a technical change, the adopting agency shall provide a copy of
118 a notice of change by certified mail or actual delivery to any
119 person who requests it in writing no later than 21 days after
120 the notice required in paragraph (a). The agency shall file the
121 notice of change with the committee, along with the reasons for
122 the ~~such~~ change, and provide the notice of change to persons
123 requesting it, at least 21 days prior to filing the rule for
124 adoption. The notice of change shall be published in the Florida
125 Administrative Weekly at least 21 days prior to filing the rule
126 for adoption. This subparagraph does not apply to emergency
127 rules adopted pursuant to subsection (4).
128 2. After the notice required by paragraph (a) and prior to
129 adoption, the agency may withdraw the rule in whole or in part.
130 3. After adoption and before the effective date, a rule
131 may be modified or withdrawn only in response to an objection by
132 the committee or may be modified to extend the effective date by
133 not more than 60 days when the committee has notified the agency
134 that an objection to the rule is being considered.
135 4. The agency shall give notice of its decision to
136 withdraw or modify a rule in the first available issue of the
137 publication in which the original notice of rulemaking was
138 published, shall notify those persons described in subparagraph
139 (a)3. in accordance with the requirements of that subparagraph,
140 and shall notify the Department of State if the rule is required

141 to be filed with the Department of State.
142 5. After a rule has become effective, it may be repealed
143 or amended only through the rulemaking procedures specified in
144 this chapter.
145 (e) Filing for final adoption; effective date.--
146 1. If the adopting agency is required to publish its rules
147 in the Florida Administrative Code, it shall file with the
148 Department of State three certified copies of the rule it
149 proposes to adopt, a summary of the rule, a summary of any
150 hearings held on the rule, and a detailed written statement of
151 the facts and circumstances justifying the rule. Agencies not
152 required to publish their rules in the Florida Administrative
153 Code shall file one certified copy of the proposed rule, and the
154 other material required by this subparagraph, in the office of
155 the agency head, and such rules shall be open to the public.
156 2. A rule may not be filed for adoption less than 28 days
157 or more than 90 days after the notice required by paragraph (a),
158 until 21 days after the notice of change required by paragraph
159 (d), until 14 days after the final public hearing, until 21 days
160 after preparation of a statement of estimated regulatory costs
161 required under s. 120.541, or until the administrative law judge
162 has rendered a decision under s. 120.56(2), whichever applies.
163 ~~Filings shall be made no less than 28 days nor more than 90 days~~
164 ~~after the notice required by paragraph (a).~~ When a required
165 notice of change is published prior to the expiration of the
166 time to file the rule for adoption, the period during which a
167 rule must be filed for adoption is extended to 45 days after the
168 date of publication. If notice of a public hearing is published

169 prior to the expiration of the time to file the rule for
170 adoption, the period during which a rule must be filed for
171 adoption is extended to 45 days after adjournment of the final
172 hearing on the rule, 21 days after receipt of all material
173 authorized to be submitted at the hearing, or 21 days after
174 receipt of the transcript, if one is made, whichever is latest.
175 The term "public hearing" includes any public meeting held by
176 any agency at which the rule is considered. If a petition for an
177 administrative determination under s. 120.56(2) is filed, the
178 period during which a rule must be filed for adoption is
179 extended to 60 days after the administrative law judge files the
180 final order with the clerk or until 60 days after subsequent
181 judicial review is complete. ~~The filing of a petition for an~~
182 ~~administrative determination under the provisions of s.~~
183 ~~120.56(2) shall toll the 90-day period during which a rule must~~
184 ~~be filed for adoption until the administrative law judge has~~
185 ~~filed the final order with the clerk.~~
186 3. At the time a rule is filed, the agency shall certify
187 that the time limitations prescribed by this paragraph have been
188 complied with, that all statutory rulemaking requirements have
189 been met, and that there is no administrative determination
190 pending on the rule.
191 4. At the time a rule is filed, the committee shall
192 certify whether the agency has responded in writing to all
193 material and timely written comments or written inquiries made
194 on behalf of the committee. The department shall reject any rule
195 not filed within the prescribed time limits; that does not
196 satisfy all statutory rulemaking requirements; upon which an

197 agency has not responded in writing to all material and timely
198 written inquiries or written comments; upon which an
199 administrative determination is pending; or which does not
200 include a statement of estimated regulatory costs, if required.
201 5. If a rule has not been adopted within the time limits
202 imposed by this paragraph or has not been adopted in compliance
203 with all statutory rulemaking requirements, the agency proposing
204 the rule shall withdraw the rule and give notice of its action
205 in the next available issue of the Florida Administrative
206 Weekly.
207 6. The proposed rule shall be adopted on being filed with
208 the Department of State and become effective 20 days after being
209 filed, on a later date specified in the rule, or on a date
210 required by statute. Rules not required to be filed with the
211 Department of State shall become effective when adopted by the
212 agency head or on a later date specified by rule or statute. If
213 the committee notifies an agency that an objection to a rule is
214 being considered, the agency may postpone the adoption of the
215 rule to accommodate review of the rule by the committee. When
216 an agency postpones adoption of a rule to accommodate review by
217 the committee, the 90-day period for filing the rule is tolled
218 until the committee notifies the agency that it has completed
219 its review of the rule.
220
221 <u>For the purposes of this paragraph, the term "administrative</u>
222 <u>determination" does not include subsequent judicial review.</u>
223 (5) UNIFORM RULES.--
224 (b) The uniform rules of procedure adopted by the

225 commission pursuant to this subsection shall include, but are
226 not limited to:
227 1. Uniform rules for the scheduling of public meetings,
228 hearings, and workshops.
229 2. Uniform rules for use by each state agency that provide
230 procedures for conducting public meetings, hearings, and
231 workshops, and for taking evidence, testimony, and argument at
232 such public meetings, hearings, and workshops, in person and by
233 means of communications media technology. The rules shall
234 provide that all evidence, testimony, and argument presented
235 shall be afforded equal consideration, regardless of the method
236 of communication. If a public meeting, hearing, or workshop is
237 to be conducted by means of communications media technology, or
238 if attendance may be provided by such means, the notice shall so
239 state. The notice for public meetings, hearings, and workshops
240 utilizing communications media technology shall state how
241 persons interested in attending may do so and shall name
242 locations, if any, where communications media technology
243 facilities will be available. Nothing in this paragraph shall be
244 construed to diminish the right to inspect public records under
245 chapter 119. Limiting points of access to public meetings,
246 hearings, and workshops subject to the provisions of s. 286.011
247 to places not normally open to the public shall be presumed to
248 violate the right of access of the public, and any official
249 action taken under such circumstances is void and of no effect.
250 Other laws relating to public meetings, hearings, and workshops,
251 including penal and remedial provisions, shall apply to public
252 meetings, hearings, and workshops conducted by means of

253 communications media technology, and shall be liberally
254 construed in their application to such public meetings,
255 hearings, and workshops. As used in this subparagraph,
256 "communications media technology" means the electronic
257 transmission of printed matter, audio, full-motion video,
258 freeze-frame video, compressed video, and digital video by any
259 method available.
260 3. Uniform rules of procedure for the filing of notice of
261 protests and formal written protests. The Administration
262 Commission may prescribe the form and substantive provisions of
263 a required bond.
264 4. Uniform rules of procedure for the filing of petitions
265 for administrative hearings pursuant to s. 120.569 or s. 120.57.
266 Such rules shall require the petition to include:
267 a. The identification of the petitioner.
268 b. A statement of when and how the petitioner received
269 notice of the agency's action or proposed action.
270 c. An explanation of how the petitioner's substantial
271 interests are or will be affected by the action or proposed
272 action.
273 d. A statement of all material facts disputed by the
274 petitioner or a statement that there are no disputed facts.
275 e. A statement of the ultimate facts alleged, including a
276 statement of the specific facts the petitioner contends warrant
277 reversal or modification of the agency's proposed action.
278 f. A statement of the specific rules or statutes that the
279 petitioner contends require reversal or modification of the
280 agency's proposed action, including an explanation of how the

281 alleged facts relate to the specific rules or statutes.
282 g. A statement of the relief sought by the petitioner,
283 stating precisely the action the petitioner wishes the agency to
284 take with respect to the proposed action.
285 5. Uniform rules for the filing of a request for
286 administrative hearing by a respondent in agency enforcement and
287 disciplinary actions. Such rules shall require a request to
288 include:
289 a. The name, address, and telephone number of the party
290 making the request and the name, address, and telephone number
291 of the party's counsel or qualified representative upon whom
292 service of pleadings and other papers shall be made.
293 b. A statement that the respondent is requesting an
294 administrative hearing and disputes the material facts alleged
295 by the petitioner, in which case the respondent shall identify
296 those material facts that are in dispute, or that the respondent
297 is requesting an administrative hearing and does not dispute the
298 material facts alleged by the petitioner.
299 c. A reference by file number to the administrative
300 complaint that the party has received from the agency and the
301 date on which the agency pleading was received.
302
303 The agency may provide an election-of-rights form for the
304 respondent's use in requesting a hearing, so long as any form
305 provided by the agency calls for the information in sub-
306 subparagraphs a.-c. and does not impose any additional
307 requirements on a respondent in order to request a hearing,
308 unless such requirements are specifically authorized by law.

309 6.~~5.~~ Uniform rules of procedure for the filing and prompt
310 disposition of petitions for declaratory statements. The rules
311 shall also describe the contents of the notices that must be
312 published in the Florida Administrative Weekly under s. 120.565,
313 including any applicable time limit for the filing of petitions
314 to intervene or petitions for administrative hearing by persons
315 whose substantial interests may be affected.
316 7.~~6.~~ Provision of a method by which each agency head shall
317 provide a description of the agency's organization and general
318 course of its operations.
319 8.~~7.~~ Uniform rules establishing procedures for granting or
320 denying petitions for variances and waivers pursuant to s.
321 120.542.
322 Section 4. Effective December 31, 2007, section 120.55,
323 Florida Statutes, is amended to read:
324 120.55 Publication.--
325 (1) The Department of State shall:
326 (a)1. Through a continuous revision system, compile and
327 publish the "Florida Administrative Code." The Florida
328 Administrative Code shall contain all rules adopted by each
329 agency, citing the specific rulemaking authority pursuant to
330 which each rule was adopted, all history notes as authorized in
331 s. 120.545(9), and complete indexes to all rules contained in
332 the code. Supplementation shall be made as often as practicable,
333 but at least monthly. The department may contract with a
334 publishing firm for the publication, in a timely and useful
335 form, of the Florida Administrative Code; however, the
336 department shall retain responsibility for the code as provided

337 in this section. This publication shall be the official
338 compilation of the administrative rules of this state. The
339 Department of State shall retain the copyright over the Florida
340 Administrative Code.
341 2. Rules general in form but applicable to only one school
342 district, community college district, or county, or a part
343 thereof, or state university rules relating to internal
344 personnel or business and finance shall not be published in the
345 Florida Administrative Code. Exclusion from publication in the
346 Florida Administrative Code shall not affect the validity or
347 effectiveness of such rules.
348 3. At the beginning of the section of the code dealing
349 with an agency that files copies of its rules with the
350 department, the department shall publish the address and
351 telephone number of the executive offices of each agency, the
352 manner by which the agency indexes its rules, a listing of all
353 rules of that agency excluded from publication in the code, and
354 a statement as to where those rules may be inspected.
355 4. Forms shall not be published in the Florida
356 Administrative Code; but any form which an agency uses in its
357 dealings with the public, along with any accompanying
358 instructions, shall be filed with the committee before it is
359 used. Any form or instruction which meets the definition of
360 "rule" provided in s. 120.52 shall be incorporated by reference
361 into the appropriate rule. The reference shall specifically
362 state that the form is being incorporated by reference and shall
363 include the number, title, and effective date of the form and an
364 explanation of how the form may be obtained. Each form created

365 by an agency which is incorporated by reference in a rule notice
366 of which is given under s. 120.54(3)(a) after December 31, 2007,
367 must clearly display the number, title, and effective date of
368 the form and the number of the rule in which the form is
369 incorporated.
370 (b) Electronically publish on an Internet website managed
371 by the department ~~publish~~ a weekly publication entitled the
372 "Florida Administrative Weekly," which shall serve as the
373 official Internet website for such publication and must contain:
374 1. Notice of adoption of, and an index to, all rules filed
375 during the preceding week.
376 2. All notices required by s. 120.54(3)(a), showing the
377 text of all rules proposed for consideration ~~or a reference to~~
378 ~~the location in the Florida Administrative Weekly where the text~~
379 ~~of the proposed rules is published~~.
380 3. All notices of public meetings, hearings, and workshops
381 conducted in accordance with the provisions of s. 120.525,
382 including a statement of the manner in which a copy of the
383 agenda may be obtained.
384 4. A notice of each request for authorization to amend or
385 repeal an existing uniform rule or for the adoption of new
386 uniform rules.
387 5. Notice of petitions for declaratory statements or
388 administrative determinations.
389 6. A summary of each objection to any rule filed by the
390 Administrative Procedures Committee during the preceding week.
391 7. A cumulative list of all rules that have been proposed
392 but not filed for adoption.

393 8.~~7.~~ Any other material required or authorized by law or
394 deemed useful by the department.
395
396 The department shall publish a printed version of the Florida
397 Administrative Weekly and make copies available on an annual
398 subscription basis. The department may contract with a
399 publishing firm for printed publication of the Florida
400 Administrative Weekly.
401 (c) Review notices for compliance with format and
402 numbering requirements before publishing them on the Florida
403 Administrative Weekly Internet website.
404 (d) ~~(c)~~ Prescribe by rule the style and form required for
405 rules submitted for filing and establish the form for their
406 certification.
407 (e) ~~(d)~~ Correct grammatical, typographical, and like errors
408 not affecting the construction or meaning of the rules, after
409 having obtained the advice and consent of the appropriate
410 agency, and insert history notes.
411 ~~(e) Make copies of the Florida Administrative Weekly~~
412 ~~available on an annual subscription basis computed to cover a~~
413 ~~pro rata share of 50 percent of the costs related to the~~
414 ~~publication of the Florida Administrative Weekly.~~
415 (f) Charge each agency using the Florida Administrative
416 Weekly a space rate ~~computed~~ to cover ~~a pro rata share of 50~~
417 ~~percent of~~ the costs related to the Florida Administrative
418 Weekly and the Florida Administrative Code.
419 (g) Maintain a permanent record of all notices published
420 in the Florida Administrative Weekly.

421 (2) The Florida Administrative Weekly Internet website
422 must allow users to:
423 (a) Search for notices by type, publication date, rule
424 number, word, subject, and agency.
425 (b) Search a database that makes available all notices
426 published on the website for a period of at least 5 years.
427 (c) Subscribe to an automated e-mail notification of
428 selected notices.
429 (d) View agency forms incorporated by reference in
430 proposed rules.
431 (e) Comment on proposed rules.
432 (3) Publication of material required by paragraph (1)(b)
433 on the Florida Administrative Weekly Internet website does not
434 preclude publication of such material on an agency's website or
435 by other means.
436 (4) ~~(2)~~ Each agency shall provide copies of its rules upon
437 request, with citations to the grant of rulemaking authority and
438 the specific law implemented for each rule ~~print or distribute~~
439 ~~copies of its rules, citing the specific rulemaking authority~~
440 ~~pursuant to which each rule was adopted~~.
441 (5) ~~(3)~~ Any publication of a proposed rule promulgated by
442 an agency, whether published in the Florida Administrative Code
443 or elsewhere, shall include, along with the rule, the name of
444 the person or persons originating such rule, the name of the
445 supervisor or person who approved the rule, and the date upon
446 which the rule was approved.
447 (6) Access to the Florida Administrative Weekly Internet
448 website and its contents, including the e-mail notification

449 service, shall be free for the public.
450 (7)(a) ~~(4)(a)~~ Each year the Department of State shall
451 furnish the Florida Administrative Weekly, without charge and
452 upon request, as follows:
453 1. One subscription to each federal and state court having
454 jurisdiction over the residents of the state; the Legislative
455 Library; each state university library; the State Library; each
456 depository library designated pursuant to s. 257.05; and each
457 standing committee of the Senate and House of Representatives
458 and each state legislator.
459 2. Two subscriptions to each state department.
460 3. Three subscriptions to the library of the Supreme Court
461 of Florida, the library of each state district court of appeal,
462 the division, the library of the Attorney General, each law
463 school library in Florida, the Secretary of the Senate, and the
464 Clerk of the House of Representatives.
465 4. Ten subscriptions to the committee.
466 (b) The Department of State shall furnish one copy of the
467 Florida Administrative Weekly, at no cost, to each clerk of the
468 circuit court and each state department, for posting for public
469 inspection.
470 (8)(a) ~~(5)(a)~~ All fees and moneys collected by the
471 Department of State under this chapter shall be deposited in the
472 Records Management Trust Fund for the purpose of paying for ~~the~~
473 ~~publication and distribution of the Florida Administrative Code~~
474 ~~and the Florida Administrative Weekly and for associated~~ costs
475 incurred by the department in carrying out this chapter.
476 (b) The unencumbered balance in the Records Management

477 Trust Fund for fees collected pursuant to this chapter may ~~shall~~
478 not exceed $300,000 at the beginning of each fiscal year, and
479 any excess shall be transferred to the General Revenue Fund.
480 ~~(c) It is the intent of the Legislature that the Florida~~
481 ~~Administrative Weekly be supported entirely from funds collected~~
482 ~~for subscriptions to and advertisements in the Florida~~
483 ~~Administrative Weekly.~~
484 Section 5. Subsection (3) of section 120.551, Florida
485 Statutes, is amended to read:
486 120.551 Internet publication.--
487 (3) This section is repealed effective December 31, 2007
488 ~~July 1, 2006, unless reviewed and reenacted by the Legislature~~
489 ~~before that date~~.
490 Section 6. Paragraph (b) of subsection (2) of section
491 120.56, Florida Statutes, is amended to read:
492 120.56 Challenges to rules.--
493 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.--
494 (b) The administrative law judge may declare the proposed
495 rule wholly or partly invalid. Unless the decision of the
496 administrative law judge is reversed on appeal, the proposed
497 rule or provision of a proposed rule declared invalid shall ~~be~~
498 ~~withdrawn by the adopting agency and shall~~ not be adopted. ~~No~~
499 ~~rule shall be filed for adoption until 28 days after the notice~~
500 ~~required by s. 120.54(3)(a), until 21 days after the notice~~
501 ~~required by s. 120.54(3)(d), until 14 days after the public~~
502 ~~hearing, until 21 days after preparation of a statement of~~
503 ~~estimated regulatory costs required pursuant to s. 120.541, or~~
504 ~~until the administrative law judge has rendered a decision,~~

505 ~~whichever applies.~~ However, the agency may proceed with all
506 other steps in the rulemaking process, including the holding of
507 a factfinding hearing. In the event part of a proposed rule is
508 declared invalid, the adopting agency may, in its sole
509 discretion, withdraw the proposed rule in its entirety. The
510 agency whose proposed rule has been declared invalid in whole or
511 part shall give notice of the decision in the first available
512 issue of the Florida Administrative Weekly.
513 Section 7. Paragraph (c) of subsection (2) of section
514 120.569, Florida Statutes, is amended to read:
515 120.569 Decisions which affect substantial interests.--
516 (2)
517 (c) Unless otherwise provided by law, a petition or
518 request for hearing shall include those items required by the
519 uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the
520 receipt of a petition or request for hearing, the agency shall
521 carefully review the petition to determine if it contains all of
522 the required information. A petition shall be dismissed if it
523 is not in substantial compliance with these requirements or it
524 has been untimely filed. Dismissal of a petition shall, at
525 least once, be without prejudice to petitioner's filing a timely
526 amended petition curing the defect, unless it conclusively
527 appears from the face of the petition that the defect cannot be
528 cured. The agency shall promptly give written notice to all
529 parties of the action taken on the petition, shall state with
530 particularity its reasons if the petition is not granted, and
531 shall state the deadline for filing an amended petition if
532 applicable. <u>The time for filing a petition shall be extended for</u>

533 an appropriate time if the petitioner demonstrates that the
534 petitioner has been misled or guided into inaction by the agency
535 or has in some extraordinary way been prevented from asserting
536 his or her rights by the agency.
537 Section 8. Paragraphs (k) and (m) of subsection (1) and
538 paragraph (a) of subsection (3) of section 120.57, Florida
539 Statutes, are amended to read:
540 120.57 Additional procedures for particular cases.--
541 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING
542 DISPUTED ISSUES OF MATERIAL FACT.--
543 (k) The presiding officer shall complete and submit to the
544 agency and all parties a recommended order consisting of
545 findings of fact, conclusions of law, and recommended
546 disposition or penalty, if applicable, and any other information
547 required by law to be contained in the final order. All
548 proceedings conducted under ~~pursuant to~~ this subsection shall be
549 de novo. The agency shall allow each party 15 days in which to
550 submit written exceptions to the recommended order. The final
551 order shall include an explicit ruling on each exception, but an
552 agency need not rule on an exception that does not clearly
553 identify the disputed portion of the recommended order by page
554 number or paragraph, that does not identify the legal basis for
555 the exception, or that does not include appropriate and specific
556 citations to the record.
557 (m) If a recommended order is submitted to an agency, the
558 agency shall provide a copy of its final order and any
559 exceptions to the division within 15 days after the order is
560 filed with the agency clerk.

561 (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO
562 CONTRACT SOLICITATION OR AWARD.--Agencies subject to this
563 chapter shall use the uniform rules of procedure, which provide
564 procedures for the resolution of protests arising from the
565 contract solicitation or award process. Such rules shall at
566 least provide that:
567 (a) The agency shall provide notice of a decision or
568 intended decision concerning a solicitation, contract award, or
569 exceptional purchase by electronic posting. This notice shall
570 contain the following statement: "Failure to file a protest
571 within the time prescribed in section 120.57(3), Florida
572 Statutes, <u>or failure to post the bond or other security required</u>
573 <u>by law within the time allowed for filing a bond</u> shall
574 constitute a waiver of proceedings under chapter 120, Florida
575 Statutes."
576 Section 9. Paragraphs (c) and (d) are added to subsection
577 (10) of section 120.65, Florida Statutes, to read:
578 120.65 Administrative law judges.--
579 (10) Not later than February 1 of each year, the division
580 shall issue a written report to the Administrative Procedures
581 Committee and the Administration Commission, including at least
582 the following information:
583 <u>(c) Recommendations as to those types of cases or disputes</u>
584 <u>which should be conducted under the summary hearing process</u>
585 <u>described in s. 120.574.</u>
586 <u>(d) A report regarding each agency's compliance with the</u>
587 <u>filing requirement in s. 120.57(1)(m).</u>
588 Section 10. Subsection (2) of section 120.74, Florida

589 Statutes, is amended to read:
590 120.74 Agency review, revision, and report.--
591 (2) Beginning October 1, 1997, and by October 1 of every
592 other year thereafter, the head of each agency shall file a
593 report with the President of the Senate, ~~and~~ the Speaker of the
594 House of Representatives, and the committee, with a copy to each
595 appropriate standing committee of the Legislature, which
596 certifies that the agency has complied with the requirements of
597 this subsection. The report must specify any changes made to its
598 rules as a result of the review and, when appropriate, recommend
599 statutory changes that will promote efficiency, reduce
600 paperwork, or decrease costs to government and the private
601 sector. The report must identify the types of cases or disputes
602 in which the agency is involved which should be conducted under
603 the summary hearing process described in s. 120.574.
604 Section 11. The Department of State shall, before December
605 31, 2007, make available, to all agencies required on the
606 effective date of this act to publish materials in the Florida
607 Administrative Weekly, training courses for the purpose of
608 assisting the agencies with their transition to publishing on
609 the Florida Administrative Weekly Internet website. The training
610 courses may be provided in the form of workshops or software
611 packages that allow self-training by agency personnel.
612 Section 12. Except as otherwise expressly provided in this
613 act, this act shall take effect July 1, 2006.

HB 7233 CS

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7233 CS PCB GO 06-07 OGSR Communications Services Tax Simplification Law
**SPONSOR(S):** Governmental Operations Committee and Rivera
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 792

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Governmental Operations Committee | 4 Y, 0 N | Williamson | Williamson |
| 1) Finance & Tax Committee | 5 Y, 0 N, w/CS | Levin | Diez-Arguelles |
| 2) State Administration Council | | Williamson | Bussey |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for information received by The Department of Revenue pursuant to the Communications Services Tax Simplification Law. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill will not have a significant fiscal impact on state or local government.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

In 2000, the Legislature enacted the "Communications Services Tax Simplification Law."[1] The act combined seven different state and local taxes and fees and replaced those revenues with a two-tiered tax composed of a state tax and a local option tax on communications services. The new tax structure took effect October 1, 2001.

In 2001, the Legislature created a public records exemption for information received by the Department of Revenue pursuant to the Communications Services Tax Simplification Law. All information contained in returns, reports, accounts, and declarations received by the department, in addition to investigative reports and information and letters of technical advice, are exempt from public records requirements. The exemption authorizes release of the information for limited purposes. Any person who willfully and knowingly releases the exempt information for purposes not authorized by law commits a misdemeanor of the first degree.[2] Pursuant to the Open Government Sunset Review Act,[3] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes grammatical changes and removes superfluous language.

C. SECTION DIRECTORY:

Section 1 amends s. 213.053, F.S., to remove the repeal date.

Section 2 amends s. 202.37, F.S., to make a cross-reference change.

Section 3 amends s. 206.27, F.S., to make a cross-reference change.

Section 4 amends s. 409.2577, F.S., to make a cross-reference change.

Section 5 amends s. 607.0130, F.S., to make a cross-reference change.

Section 6 amends s. 608.703, F.S., to make a cross-reference change.

Section 7 amends s. 617.01301, F.S., to make a cross-reference change.

Section 8 amends s. 896.102, F.S., to make a cross-reference change.

Section 9 provides an effective date of October 1, 2006.

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[1] Chapter 2000-260, Laws of Florida, codified in chapter 202, F.S.

[2] A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year (s. 775.082(4)(a), F.S.) and a fine not to exceed $1,000 (s. 775.083(1)(d), F.S.).

[3] Section 119.15, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate state governmental expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Open Government Sunset Review Act
The Open Government Sunset Review Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

The Act also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Finance and Tax Committee adopted one amendment which changed the effective date of the bill from October 3, 2006 to October 1, 2006, as suggested by the Governmental Operations Committee. The change has been incorporated into the bill analysis.

CHAMBER ACTION

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1 The Finance & Tax Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5
6 A bill to be entitled
7 An act relating to a review under the Open Government
8 Sunset Review Act regarding the Communications Services
9 Tax Simplification Law; amending s. 213.053, F.S., which
10 provides an exemption from public records requirements for
11 all information contained in returns, reports, accounts,
12 or declarations received by the Department of Revenue,
13 including investigative reports and information and
14 letters of technical advice, under enumerated sections and
15 chapters of the Florida Statutes; removing the scheduled
16 repeal of the exemption from public records requirements
17 for such information received by the department under the
18 Communications Services Tax Simplification Law;
19 reorganizing the section; making editorial changes;
20 amending ss. 202.37, 206.27, 409.2577, 607.0130, 608.703,
21 617.01301, and 896.102, F.S.; correcting cross-references;
22 providing an effective date.
23

24 Be It Enacted by the Legislature of the State of Florida:
25
26 Section 1. Section 213.053, Florida Statutes, is amended
27 to read:
28 213.053 Confidentiality and information sharing.--
29 (1)~~(a)~~ ~~The provisions of~~ This section applies ~~apply~~ to:
30 (a) Section ~~s.~~ 125.0104, county government.~~;~~
31 (b) Section ~~s.~~ 125.0108, tourist impact tax.~~;~~
32 (c) Chapter 175, municipal firefighters' pension trust
33 funds.~~;~~
34 (d) Chapter 185, municipal police officers' retirement
35 trust funds.~~;~~
36 (e) Chapter 198, estate taxes.~~;~~
37 (f) Chapter 199, intangible personal property taxes.~~;~~
38 (g) Chapter 201, excise tax on documents.~~;~~
39 (h) Chapter 202, the Communications Services Tax
40 Simplification Law.
41 (i) Chapter 203, gross receipts taxes.~~;~~
42 (j) Chapter 211, tax on severance and production of
43 minerals.~~;~~
44 (k) Chapter 212, tax on sales, use, and other
45 transactions.~~;~~
46 (l) Chapter 220, income tax code.;
47 (m) Chapter 221, emergency excise tax.~~;~~
48 (n) Section ~~s.~~ 252.372, emergency management,
49 preparedness, and assistance surcharge.~~;~~
50 (o) Section ~~s.~~ 370.07(3), Apalachicola Bay oyster
51 surcharge.~~;~~

52 (p) Chapter 376, pollutant spill prevention and control.~~;~~
53 (q) Section ~~s.~~ 403.718, waste tire fees.~~;~~
54 (r) Section ~~s.~~ 403.7185, lead-acid battery fees.~~;~~
55 (s) Section ~~s.~~ 538.09, registration of secondhand
56 dealers.~~;~~
57 (t) Section ~~s.~~ 538.25, registration of secondary metals
58 recyclers.~~;~~
59 (u) Sections ~~ss.~~ 624.501 and 624.509-624.515, insurance
60 code.~~;~~
61 (v) Section ~~s.~~ 681.117, motor vehicle warranty
62 enforcement.~~; and~~
63 (w) Section ~~s.~~ 896.102, reports of financial transactions
64 in trade or business.
65 ~~(b) The provisions of this section also apply to chapter~~
66 ~~202, the Communications Services Tax Simplification Law. This~~
67 ~~paragraph is subject to the Open Government Sunset Review Act of~~
68 ~~1995 in accordance with s. 119.15, and shall stand repealed on~~
69 ~~October 2, 2006, unless reviewed and saved from repeal through~~
70 ~~reenactment by the Legislature.~~
71 (2)(a) ~~Except as provided in subsections (3), (4), (5),~~
72 ~~(6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16),~~
73 ~~and (17),~~ All information contained in returns, reports,
74 accounts, or declarations received by the department, including
75 investigative reports and information and including letters of
76 technical advice, is confidential except for official purposes
77 and is exempt from ~~the provisions of~~ s. 119.07(1).
78 (b) Any officer or employee, or former officer or
79 employee, of the department who divulges any such information in

80 any manner, except for such official purposes, commits a
81 misdemeanor of the first degree, punishable as provided in s.
82 775.082 or s. 775.083.
83 (3) The department shall permit a taxpayer, his or her
84 authorized representative, or the personal representative of an
85 estate to inspect the taxpayer's return and may furnish him or
86 her an abstract of such return. A taxpayer may authorize the
87 department in writing to divulge specific information concerning
88 the taxpayer's account.
89 (4) The department, while providing unemployment tax
90 collection services under contract with the Agency for Workforce
91 Innovation through an interagency agreement pursuant to s.
92 443.1316, may release unemployment tax rate information to the
93 agent of an employer, which agent provides payroll services for
94 more than 500 employers, pursuant to the terms of a memorandum
95 of understanding. The memorandum of understanding must state
96 that the agent affirms, subject to the criminal penalties
97 contained in ss. 443.171 and 443.1715, that the agent will
98 retain the confidentiality of the information, that the agent
99 has in effect a power of attorney from the employer which
100 permits the agent to obtain unemployment tax rate information,
101 and that the agent shall provide the department with a copy of
102 the employer's power of attorney upon request.
103 (5) ~~(4)~~ Nothing contained in this section shall prevent the
104 department from:
105 (a) Publishing statistics so classified as to prevent the
106 identification of particular accounts, reports, declarations, or
107 returns; or ~~prevent the department from~~

108 (b) Disclosing to the Chief Financial Officer the names
109 and addresses of those taxpayers who have claimed an exemption
110 pursuant to s. 199.185(1)(i) or a deduction pursuant to s.
111 220.63(5).
112 (6) ~~(5)~~ The department may make available to the Secretary
113 of the Treasury of the United States or his or her delegate, the
114 Commissioner of Internal Revenue of the United States or his or
115 her delegate, the Secretary of the Department of the Interior of
116 the United States or his or her delegate, or the proper officer
117 of any state or his or her delegate, exclusively for official
118 purposes, information to comply with any formal agreement for
119 the mutual exchange of state information with the Internal
120 Revenue Service of the United States, the Department of the
121 Interior of the United States, or any state.
122 (7)(a) ~~(6)~~ Any information received by the Department of
123 Revenue in connection with the administration of taxes,
124 including, but not limited to, information contained in returns,
125 reports, accounts, or declarations filed by persons subject to
126 tax, shall be made available ~~by the department~~ to the following
127 in the performance of their official duties:
128 1. The Auditor General or his or her authorized agent; ~~,~~
129 2. The director of the Office of Program Policy Analysis
130 and Government Accountability or his or her authorized agent; ~~,~~
131 3. The Chief Financial Officer or his or her authorized
132 agent; ~~,~~
133 4. The Director of the Office of Insurance Regulation of
134 the Financial Services Commission or his or her authorized
135 agent; ~~, or~~

136 5. A property appraiser or tax collector or their
137 authorized agents pursuant to s. 195.084(1);~~, in the performance~~
138 ~~of their official duties,~~ or ~~to~~
139 6. Designated employees of the Department of Education
140 solely for determination of each school district's price level
141 index pursuant to s. 1011.62(2).~~;~~
142 (b) ~~However,~~ No information shall be disclosed as provided
143 in paragraph (a) ~~to the Auditor General or his or her authorized~~
144 ~~agent, the director of the Office of Program Policy Analysis and~~
145 ~~Government Accountability or his or her authorized agent, the~~
146 ~~Chief Financial Officer or his or her authorized agent, the~~
147 ~~Director of the Office of Insurance Regulation or his or her~~
148 ~~authorized agent, or to a property appraiser or tax collector or~~
149 ~~their authorized agents, or to designated employees of the~~
150 ~~Department of Education~~ if such disclosure is prohibited by
151 federal law.
152 (c) Any person designated in paragraph (a) ~~The Auditor~~
153 ~~General or his or her authorized agent, the director of the~~
154 ~~Office of Program Policy Analysis and Government Accountability~~
155 ~~or his or her authorized agent, the Chief Financial Officer or~~
156 ~~his or her authorized agent, the Director of the Office of~~
157 ~~Insurance Regulation or his or her authorized agent, and the~~
158 ~~property appraiser or tax collector and their authorized agents,~~
159 ~~or designated employees of the Department of Education~~ shall be
160 subject to the same requirements of confidentiality and the same
161 penalties for violation of the requirements as the department.
162 (d) For the purpose of this subsection, "designated
163 employees of the Department of Education" means only those

164 employees directly responsible for calculation of price level
165 indices pursuant to s. 1011.62(2). It does not include the
166 supervisors of such employees or any other employees or elected
167 officials within the Department of Education.
168 (8) ~~(7)~~ Notwithstanding any other provision of this
169 section, the department may provide:
170 (a) Information relative to chapter 211, chapter 376, or
171 chapter 377 to the proper state agency in the conduct of its
172 official duties.
173 (b) Names, addresses, and dates of commencement of
174 business activities of corporations to the Division of
175 Corporations of the Department of State in the conduct of its
176 official duties.
177 (c) Information relative to chapter 212 and chapters 561
178 through 568 to the Division of Alcoholic Beverages and Tobacco
179 of the Department of Business and Professional Regulation in the
180 conduct of its official duties.
181 (d) Names, addresses, and sales tax registration
182 information to the Division of Hotels and Restaurants of the
183 Department of Business and Professional Regulation in the
184 conduct of its official duties.
185 (e) Names, addresses, taxpayer identification numbers, and
186 outstanding tax liabilities to the Department of the Lottery and
187 the Office of Financial Regulation of the Financial Services
188 Commission in the conduct of their official duties.
189 (f) State tax information to the Nexus Program of the
190 Multistate Tax Commission pursuant to any formal agreement for

191 the exchange of mutual information between the department and
192 the commission.
193 (g) Tax information to principals, and their designees, of
194 the Revenue Estimating Conference for the purpose of developing
195 official revenue estimates.
196 (h) Names and addresses of persons paying taxes pursuant
197 to part IV of chapter 206 to the Department of Environmental
198 Protection in the conduct of its official duties.
199 (i) Information relative to chapters 212 and 326 to the
200 Division of Florida Land Sales, Condominiums, and Mobile Homes
201 of the Department of Business and Professional Regulation in the
202 conduct of its official duties.
203 (j) Information authorized pursuant to s. 213.0535 to
204 eligible participants and certified public accountants for such
205 participants in the Registration Information Sharing and
206 Exchange Program.
207 (k)1. Payment information relative to chapters 199, 201,
208 212, 220, 221, and 624 to the Office of Tourism, Trade, and
209 Economic Development, or its employees or agents that are
210 identified in writing by the office to the department, in the
211 administration of the tax refund program for qualified defense
212 contractors authorized by s. 288.1045 and the tax refund program
213 for qualified target industry businesses authorized by s.
214 288.106.
215 2. Information relative to tax credits taken by a business
216 under s. 220.191 and exemptions or tax refunds received by a
217 business under s. 212.08(5)(j) to the Office of Tourism, Trade,
218 and Economic Development, or its employees or agents that are

219 identified in writing by the office to the department, in the
220 administration and evaluation of the capital investment tax
221 credit program authorized in s. 220.191 and the semiconductor,
222 defense, and space tax exemption program authorized in s.
223 212.08(5)(j).
224 (l) Information relative to chapter 212 and the Bill of
225 Lading Program to the Office of Agriculture Law Enforcement of
226 the Department of Agriculture and Consumer Services in the
227 conduct of its official duties.
228 (m) Information relative to chapter 198 to the Agency for
229 Health Care Administration in the conduct of its official
230 business relating to ss. 409.901-409.9101.
231 (n) Information contained in returns, reports, accounts,
232 or declarations to the Board of Accountancy in connection with a
233 disciplinary proceeding conducted pursuant to chapter 473 when
234 related to a certified public accountant participating in the
235 certified audits project, or to the court in connection with a
236 civil proceeding brought by the department relating to a claim
237 for recovery of taxes due to negligence on the part of a
238 certified public accountant participating in the certified
239 audits project. In any judicial proceeding brought by the
240 department, upon motion for protective order, the court shall
241 limit disclosure of tax information when necessary to effectuate
242 the purposes of this section.
243 (o) Information relative to ss. 376.70 and 376.75 to the
244 Department of Environmental Protection in the conduct of its
245 official business and to the facility owner, facility operator,
246 and real property owners as defined in s. 376.301.

247 (p) Information relative to ss. 199.1055, 220.1845, and
248 376.30781 to the Department of Environmental Protection in the
249 conduct of its official business.
250 (q) Names, addresses, and sales tax registration
251 information to the Division of Consumer Services of the
252 Department of Agriculture and Consumer Services in the conduct
253 of its official duties.
254 (r) Information relative to the returns required by ss.
255 175.111 and 185.09 to the Department of Management Services in
256 the conduct of its official duties. The Department of Management
257 Services is, in turn, authorized to disclose payment information
258 to a governmental agency or the agency's agent for purposes
259 related to budget preparation, auditing, revenue or financial
260 administration, or administration of chapters 175 and 185.
261 (s) Names, addresses, and federal employer identification
262 numbers, or similar identifiers, to the Department of Highway
263 Safety and Motor Vehicles for use in the conduct of its official
264 duties.
265 (t) Information relative to the tax exemptions under ss.
266 212.031, 212.06, and 212.08 for those persons qualified under s.
267 288.1258 to the Office of Film and Entertainment. The Department
268 of Revenue shall provide the Office of Film and Entertainment
269 with information in the aggregate.
270 (u) Information relative to s. 220.187 to the Department
271 of Education in the conduct of its official business.
272 (v) Information relative to chapter 202 to each local
273 government that imposes a tax pursuant to s. 202.19 in the
274 conduct of its official duties as specified in chapter 202.

275 Information provided under this paragraph may include, but is
276 not limited to, any reports required pursuant to s. 202.231,
277 audit files, notices of intent to audit, tax returns, and other
278 confidential tax information in the department's possession
279 relating to chapter 202. A person or an entity designated by the
280 local government in writing to the department as requiring
281 access to confidential taxpayer information shall have
282 reasonable access to information provided pursuant to this
283 paragraph. Such person or entity may disclose such information
284 to other persons or entities with direct responsibility for
285 budget preparation, auditing, revenue or financial
286 administration, or legal counsel. Such information shall only be
287 used for purposes related to budget preparation, auditing, and
288 revenue and financial administration. Any confidential and
289 exempt information furnished to a local government, or to any
290 person or entity designated by the local government as
291 authorized by this paragraph~~, that is exempt from the provisions~~
292 ~~of s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~
293 ~~pursuant to this section shall continue to be exempt when so~~
294 ~~provided, and~~ may not be further disclosed by the recipient
295 except as provided by this paragraph.
296 (w) Tax registration information to the Agency for
297 Workforce Innovation for use in the conduct of its official
298 duties, which information may not be redisclosed by the Agency
299 for Workforce Innovation.
300 (x) Rental car surcharge revenues authorized by s.
301 212.0606, reported according to the county to which the
302 surcharge was attributed to the Department of Transportation.

303
304 Disclosure of information under this subsection shall be
305 pursuant to a written agreement between the executive director
306 and the agency. Such agencies, governmental or nongovernmental,
307 shall be bound by the same requirements of confidentiality as
308 the Department of Revenue. Breach of confidentiality is a
309 misdemeanor of the first degree, punishable as provided by s.
310 775.082 or s. 775.083.
311 (9) ~~(8)~~ The Department of Revenue shall provide returns,
312 reports, accounts, or declarations received by the department,
313 including investigative reports and information, or information
314 contained in such documents, pursuant to an order of a judge of
315 a court of competent jurisdiction or pursuant to a subpoena
316 duces tecum only when the subpoena is:
317 (a) Issued by a state attorney, a United States attorney,
318 or a court in a criminal investigation or a criminal judicial
319 proceeding;
320 (b) Issued by a state or federal grand jury; or
321 (c) Issued by a state attorney, the Department of Legal
322 Affairs, the State Fire Marshal, a United States attorney, or a
323 court in the course of a civil investigation or a civil judicial
324 proceeding under the state or federal racketeer influenced and
325 corrupt organization act or under chapter 896.
326 (10) ~~(9)~~ (a) Notwithstanding other provisions of this
327 section, the department shall, subject to paragraph (c) and to
328 the safeguards and limitations of paragraphs (b) and (d),
329 disclose to the governing body of a municipality, a county, or a
330 subcounty district levying a local option tax, or any state tax

331 that ~~which~~ is distributed to units of local government based
332 upon place of collection, which the department is responsible
333 for administering, names and addresses only of the taxpayers
334 granted a certificate of registration pursuant to s. 212.18(3)
335 who reside within or adjacent to the taxing boundaries of such
336 municipality, county, or subcounty district when sufficient
337 information is supplied by the municipality, the county, or
338 subcounty district as the department by rule may prescribe,
339 provided such governing bodies are following s. 212.18(3)
340 relative to the denial of an occupational license after the
341 department cancels a dealer's sales tax certificate of
342 registration.
343 (b) Such information shall be disclosed only if the
344 department receives an authenticated copy of a resolution
345 adopted by the governing body requesting it.
346 (c) After receipt of such information, the governing body
347 and its officers and employees are subject to the same
348 requirements of confidentiality and the same penalties for
349 violating confidentiality as the department and its employees.
350 (d) The resolution requesting such information shall
351 provide assurance that the governing body and its officers and
352 employees are aware of the confidentiality ~~those~~ requirements
353 and of the penalties for their violation of such requirements.~~,~~
354 ~~and~~ The resolution shall describe the measures that will be put
355 into effect to ensure such confidentiality. The officer of the
356 department who is authorized to receive, consider, and act upon
357 such requests shall, if satisfied that the assurances in the

358 resolution are adequate to assure confidentiality, grant the
359 request.
360 (e) ~~(d)~~ Nothing in this subsection authorizes disclosure of
361 any information prohibited by federal law from being disclosed.
362 (11) ~~(10)~~ Notwithstanding any other provision of this
363 section, with respect to a request for verification of a
364 certificate of registration issued pursuant to s. 212.18 to a
365 specified dealer or taxpayer or with respect to a request by a
366 law enforcement officer for verification of a certificate of
367 registration issued pursuant to s. 538.09 to a specified
368 secondhand dealer or pursuant to s. 538.25 to a specified
369 secondary metals recycler, the department may disclose whether
370 the specified person holds a valid certificate or whether a
371 specified certificate number is valid or whether a specified
372 certificate number has been canceled or is inactive or invalid
373 and the name of the holder of the certificate. This subsection
374 shall not be construed to create a duty to request verification
375 of any certificate of registration.
376 (12) ~~(11)~~ The department may provide to a United States
377 Trustee, or his or her designee, for any United States
378 Bankruptcy Court, exclusively for official purposes in
379 connection with administering a bankruptcy estate, information
380 relating to payment or nonpayment of taxes imposed by any
381 revenue law of this state by a trustee, debtor, or debtor in
382 possession, including any amount paid or due.
383 (13) ~~(12)~~ The department may disclose certain state sales
384 tax information relating to the cancellation or revocation of
385 sales and use tax certificates of registration for the failure

386 to collect and remit sales tax. This information is limited to
387 the sales tax certificate number, trade name, owner's name,
388 business location address, and the reason for the cancellation
389 or revocation.
390 (14) ~~(13)~~ Notwithstanding the provisions of s. 896.102(2),
391 the department may allow full access to the information and
392 documents required to be filed with it under s. 896.102(1) to
393 federal, state, and local law enforcement and prosecutorial
394 agencies, and to the Office of Financial Regulation of the
395 Financial Services Commission, and any of those agencies may use
396 the information and documents in any civil or criminal
397 investigation and in any court proceedings.
398 (15) ~~(14)~~ (a) Notwithstanding any other provision of this
399 section, the department shall, subject to the safeguards
400 specified in paragraph (c), disclose to the Division of
401 Corporations of the Department of State the name, address,
402 federal employer identification number, and duration of tax
403 filings with this state of all corporate or partnership entities
404 which are not on file or have a dissolved status with the
405 Division of Corporations and which have filed tax returns
406 pursuant to either chapter 199 or chapter 220.
407 (b) The Division of Corporations shall use such
408 information only in the pursuit of its official duties relative
409 to nonqualified foreign or dissolved corporations in the
410 recovery of fees and penalties due and owing the state.
411 (c) All information exchanged between the Division of
412 Corporations and the department shall be subject to the same
413 requirements of confidentiality as the Department of Revenue.

414 (16)(a) ~~(15)~~ The department may disclose confidential
415 taxpayer information contained in returns, reports, accounts, or
416 declarations filed with the department by persons subject to any
417 state or local tax to the child support enforcement program, to
418 assist in the location of parents who owe or potentially owe a
419 duty of support, as defined in s. 409.2554, pursuant to Title
420 IV-D of the Social Security Act, their assets, their income, and
421 their employer, and to the Department of Children and Family
422 Services for the purpose of diligent search activities pursuant
423 to chapter 39.
424 (b) Nothing in this subsection authorizes the disclosure
425 of information if such disclosure is prohibited by federal law.
426 Employees of the child support enforcement program and of the
427 Department of Children and Family Services are bound by the same
428 requirements of confidentiality and the same penalties for
429 violation of the requirements as the department.
430 (17) ~~(16)~~ The department may provide to the person against
431 whom transferee liability is being asserted pursuant to s.
432 212.10(1) information relating to the basis of the claim.
433 (18) ~~(17)~~ The department may disclose to a person entitled
434 to compensation pursuant to s. 213.30 the amount of any tax,
435 penalty, or interest collected as a result of information
436 furnished by such person.
437 Section 2. Paragraph (a) of subsection (1) of section
438 202.37, Florida Statutes, is amended to read:
439 202.37 Special rules for administration of local
440 communications services tax.--

441 (1)(a) Except as otherwise provided in this section, all
442 statutory provisions and administrative rules applicable to the
443 communications services tax imposed by s. 202.12 apply to any
444 local communications services tax imposed under s. 202.19, and
445 the department shall administer, collect, and enforce all taxes
446 imposed under s. 202.19, including interest and penalties
447 attributable thereto, in accordance with the same procedures
448 used in the administration, collection, and enforcement of the
449 communications services tax imposed by s. 202.12. Audits
450 performed by the department shall include a determination of the
451 dealer's compliance with the jurisdictional situsing of its
452 customers' service addresses and a determination of whether the
453 rate collected for the local tax pursuant to ss. 202.19 and
454 202.20 is correct. The person or entity designated by a local
455 government pursuant to s. 213.053(8) ~~(7)~~(v) may provide evidence
456 to the department demonstrating a specific person's failure to
457 fully or correctly report taxable communications services sales
458 within the jurisdiction. The department may request additional
459 information from the designee to assist in any review. The
460 department shall inform the designee of what action, if any, the
461 department intends to take regarding the person.
462 Section 3. Subsection (2) of section 206.27, Florida
463 Statutes, is amended to read:
464 206.27 Records and files as public records.--
465 (2) Nothing herein shall be construed as requiring the
466 department to provide as a public record any information
467 concerning audits in progress or those records and files of the
468 department described in this section which are currently the

469 subject of pending investigation by the Department of Revenue or
470 the Florida Department of Law Enforcement. It is specifically
471 provided that the foregoing information shall be exempt from the
472 provisions of s. 119.07(1) and shall be considered confidential
473 pursuant to s. 213.053; however, the department may make
474 available to the executive director of the Department of Highway
475 Safety and Motor Vehicles or his or her designee, exclusively
476 for official purposes in administering chapter 207, any
477 information concerning any audit in progress, and the provisions
478 of s. 213.053(8) ~~(7)~~ requiring a written agreement and
479 maintenance of confidentiality by the recipient, and the penalty
480 for breach of confidentiality, shall apply if the department
481 makes such information available. Any officer, employee, or
482 former officer or employee of the department who divulges any
483 such information in any manner except for such official purposes
484 or under s. 213.053 is guilty of a misdemeanor of the first
485 degree, punishable as provided in s. 775.082 or s. 775.083.
486 Section 4. Section 409.2577, Florida Statutes, is amended
487 to read:
488 409.2577 Parent locator service.--The department shall
489 establish a parent locator service to assist in locating parents
490 who have deserted their children and other persons liable for
491 support of dependent children. The department shall use all
492 sources of information available, including the Federal Parent
493 Locator Service, and may request and shall receive information
494 from the records of any person or the state or any of its
495 political subdivisions or any officer thereof. Any agency as
496 defined in s. 120.52, any political subdivision, and any other

497 person shall, upon request, provide the department any
498 information relating to location, salary, insurance, social
499 security, income tax, and employment history necessary to locate
500 parents who owe or potentially owe a duty of support pursuant to
501 Title IV-D of the Social Security Act. This provision shall
502 expressly take precedence over any other statutory nondisclosure
503 provision which limits the ability of an agency to disclose such
504 information, except that law enforcement information as provided
505 in s. 119.071(4)(d) is not required to be disclosed, and except
506 that confidential taxpayer information possessed by the
507 Department of Revenue shall be disclosed only to the extent
508 authorized in s. 213.053(16) ~~(15)~~. Nothing in this section
509 requires the disclosure of information if such disclosure is
510 prohibited by federal law. Information gathered or used by the
511 parent locator service is confidential and exempt from the
512 provisions of s. 119.07(1). Additionally, the department is
513 authorized to collect any additional information directly
514 bearing on the identity and whereabouts of a person owing or
515 asserted to be owing an obligation of support for a dependent
516 child. The department shall, upon request, make information
517 available only to public officials and agencies of this state;
518 political subdivisions of this state, including any agency
519 thereof providing child support enforcement services to non-
520 Title IV-D clients; the custodial parent, legal guardian,
521 attorney, or agent of the child; and other states seeking to
522 locate parents who have deserted their children and other
523 persons liable for support of dependents, for the sole purpose
524 of establishing, modifying, or enforcing their liability for

525 support, and shall make such information available to the
526 Department of Children and Family Services for the purpose of
527 diligent search activities pursuant to chapter 39. If the
528 department has reasonable evidence of domestic violence or child
529 abuse and the disclosure of information could be harmful to the
530 custodial parent or the child of such parent, the child support
531 program director or designee shall notify the Department of
532 Children and Family Services and the Secretary of the United
533 States Department of Health and Human Services of this evidence.
534 Such evidence is sufficient grounds for the department to
535 disapprove an application for location services.
536 Section 5. Subsection (3) of section 607.0130, Florida
537 Statutes, is amended to read:
538 607.0130 Powers of Department of State.--
539 (3) The Department of State may, based upon its findings
540 hereunder or as provided in s. 213.053(15) ~~(14)~~, bring an action
541 in circuit court to collect any penalties, fees, or taxes
542 determined to be due and owing the state and to compel any
543 filing, qualification, or registration required by law. In
544 connection with such proceeding the department may, without
545 prior approval by the court, file a lis pendens against any
546 property owned by the corporation and may further certify any
547 findings to the Department of Legal Affairs for the initiation
548 of any action permitted pursuant to s. 607.0505 which the
549 Department of Legal Affairs may deem appropriate.
550 Section 6. Subsection (3) of section 608.703, Florida
551 Statutes, is amended to read:
552 608.703 Interrogatories by Department of State.--

553 (3) The Department of State may, based upon its findings
554 hereunder or as provided in s. 213.053(15) ~~(14)~~, bring an action
555 in circuit court to collect any penalties, fees, or taxes
556 determined to be due and owing the state and to compel any
557 filing, qualification, or registration required by law. In
558 connection with such proceeding, the department may, without
559 prior approval by the court, file a lis pendens against any
560 property owned by the corporation and may further certify any
561 findings to the Department of Legal Affairs for the initiation
562 of any action permitted pursuant to this chapter which the
563 Department of Legal Affairs may deem appropriate.
564 Section 7. Subsection (3) of section 617.01301, Florida
565 Statutes, is amended to read:
566 617.01301 Powers of Department of State.--
567 (3) The Department of State may, based upon its findings
568 hereunder or as provided in s. 213.053(13) ~~(12)~~, bring an action
569 in circuit court to collect any penalties, fees, or taxes
570 determined to be due and owing the state and to compel any
571 filing, qualification, or registration required by law. In
572 connection with such proceeding the department may, without
573 prior approval by the court, file a lis pendens against any
574 property owned by the corporation and may further certify any
575 findings to the Department of Legal Affairs for the initiation
576 of any action permitted pursuant to s. 617.0503 which the
577 Department of Legal Affairs may deem appropriate.
578 Section 8. Subsection (2) of section 896.102, Florida
579 Statutes, is amended to read:

580 896.102 Currency more than $10,000 received in trade or
581 business; report required; noncompliance penalties.--
582 (2) The Department of Revenue shall enforce compliance
583 with the provisions of subsection (1) and is to be the custodian
584 of all information and documents filed pursuant to subsection
585 (1). Such information and documents are confidential and exempt
586 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
587 State Constitution; however, the department must provide any
588 report filed under this section, or information contained
589 therein, to federal, state, and local law enforcement and
590 prosecutorial agencies, to the Department of Financial Services,
591 and to the Office of Financial Regulation, and the information
592 is subject to disclosure pursuant to subpoena as provided in s.
593 213.053(9) ~~(8)~~.
594 Section 9. This act shall take effect October 1, 2006.