Governmental Operations Committee

Wednesday, March 15, 2006
3:30 – 5:30 PM
Morris Hall

Allan Bense
Speaker

David Rivera
Chairman

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Governmental Operations Committee

Start Date and Time:	Wednesday, March 15, 2006 03:30 pm
End Date and Time:	Wednesday, March 15, 2006 05:30 pm
Location:	Morris Hall (17 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 323 Reemployment After Retirement by Patterson
HB 757 Polk County by Stargel
HB 783 Wellness Programs for State Employees by Henriquez
HB 1001 Public Records by Adams

Consideration of the following proposed committee bill(s):

PCB GO 06-29 -- State Financial Matters
PCB GO 06-30 -- Public Records Exemption for Alternative Investments
PCB GO 06-34 -- Procurement of Contractual Services by a State Agency

NOTICE FINALIZED on 03/13/2006 16:26 by TUCK.SHIRLEY

HB 323

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 323 Reemployment After Retirement
SPONSOR(S): Patterson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee		Mitchell	Williamson
2) Local Government Council			
3) Fiscal Council			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

HB 323 limits the reemployment of retired law enforcement officers, correctional officers, and correctional probation officers to entry level positions.

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

This bill does not appear to impact the revenues of the state or local governments. This bill may create expenditures for the state and for local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty–This bill limits the reemployment of law enforcement officers, correctional officers, and correctional probation officers after retirement to "entry level positions."

B. EFFECT OF PROPOSED CHANGES:

Present Situation: Limitations on Employment after Retirement

Chapter 121, Florida Statutes, is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.[1]

Section 121.091, Florida Statutes, governs the payment of benefits under the FRS. This section requires a member of the FRS to terminate employment or begin participation in the Deferred Retirement Option Program in order to receive benefits. Termination occurs when a member ceases all employment relationships with FRS employers.[2] Termination is void if a member becomes reemployed by any member of the FRS within the next calendar month.[3]

Subsection (9) of section 121.091, Florida Statutes, governs employment after retirement. This subsection permits any person who is a retired member of the FRS to be employed by a non-FRS employer and receive retirement benefits. Yet, those persons who are retired members of the FRS and who are reemployed by an FRS employer may not receive both a salary from reemployment and retirement benefits in the period between two and 12 months after the date of retirement. After 12 months from the date of retirement, a person may receive both a salary from reemployment from the FRS employer and retirement benefits.

There are currently several provisions that allow a person who has retired to receive both a salary from reemployment with an FRS employer and retirement benefits in the period between two and 12 months after the date of retirement.[4] These provisions limit the types of positions that the retired FRS member may accept, the number of hours the retired FRS member may work, or both. There currently are no restrictions on the types of positions or the number of hours that a retired FRS member may work with an FRS employer after twelve months.

Limitations on Reemployment

HB 323 appears to create a permanent limitation on reemployment for law enforcement officers,[5] correctional officers,[6] and correctional probation officers.[7] The bill limits reemployment for these officers to "an entry level position for the duration of such reemployment." This provision appears to be a broad limitation that applies to any employing agency and not just the employing agency from which the officer retired.

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Stat. § 121.021(39)(a) (2005).
[3] *Id.*
[4] For example, a district school board may reemploy a retired member as a substitute or hourly teacher, education paraprofessional, transportation assistant, bus driver, or food service worker on a noncontractual basis. Fla. Stat. § 121.091(9)(b)3. (2005).
[5] Fla. Stat. § 943.10(1) (2005).
[6] Fla. Stat. § 943.10(2) (2005).
[7] Fla. Stat. § 943.10(3) (2005).

Only anecdotal data is available on the extent to which law enforcement officers, correctional officers, and correctional probation officers are reemployed in their previous positions after retiring. There also was no data on the number of law enforcement/corrections agencies that have policies like that proposed by HB 323.[8]

This change is unlike the other reemployment provisions in subsection (9) since it does not permit the law enforcement officer, correctional officer, or correctional probation officer to receive both a salary from reemployment and retirement benefits in the period between two and 12 months after the date of retirement. Furthermore, there does not appear to be any adverse impact for the retired FRS member or the employing agency for violating this provision.

C. SECTION DIRECTORY:

Section 1: Amends section 121.091, Florida Statutes, to limit the reemployment of law enforcement officers, correctional officers, and correctional probation officers.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate any revenues of state government.

2. Expenditures:

   This bill may create expenditures for state government if the Division of Retirement within the Department of Management Services is required to change its employer reporting process and monitor compliance with the provisions of this bill.[9]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate any revenues of local governments.

2. Expenditures:

   This bill may create expenditures for local governments that employ law enforcement officers or correctional officers since those local governments will have to determine their entry level positions and may have to report this information to the Division of Retirement within the Department of Management Services.[10]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The Department of Management Services provided a fiscal note from the Enrolled Actuary regarding this bill:

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[8] For example, the Florida Highway Patrol has such a practice. Telephone conversation with Colonel Christopher Knight, Florida Highway Patrol (Feb. 2, 2006).
[9] Fla. Dep't of Mgmt. Serv., HB 323 (2006) Staff Analysis (Dec. 19, 2005) (on file with dep't).
[10] *Id.*

This bill does not alter existing reemployment exceptions or create new exceptions or requirements for forfeiture of benefits during reemployment. In its current form, this bill would not have a fiscal impact on the FRS.[11]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

This bill may, however, require counties to spend funds or to take an action requiring the expenditure of funds. Yet, the bill appears to be exempt from the requirements of section 18(a) of article VII of the Florida Constitution because it has an insignificant fiscal impact.[12]

2. Other:

Benefit changes to the state retirement system are governed by section 14 of article X of the Florida Constitution:

> SECTION 14. State retirement systems benefit changes.—A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Since this bill does not change state retirement system benefits, the bill does not need to comply with the requirements of section 14 of article X of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Employing Agency

The bill references "employing agency." This term is not defined in section 121.021, Florida Statutes; rather, this appears to be a reference to section 943.10(4), Florida Statutes. The sponsor may wish to consider an amendment to provide a citation to section 943.10(4), Florida Statutes.

Drafting Issue: Entry-Level Position

The bill limits reemployment to an "entry-level position." This term is not defined in section 121.021, Florida Statutes, or in section 943.10, Florida Statutes. The sponsor may wish to consider an amendment to provide a definition.

Drafting Issue: Scope of the Reemployment Limitation

As currently drafted, the bill appears to limit the reemployment of law enforcement officers, correctional officers, and correctional probation officers with any employing agency, not just the employing agency

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[11] *Id.*
[12] Fla. Const. art. VIII, §18(d).

from which that officer retired. The sponsor may wish to consider an amendment if a more limited restriction on reemployment is desired.

Drafting Issue: Placement in Section 121.091, Florida Statutes

This bill does not affect the benefits payable under the FRS. As such, the sponsor may wish to consider making these changes in chapter 943, Florida Statutes, which governs the employment of law enforcement officers, correctional officers, and correctional probation officers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to reemployment after retirement; amending
3 s. 121.091, F.S.; providing that certain law enforcement
4 and correctional officers may only be reemployed at entry-
5 level positions for the duration of such reemployment;
6 providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Paragraph (b) of subsection (9) of section
11 121.091, Florida Statutes, is amended to read:
12 121.091 Benefits payable under the system.--Benefits may
13 not be paid under this section unless the member has terminated
14 employment as provided in s. 121.021(39)(a) or begun
15 participation in the Deferred Retirement Option Program as
16 provided in subsection (13), and a proper application has been
17 filed in the manner prescribed by the department. The department
18 may cancel an application for retirement benefits when the
19 member or beneficiary fails to timely provide the information
20 and documents required by this chapter and the department's
21 rules. The department shall adopt rules establishing procedures
22 for application for retirement benefits and for the cancellation
23 of such application when the required information or documents
24 are not received.
25 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.--
26 (b)1. Any person who is retired under this chapter, except
27 under the disability retirement provisions of subsection (4),
28 may be reemployed by any private or public employer after

29 retirement and receive retirement benefits and compensation from
30 his or her employer without any limitations, except that a
31 person may not receive both a salary from reemployment with any
32 agency participating in the Florida Retirement System and
33 retirement benefits under this chapter for a period of 12 months
34 immediately subsequent to the date of retirement. However, a
35 DROP participant shall continue employment and receive a salary
36 during the period of participation in the Deferred Retirement
37 Option Program, as provided in subsection (13). Notwithstanding
38 the provisions of this subparagraph, an employing agency may
39 only reemploy a law enforcement officer as defined in s.
40 943.10(1), a correctional officer as defined in s. 943.10(2), or
41 a correctional probation officer as defined in s. 943.10(3) at
42 an entry-level position for the duration of such reemployment.
43 2. Any person to whom the limitation in subparagraph 1.
44 applies who violates such reemployment limitation and who is
45 reemployed with any agency participating in the Florida
46 Retirement System before completion of the 12-month limitation
47 period shall give timely notice of this fact in writing to the
48 employer and to the division and shall have his or her
49 retirement benefits suspended for the balance of the 12-month
50 limitation period. Any person employed in violation of this
51 paragraph and any employing agency which knowingly employs or
52 appoints such person without notifying the Division of
53 Retirement to suspend retirement benefits shall be jointly and
54 severally liable for reimbursement to the retirement trust fund
55 of any benefits paid during the reemployment limitation period.
56 To avoid liability, such employing agency shall have a written

57 statement from the retiree that he or she is not retired from a
58 state-administered retirement system. Any retirement benefits
59 received while reemployed during this reemployment limitation
60 period shall be repaid to the retirement trust fund, and
61 retirement benefits shall remain suspended until such repayment
62 has been made. Benefits suspended beyond the reemployment
63 limitation shall apply toward repayment of benefits received in
64 violation of the reemployment limitation.
65 3. A district school board may reemploy a retired member
66 as a substitute or hourly teacher, education paraprofessional,
67 transportation assistant, bus driver, or food service worker on
68 a noncontractual basis after he or she has been retired for 1
69 calendar month, in accordance with s. 121.021(39). A district
70 school board may reemploy a retired member as instructional
71 personnel, as defined in s. 1012.01(2)(a), on an annual
72 contractual basis after he or she has been retired for 1
73 calendar month, in accordance with s. 121.021(39). Any other
74 retired member who is reemployed within 1 calendar month after
75 retirement shall void his or her application for retirement
76 benefits. District school boards reemploying such teachers,
77 education paraprofessionals, transportation assistants, bus
78 drivers, or food service workers are subject to the retirement
79 contribution required by subparagraph 7.
80 4. A community college board of trustees may reemploy a
81 retired member as an adjunct instructor, that is, an instructor
82 who is noncontractual and part-time, or as a participant in a
83 phased retirement program within the Florida Community College
84 System, after he or she has been retired for 1 calendar month,

85 in accordance with s. 121.021(39). Any retired member who is
86 reemployed within 1 calendar month after retirement shall void
87 his or her application for retirement benefits. Boards of
88 trustees reemploying such instructors are subject to the
89 retirement contribution required in subparagraph 7. A retired
90 member may be reemployed as an adjunct instructor for no more
91 than 780 hours during the first 12 months of retirement. Any
92 retired member reemployed for more than 780 hours during the
93 first 12 months of retirement shall give timely notice in
94 writing to the employer and to the division of the date he or
95 she will exceed the limitation. The division shall suspend his
96 or her retirement benefits for the remainder of the first 12
97 months of retirement. Any person employed in violation of this
98 subparagraph and any employing agency which knowingly employs or
99 appoints such person without notifying the Division of
100 Retirement to suspend retirement benefits shall be jointly and
101 severally liable for reimbursement to the retirement trust fund
102 of any benefits paid during the reemployment limitation period.
103 To avoid liability, such employing agency shall have a written
104 statement from the retiree that he or she is not retired from a
105 state-administered retirement system. Any retirement benefits
106 received by a retired member while reemployed in excess of 780
107 hours during the first 12 months of retirement shall be repaid
108 to the Retirement System Trust Fund, and retirement benefits
109 shall remain suspended until repayment is made. Benefits
110 suspended beyond the end of the retired member's first 12 months
111 of retirement shall apply toward repayment of benefits received
112 in violation of the 780-hour reemployment limitation.

113 5. The State University System may reemploy a retired
114 member as an adjunct faculty member or as a participant in a
115 phased retirement program within the State University System
116 after the retired member has been retired for 1 calendar month,
117 in accordance with s. 121.021(39). Any retired member who is
118 reemployed within 1 calendar month after retirement shall void
119 his or her application for retirement benefits. The State
120 University System is subject to the retired contribution
121 required in subparagraph 7., as appropriate. A retired member
122 may be reemployed as an adjunct faculty member or a participant
123 in a phased retirement program for no more than 780 hours during
124 the first 12 months of his or her retirement. Any retired member
125 reemployed for more than 780 hours during the first 12 months of
126 retirement shall give timely notice in writing to the employer
127 and to the division of the date he or she will exceed the
128 limitation. The division shall suspend his or her retirement
129 benefits for the remainder of the first 12 months of retirement.
130 Any person employed in violation of this subparagraph and any
131 employing agency which knowingly employs or appoints such person
132 without notifying the Division of Retirement to suspend
133 retirement benefits shall be jointly and severally liable for
134 reimbursement to the retirement trust fund of any benefits paid
135 during the reemployment limitation period. To avoid liability,
136 such employing agency shall have a written statement from the
137 retiree that he or she is not retired from a state-administered
138 retirement system. Any retirement benefits received by a retired
139 member while reemployed in excess of 780 hours during the first
140 12 months of retirement shall be repaid to the Retirement System

141 Trust Fund, and retirement benefits shall remain suspended until
142 repayment is made. Benefits suspended beyond the end of the
143 retired member's first 12 months of retirement shall apply
144 toward repayment of benefits received in violation of the 780-
145 hour reemployment limitation.
146 6. The Board of Trustees of the Florida School for the
147 Deaf and the Blind may reemploy a retired member as a substitute
148 teacher, substitute residential instructor, or substitute nurse
149 on a noncontractual basis after he or she has been retired for 1
150 calendar month, in accordance with s. 121.021(39). Any retired
151 member who is reemployed within 1 calendar month after
152 retirement shall void his or her application for retirement
153 benefits. The Board of Trustees of the Florida School for the
154 Deaf and the Blind reemploying such teachers, residential
155 instructors, or nurses is subject to the retirement contribution
156 required by subparagraph 7. Reemployment of a retired member as
157 a substitute teacher, substitute residential instructor, or
158 substitute nurse is limited to 780 hours during the first 12
159 months of his or her retirement. Any retired member reemployed
160 for more than 780 hours during the first 12 months of retirement
161 shall give timely notice in writing to the employer and to the
162 division of the date he or she will exceed the limitation. The
163 division shall suspend his or her retirement benefits for the
164 remainder of the first 12 months of retirement. Any person
165 employed in violation of this subparagraph and any employing
166 agency which knowingly employs or appoints such person without
167 notifying the Division of Retirement to suspend retirement
168 benefits shall be jointly and severally liable for reimbursement

169 to the retirement trust fund of any benefits paid during the
170 reemployment limitation period. To avoid liability, such
171 employing agency shall have a written statement from the retiree
172 that he or she is not retired from a state-administered
173 retirement system. Any retirement benefits received by a retired
174 member while reemployed in excess of 780 hours during the first
175 12 months of retirement shall be repaid to the Retirement System
176 Trust Fund, and his or her retirement benefits shall remain
177 suspended until payment is made. Benefits suspended beyond the
178 end of the retired member's first 12 months of retirement shall
179 apply toward repayment of benefits received in violation of the
180 780-hour reemployment limitation.
181 7. The employment by an employer of any retiree or DROP
182 participant of any state-administered retirement system shall
183 have no effect on the average final compensation or years of
184 creditable service of the retiree or DROP participant. Prior to
185 July 1, 1991, upon employment of any person, other than an
186 elected officer as provided in s. 121.053, who has been retired
187 under any state-administered retirement program, the employer
188 shall pay retirement contributions in an amount equal to the
189 unfunded actuarial liability portion of the employer
190 contribution which would be required for regular members of the
191 Florida Retirement System. Effective July 1, 1991, contributions
192 shall be made as provided in s. 121.122 for retirees with
193 renewed membership or subsection (13) with respect to DROP
194 participants.
195 8. Any person who has previously retired and who is
196 holding an elective public office or an appointment to an

197 elective public office eligible for the Elected Officers' Class
198 on or after July 1, 1990, shall be enrolled in the Florida
199 Retirement System as provided in s. 121.053(1)(b) or, if holding
200 an elective public office that does not qualify for the Elected
201 Officers' Class on or after July 1, 1991, shall be enrolled in
202 the Florida Retirement System as provided in s. 121.122, and
203 shall continue to receive retirement benefits as well as
204 compensation for the elected officer's service for as long as he
205 or she remains in elective office. However, any retired member
206 who served in an elective office prior to July 1, 1990,
207 suspended his or her retirement benefit, and had his or her
208 Florida Retirement System membership reinstated shall, upon
209 retirement from such office, have his or her retirement benefit
210 recalculated to include the additional service and compensation
211 earned.
212 9. Any person who is holding an elective public office
213 which is covered by the Florida Retirement System and who is
214 concurrently employed in nonelected covered employment may elect
215 to retire while continuing employment in the elective public
216 office, provided that he or she shall be required to terminate
217 his or her nonelected covered employment. Any person who
218 exercises this election shall receive his or her retirement
219 benefits in addition to the compensation of the elective office
220 without regard to the time limitations otherwise provided in
221 this subsection. No person who seeks to exercise the provisions
222 of this subparagraph, as the same existed prior to May 3, 1984,
223 shall be deemed to be retired under those provisions, unless

224 such person is eligible to retire under the provisions of this
225 subparagraph, as amended by chapter 84-11, Laws of Florida.
226 10. The limitations of this paragraph apply to
227 reemployment in any capacity with an "employer" as defined in s.
228 121.021(10), irrespective of the category of funds from which
229 the person is compensated.
230 11. An employing agency may reemploy a retired member as a
231 firefighter or paramedic after the retired member has been
232 retired for 1 calendar month, in accordance with s. 121.021(39).
233 Any retired member who is reemployed within 1 calendar month
234 after retirement shall void his or her application for
235 retirement benefits. The employing agency reemploying such
236 firefighter or paramedic is subject to the retired contribution
237 required in subparagraph 8. Reemployment of a retired
238 firefighter or paramedic is limited to no more than 780 hours
239 during the first 12 months of his or her retirement. Any retired
240 member reemployed for more than 780 hours during the first 12
241 months of retirement shall give timely notice in writing to the
242 employer and to the division of the date he or she will exceed
243 the limitation. The division shall suspend his or her retirement
244 benefits for the remainder of the first 12 months of retirement.
245 Any person employed in violation of this subparagraph and any
246 employing agency which knowingly employs or appoints such person
247 without notifying the Division of Retirement to suspend
248 retirement benefits shall be jointly and severally liable for
249 reimbursement to the Retirement System Trust Fund of any
250 benefits paid during the reemployment limitation period. To
251 avoid liability, such employing agency shall have a written

252 statement from the retiree that he or she is not retired from a
253 state-administered retirement system. Any retirement benefits
254 received by a retired member while reemployed in excess of 780
255 hours during the first 12 months of retirement shall be repaid
256 to the Retirement System Trust Fund, and retirement benefits
257 shall remain suspended until repayment is made. Benefits
258 suspended beyond the end of the retired member's first 12 months
259 of retirement shall apply toward repayment of benefits received
260 in violation of the 780-hour reemployment limitation.
261 Section 2. This act shall take effect July 1, 2006.

HB 757

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 757 Polk County
SPONSOR(S): Stargel
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	Nelson	Hamby
2) Governmental Operations Committee		Brown	Williamson
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 757 amends the special law which created a personnel system for the Polk County Sheriff's Office. The bill changes references to positions excluded from this system to reflect a reorganization of titles within the Office. The bill also removes intent language from the act which attempts to restrict collective bargaining rights for deputy sheriffs. This is in response to a 2003 determination by the Florida Supreme Court that deputy sheriffs are "employees" for purposes of the constitutional right to collectively bargain.

Additionally, the bill adjusts the commencement of the two-year terms of personnel board members from the second Tuesday of January, to the same day in February; reduces the term of the chairman of the board from two years to one year; revises the effective date of the initial probationary period for employees; and makes minor technical changes to language in the special act.

According to the Economic Impact Statement, no fiscal effects are anticipated as a result of the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1988, the Legislature authorized a personnel system for deputies, employees and members of the Sheriff's Office of Polk County (ch. 88-443, L.O.F.). This "classified service" includes all certified deputy sheriffs, certified detention deputies and noncertified support staff, and specifically excludes the sheriff, the undersheriff, colonels, directors, legal advisors, personnel holding the rank of major or above or equivalent noncertified support positions, contract personnel, nonsalaried personnel, any special deputy sheriff appointed pursuant to s. 30.09(4), F.S.,[1] members of the Mounted Enforcement Unit, or Auxiliary or Reserve Unit, or any person appointed as a part-time employee. Eligible employees become members of the classified service after serving at least one year probationary service, and appointments take effect upon the date the person appointed reports to duty. Currently, no employees within the Polk County Sheriff's Office are represented by a collective bargaining agent.[2]

The Sheriff is authorized to appoint a five-member personnel board to hear appeals and complaints and to make recommendations regarding the same. To ensure continuity, board members are appointed by the Sheriff to two-year terms on an alternating schedule effective the second Tuesday of January. The Human Resources Administrator serves as secretary to the board, and as an ex officio member. Board members elect one member to serve as their chair for a two-year period.

A three-person Members Nominating Committee nominates candidates for appointment to the board. These individuals are elected from each department of the Sheriff's Office by classified service members, and also serve two-year terms.

Effect of Proposed Changes

HB 757 amends ch. 88-443, L.O.F., as amended, relating to the classified service of the Polk County Sheriff's Office, and changes references to positions excluded from this system (from the "undersheriff" and "colonels" to the "chief of staff," "chief of detention," "chief of law enforcement," "chief of criminal investigations," and "executive director of the Office of Business Affairs") to reflect a reorganization of titles within the Office. This language refers to the same individuals and, thus, has no impact.

The bill also removes intent provisions from the act which attempt to restrict collective bargaining rights for deputy sheriffs. This deletion is in reaction to a 2003 Florida Supreme Court decision[3] which held that deputy sheriffs were "employees" for purposes of the constitutional right to collectively bargain.

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[1]This section applies to those special deputy sheriffs appointed: (a) to attend elections on election days; (b) to perform undercover investigative work; (c) for specific guard or police duties in connection with public sporting or entertainment events, not to exceed 30 days; or for watch or guard duties, when serving in such capacity at specified locations or areas only; (d) for special and temporary duties, without power of arrest, in connection with guarding or transporting prisoners; (e) to aid in preserving law and order, or to give necessary assistance in the event of any threatened or actual hurricane, fire, flood or other natural disaster, or in the event of any major tragedy such as an act of local terrorism or a national terrorism alert, an airplane crash, a train or automobile wreck or a similar accident; (f) to raise the power of the county, by calling bystanders or others, to assist in quelling a riot or any breach of the peace, when ordered by the sheriff or an authorized general deputy; and (g) to serve as certain parking enforcement specialists.

[2] Telephone conversation with Director of Communications, Polk County Sheriff's Office, February 14, 2006.

[3] Coastal Florida Police Benevolent Association, Inc. v. Williams, 838 So.2d 543 (Fla. 2003).

The bill adjusts the commencement of the two-year terms of personnel board members from the second Tuesday of January, to the same day in February, in order to accommodate the demanding schedule in the Sheriff's Office during the month of January each year. The bill also reduces the term of the chairman of the board from two years to one year in order to allow more opportunities for service in this position. Additionally, the bill revises the effective date of the initial probationary period for employees from the time that an individual reports to duty to when an individual successfully completes all entry level training. This change reflects current practice. The Sheriff's Office often hires non-certified or non-sworn civilians who then attend the law enforcement or corrections academy—i.e., "entry level training." These individuals are paid while in training. Once they successfully complete the academy, they are appointed as deputy sheriffs or detention deputy sheriffs, and begin a one-year probationary period.[4]

The bill also makes editorial changes to language in the special act.

C. SECTION DIRECTORY:

Section 1: Amends ch. 88-443, L.O.F., as amended by ch. 98-516, L.0.F., as follows:

Section 1: Provides for use of current titles for positions excluded from the classified service. Deletes intent language.

Section 2: Provides clarifying language. Changes the name of the Human Resources Section to the Human Resources Division. Changes the title of the ranking officer of the Division.

Section 3: Changes the effective date of personnel board members' terms.

Section 5: Changes the term of the board chair.

Section 8: Removes unnecessary language.

Section 9: Specifies that the Members Nominating Committee shall be elected from a certain office and two departments.

Section 11: Corrects obsolete description.

Section 12: Corrects obsolete description.

Section 13: Provides for the initial probationary period.

Section 14: Provides clarifying language.

Section 15: Provides clarifying language.

Section 16: Provides clarifying language.

Section 17: Provides clarifying language.

Section 2: Provides an effective date.

[4] Polk County Sheriff's Office General Order 22.10, 12. (f) 2): "Members (deputy sheriff and detention deputy) shall be classified as probationary for a period of twelve (12) months commencing upon the date they take their Oath of Office. [FCAC 4.04]." FCAC refers to the Florida Corrections Accreditation Commission; 4.04 means that this general order complies with standard 4.04.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? December 19, 2005.

WHERE? *The Polk County Democrat*, a semi-weekly newspaper published in Polk County.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

According to the Economic Impact Statement, no fiscal effects are anticipated as a result of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

See, **Effect of Proposed Changes** section re: s. 6, Art. I of the State Con jstitution

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Line 77 provides new language which could be interpreted to mean that a member's conflict could be attributed to an alternate's business affairs. The sponsor may wish to consider an amendment which retains current language.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to Polk County; amending chapter 88-443,
3 Laws of Florida, as amended; excluding certain positions
4 from the classified service of the Sheriff's Office of
5 Polk County; removing legislative intent; revising names
6 of units and titles of persons in the Sheriff's Office;
7 revising terminology; revising the effective date of
8 appointments to the personnel board; reducing the term of
9 the chairperson of the board; specifying the office and
10 departments from which members are elected to the Members
11 Nominating Committee; revising the effective date of the
12 initial probationary period; providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Chapter 88-443, Laws of Florida, as amended by
17 chapter 98-516, Laws of Florida, is amended to read:
18 Section 1. The terms of this act shall apply to the
19 classified service of the Polk County Sheriff's Office, which
20 shall include all certified deputy sheriffs, certified detention
21 deputies, and noncertified support staff of the Polk County
22 Sheriff's Office. The provisions of this act shall not include
23 the sheriff or chief of staff, chief of detention, chief of law
24 enforcement, chief of criminal investigations, executive
25 director of the Office of Business Affairs ~~under sheriff,~~
26 ~~colonels~~, directors, legal advisors, personnel holding the rank
27 of major or above or equivalent noncertified support positions,
28 contract personnel, nonsalaried personnel, any special deputy

29 sheriff appointed pursuant to s. 30.09(4)(b), Florida Statutes,
30 members of the Mounted Enforcement Unit, ~~or~~ Auxiliary or Reserve
31 Unit, or any person appointed as a part-time employee. ~~It is the~~
32 ~~intent of this act to authorize an advisory personnel system, to~~
33 ~~maintain the full powers of the Sheriff, and to continue to~~
34 ~~respect the legal limitations on the right of collective~~
35 ~~bargaining and other rights under part II of chapter 447,~~
36 ~~Florida Statues, and not to grant such rights to any deputy,~~
37 ~~member, or employee of the Polk County Sheriff's Office who,~~
38 ~~prior to the effective date of this act, did not otherwise have~~
39 ~~such rights pursuant to law.~~
40 Section 2. The Sheriff of Polk County is herby authorized
41 to appoint a personnel board, hereafter referred to as the
42 "board," to act as an advisory agency of and to the Sheriff,
43 which board shall be composed of five members to be appointed as
44 follows:
45 (1) Two members of the board shall be selected and
46 appointed by the Sheriff.
47 (2) Two members of the board shall be appointed by the
48 Sheriff after being elected in an election among members of the
49 classified service from a group of three nominations chosen by a
50 majority vote of a three-person committee known as the Members
51 Nominating Committee representing the classified members of the
52 Sheriff's Office as described in section 9. Each of three
53 candidates nominated by the Members Nominating Committee shall
54 possess qualifications for board membership as outlined in
55 subsections (5) and (6).

56 (3) The fifth member shall be selected by the four
57 appointed members of the board and shall be appointed by the
58 Sheriff.
59 (4) All members shall be appointed by the Sheriff and
60 shall also possess the qualifications for board membership
61 outlined in subsections (5) and (6).
62 (5) No member appointed pursuant to subsection (1),
63 subsection (2), or subsection (3), or that member's ~~his or her~~
64 alternate, may be:
65 (a) A member ~~An employee~~ of the Sheriff's Office or of any
66 city or county of this state or of the State of Florida or the
67 United States; or
68 (b) A member of any national, state, or county committee
69 of a political party; or
70 (c) A candidate for, or incumbent of, any paid public
71 office; or
72 (d) The spouse, parent or grandparent, child or
73 grandchild, brother or sister, aunt or uncle, niece or nephew,
74 by consanguinity or affinity, of a member of the classified
75 service; or
76 (e) Situated so as to have a conflict of interest in the
77 terms of the member's or alternate's ~~his or her~~ related
78 business, duties, or responsibilities in connection with the
79 board.
80 (6) All the members of the personnel board shall be at
81 least 21 years of age; of good moral character; of good
82 reputation in the community; citizens of the United States;
83 permanent residents of Florida; and residents of Polk County for

84 at least 2 years prior to the date of appointment.
85 (7) Two alternates to the board shall be appointed by the
86 Sheriff. In the event that a vacancy occurs in that a board
87 member terminates or that a matter before the board involves a
88 conflict of interest, the alternate member shall serve for the
89 hearing or term of office as the case may be.
90 (8) The ranking officer in charge of the Human Resources
91 Division ~~Section~~ shall be designated as the Human Resources
92 Director ~~Administrator~~ and shall serve as secretary to the board
93 and as an ex officio member of the board but shall have no vote.
94 Section 3. To ensure continuity, board members shall be
95 appointed by the Sheriff to 2-year terms on an alternating
96 schedule effective the second Tuesday of February ~~January~~. Two
97 members shall be appointed during even numbered years, and three
98 members shall be appointed during odd numbered years. Nothing
99 contained herein shall prohibit board members from being
100 reappointed by the Sheriff for additional terms.
101 Section 4. Members of the board shall receive no salary,
102 but each shall be paid a monthly allowance, the amount to be
103 determined by the Sheriff, for expenses incurred in performing
104 the duties of the board.
105 Section 5. The board shall elect one member to serve as
106 chairperson ~~the chair~~ for a 1-year period ~~2-year period~~. The
107 chairperson ~~chair~~ shall perform such duties as are provided for
108 by the board's rules.
109 Section 6. The Sheriff shall make available to the board a
110 table of organization and a list of all employees and members,
111 positions, and classes and the pay scale of each position and

112 class in the Sheriff's Office.
113 Section 7. The board shall have the following powers and
114 duties:
115 (1) To adopt and amend rules and regulations for its
116 hearing procedures subject to approval by the Sheriff.
117 (2) To hear appeals and complaints in matters provided for
118 in this act and to make recommendations to the Sheriff regarding
119 the same. Three members shall constitute a quorum for hearing an
120 appeal and rendering a decision.
121 Section 8. The Sheriff shall have the authority to adopt
122 such rules and regulations as are necessary for ~~the~~
123 ~~implementation and~~ administration of this act.
124 Section 9. There shall be a three-person Members
125 Nominating Committee which shall nominate candidates for
126 appointment to the board. All members of the committee shall be
127 members of the classified service. One member shall be elected
128 from the Office of Business Affairs, the Department of Law
129 Enforcement, and the Department of Detention ~~each department~~ by
130 secret vote of all members of the classified service within each
131 respective office or department. Members of the committee shall
132 serve a 2-year term of office beginning July 1.
133 Section 10. The Sheriff or the Sheriff's designee may
134 create new positions within the Sheriff's Office or combine,
135 alter, or abolish existing positions in such manner as the
136 Sheriff deems necessary.
137 Section 11. The Human Resources Director ~~Administrator~~
138 shall give public notice of vacancies and of open competitive
139 examinations for positions in the classified service. The Human

140 Resources Director ~~Administrator~~ ~~in the Sheriff's Office~~ shall
141 establish and maintain such eligibility lists for the various
142 job classes as are deemed necessary to meet the needs of the
143 Sheriff's Office.
144 Section 12. ~~(1)~~ Whenever a vacancy occurs in any position
145 in the classified service, the Sheriff or the Sheriff's designee
146 shall make requisition to the Human Resources Director
147 ~~Administrator~~ for the names and addresses of all persons
148 eligible for appointment thereto. In the event that a candidate
149 acceptable to the Sheriff or the Sheriff's designee is
150 recommended, the Sheriff or the Sheriff's designee thereupon
151 shall appoint this person to the position where the vacancy
152 exists. The Sheriff or the Sheriff's designee shall immediately
153 inform the Human Resources Director ~~Administrator~~ of such ~~his~~
154 action.
155 (1) ~~(2)~~ In the absence of an eligibility list, the Sheriff
156 or the Sheriff's designee may, if either ~~he or she~~ determines
157 that the necessity of adequate law enforcement or operational
158 efficiency so requires, appoint a person without reference to an
159 eligibility list to fill a vacant position on a provisional
160 basis. The Sheriff or the Sheriff's designee shall immediately
161 inform the Human Resources Director ~~Administrator~~ of such ~~his~~
162 action. Such provisional appointee shall be a person who
163 lawfully could be appointed within the personnel system had the
164 appointee ~~he or she~~ been an applicant. Such provisional
165 appointee shall acquire no rights under the system by virtue of
166 said appointment and said appointment shall terminate
167 immediately when an eligible person from an eligibility list is

168 certified to and accepted by the Sheriff, or within 6 months
169 from the date of the appointment, or 45 days after the
170 establishment of an eligibility list, whichever is the shorter
171 length of time. Acceptance or refusal or a provisional
172 appointment shall not prejudice or in any way affect the
173 standing of a person who is an applicant or who shall become an
174 applicant for an established position.
175 (2) ~~(3)~~ In the event of an emergency, the Sheriff or the
176 Sheriff's designee may appoint a person to fill a position not
177 to exceed 3 calendar months during any 12-month period.
178 Section 13. No employee shall become a member of
179 ~~appointment to any position in~~ the classified service ~~shall be~~
180 ~~deemed complete~~ until the expiration of a period of at least 1-
181 year probationary service. During the initial probationary
182 period, the Sheriff or the Sheriff's designee may terminate or
183 otherwise discipline the employee ~~appointee~~ and the employee
184 ~~appointee~~ shall not be eligible for a hearing before the board.
185 The initial probationary period ~~Appointments~~ may be regarded as
186 taking effect upon the date the employee successfully completes
187 all entry-level training ~~person appointed reports for duty~~.
188 Section 14. Whenever a position in the classified service
189 is filled by promotion, the employee ~~person~~ may be returned to
190 duty in a position at the level formerly held ~~by him or her~~ in
191 the classified service without a hearing during the employee's
192 ~~his or her~~ promotion probationary period. The member may have
193 the opportunity for a hearing if dismissed from the service or
194 suspended for greater than 40 hours if the member ~~he or she~~ has
195 completed an initial 1-year probationary period.

196 Section 15. It is not the intent of this act to modify the
197 Sheriff's absolute control over the selection and retention of
198 the Sheriff's deputies and of other members of the Sheriff's
199 Office as provided for by the law. No dismissal, demotion,
200 suspension, or reduction in pay shall be taken against any
201 nonprobationary member of the classified service unless notice
202 of the action and the reason therefor is given to the member
203 verbally or in writing prior to the action taking effect. An
204 opportunity to respond orally and in writing to the Sheriff or
205 the Sheriff's designee ~~representative in the decisionmaking~~
206 ~~process~~ may be granted prior to the effective date of the
207 action. Following issuance of the written notice of disciplinary
208 action, the affected member of the classified service may seek a
209 formal hearing for a review of dismissal, demotion, suspension
210 of greater than 40 hours, or reduction in pay, provided that the
211 member, as a condition to seeking a hearing, shall, upon receipt
212 of the written notice, answer the same in writing and file the
213 answer and a request with the Sheriff within 7 calendar days
214 after the issuance of the notice. If a dismissal, demotion,
215 suspension of greater than 40 hours, or reduction in pay is
216 answered and a hearing is requested in writing within 7 calendar
217 days, the member of the classified service may have an
218 opportunity for a hearing before the board with all the rights
219 and privileges afforded under section 16. In the case of a
220 notice of dismissal, the member shall remain dismissed without
221 pay pending the hearing and the final decision of the Sheriff.
222 In the case of a notice of a demotion, suspension of greater
223 than 40 hours, or reduction in pay, the disciplinary action

224 shall not be delayed pending the review process. The board shall
225 report in writing its findings and recommendations to the
226 Sheriff along with any mitigating circumstances noted for review
227 and consideration by the Sheriff. The Sheriff shall retain the
228 right of final determination. No member of the classified
229 service may be reinstated, with or without backpay or benefits,
230 without the concurrence of the Sheriff. For disciplinary
231 purposes, the Sheriff or the Sheriff's designee may reprimand,
232 orally or in writing, or summarily suspend a member of the
233 classified service for a period not exceeding 40 hours, and such
234 action shall not be subject to review and recommendation of the
235 board.
236 Section 16. The practice and procedure of the board with
237 respect to any hearing by the board authorized by this act shall
238 be in accordance with the rules and regulations ~~to be~~
239 established by the board. Such rules shall provide for a
240 reasonable notice of hearing to all persons affected by a
241 recommendation to be made by the board, with the opportunity to
242 be heard in <u>their</u> ~~his or her~~ behalf at a hearing to be held for
243 that purpose and to examine and cross-examine witnesses.
244 (1) The board, when conducting any hearings authorized by
245 this act, shall have the power to administer oaths and issue
246 subpoenas to compel the attendance of witnesses and the
247 production of books, accounts, papers, records, documents, and
248 testimony. In the case of the disobedience or failure of any
249 person to comply with a subpoena issued by the board or any of
250 its members, or on the refusal of a witness to testify on any
251 matter on which <u>the witness</u> ~~he or she~~ may be lawfully

252 interrogated, the judge of the circuit court of the county, on
253 application of the board, shall compel the obedience by
254 proceedings as for contempt. The service of a subpoena shall be
255 made in the manner provided by the Florida Rules of Civil
256 Procedure. Each witness subpoenaed by the board shall receive
257 for the witness's ~~his or her~~ attendance, fees and mileage in the
258 amount as provided for witnesses in civil cases, if requested.
259 (2) The board shall meet for the purpose of hearing the
260 appeal promptly and no later than 30 days after receipt of the
261 answer and request for hearing, unless good cause exists for, or
262 the affected member agrees to, a postponement.
263 (3) The actions of the board and the Sheriff shall be
264 exempt from the provisions of chapter 120, Florida Statutes.
265 Section 17. When a newly elected or appointed Sheriff
266 assumes office, the service of all personnel shall continue
267 without the necessity of formal reappointment. Notwithstanding
268 any other provisions of this act, the incoming Sheriff shall
269 have the option of maintaining the current personnel assigned to
270 the rank of major and above or equivalent noncertified support
271 positions or transferring those personnel as described below. If
272 the incoming Sheriff fills any of the above positions with a new
273 person and the current occupant of the above position is a
274 certified law enforcement deputy ~~officer~~ or detention deputy, he
275 or she shall be reduced to the rank of captain if certified, or
276 to the equivalent noncertified support position if not certified
277 immediately. The member's salary shall be reduced in compliance
278 with the salary policy in effect at that time, but shall be no
279 less than the salary the member would have attained had the

280 member remained in the highest classification accorded appeal
281 rights under this act. Following the election or appointment of
282 a Sheriff, appointments of all personnel remain at the pleasure
283 of the Sheriff, and personnel in the classified service may be
284 terminated by affirmative action of the Sheriff or the Sheriff's
285 successor in office subject to the provisions of this act.
286 Section 18. If any provision of this act or the
287 application thereof to any person or circumstance is held
288 invalid, it is the legislative intent that the invalidity shall
289 not affect other provisions or applications of the act which can
290 be given effect without the invalid provision or application,
291 and to this end provisions of this act are declared severable.
292 Section 19. This act shall not be held or construed to
293 create any property rights or any vested interest in any
294 position in the classified service and the right is hereby
295 reserved to repeal, alter, or amend this act or any provision
296 thereof at any time.
297 Section 2. This act shall take effect upon becoming a law.

HB 783

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 783 Wellness Programs for State Employees
SPONSOR(S): Henriquez
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee		Brown	Williamson
2) Health Care General Committee			
3) Fiscal Council			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill defines specific elements to be included in age-based and gender-based services provided by health maintenance organizations under contract to the state employee health insurance program. It also creates within the Department of Management Services the Florida State Employee Wellness Council, made up of nine members appointed by the Governor.

The council is created to provide health education information to employees and to help develop minimum benefits for health care providers when providing age-based and gender-based wellness benefits. The council has three specific duties:

- Work to encourage participation in wellness programs by state employees.
- Develop standards and criteria for age-based and gender-based wellness programs.
- Recommend a "healthy food and beverage" menu for food-service establishments in buildings owned, operated, or leased by the state.

The fiscal impact of the council is nominal. Certain aspects of the newly-defined health benefits may have an indeterminate effect on healthcare premiums paid by the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates a nine-member advisory council.

Promote personal responsibility – The bill defines certain benefits included in the Health Maintenance Organization program that are intended to foster healthier behaviors in state employees.

B. EFFECT OF PROPOSED CHANGES:

Health Coverage - Background

The State of Florida provides a comprehensive array of workplace benefits to its employees and their spouses and dependents.[1] Full-time and part-time employees and retirees may choose between a Preferred Provider Organization (PPO) or from one of several Health Maintenance Organizations (HMOs) for their health insurance needs.[2] Employees who are eligible retired members from one of the branches of the United States Armed Services may choose a health care supplement (TRICARE) to complement their federal retiree benefits. The Department of Management Services, through its Division of State Group Insurance, negotiates all contracts with these providers.[3] The providers, however, own their respective networks or are the direct contractors for service delivery.

"Wellness" is a term used in s. 110.123, F.S., but it is not otherwise defined. In a wider sense wellness has come to mean an array of health care services that focus on chronic disease management or lifestyle changes that have direct or indirect health outcomes. Some of these may be workplace based, as with blood pressure monitoring; home-based, as with changes to personal nutrition and portion control practices; or a combination of the two in which the employer provides subsidies or discounts with plan-affiliated vendors to achieve the same objectives. In this latter sense "wellness" is not part of the insurance contract per se but does serve the complementary objectives of provider and patient in the promotion of preventive techniques that stabilize employer compensation expenses, both direct benefit costs and compensated absences, and add to the quality of employee lives.

The PPO plan contains a feature called "Blue Complements" that provides access to the following discounted wellness services:[4]

- Alternative therapies;
- Discounted vision care;
- Discounted hearing care and appliances;
- Laser correction of vision impairments;
- Discounted fitness or athletic club membership;[5]
- Discounted bicycle helmets; and
- Discounted weight-loss management club memberships.

Each HMO decides individually how it will approach the concept of wellness. Wellness services provided by participating HMOs include:[6]

- AVMED: smoking cessation; weight management; live/recorded access to a health information service; and chronic disease management.

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[1] See generally s. 110.123, F.S.
[2] Section 110.123(3), F.S.
[3] Specific authority is granted in s. 110.123(5)(c), F.S.
[4] http://www.bcbsfl.com. The "Blue Complements" materials are directly available at http://www.bcbsfl.com/index.cfm?fuseaction=BlueComplements.Home
[5] Limited geographic accessibility.
[6] Accessible through www.myflorida.com/dsgi.

- CAPITAL HEALTH PLAN: chronic disease management specifically targeting diabetes and asthma; smoking cessation; weight loss; cholesterol/heart disease; newborn health care; nutrition; and cardio-pulmonary resuscitation (CPR).
- FLORIDA HEALTH CARE PLANS: automated links to sponsored health information web sites; smoking cessation; osteoporosis management; diabetes management; weight management; nutrition management; asthma management; bariatrics and sponsored exercise.
- TRICARE: weight loss; hearing; health screening.
- UNITED HEALTH CARE: on-line/live health assessments and information; chronic disease management; nutrition; and discounted vision, dental, alternative, smoking cessation, long-term care, fitness, and weight management.
- VISTA HEALTH PLANS: registration required; none listed.

Wellness benefits are broadly recognized as valuable adjuncts to health insurance plans and can stabilize the costs of an employer's direct benefits costs by reducing compensated absences, increasing productivity, and limiting the out-of-pocket expenses incurred by employees for health events that can be minimized by lifestyle changes. Current law provides premium rebates for insurance plans that can demonstrate a majority of enrollees participate in organized wellness programs.[7] The nominal indicators of measurement are smoking cessation, weight reduction, and body mass index.

A principal feature of the recently enacted Medicaid Choice program is the development of preventive care programs for eligible low-income individuals.[8] For enrollees who take advantage of these services and alter their lifestyles under physician guidance, there can be tangible financial effects through additional choices they will have in the selection of health benefits.

Health Coverage – Effect of Bill

The bill amends s. 110.123, F.S., to require that HMOs under contract to the state employee health insurance program provide enumerated age- and gender-based services. The named services include:

- Aerobic exercise;
- Education in alcohol and substance abuse prevention;
- Blood cholesterol screening;
- Health risk appraisals;
- Blood pressure screening and education;
- Nutrition education;
- Program planning;
- Safety belt education;
- Smoking cessation;
- Stress management;
- Weight loss; and
- Women's health education.

Councils - Background

Section 20.03(7), F.S. defines a "council" or "advisory council" as an "advisory body created... to function on a continuing basis for the study of the problems arising in a specified... area... and to provide recommendations and policy alternatives." Councils must be established and maintained according to certain provisions, including:[9]

- A statutorily defined purpose;
- The appointment of members to 4-year staggered terms;
- Appointment of members by the governor, the head of a department, or a Cabinet officer; and
- Compliance with public meeting and public records requirements.

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[7] Section 627.65626, F.S.
[8] Section 409.91211, F.S.; Senate Bill 2-B; Chapter 2005-358, Laws of Florida.
[9] Section 20.052(4), F.S., *et seq.*

Councils – Effect of Bill

The bill adds a new subsection (13) to s. 110.123, F.S. to create the Florida State Employee Wellness Council. The council is composed of nine members appointed by the Governor for staggered 4-year terms. Its members must be state residents and must be active in the health and medical field.

The council has three specific duties:

- Encourage state employee participation in wellness programs and prepare informational actions on this topic;
- Develop standards for age-based and gender-based programs; and
- Recommend a "healthy food and beverage menu" for food outlets in buildings owned, operated or leased by the State of Florida.

The council is directed to meet within 60 days after appointments are complete, and to meet at least quarterly thereafter. The Department of Management Services is directed to provide administrative support for the activities of the council.

C. SECTION DIRECTORY:

Section 1 amends s. 110.123, F.S., to include a detailed definition of "age-based and gender-based benefits," and to create a wellness council.

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 Florida State Employee Wellness Council is directed to meet at least once per calendar quarter. Travel and per diem for these meetings at $500 per member equals $18,000 annually. The Department of Management Services is directed to provide staff support. Absent any specific appropriation, the meeting costs will have to be assumed by the agency out of appropriated funds or, alternatively, assumed by the employers of the appointed members.

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:

There is no direct impact to the contract vendors that operate food service establishments in state agency occupied buildings as the recommendations of the council on a model healthy menu are not binding. This element could be a consideration in later negotiations of leases or subleases of such spaces where the State of Florida is the building owner.

The bill is nominally directed at HMOs, not the PPO. Many of these service elements are contained in current practices of these providers and are available directly or by referral. As wellness programs, under current law, are not necessarily part of the insurance coverage arrangements, a provider may make arrangements for their provision at the expense of the insured outside of the contract reimbursements. Employees enrolled in one of several pre-tax medical reimbursements or health savings accounts authorized under federal law may reduce their taxable expense for eligible services by paying for these items with pre-tax dollars.

D. FISCAL COMMENTS:

It is not entirely clear whether the enumerated benefits would result in an increased premium to be paid by state employers. The Division of State Group Insurance has stated that the additional definition "would have the effect of mandating benefits not currently a part of the benefit plan for State members."[10] However, virtually all of the "wellness" components are already part of the HMO providers' plans, as the components presumably lead to lower healthcare costs incurred by the providers.

Additionally, the complex negotiation involved in entering into HMO contracts means that the state may be able to leverage its enrollee size in order to receive these mandates at no increase in premium. These are "bargaining chips" that cannot be accounted for in great detail, in advance of the solicitation and negotiation of new benefits plans.

Wellness programs can have front-loaded effects but back-loaded benefits. Lifestyle changes require the passage of time for their effects to be fully realized. The changes also may not necessarily be linear. A person may adopt an alternative, healthier lifestyle for which the tangible benefits may accrue principally to the employer, such as in reduced absenteeism and increased productivity.

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:

<u>Drafting Issues - Weight Management</u>
"Weight management" may be a preferable term to "weight loss," as not all people affected by the consequences of weight abnormalities have that attributable to excess weight gain. Conditions such as anorexia nervosa, bulimia, AIDS, depression, diabetes, hepatitis, and many forms of cancer have weight loss as common signs and symptoms.

<u>Drafting Issues – Florida State Employee Wellness Council</u>
As drafted, the Florida State Employee Wellness Council need not have a government employee. It may be reasonable to require at least one member be a state employee, in order to provide a voice from the most-affected population.

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[10] *Department of Management Services' HB 783 Bill Analysis*, Director, Division of State Group Insurance, February 7, 2006.

In addition, on line 208, the paragraph creating the wellness council should be entitled "Florida State Employee Wellness Council" rather than merely "Wellness Council."

Other Comments – HMOs

As drafted, the bill applies only to the several HMOs but not the PPO. The Department of Management Services negotiates multi-year contracts with its provider HMOs. Passage of a statute will not necessarily cause the contracts to be amended prior to their normal expiration unless both contracting parties consent to the specification of different services and the incidence of payment.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to wellness programs for state employees;
3 amending s. 110.123, F.S.; defining the term "aged-based
4 and gender-based benefits" for purposes of the state group
5 insurance program; creating the Florida State Employee
6 Wellness Council within the Department of Management
7 Services; providing for the appointment and qualification
8 of members; providing terms of membership; providing for
9 the appointment of members to fill vacant positions;
10 requiring the council to elect a chair and vice chair;
11 providing that the chair shall call the initial meeting of
12 the council within a time certain; requiring the council
13 to meet quarterly; providing that council members shall
14 serve without compensation; providing for reimbursement of
15 per diem and travel expenses; providing purpose and duties
16 of the council; providing an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Paragraph (h) of subsection (3) of section
21 110.123, Florida Statutes, is amended, and subsection (13) is
22 added to that section, to read:
23 110.123 State group insurance program.--
24 (3) STATE GROUP INSURANCE PROGRAM.--
25 (h)1. A person eligible to participate in the state group
26 insurance program may be authorized by rules adopted by the
27 department, in lieu of participating in the state group health
28 insurance plan, to exercise an option to elect membership in a

29 health maintenance organization plan which is under contract
30 with the state in accordance with criteria established by this
31 section and by said rules. The offer of optional membership in a
32 health maintenance organization plan permitted by this paragraph
33 may be limited or conditioned by rule as may be necessary to
34 meet the requirements of state and federal laws.
35 2. The department shall contract with health maintenance
36 organizations seeking to participate in the state group
37 insurance program through a request for proposal or other
38 procurement process, as developed by the Department of
39 Management Services and determined to be appropriate.
40 a. The department shall establish a schedule of minimum
41 benefits for health maintenance organization coverage, and that
42 schedule shall include: physician services; inpatient and
43 outpatient hospital services; emergency medical services,
44 including out-of-area emergency coverage; diagnostic laboratory
45 and diagnostic and therapeutic radiologic services; mental
46 health, alcohol, and chemical dependency treatment services
47 meeting the minimum requirements of state and federal law;
48 skilled nursing facilities and services; prescription drugs;
49 age-based and gender-based wellness benefits; and other benefits
50 as may be required by the department. Additional services may be
51 provided subject to the contract between the department and the
52 HMO. <u>As used in this paragraph, the term "age-based and gender-</u>
53 <u>based wellness benefits" includes aerobic exercise, education in</u>
54 <u>alcohol and substance abuse prevention, blood cholesterol</u>
55 <u>screening, health risk appraisals, blood pressure screening and</u>
56 <u>education, nutrition education, program planning, safety belt</u>

57 education, smoking cessation, stress management, weight loss,
58 and women's health education.
59 b. The department may establish uniform deductibles,
60 copayments, coverage tiers, or coinsurance schedules for all
61 participating HMO plans.
62 c. The department may require detailed information from
63 each health maintenance organization participating in the
64 procurement process, including information pertaining to
65 organizational status, experience in providing prepaid health
66 benefits, accessibility of services, financial stability of the
67 plan, quality of management services, accreditation status,
68 quality of medical services, network access and adequacy,
69 performance measurement, ability to meet the department's
70 reporting requirements, and the actuarial basis of the proposed
71 rates and other data determined by the director to be necessary
72 for the evaluation and selection of health maintenance
73 organization plans and negotiation of appropriate rates for
74 these plans. Upon receipt of proposals by health maintenance
75 organization plans and the evaluation of those proposals, the
76 department may enter into negotiations with all of the plans or
77 a subset of the plans, as the department determines appropriate.
78 Nothing shall preclude the department from negotiating regional
79 or statewide contracts with health maintenance organization
80 plans when this is cost-effective and when the department
81 determines that the plan offers high value to enrollees.
82 d. The department may limit the number of HMOs that it
83 contracts with in each service area based on the nature of the
84 bids the department receives, the number of state employees in

85 the service area, or any unique geographical characteristics of
86 the service area. The department shall establish by rule service
87 areas throughout the state.
88 e. All persons participating in the state group insurance
89 program may be required to contribute towards a total state
90 group health premium that may vary depending upon the plan and
91 coverage tier selected by the enrollee and the level of state
92 contribution authorized by the Legislature.
93 3. The department is authorized to negotiate and to
94 contract with specialty psychiatric hospitals for mental health
95 benefits, on a regional basis, for alcohol, drug abuse, and
96 mental and nervous disorders. The department may establish,
97 subject to the approval of the Legislature pursuant to
98 subsection (5), any such regional plan upon completion of an
99 actuarial study to determine any impact on plan benefits and
100 premiums.
101 4. In addition to contracting pursuant to subparagraph 2.,
102 the department may enter into contract with any HMO to
103 participate in the state group insurance program which:
104 a. Serves greater than 5,000 recipients on a prepaid basis
105 under the Medicaid program;
106 b. Does not currently meet the 25-percent non-
107 Medicare/non-Medicaid enrollment composition requirement
108 established by the Department of Health excluding participants
109 enrolled in the state group insurance program;
110 c. Meets the minimum benefit package and copayments and
111 deductibles contained in sub-subparagraphs 2.a. and b.;
112 d. Is willing to participate in the state group insurance

113 program at a cost of premiums that is not greater than 95
114 percent of the cost of HMO premiums accepted by the department
115 in each service area; and
116 e. Meets the minimum surplus requirements of s. 641.225.
117
118 The department is authorized to contract with HMOs that meet the
119 requirements of sub-subparagraphs a.-d. prior to the open
120 enrollment period for state employees. The department is not
121 required to renew the contract with the HMOs as set forth in
122 this paragraph more than twice. Thereafter, the HMOs shall be
123 eligible to participate in the state group insurance program
124 only through the request for proposal or invitation to negotiate
125 process described in subparagraph 2.
126 5. All enrollees in a state group health insurance plan, a
127 TRICARE supplemental insurance plan, or any health maintenance
128 organization plan have the option of changing to any other
129 health plan that is offered by the state within any open
130 enrollment period designated by the department. Open enrollment
131 shall be held at least once each calendar year.
132 6. When a contract between a treating provider and the
133 state-contracted health maintenance organization is terminated
134 for any reason other than for cause, each party shall allow any
135 enrollee for whom treatment was active to continue coverage and
136 care when medically necessary, through completion of treatment
137 of a condition for which the enrollee was receiving care at the
138 time of the termination, until the enrollee selects another
139 treating provider, or until the next open enrollment period
140 offered, whichever is longer, but no longer than 6 months after

141 termination of the contract. Each party to the terminated
142 contract shall allow an enrollee who has initiated a course of
143 prenatal care, regardless of the trimester in which care was
144 initiated, to continue care and coverage until completion of
145 postpartum care. This does not prevent a provider from refusing
146 to continue to provide care to an enrollee who is abusive,
147 noncompliant, or in arrears in payments for services provided.
148 For care continued under this subparagraph, the program and the
149 provider shall continue to be bound by the terms of the
150 terminated contract. Changes made within 30 days before
151 termination of a contract are effective only if agreed to by
152 both parties.
153 7. Any HMO participating in the state group insurance
154 program shall submit health care utilization and cost data to
155 the department, in such form and in such manner as the
156 department shall require, as a condition of participating in the
157 program. The department shall enter into negotiations with its
158 contracting HMOs to determine the nature and scope of the data
159 submission and the final requirements, format, penalties
160 associated with noncompliance, and timetables for submission.
161 These determinations shall be adopted by rule.
162 8. The department may establish and direct, with respect
163 to collective bargaining issues, a comprehensive package of
164 insurance benefits that may include supplemental health and life
165 coverage, dental care, long-term care, vision care, and other
166 benefits it determines necessary to enable state employees to
167 select from among benefit options that best suit their
168 individual and family needs.

169 a. Based upon a desired benefit package, the department
170 shall issue a request for proposal or invitation to negotiate
171 for health insurance providers interested in participating in
172 the state group insurance program, and the department shall
173 issue a request for proposal or invitation to negotiate for
174 insurance providers interested in participating in the non-
175 health-related components of the state group insurance program.
176 Upon receipt of all proposals, the department may enter into
177 contract negotiations with insurance providers submitting bids
178 or negotiate a specially designed benefit package. Insurance
179 providers offering or providing supplemental coverage as of May
180 30, 1991, which qualify for pretax benefit treatment pursuant to
181 s. 125 of the Internal Revenue Code of 1986, with 5,500 or more
182 state employees currently enrolled may be included by the
183 department in the supplemental insurance benefit plan
184 established by the department without participating in a request
185 for proposal, submitting bids, negotiating contracts, or
186 negotiating a specially designed benefit package. These
187 contracts shall provide state employees with the most cost-
188 effective and comprehensive coverage available; however, no
189 state or agency funds shall be contributed toward the cost of
190 any part of the premium of such supplemental benefit plans. With
191 respect to dental coverage, the division shall include in any
192 solicitation or contract for any state group dental program made
193 after July 1, 2001, a comprehensive indemnity dental plan option
194 which offers enrollees a completely unrestricted choice of
195 dentists. If a dental plan is endorsed, or in some manner
196 recognized as the preferred product, such plan shall include a

197 comprehensive indemnity dental plan option which provides
198 enrollees with a completely unrestricted choice of dentists.
199 b. Pursuant to the applicable provisions of s. 110.161,
200 and s. 125 of the Internal Revenue Code of 1986, the department
201 shall enroll in the pretax benefit program those state employees
202 who voluntarily elect coverage in any of the supplemental
203 insurance benefit plans as provided by sub-subparagraph a.
204 c. Nothing herein contained shall be construed to prohibit
205 insurance providers from continuing to provide or offer
206 supplemental benefit coverage to state employees as provided
207 under existing agency plans.
208 (13) WELLNESS COUNCIL.--
209 (a) There is created within the department the Florida
210 State Employee Wellness Council.
211 (b) The council shall be an advisory body to the
212 department to provide health education information to employees
213 and to assist the department in developing minimum benefits for
214 health maintenance organizations when providing age-based and
215 gender-based wellness benefits.
216 (c) The council shall be composed of nine members
217 appointed by the Governor. When making appointments to the
218 council, the Governor shall appoint persons who are residents of
219 the state and who are highly knowledgeable concerning, active
220 in, and recognized leaders in the health and medical field.
221 Council members shall equitably represent the broadest spectrum
222 of the health industry and the geographic areas of the state.
223 Not more than one member of the council may be from any one
224 company, organization, or association.

225 (d)1. Council members shall be appointed to 4-year terms,
226 except that the initial terms shall be staggered. The Governor
227 shall appoint three members to 2-year terms, three members to 3-
228 year terms, and three members to 4-year terms.
229 2. A member's absence from three consecutive meetings
230 shall result in his or her automatic removal from the council. A
231 vacancy on the council shall be filled for the remainder of the
232 unexpired term.
233 (e) The council shall annually elect from its membership
234 one member to serve as chair of the council and one member to
235 serve as vice chair.
236 (f) The first meeting of the council shall be called by
237 the chair not more than 60 days after the council members are
238 appointed by the Governor. The council shall thereafter meet at
239 least once quarterly and may meet more often as necessary. The
240 department shall provide staff assistance to the council, which
241 shall include, but not be limited to, keeping records of the
242 proceedings of the council and serving as custodian of all
243 books, documents, and papers filed with the council.
244 (g) A majority of the members of the council constitutes a
245 quorum.
246 (h) Members of the council shall serve without
247 compensation but are entitled to reimbursement for per diem and
248 travel expenses while performing their duties as provided in s.
249 112.061.
250 (i) The council shall:
251 1. Work to encourage participation in wellness programs by
252 state employees. The council may prepare informational programs

253 and brochures for state agencies and employees.
254 2. In consultation with the department, develop standards
255 and criteria for age-based and gender-based wellness programs.
256 3. In consultation with the department, recommend a
257 healthy food and beverage menu for cafeterias and other food-
258 service establishments located in buildings owned, operated, or
259 leased by the state.
260 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1001 Public Records
SPONSOR(S): Adams
TIED BILLS: HB 151 CS **IDEN./SIM. BILLS:** SB 2292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee		Williamson	Williamson
2) State Administration Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Current law provides public records exemptions for fingerprints under limited circumstances; however, an exemption applicable to all agencies in all circumstances does not exist. The bill appears to create a public records exemption for fingerprint identification information that is applicable to all agencies. It provides for retroactive application of the exemption, provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill does not grant rule-making authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Current law provides public records exemptions for fingerprints under limited circumstances:

- Fingerprints collected under chapter 447, F.S., relating to labor organizations are confidential and exempt[1].[2]
- Fingerprints collected for identifying a child, in the event that the child becomes missing, are exempt.[3]
- Fingerprints of a child charged with or who committed certain offenses are confidential and exempt.[4]

A general public records exemption for fingerprints, applicable to all agencies in all circumstances, does not exist.

This bill creates a public records exemption for fingerprint identification information held by an agency; however, the bill does not define the term "agency". It appears that the sponsor is attempting to create a public records exemption for such information that is applicable to all agencies.

The bill defines "fingerprint identification information" to mean "any record of friction ridge detail, including, but not limited to, fingerprints, palm prints, and footprints".

The bill provides for retroactive application of the exemption and provides for future review and repeal of the exemption on October 2, 2011. It also provides a statement of public necessity and a contingent effective date.

C. SECTION DIRECTORY:

Section 1 amends s. 943.05, F.S., to create a public records exemption for fingerprint identification information.

Section 2 provides a public necessity statement.

Section 3 provides a July 1, 2006, effective date that is contingent upon the passage of HB 151 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[1] There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. *See City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. *See Attorney General Opinion 85-62*, August 1, 1985.

[2] Section 447.045, F.S.

[3] Section 937.028(1), F.S.

[4] Section 985.212(1), F.S.

1. Revenues:

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

2. Expenditures:

   See "FISCAL COMMENTS."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   See "FISCAL COMMENTS."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the exempt information prior to releasing a record.

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:

   Vote Requirement

   Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

   Public Necessity Statement

   Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues – Use of the term "agency"
The public records exemption applies to fingerprint identification information held by an agency. The term "agency" is not a defined term in chapter 943, F.S. Based on a review of the public necessity statement, it appears that the term is intended to mean an "agency" as defined in s. 119.011, F.S.

Drafting Issues - Placement
The bill places the public records exemption in chapter 943, F.S., relating to the Department of Law Enforcement. The exemption, however, is not applicable only to the department. Placement of the exemption in chapter 119, F.S., might be more appropriate as that chapter typically houses exemptions applicable to all agencies.

Drafting Issues – Cross-reference
The fingerprint identification information is made exempt from s. 119.071(1), F.S. This subsection contains general public records exemptions related to agency administrative duties. The appropriate reference is s. 119.07(1), F.S. An amendment is needed to correct this cross-reference.

Drafting Issues – Fingerprint identification information
The bill defines "fingerprint identification information" to include footprints. It is unclear how a footprint qualifies as "fingerprint identification information." Furthermore, the need to protect a footprint is unclear.

Other Comments – Public Records Law
Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[5] 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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[5] Section 119.15, F.S.

1 A bill to be entitled
2 An act relating to public records; amending s. 943.05,
3 F.S.; exempting from public records requirements
4 fingerprint identification information held by an agency
5 before, on, or after the effective date of the exemption;
6 providing for future legislative review and repeal;
7 providing a finding of public necessity; providing an
8 effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Subsection (3) is added to section 943.05,
13 Florida Statutes, to read:
14 943.05 Criminal Justice Information Program; duties; crime
15 reports.--
16 (3)(a) Fingerprint identification information held by an
17 agency before, on, or after the effective date of this exemption
18 is exempt from s. 119.071(1) and s. 24(a), Art. I of the State
19 Constitution. For purposes of this subsection, the term
20 "fingerprint identification information" means any record of
21 friction ridge detail, including, but not limited to,
22 fingerprints, palm prints, and footprints, in whatever form or
23 medium recorded.
24 (b) This subsection is subject to the Open Government
25 Sunset Review Act in accordance with s. 119.15 and shall stand
26 repealed on October 2, 2011, unless reviewed and saved from
27 repeal through reenactment by the Legislature.

28 Section 2. The Legislature finds that it is a public
29 necessity that fingerprint identification information held by an
30 agency before, on, or after the effective date of this exemption
31 be made exempt from public records requirements. Fingerprint
32 identification is currently the most widely used ultimate means
33 of verifying identity and of detecting or preventing false
34 claims of identity. Given existing technological capabilities
35 for duplicating, enhancing, modifying, and transferring records,
36 the availability of fingerprint identification information,
37 whether in traditional ink and paper form or when digitized,
38 creates the opportunity for improper, illegal, or harmful use,
39 particularly the crime of identify theft. In addition, release
40 of fingerprint identification information could create
41 opportunities for breach of security, which could result in harm
42 to programs, property, and persons. Thus, the Legislature finds
43 that it is a public necessity to protect fingerprint
44 identification information held by an agency before, on, or
45 after the effective date of this act.
46 Section 3. This act shall take effect July 1, 2006, if
47 House Bill 151, or similar legislation relating to fingerprint
48 identification information held by an agency, is adopted in the
49 same legislative session or an extension thereof and becomes
50 law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-29 State Financial Matters
SPONSOR(S): Governmental Operations Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1670

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Mitchell	Williamson
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This proposed committee bill is being considered by the Governmental Operations Committee pursuant to House Rule 7.9. The bill contains statutory changes sought by the State Board of Administration:

- Amends the interest rate for transfers, which are required due to computed insufficiency, from the Florida Retirement System Pension Plan to the Public Employee Optional Retirement Program (FRS Investment Plan) at the most recent assumed return on the actuarial investment;
- Specifically provides that certain military service is credible service under the FRS Investment Plan;
- Creates provisions regarding receipt of invalid distributions for the FRS Investment Plan;
- Revises the investments that the State Board of Administration can make without limitation and the investments authorized with no more than 25 percent of any fund;
- Increases, from 20 percent to 25 percent, the amount of any fund which the State Board of Administration may invest in certain corporate obligations and securities of a foreign corporation or a foreign commercial entity; and
- Authorizes the State Board of Administration to "sell short" any authorized securities and investments.

This bill may have a positive fiscal impact on the funds managed by the State Board of Administration. The bill does not appear to have a fiscal impact on any other revenues of state government or the expenditures of state government. This bill does not appear to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill increases the authority of the State Board of Administration related to invalid distributions and authorized investments.

B. EFFECT OF PROPOSED CHANGES:

This proposed committee bill is being considered by the Governmental Operations Committee pursuant to House Rule 7.9. The bill contains the statutory changes sought by the State Board of Administration[1] and addresses certain transfers between plans, credit for military service, invalid distributions, and authorized investments.

Public Employee Optional Retirement Program

In 2000, the Florida Legislature created the Public Employee Optional Retirement Program in part II of chapter 121, Florida Statutes. The State Board of Administration, which is responsible for establishing the program, calls this program the Florida Retirement System (FRS) Investment Plan in order to distinguish it from the FRS defined benefit program, the FRS Pension Plan.[2] The FRS Investment Plan is a defined contribution retirement plan in which employer contributions, based on membership class, are made to an account established for the participant. The participant can then choose, from a number of investment funds which "span the risk-return spectrum," how to invest those contributions.[3]

New employees of FRS employers are automatically enrolled in the FRS Pension Plan on the first day of their employment.[4] Within five months following their month of hire, these new employees may elect to participate in the FRS Investment Plan instead of the FRS Pension Plan.[5] Employees of FRS employers also have a one-time option to change their retirement plan from the FRS Investment Plan to the FRS Pension Plan or from the FRS Pension Plan to the FRS Investment Plan.[6]

Transfers from the FRS Pension Plan to the FRS Investment Plan

Transfers from the FRS Pension Plan to the FRS Investment Plan are governed, in part, by section 121.4501(3)(c), Florida Statutes. This subsection requires the Division of Retirement to recompute the amount transferred based on the participant's creditable service[7] and average final compensation[8] as of the date of FRS Investment Plan participation.[9] If the recomputed amount indicates, by $10 or more, that excess funds were transferred from the FRS Pension Plan, the Division of Retirement is required to transfer the excess funds from the participant's FRS Investment Plan to the FRS Pension Plan,

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[1] The State Board of Administration exists pursuant to article IV, section 4(e) of the Florida Constitution. It is composed of the governor, as chair, the chief financial officer, and the attorney general. The State Board of Administration was originally established pursuant to article IX, section 16 of the Constitution of 1885, as amended. The State Board of Administration is vested with additional statutory responsibilities under provisions of law such as sections 215.44 to 215.53, Florida Statutes.
[2] Fla. State Board of Admin., Fla. Ret. Sys. Summary Plan Description - FRS Investment Plan (Sept. 1, 2005), available at http://www.rol.frs.state.fl.us/myfrs/forms/pdf/frs_ip_spd.pdf (last visited Mar. 12, 2006).
[3] *Id.*
[4] Fla. Stat. § 121.4501(4)(a) (2005).
[5] *Id.*
[6] Fla. Stat. § 121.4501(4)(e) (2005).
[7] Fla. Stat. § 121.021(17)(a) (2005) ("Creditable service means the sum of his or her past service, prior service, military service, out-of-state or non-FRS in-state service, workers' compensation credit, leave-of-absence credit and future service allowed within the provisions of this chapter if all required contributions have been paid and all other requirements of this chapter have been met.")
[8] Fla. Stat. § 121.021(24) (2005) ("Average final compensation means the average of the 5 highest fiscal years of compensation for creditable service prior to retirement, termination, or death.")
[9] Fla. Stat. § 121.4501(3)(c)3. (2005).

based upon six percent effective annual interest, compounded annually, pro rata based on the participant's allocation plan.[10] If the recomputed amount indicates, by $10 or more, that insufficient funds were transferred from the FRS Pension Plan, the Division of Retirement is required to transfer the outstanding amount from the FRS Pension Plan to the participant's FRS Investment Plan account based upon eight percent annual interest, compounded annually.[11]

This bill changes the interest rates for those recomputed transfers required due to insufficient funds transferred from the FRS Pension Plan to the FRS Investment Plan. The eight-percent effective annual interest rate was the actuarial investment return assumption prior to July 1, 2005. Yet, effective July 1, 2005, the actuarial investment return rate was reduced to 7.75% by the Florida Retirement System Actuarial Assumption Conference.[12]

Rather than pay out at a higher or lower rate than the actuarial investment return rate or to change the law when the actuarial investment return rate changes, this bill sets the effective annual interest rate for the insufficient funds transfered from the FRS Pension Plan to the FRS Investment Plan at "equal to the assumed return on the actuarial investment which was used in the most recent actuarial valuation of the system."

Credit for Military Service and the FRS Investment Plan

Part I of chapter 121, Florida Statutes, sets forth the general provisions for the FRS, including credit for military service in section 121.111, Florida Statutes. This section allows military service to be creditable service[13] for FRS purposes if five criteria are met:[14]

> (1) The employee is actively employed by an FRS employer immediately prior to service and leaves his or her employment for the purpose of induction into the Armed Forces of the United States or entry upon duty in the Armed Forces of the United States;[15]
>
> (2) The employee is entitled to reemployment under the provisions of the Veterans' Reemployment Rights Act;[16]
>
> (3) The employee applies for reemployment with the same FRS employer and is reemployed by that FRS employer within the applicable timeframes;[17]
>
> (4) The employee makes any required employee contributions and the employer makes the required employer contributions for the employee's membership class for each month of service credit during such period of military service;[18] and
>
> (5) The period of service claimed pursuant to this subsection does not exceed the applicable periods.[19]

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[10] *Id.*
[11] *Id.*
[12] Fla. Stat. § 216.136(10) (2005) (The Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of the Senate and House of Representatives are the principals of the Florida Retirement System Actuarial Assumption Conference, which develops the official information with respect to the economic and noneconomic assumptions and funding methods of the Florida Retirement System).
[13] Fla. Stat. § 121.021(17)(a) (2005), *supra* note 7.
[14] These criteria are provided in subsection (1). Subsection (2) applies to employees whose initial date of employment was before January 1, 1987, and it allows those employees to receive four years of creditable service for military service upon payment of certain contributions and subject to certain limitations.
[15] Fla. Stat. § 121.111(1)(a) (2005) (An employee is construed to have left his or her employment for military purposes if he or she reported for active duty within 60 days after leaving such employment).
[16] Fla. Stat. § 121.111(1)(b) (2005) (specifically citing "38 U.S.C. ss. 2021 et seq.")
[17] Fla. Stat. § 121.111(1)(c) (2005) (specifically citing "the time set forth in s. 2021 or s. 2024 of the Veterans' Reemployment Rights Act, whichever is applicable").
[18] Fla. Stat. § 121.111(1)(d) (2005) (based upon the employee's rate of monthly compensation as of the date that the employee left his or her position, plus 6.5 percent interest compounded annually).

Part II of chapter 121, Florida Statutes, relating to the Public Employee Optional Retirement Program/FRS Investment Plan, is silent regarding credit for military service. This bill adds a provision to specifically state that credible service for FRS Investment Plan participants includes military service in the Armed Forces of the United States as provided in section 121.111, Florida Statutes.

Invalid Distributions and the FRS Investment Plan

Section 121.591, Florida Statutes, governs the payment of benefits under the Public Employee Optional Retirement Program/FRS Investment Plan.

FRS Investment Plan payments also are controlled by section 121.4501, Florida Statutes, which establishes the FRS Investment Plan, and section 121.091(9), Florida Statutes, which provides limitations on employment after retirement.

In order for benefits to be paid, an employee must have terminated employment[20] with the FRS employer, or be deceased, and have filed an application to receive benefits. Benefit payments are not made until the employee has been terminated for three calendar months.[21] The State Board of Administration may permit, by rule, distribution of up to 10 percent of the participant's account after being terminated for one calendar month if a participant has reached the normal retirement requirements of the defined benefit plan.[22] Benefits are payable in one of three ways:

1. A lump-sum distribution to the participant;

2. A lump-sum direct rollover distribution where all accrued benefits, plus interest and investment earnings, are paid from the participant's FRS Investment Account directly to the custodian of an eligible retirement plan; or

3. Periodic distributions, as authorized by the State Board of Administration.[23]

This section does not, however, have a provision which governs "invalid distributions."

This bill defines an invalid distribution as a distribution from an FRS Investment Account which violates the statute governing investment plan benefits,[24] the statute establishing the FRS Investment Account,[25] or the statute limiting employment after retirement.[26]

This bill provides that if an employee or former employee receives an "invalid distribution" from the Public Employee Optional Retirement Program Trust Fund, that invalid distribution must be repaid to the trust fund within 90 days after receipt of final notification by the State Board of Administration or the third-party administrator that the distribution was invalid. The bill further provides that if the employee or former employee does not repay the full invalid distribution within 90 days after receipt of final notification, the employee or former employee may be deemed to be retired from the FRS Investment Plan by the State Board of Administration and subject to section 121.122, Florida Statutes, which relates to renewed membership in the FRS. If an employee is deemed retired, the State Board of Administration, the Department of Management Services, or the employing agency are not liable for gains on payroll contributions that have not been deposited into the employee's FRS Investment Plan

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[19] Fla. Stat. § 121.111(1)(e) (2005) (specifically citing "the provisions of ss. 2021 and 2024 of the Veterans' Reemployment Rights Act which are applicable in the member's case").
[20] Fla. Stat. § 121.021(39) (2005).
[21] Fla. Stat. §§ 121.091(9)(c) and 121.591(1)(a)4. (2005) (created by ch. 2005-253, Laws of Fla.)
[22] Fla. Stat. § 121.591(1)(a)4. (2005).
[23] Fla. Stat. § 121.591(1)(c) (2005).
[24] Fla. Stat. § 121.591 (2005).
[25] Fla. Stat. § 121.4501 (2005).
[26] Fla. Stat. § 121.091(9) (2005).

account pending resolution of the invalid distribution. The bill permits a member or former member who has been deemed retired or to have received an invalid distribution to appeal the agency decision.[27]

The State Board of Administration requests these changes due to investment plan members who have taken a distribution which is not permitted by law and who have then failed to repay that distribution despite repeated attempts to collect it.[28] Many of these distributions involve members who received a distribution and then returned to work before the member was eligible by law.[29]

Authorized Investments: Generally

Investment of the System Trust Fund of the FRS, which holds and invests the contributions paid by employees and employers to fund the FRS Pension Plan, [30] is governed by the provisions in sections 215.44 to 215.53, Florida Statues. In particular, section 215.47, Florida Statutes, provides the permissible investment for the FRS Pension Plan as well as other funds.

Authorized Investments: Without Limitation

There are currently 14 types of investments that the State Board of Administration is authorized to invest in without limitation.[31] Eight of these investments are bonds (or notes or other obligations) of identified governmental entities (*e.g.* the United States and the state). Of the six other investments, four relate to savings accounts and certificates of deposit, commercial paper, banker's acceptances, and negotiable certificates of deposit. Except for negotiable certificates of deposit, each of these investments must meet certain criteria:

- Investment in commercial paper must be "of prime quality of the highest letter and numerical rating as provided for by at least one nationally recognized rating service."[32]

- Investment in "savings accounts in, or certificates of deposit of, any bank, savings bank, or savings and loan association incorporated under the laws of this state or organized under the laws of the United States doing business and situated in this state, the accounts of which are insured by the Federal Government or an agency thereof" is limited to 15 percent of the net worth of the institution or a lesser amount if provided by a rule of the State Board of Administration.[33]

- Investments in time drafts or bills of exchange (banker's acceptances) must be accepted by a member bank of the Federal Reserve System having total deposits not less than $400 million.[34]

There currently are no criteria for negotiable certificates of deposit issued by domestic or foreign financial institutions in United States dollars.[35]

The bill eliminates the net worth requirement for savings accounts and certificates of deposit and the deposit requirement for banker's acceptances. In its place, the bill applies criteria similar to that used for used for commercial paper to savings accounts, certificates of deposit, and banker's acceptances: must have a prime quality of the highest letter and numerical rating as provided by at least one nationally recognized statistical rating organization. The bill also applies this

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[27] Fla. Stat. § 121.4501(9)(f)3. (2005) (requires the State Board of Administration to develop procedures to receive and resolve participant complaints against a provider or approved provider personnel, and, when appropriate, refer such complaints to the appropriate agency).
[28] Fla. State Board of Admin., Proposed 2006 Legislation (copy provided Jan. 2006) (on file with the State Board of Admin.) [hereinafter Fla. SBA Legislation 2006].
[29] Fla. SBA Legislation 2006.
[30] Fla. Stat. § 121.021 (36) (2005).
[31] Fla. Stat. § 215.47(1) (2005).
[32] Fla. Stat. § 215.47(1)(j) (2005).
[33] Fla. Stat. § 215.47(1)(h) (2005).
[34] Fla. Stat. § 215.47(1)(k) (2005).
[35] Fla. Stat. § 215.47(1)(l) (2005).

"prime quality of the highest letter and numerical rating as provided by at least one nationally recognized statistical rating organization" criteria to negotiable certificates of deposit.

Although not defined in the bill, a nationally recognized statistical rating organization ("NRSROs") is an organization that has been identified by the United States Securities and Exchange Commission.[36] Nine firms have been identified as NRSROs; after the consolidation of several credit rating agencies, there currently are five NRSROs: A.M. Best Company, Inc. ("A.M. Best"), Dominion Bond Rating Service Limited ("DBRS"); Fitch, Inc. ("Fitch"); Moody's Investors Service Inc. ("Moody's"); and the Standard & Poor's Division of the McGraw Hill Companies, Inc. ("S&P").[37]

Each of these NRSROs has its own set of credit ratings. For example, Moody's long-term issue credit ratings[38] range from Aaa[39] to C[40] and Moody's "appends numerical modifiers to each generic rating classification from Aa to Caa."[41] By contrast, S&P long-term issue credit ratings[42] range from AAA[43] to D[44] and "may be modified by the addition of a plus or minus sign to show relative standing within the major categories."[45]

The State Board of Administration supports[46] changing the criteria for savings accounts,[47] certificates of deposit,[48] banker's acceptances,[49] and negotiable certificates of deposit.

Authorized Investments: No More than 25 Percent

There are currently 11 types of investments that the State Board of Administration is authorized to invest in "with no more than 25 percent of any fund."[50] Most of these "25-percent-authorized investments" also must meet certain criteria. The bill changes some of these criteria and eliminates specific authority related to one of the authorized investments.

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[36] The Securities and Exchange Commission has never defined the term NRSRO. Instead, NRSROs are identified through the no-action letter process. Securities and Exchange Commission, Release No. 33-8570, Definition of Nationally Recognized Statistical Rating Organization (Apr. 19, 2005), available at http://www.sec.gov/rules/proposed/33-8570.pdf (last visited Mar. 11, 2006).
[37] *Id.*
[38] Moody's, Long-Term Obligation Ratings, available at http://www.moodys.com/moodys/cust/AboutMoodys/AboutMoodys.aspx?topic=rdef&subtopic=moodys%20credit%20ratings&title=Long+Term+Obligation+Ratings.htm (last visited Mar. 11, 2006; free login required).
[39] *Id.* ("Obligations rated Aaa are judged to be of the highest quality, with minimal credit risk.")
[40] *Id.* ("Obligations rated C are the lowest rated class of bonds and are typically in default, with little prospect for recovery of principal or interest.")
[41] *Id.*
[42] S&P, Long-term issue credit ratings, available at http://www2.standardandpoors.com/servlet/Satellite?pagename=sp%2FPage%2FSiteSearchResultsPg&l=EN&r=1&b=10&search=site&vqt=%22long-term+issue+credit+ratings%22#FixedIncome (click on "Long-term Issue Credit Ratings" in results, last visited Mar. 11, 2006).
[43] *Id.* ("An obligation rated 'AAA' has the highest rating assigned by S&P and the obligor's capacity to meet its financial commitment on the obligation is extremely strong.")
[44] *Id.* (" An obligation rated 'D' is in payment default. The 'D' rating category is used when payments on an obligation are not made on the date due even if the applicable grace period has not expired, unless Standard & Poor's believes that such payments will be made during such grace period. The 'D' rating also will be used upon the filing of a bankruptcy petition or the taking of a similar action if payments on an obligation are jeopardized.")
[45] *Id.*
[46] The State Board of Administration approved this general legislative proposal at its meeting on December 13, 2005. Fla. State Board of Admin., Transcript, Fla. Cabinet Meeting, Dec. 13, 2005, pp. 52-53, Item 4. (Dec. 21, 2005).
[47] The State Board of Administration indicates the current credit exposure limitation is redundant under current portfolio guidelines and is rarely used in their portfolios. The State Board of Administration also indicates that "automated compliance testing is not possible...due to net worth information not being available." Fla. SBA Legislation 2006.
[48] *Id.*
[49] According to the State Board of Administration, "these types of securities have diminished in importance and are also rarely used in their portfolios." It also is another area where automated compliance testing with the deposit size requirement is difficult because this information is not available. The State Board of Administration believes these changes better reflect credit quality and are more effective and efficient. Fla. SBA Legislation 2006.
[50] Fla. Stat. § 215.47(2) (2005).

Municipal/Political Subdivision Bonds, Notes, or Obligations. Currently, the State Board of Administration may invest in bonds, notes, or obligations of any municipality or political subdivision or any agency or authority of the state as long as those obligations are rated in any one of the three highest ratings by two nationally recognized rating services.[51] If only one nationally recognized rating service has rated the obligation, the rating must be in one of the two highest classifications.[52] This bill lowers the required rating to "investment grade" by at least one nationally recognized statistical rating organization. The following table illustrates the permissible investment range under current law and under the bill:

Source	Requirement	S&P	Moody's
Current Law	Three Highest Ratings	AAA, AA, A	Aaa, Aa1, Aa2
Current Law	Two Highest Ratings	AAA, AA	Aaa, Aa1
Bill	Investment Grade	AAA, AA, A, BBB	Aaa, Aa1, Aa2, Aa3, A1, A2, A3, Baa1, Baa2, Baa3

The State Board of Administration characterizes this change as a matter of consistency with the investment grade criteria for investing in fixed-income obligations[53] issued by foreign governments or political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities.[54]

Certain Notes Secured by First Mortgages. The State Board of Administration is authorized to invest in notes secured by first mortgages on Florida real property that are insured or guaranteed by the Federal Housing Administration or the United States Department of Veterans Affairs.[55] The bill removes the limitation to Florida real property. According to the State Board of Administration, first mortgages pooled in Federal Housing Administration and Department of Veterans Affairs certificates are not pooled by the state.[56] As such, the State Board of Administration cannot utilize this provision unless it is expanded.

Investments Collateralized by Certain First Mortgages. The State Board of Administration is authorized to invest in investments that are collateralized by first mortgages covering single-family Florida residences which meet certain criteria: do not exceed $60,000, do not exceed 80 percent of value, are not delinquent, and are originated by a lender regulated by the state or Federal Government.[57] The aggregate collateral furnished by the mortgage must be at least 150 percent of the aggregate investment and the mortgages must be segregated by the lending institution.[58] If one of these mortgages becomes more than three months delinquent, the lender is required to substitute a mortgage of equal or greater value.[59] Because the State Board of Administration considers these provisions "dated, limited in scope, and redundant,"[60] the bill removes this specific authority. The State Board of Administration will, however, continue to have the authority to invest in these mortgages under another provision of this section[61] which authorizes investment in other asset backed securities.[62]

Certain Group Annuity Contracts. The State Board of Administration is authorized to invest in group annuity contracts of the pension investment type with insurers licensed to do business in this state

[51] Fla. Stat. § 215.47(2)(a) (2005).
[52] *Id.*
[53] Fla. Stat. § 215.47(2)(g) (2005).
[54] Fla. SBA Legislation 2006.
[55] Fla. Stat. § 215.47(2)(b) (2005).
[56] Fla. SBA Legislation 2006.
[57] Fla. Stat. § 215.47(2)(c) (2005).
[58] *Id.*
[59] *Id.*
[60] Fla. SBA Legislation 2006.
[61] Fla. Stat. § 215.47(2)(k) (2005).
[62] *Id.*

provided that the amount invested with any one insurer does not exceed three percent of its assets.[63] This bill removes the asset-percentage limitation and replaces it with the following requirement: rated investment grade by at least one nationally recognized rating service. The State Board of Administration views the "asset limitation as an attempt to impose credit limits, which are better effectuated by using rating requirements."[64] The State Board of Administration cites consistency with the other changes in the bill and the investment grade standard for investing in fixed-income obligations[65] issued by foreign governments or political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities as support the investment grade level for these investments.[66]

Authorized Investments: Certain Foreign Corporations or Foreign Commercial Entities

The State Board of Administration is authorized to invest no more than 20 percent of any fund in corporate obligations and securities of any kind of a foreign corporation or a foreign commercial entity which has its principal office located in any country other than the United States of America or its possessions or territories.[67] This authority does not include United States dollar-denominated securities listed and traded on a United States exchange which are a part of the ordinary investment strategy of the board.[68] The bill increases the authorized percentage from 20 percent to 25 percent.

The State Board of Administration explains the necessity for this change:

> "This will help avoid cross-over investments topping the current 20 percent limit. The majority of the world's investment opportunities lie outside the United States, with many of the leading multinational companies now being based outside the United States. International investing expands opportunities to invest in different types of industries that might not be prevalent in the United States. Asset classes that typically have not invested outside the United States are beginning to expand their strategies to include Foreign Markets. As the Real Estate and Alternative Asset Classes explore and begin to invest globally, we will easily reach our 20 percent ceiling on international investing and possibly miss opportunities for future asset growth."[69]

Authorized Investments: Selling Short

The bill authorizes the State Board of Administration to "sell short" any authorized securities and investments:

> "A short sale is generally the sale of a stock you do not own. Investors who sell short believe the price of the stock will fall. If the price drops, you can buy the stock at the lower price and make a profit. If the price of the stock rises and you buy it back later at the higher price, you will incur a loss. When you sell short, your brokerage firm loans you the stock. The stock you borrow comes from either the firm's own inventory, the margin account of another of the firm's clients, or another brokerage firm. As with buying stock on margin, your brokerage firm will charge you interest on the loan, and you are subject to the margin rules. If the stock you borrow pays a dividend, you must pay the dividend to the person or firm making the loan."[70]

The State Board of Administration defends this change:

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[63] Fla. Stat. § 215.47(2)(e) (2005).
[64] Fla. SBA Legislation 2006.
[65] Fla. Stat. § 215.47(2)(g) (2005).
[66] Fla. SBA Legislation 2006.
[67] Fla. Stat. §215.47(5) (2005).
[68] *Id.*
[69] Fla. SBA Legislation 2006.
[70] United States Sec. and Exch. Comm., *Short Sales*, available at http://www.sec.gov/answers/shortsale.htm (last visited Mar. 12, 2006).

"Current law allows the State Board of Administration to buy and sell futures contracts,[71] options,[72] and notional principal contracts.[73] Under current law, the smallest position a long-only portfolio can hold is zero, limiting the portfolio manager's ability to express negative views on stocks with small index weights. Conversely, the ability to profit from positive views by overweighting stocks is allowed within the parameters of the manager's investment guidelines. The inability of long-only portfolio managers to capture the added value associated with correctly identifying poorly performing stocks suggest that value added opportunities are not being fully explored. Large institutional investors are beginning to implement programs that combine a group of market-neutral equity managers to overlay equity index futures. The objective is to outperform the passive equity index. This approach allows institutional investors to take advantage of both long and short positions in their effort to add value over the passive equity index. This approach has a number of benefits relative to other programs that utilize alternative types of investments. These benefits include complete transparency, daily valuation, higher levels of diversification and risk control, lower fees, and a simple institutional investment structure."[74]

Conforming a Cross Reference

The bill also conforms a cross reference in section 1002.36(4)(e)14., Florida Statutes, relating to the investment authority of the Board of Trustees for the Florida School of the Deaf and Blind.

C. SECTION DIRECTORY:

Section 1: Amends section 121.4501, Florida Statutes, to revise the interest rate for money transfers between plans and to provide credit for military service of members of the Public Employee Optional Retirement Program/FRS Investment Plan.

Section 2: Amends section 121.591, Florida Statutes, to create procedures related to invalid distributions from the Public Employee Optional Retirement Program/FRS Investment Plan.

Section 3: Amends section 215.47, Florida Statutes, to revises the investments that the State Board of Administration can make without limitation and the investments authorized with no more than 25 percent of any fund.

Section 4: Amends section 1002.36, Florida Statutes, to update a cross reference.

Section 5: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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[71] "A futures contract is an agreement to buy or sell a specific quantity of a commodity or financial instrument at a specified price on a particular date in the future. Commodities include bulk goods, such as grains, metals, and foods, and financial instruments include U.S. and foreign currencies." United States Sec. and Exch. Comm., *Commodity Futures Trading Commission*, available at http://www.sec.gov/answers/cftc.htm (last visited Mar. 12, 2006).

[72] "Options are contracts giving the purchaser the right to buy or sell a security, such as stocks, at a fixed price within a specific period of time." United States Sec. and Exch. Comm., *Options Trading*, available at http://www.sec.gov/answers/options.htm (last visited Mar. 12, 2006).

[73] "A notional principal contract is a financial instrument that provides for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts." Notional Principal Contracts, 26 C.F.R. § 1.446-3 (2006), available at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=8ddaf18a7b848e2e65251a98c9274c05;rgn=div8;view=text;node=26%3A6.0.1.1.1.0.4.16;idno=26;cc=ecfr (last visited Mar. 12, 2006).

[74] Fla. SBA Legislation 2006.

This bill may have a positive fiscal impact on the funds managed by the State Board of Administration. The bill does not appear to create, modify, amend, or eliminate any other revenues of state government.

2. Expenditures:

This bill does not appear to create, modify, amend, or eliminate any expenditures of state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to create, modify, amend, or eliminate any revenues of local governments.

2. Expenditures:

This bill does not appear to create, modify, amend, or eliminate any expenditures of local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have a direct impact on the private sector through the increased investment authority given to the State Board of Administration.

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 spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to 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

Not applicable.

1 A bill to be entitled
2 An act relating to state financial matters; amending s.
3 121.4501, F.S.; revising the method for calculating
4 interest on certain moneys transferred between retirement
5 accounts; providing for credit for military service of
6 members of the Public Employee Optional Retirement
7 Program; amending s. 121.591, F.S.; prescribing procedures
8 to follow if a participant in the Public Employee Optional
9 Retirement Program receives an invalid distribution;
10 amending s. 215.47, F.S.; revising standards for
11 determining eligibility of specified savings accounts,
12 certificates of deposit, time drafts, bills of exchange,
13 bonds, notes, and other instruments for investment by the
14 State Board of Administration; amending s. 1002.36, F.S.;
15 conforming a cross-reference; providing an effective date.
16
17 Be It Enacted by the Legislature of the State of Florida:
18
19 Section 1. Paragraph (c) of subsection (3) of section
20 121.4501, Florida Statutes, is amended, and subsection (22) is
21 added to that section, to read:
22 121.4501 Public Employee Optional Retirement Program.--
23 (3) ELIGIBILITY; RETIREMENT SERVICE CREDIT.--
24 (c)1. Notwithstanding paragraph (b), each eligible employee
25 who elects to participate in the Public Employee Optional
26 Retirement Program and establishes one or more individual
27 participant accounts under the optional program may elect to
28 transfer to the optional program a sum representing the present
29 value of the employee's accumulated benefit obligation under the
30 defined benefit retirement program of the Florida Retirement
31 System. Upon such transfer, all service credit previously earned

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

32 under the defined benefit program of the Florida Retirement
33 System shall be nullified for purposes of entitlement to a future
34 benefit under the defined benefit program of the Florida
35 Retirement System. A participant is precluded from transferring
36 the accumulated benefit obligation balance from the defined
37 benefit program upon the expiration of the period afforded to
38 enroll in the optional program.
39 2. For purposes of this subsection, the present value of
40 the member's accumulated benefit obligation is based upon the
41 member's estimated creditable service and estimated average final
42 compensation under the defined benefit program, subject to
43 recomputation under subparagraph 3. For state employees enrolling
44 under subparagraph (4)(a)1., initial estimates will be based upon
45 creditable service and average final compensation as of midnight
46 on June 30, 2002; for district school board employees enrolling
47 under subparagraph (4)(b)1., initial estimates will be based upon
48 creditable service and average final compensation as of midnight
49 on September 30, 2002; and for local government employees
50 enrolling under subparagraph (4)(c)1., initial estimates will be
51 based upon creditable service and average final compensation as
52 of midnight on December 31, 2002. The dates respectively
53 specified above shall be construed as the "estimate date" for
54 these employees. The actuarial present value of the employee's
55 accumulated benefit obligation shall be based on the following:
56 a. The discount rate and other relevant actuarial
57 assumptions used to value the Florida Retirement System Trust
58 Fund at the time the amount to be transferred is determined,
59 consistent with the factors provided in sub-subparagraphs b. and
60 c.
61 b. A benefit commencement age, based on the member's
62 estimated creditable service as of the estimate date. The benefit

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63 commencement age shall be the younger of the following, but shall
64 not be younger than the member's age as of the estimate date:
65 (I) Age 62; or
66 (II) The age the member would attain if the member
67 completed 30 years of service with an employer, assuming the
68 member worked continuously from the estimate date, and
69 disregarding any vesting requirement that would otherwise apply
70 under the defined benefit program of the Florida Retirement
71 System.
72 c. For members of the Special Risk Class and for members of
73 the Special Risk Administrative Support Class entitled to retain
74 special risk normal retirement date, the benefit commencement age
75 shall be the younger of the following, but shall not be younger
76 than the member's age as of the estimate date:
77 (I) Age 55; or
78 (II) The age the member would attain if the member
79 completed 25 years of service with an employer, assuming the
80 member worked continuously from the estimate date, and
81 disregarding any vesting requirement that would otherwise apply
82 under the defined benefit program of the Florida Retirement
83 System.
84 d. The calculation shall disregard vesting requirements and
85 early retirement reduction factors that would otherwise apply
86 under the defined benefit retirement program.
87 3. For each participant who elects to transfer moneys from
88 the defined benefit program to his or her account in the optional
89 program, the division shall recompute the amount transferred
90 under subparagraph 2. not later than 60 days after the actual
91 transfer of funds based upon the participant's actual creditable
92 service and actual final average compensation as of the initial
93 date of participation in the optional program. If the recomputed

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94 amount differs from the amount transferred under subparagraph 2.
95 by $10 or more, the division shall:
96 a. Transfer, or cause to be transferred, from the Florida
97 Retirement System Trust Fund to the participant's account in the
98 optional program the excess, if any, of the recomputed amount
99 over the previously transferred amount together with interest
100 from the initial date of transfer to the date of transfer under
101 this subparagraph, based upon ~~8 percent~~ effective annual interest
102 equal to the assumed return on the actuarial investment which was
103 used in the most recent actuarial valuation of the system,
104 compounded annually.
105 b. Transfer, or cause to be transferred, from the
106 participant's account to the Florida Retirement System Trust Fund
107 the excess, if any, of the previously transferred amount over the
108 recomputed amount, together with interest from the initial date
109 of transfer to the date of transfer under this subparagraph,
110 based upon 6 percent effective annual interest, compounded
111 annually, pro rata based on the participant's allocation plan.
112 4. As directed by the participant, the board shall transfer
113 or cause to be transferred the appropriate amounts to the
114 designated accounts. The board shall establish transfer
115 procedures by rule, but the actual transfer shall not be later
116 than 30 days after the effective date of the member's
117 participation in the optional program unless the major financial
118 markets for securities available for a transfer are seriously
119 disrupted by an unforeseen event which also causes the suspension
120 of trading on any national securities exchange in the country
121 where the securities were issued. In that event, such 30-day
122 period of time may be extended by a resolution of the trustees.
123 Transfers are not commissionable or subject to other fees and may
124 be in the form of securities or cash as determined by the state

125 board. Such securities shall be valued as of the date of receipt
126 in the participant's account.
127 5. If the board or the division receives notification from
128 the United States Internal Revenue Service that this paragraph or
129 any portion of this paragraph will cause the retirement system,
130 or a portion thereof, to be disqualified for tax purposes under
131 the Internal Revenue Code, then the portion that will cause the
132 disqualification does not apply. Upon such notice, the state
133 board and the division shall notify the presiding officers of the
134 Legislature.
135 (22) CREDIT FOR MILITARY SERVICE.--Creditable service of
136 any member of the Public Employee Optional Retirement Program
137 shall include military service in the Armed Forces of the United
138 States as provided in the conditions outlined in s. 121.111(1).
139 Section 2. Paragraph (a) of subsection (1) of section
140 121.591, Florida Statutes, is amended to read:
141 121.591 Benefits payable under the Public Employee Optional
142 Retirement Program of the Florida Retirement System.--Benefits
143 may not be paid under this section unless the member has
144 terminated employment as provided in s. 121.021(39)(a) or is
145 deceased and a proper application has been filed in the manner
146 prescribed by the state board or the department. The state board
147 or department, as appropriate, may cancel an application for
148 retirement benefits when the member or beneficiary fails to
149 timely provide the information and documents required by this
150 chapter and the rules of the state board and department. In
151 accordance with their respective responsibilities as provided
152 herein, the State Board of Administration and the Department of
153 Management Services shall adopt rules establishing procedures for
154 application for retirement benefits and for the cancellation of
155 such application when the required information or documents are

156 not received. The State Board of Administration and the
157 Department of Management Services, as appropriate, are authorized
158 to cash out a de minimis account of a participant who has been
159 terminated from Florida Retirement System covered employment for
160 a minimum of 6 calendar months. A de minimis account is an
161 account containing employer contributions and accumulated
162 earnings of not more than $5,000 made under the provisions of
163 this chapter. Such cash-out must either be a complete lump-sum
164 liquidation of the account balance, subject to the provisions of
165 the Internal Revenue Code, or a lump-sum direct rollover
166 distribution paid directly to the custodian of an eligible
167 retirement plan, as defined by the Internal Revenue Code, on
168 behalf of the participant. If any financial instrument issued for
169 the payment of retirement benefits under this section is not
170 presented for payment within 180 days after the last day of the
171 month in which it was originally issued, the third-party
172 administrator or other duly authorized agent of the State Board
173 of Administration shall cancel the instrument and credit the
174 amount of the instrument to the suspense account of the Public
175 Employee Optional Retirement Program Trust Fund authorized under
176 s. 121.4501(6). Any such amounts transferred to the suspense
177 account are payable upon a proper application, not to include
178 earnings thereon, as provided in this section, within 10 years
179 after the last day of the month in which the instrument was
180 originally issued, after which time such amounts and any earnings
181 thereon shall be forfeited. Any such forfeited amounts are assets
182 of the Public Employee Optional Retirement Program Trust Fund and
183 are not subject to the provisions of chapter 717.
184 (1) NORMAL BENEFITS.--Under the Public Employee Optional
185 Retirement Program:
186 (a) Benefits in the form of vested accumulations as

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187 described in s. 121.4501(6) shall be payable under this
188 subsection in accordance with the following terms and conditions:
189 1. To the extent vested, benefits shall be payable only to
190 a participant.
191 2. Benefits shall be paid by the third-party administrator
192 or designated approved providers in accordance with the law, the
193 contracts, and any applicable board rule or policy.
194 3. To receive benefits under this subsection, the
195 participant must be terminated from all employment with all
196 Florida Retirement System employers, as provided in s.
197 121.021(39).
198 4. Benefit payments may not be made until the participant
199 has been terminated for 3 calendar months, except that the board
200 may authorize by rule for the distribution of up to 10 percent of
201 the participant's account after being terminated for 1 calendar
202 month if a participant has reached the normal retirement
203 requirements of the defined benefit plan, as provided in s.
204 121.021(29).
205 5. If a member or former member of the Florida Retirement
206 System receives an invalid distribution from the Public Employee
207 Optional Retirement Program Trust Fund, such person shall repay
208 the full invalid distribution to the trust fund within 90 days
209 after receipt of final notification by the State Board of
210 Administration or the third-party administrator that the
211 distribution was invalid. If such person fails to repay the full
212 invalid distribution within 90 days after receipt of final
213 notification, the person may be deemed retired from the Public
214 Employee Optional Retirement Program by the state board, as
215 provided pursuant to s. 121.4501(2)(j), F.S., and shall be
216 subject to the provisions of s. 121.122. If such person is deemed
217 retired by the state board, any joint and several liability set

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218 out in s. 121.091(9)(c)2. becomes null and void, and the state
219 board, the Department of Management Services, or the employing
220 agency are not liable for gains on payroll contributions that
221 have not been deposited to the person's account in the Public
222 Employee Optional Retirement Program, pending resolution of the
223 invalid distribution. The member or former member who has been
224 deemed retired or who has been determined by the board to have
225 taken an invalid distribution may appeal the agency decision
226 through the complaint process as provided under s.
227 121.4501(9)(f)3., F.S. Invalid distribution as used in this
228 section shall mean any distribution from an account in the Public
229 Employee Optional Retirement Program that is taken in violation
230 of the provisions of this section, s. 121.091(9), or s. 121.4501.
231 Section 3. Subsections (1), (2), and (5) of section 215.47,
232 Florida Statutes, are amended, and subsection (17) is added to
233 that section, to read:
234 215.47 Investments; authorized securities; loan of
235 securities.--Subject to the limitations and conditions of the
236 State Constitution or of the trust agreement relating to a trust
237 fund, moneys available for investments under ss. 215.44-215.53
238 may be invested as follows:
239 (1) Without limitation in:
240 (a) Bonds, notes, or other obligations of the United States
241 or those guaranteed by the United States or for which the credit
242 of the United States is pledged for the payment of the principal
243 and interest or dividends thereof.
244 (b) State bonds pledging the full faith and credit of the
245 state and revenue bonds additionally secured by the full faith
246 and credit of the state.
247 (c) Bonds of the several counties or districts in the state
248 containing a pledge of the full faith and credit of the county or

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249 district involved.
250 (d) Bonds issued or administered by the State Board of
251 Administration secured solely by a pledge of all or part of the
252 2-cent constitutional fuel tax accruing under the provisions of
253 s. 16, Art. IX of the State Constitution of 1885, as amended, or
254 of s. 9, Art. XII of the 1968 revised State Constitution.
255 (e) Bonds issued by the State Board of Education pursuant
256 to ss. 18 and 19, Art. XII of the State Constitution of 1885, as
257 amended, or to s. 9, Art. XII of the 1968 revised State
258 Constitution, as amended.
259 (f) Bonds issued by the Florida Outdoor Recreational
260 Development Council pursuant to s. 17, Art. IX of the State
261 Constitution of 1885, as amended.
262 (g) Bonds issued by the Florida State Improvement
263 Commission, Florida Development Commission, Division of Bond
264 Finance of the Department of General Services, or Division of
265 Bond Finance of the State Board of Administration.
266 (h) Savings accounts in, or certificates of deposit of, any
267 bank, savings bank, or savings and loan association incorporated
268 under the laws of this state or organized under the laws of the
269 United States doing business and situated in this state, the
270 accounts of which are insured by the Federal Government or an
271 agency thereof and having a prime quality of the highest letter
272 and numerical ratings as provided for by at least one nationally
273 recognized statistical rating organization, ~~in an amount that~~
274 ~~does not exceed 15 percent of the net worth of the institution,~~
275 ~~or a lesser amount as determined by rule by the State Board of~~
276 ~~Administration,~~ provided such savings accounts and certificates
277 of deposit are secured in the manner prescribed in chapter 280.
278 (i) Notes, bonds, and other obligations of agencies of the
279 United States.

280 (j) Commercial paper of prime quality of the highest letter
281 and numerical rating as provided for by at least one nationally
282 recognized rating service.
283 (k) Time drafts or bills of exchange drawn on and accepted
284 by a commercial bank, otherwise known as banker's acceptances,
285 which are accepted by a member bank of the Federal Reserve System
286 and are of prime quality of the highest letter and numerical
287 ratings as provided for by at least one nationally recognized
288 statistical rating organization ~~having total deposits of not less~~
289 ~~than $400 million~~.
290 (l) Negotiable certificates of deposit issued by domestic
291 or foreign financial institutions in United States dollars of
292 prime quality of the highest letter and numerical ratings as
293 provided for by at least one nationally recognized statistical
294 rating organization.
295 (m) Short-term obligations not authorized elsewhere in this
296 section to be purchased individually or in pooled accounts or
297 other collective investment funds, for the purpose of providing
298 liquidity to any fund or portfolio.
299 (n) Securities of, or other interests in, any open-end or
300 closed-end management type investment company or investment trust
301 registered under the Investment Company Act of 1940, 15 U.S.C.
302 ss. 80a-1 et seq., as amended from time to time, provided that
303 the portfolio of such investment company or investment trust is
304 limited to obligations of the United States Government or any
305 agency or instrumentality thereof and to repurchase agreements
306 fully collateralized by such United States Government obligations
307 and provided that such investment company or investment trust
308 takes delivery of such collateral either directly or through an
309 authorized custodian.
310 (2) With no more than 25 percent of any fund in:

311 (a) Bonds, notes, or obligations of any municipality or
312 political subdivision or any agency or authority of this state,
313 if the obligations are rated investment grade by at least one
314 nationally recognized statistical rating organization ~~such~~
315 ~~obligations are rated in any one of the three highest ratings by~~
316 ~~two nationally recognized rating services. However, if only one~~
317 ~~nationally recognized rating service shall rate such obligations,~~
318 ~~then such rating service must have rated such obligations in any~~
319 ~~one of the two highest classifications heretofore mentioned~~.
320 (b) Notes secured by first mortgages ~~on Florida real~~
321 ~~property,~~ insured or guaranteed by the Federal Housing
322 Administration or the United States Department of Veterans
323 Affairs.
324 ~~(c) Investments collateralized by first mortgages covering~~
325 ~~single-family Florida residences, provided such mortgages do not~~
326 ~~exceed $60,000, do not exceed 80 percent of value, are not~~
327 ~~delinquent, and are originated by a lender regulated by the state~~
328 ~~or Federal Government and the aggregate of the collateral~~
329 ~~furnished is at least 150 percent of the aggregate investment~~
330 ~~under this subsection. The mortgages used for collateral shall~~
331 ~~be segregated by the lending institution so that such segregation~~
332 ~~may be confirmed by independent audit. In the event any such~~
333 ~~mortgage used as collateral becomes more than 3 months~~
334 ~~delinquent, the lender shall immediately substitute therefor a~~
335 ~~mortgage of equal or greater value.~~
336 (c) ~~(d)~~ Mortgage securities which represent participation in
337 or are collateralized by mortgage loans secured by real property.
338 Such securities must be issued by an agency of or enterprise
339 sponsored by the United States Government, including, but not
340 limited to, the Government National Mortgage Association, the
341 Federal National Mortgage Association, and the Federal Home Loan

342 Mortgage Corporation.
343 (d) ~~(e)~~ Group annuity contracts of the pension investment
344 type with insurers licensed to do business in this state which
345 are rated investment grade by at least one nationally recognized
346 rating service~~, except that amounts invested by the board with~~
347 ~~any one insurer shall not exceed 3 percent of its assets~~.
348 (e) ~~(f)~~ Certain interests in real property and related
349 personal property, including mortgages and related instruments on
350 commercial or industrial real property, with provisions for
351 equity or income participation or with provisions for
352 convertibility to equity ownership; and interests in collective
353 investment funds. Associated expenditures for acquisition and
354 operation of assets purchased under this provision or of
355 investments in private equity or other private investment
356 partnerships or limited liability companies shall be included as
357 a part of the cost of the investment.
358 1. The title to real property acquired under this paragraph
359 shall be vested in the name of the respective fund.
360 2. For purposes of taxation of property owned by any fund,
361 the provisions of s. 196.199(2)(b) do not apply.
362 3. Real property acquired under the provisions of this
363 paragraph shall not be considered state lands or public lands and
364 property as defined in chapter 253, and the provisions of that
365 chapter do not apply to such real property.
366 (f) ~~(g)~~ Fixed-income obligations not otherwise authorized by
367 this section issued by foreign governments or political
368 subdivisions or agencies thereof, supranational agencies, foreign
369 corporations, or foreign commercial entities, if the obligations
370 are rated investment grade by at least one nationally recognized
371 rating service.
372 (g) ~~(h)~~ A portion of the funds available for investment

373 pursuant to this subsection may be invested in rated or unrated
374 bonds, notes, or instruments backed by the full faith and credit
375 of the government of Israel.
376 (h) ~~(i)~~ Obligations of agencies of the government of the
377 United States, provided such obligations have been included in
378 and authorized by the Florida Retirement System Defined Benefit
379 Plan Investment Policy Statement established in s. 215.475.
380 (i) ~~(j)~~ United States dollar-denominated obligations issued
381 by foreign governments, or political subdivisions or agencies
382 thereof, supranational agencies, foreign corporations, or foreign
383 commercial entities.
384 (j) ~~(k)~~ Asset-backed securities not otherwise authorized by
385 this section.
386 (5) With no more than 25 ~~20~~ percent of any fund in
387 corporate obligations and securities of any kind of a foreign
388 corporation or a foreign commercial entity having its principal
389 office located in any country other than the United States of
390 America or its possessions or territories, not including United
391 States dollar-denominated securities listed and traded on a
392 United States exchange which are a part of the ordinary
393 investment strategy of the board.
394 (17) The State Board of Administration may sell short any
395 of the securities and investments authorized under this section.
396 Section 4. Paragraph (e) of subsection (4) of section
397 1002.36, Florida Statutes, is amended to read:
398 1002.36 Florida School for the Deaf and the Blind.--
399 (4) BOARD OF TRUSTEES.--
400 (e) The board of trustees is invested with full power and
401 authority to:
402 1. Appoint a president, faculty, teachers, and other
403 employees and remove the same as in its judgment may be best and

404 fix their compensation.
405 2. Procure professional services, such as medical, mental
406 health, architectural, and engineering.
407 3. Procure legal services without the prior written
408 approval of the Attorney General.
409 4. Determine eligibility of students and procedure for
410 admission.
411 5. Provide for the students of the school necessary
412 bedding, clothing, food, and medical attendance and such other
413 things as may be proper for the health and comfort of the
414 students without cost to their parents, except that the board of
415 trustees may set tuition and other fees for nonresidents.
416 6. Provide for the proper keeping of accounts and records
417 and for budgeting of funds.
418 7. Enter into contracts.
419 8. Sue and be sued.
420 9. Secure public liability insurance.
421 10. Do and perform every other matter or thing requisite to
422 the proper management, maintenance, support, and control of the
423 school at the highest efficiency economically possible, the board
424 of trustees taking into consideration the purposes of the
425 establishment.
426 11. Receive gifts, donations, and bequests of money or
427 property, real or personal, tangible or intangible, from any
428 person, firm, corporation, or other legal entity. However, the
429 board of trustees may not obligate the state to any expenditure
430 or policy that is not specifically authorized by law. If the bill
431 of sale, will, trust indenture, deed, or other legal conveyance
432 specifies terms and conditions concerning the use of such money
433 or property, the board of trustees shall observe such terms and
434 conditions.

435 12. Deposit outside the State Treasury such moneys as are
436 received as gifts, donations, or bequests and may disburse and
437 expend such moneys, upon its own warrant, for the use and benefit
438 of the Florida School for the Deaf and the Blind and its
439 students, as the board of trustees deems to be in the best
440 interest of the school and its students. Such money or property
441 shall not constitute or be considered a part of any legislative
442 appropriation, and such money shall not be used to compensate any
443 person for engaging in lobbying activities before the House of
444 Representatives or Senate or any committee thereof.
445 13. Sell or convey by bill of sale, deed, or other legal
446 instrument any property, real or personal, received as a gift,
447 donation, or bequest, upon such terms and conditions as the board
448 of trustees deems to be in the best interest of the school and
449 its students.
450 14. Invest such moneys in securities enumerated under s.
451 215.47(1), (2)(c) ~~(2)(d)~~, (3), (4), and (9), and in The Common
452 Fund, an Investment Management Fund exclusively for nonprofit
453 educational institutions.
454 Section 5. This act shall take effect July 1, 2006.

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PCB GO 06-30

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-30 Public Records/State Board of Administration
SPONSOR(S): Governmental Operations Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1308

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Mitchell	Williamson
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This proposed committee bill is being considered by the Governmental Operations Committee pursuant to House Rule 7.9. The bill contains a public records exemption sought by the State Board of Administration for certain information related to alternative investments:

- Defines proprietary confidential business information and specifically excludes certain information from this definition.
- Creates an exemption from the constitutional and statutory public records requirements for proprietary confidential business information held by the State Board of Administration regarding alternative investments for 10 years.
- Provides access to inspect or copy a particular public record if requested and if a proprietor fails to verify certain required information through a written declaration.
- Permits any person to petition the appropriate court in Leon County, Florida, for the public release of any record made confidential and exempt by the bill.

The bill contains a public necessity statement.

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

This bill does not appear to have a fiscal impact on local governments. The bill does not appear to have an impact on state government revenues, but may have a minimal fiscal impact on the expenditures of state government for implementation.

This bill requires passage by a two-thirds vote of each house.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Background on Alternative Investments

The State Board of Administration exists pursuant to article IV, section 4(e) of the Florida Constitution. It is composed of the governor, as chair, the chief financial officer, and the attorney general. The SBA is charged with investing all the funds in the System Trust Fund of the Florida Retirement System as well as other funds[1] such as the Public Employee Optional Retirement Program Trust Fund, the Florida Hurricane Catastrophe Trust Fund, the Lawton Chiles Endowment Fund, and the Local Government Surplus Funds Trust Fund.[2] For fiscal year 2003-2004, the net asset value of all funds managed by the SBA was $134.2 billion.[3] The System Trust Fund of the Florida Retirement System comprises 76 percent of these assets.[4]

Section 215.44, Florida Statutes, sets forth the powers and duties of the SBA in relation to the investment of trust funds. Among the powers granted to the SBA is the authority to make purchases, sales, exchanges, and reinvestments for the System Trust Fund.[5] The SBA is charged to ensure that investments are handled in the best interests of the state,[6] but also to have an appropriately diversified portfolio which maximizes financial return consistent with the risks incumbent in each investment.

As part of its best interests, maximization, and diversification actions, the SBA, invests in multiple asset classes: domestic equities (U.S. stocks), global equities (U.S. and non-U.S. stocks), international equities (non-U.S. stocks), fixed income (bonds), real estate (including direct-owned properties and real estate investment trusts), and cash/cash equivalents (short-term instruments).[7] The SBA also invests in an "alternative investment" asset class which "is composed principally of private equity investments through limited partnerships and captive (exclusive) arrangements" with resulting portfolio investments being "predominantly equity investments in domestic companies."[8] In other words, the alternative investments class generally consists of private equity funds, venture capital funds, distress debt funds, and hedge funds.[9]

The Total Fund Investment Plan approved by the Board of Trustees provides a target of five percent for the alternative investments assets class with a range from one percent to eight percent.[10] The actual investment for the System Trust Fund has been approximately 3.27 percent over the last four years:[11]

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[1] Fla. Stat. § 215.44(1) (2005).
[2] Fla. State Board of Adm., 2003-2004 Inv. Rep. (2004) at 3, available at http://www.sbafla.com/pdf/investment/annual/2004/SBA-AIR.pdf (last visited Feb. 20, 2006).
[3] *Id.*
[4] *Id.*
[5] Fla. Stat. § 215.44(2)(a) (2005).
[6] *Id.*
[7] Fla. State Board of Adm., 2003-2004 Investment Rep., at 14.
[8] *Id.* at 15.
[9] Fla. State Board of Adm., Summary of SBA Public Records Exemption Proposal (Dec. 1, 2005), at 1.
[10] Fla. State Board of Adm., Fla. Ret. Sys. Total Fund Inv. Plan (As Approved by the Trustees Aug. 12, 2003), at 5, available at http://www.sbafla.com/pdf/funds/FRSDB_TFIP_2003_07_01.pdf (last visited Feb. 20, 2006)
[11] Fla. State Board of Adm., FRS DB Assets by Type, available at http://www.sbafla.com/popup.aspx?image=images\WebCharts\FRSDB_assets_by_type.gif (last visited Feb. 20, 2006); Fla. State Board of Adm., Alternative Investment Information for FRS DB Plan, available at http://www.sbafla.com/funds_detail.aspx?parent=1&section=8&type=ai#3 (last visited Feb. 20, 2006).

	2002	2003	2004	2005
Alternative Investments ($/millions)	2,822	3,326	3,410	3,581
Net Contributions ($/millions)	(135)	445	(225)	(270)
Market Gain (Loss) ($/millions)	(145)	59	309	440
Total Market Value ($/millions)	86,166	96,490	106,752	114,122
Percent Alternative Investments	3.28	3.45	3.19	3.14

In order to make alternative investments, the SBA engages private equity managers:

> Only 30% of all private equity partnerships have been able to produce the SBA-required premium over public market returns which justify incurring the risks associated with these investments. The top of these private equity managers have generated sizable premiums over the public markets (19.4% and 29.7%) because of substantial information advantages. The information advantages of these private equity managers include confidential business information and trade secrets.[12]

Some of this information may become a public record which must be open to inspection and copying[13] unless exempt or confidential and exempt.[14]

Access to Public Records

Access to the public records of any public body is a right provided by Article 1, section 24(a) of the Florida Constitution:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution

Section 119.07(1), Florida Statutes, provides further implementation of this right:

> Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.[15]

Requirements for Public Records Exemptions

The Legislature may limit the right of the public to inspect or copy any public record by creating an exemption by general law. This general law must "state with specificity the public necessity justifying the exemption" and be "no broader than necessary to accomplish the stated purpose of the law." The Legislature has created numerous public records exemptions.

Relevant Public Records Exemptions: State Board of Administration

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[12] Fla. State Board of Adm., Summary of SBA Public Records Exemption Proposal (Dec. 1, 2005).
[13] Fla. Stat. § 119.07(1) (2005).
[14] There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62, Aug. 1, 1985.
[15] Fla. Stat. § 119.07(1)(a) (2005).

Some public records of the State Board of Administration are currently confidential and exempt:

- Records relating to acquiring, hypothecating, or disposing of real property or related personal property or mortgage interests in same, as well as interest in collective real estate investment funds, publicly traded securities, or private placement investments; [16]

- Reports and documents relating to value, offers, counteroffers, or negotiations until closing is complete and all funds have been disbursed;[17]

- Reports and documents relating to tenants, leases, contracts, rent rolls, and negotiations in progress until the executive director determines that releasing such information would not be detrimental to the interests of the board and would not cause a conflict with the fiduciary responsibilities of the State Board of Administration;[18]

- Records relating to investments made by the board pursuant to its constitutional and statutory investment duties and responsibilities until 30 days after completion of an investment transaction;[19] and

- Information concerning service provider fees may be maintained until six months after negotiations relating to such fees have been terminated.[20]

A New Public Records Exemption for the State Board of Administration

This proposed committee bill is being considered by the Governmental Operations Committee pursuant to House Rule 7.9. The bill contains a public records exemption sought by the State Board of Administration for certain information related to alternative investments.

Public Records Exemption for Alternative Investments: Definitions

The bill provides definitions for a new public records exemption for the State Board of Administration.

The bill defines an alternative investment as "an investment...in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager."

The bill also defines "proprietary confidential business information" as information which has been designated by a proprietor as meeting all three of the following criteria:

Proprietary Confidential Business Information Criteria	Elements of the Criteria
1. *Owned or controlled* by a proprietor.	A proprietor is defined as "an alternative investment vehicle, a portfolio company in which the alternative investment vehicle is invested, or an outside consultant, including the respective authorized officers, employees, agents, or successors in interest, which controls or owns information provided to the State Board of Administration."

[16] Fla. Stat. § 215.44(8)(a) (2005).
[17] *Id.*
[18] *Id.*
[19] Fla. Stat. § 215.44(8)(b) (2005).
[20] *Id.*

2. Intended to be and is treated by the proprietor as *private*.	The disclosure of this information must harm the business operations of the proprietor. The information must not have been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process or pursuant to law or an order of a court or administrative body;
3. Relates to any of the designated areas.	These designated areas include: - Trade secrets - Information provided to the State Board of Administration regarding a prospective investment in a private equity fund, venture fund, hedge fund, distress fund, or portfolio company which is proprietary to the provider of the information. - Financial statements and auditor reports of an alternative investment vehicle. - Meeting materials of an alternative investment vehicle relating to financial, operating, or marketing information of the alternative investment vehicle. - Information regarding the portfolio positions in which the alternative investment vehicles invest. - Capital call and distribution notices to investors of an alternative investment vehicle. - Alternative investment agreements and related records. - Information concerning investors, other than the State Board of Administration, in an alternative investment vehicle.

The bill also defines what information does not meet the definition of proprietary confidential business information and which would continue to be available as a public record:

1. The name, address, and vintage year of an alternative investment vehicle and the identity of the principals involved in the management of the alternative investment vehicle.

2. The dollar amount of the commitment made by the State Board of Administration to each alternative investment vehicle since inception.

3. The dollar amount and date of cash contributions made by the State Board of Administration to each alternative investment vehicle since inception.

4. The dollar amount, on a fiscal-year-end basis, of cash distributions received by the State Board of Administration from each alternative investment vehicle.

5. The dollar amount, on a fiscal-year-end basis, of cash distributions received by the State Board of Administration plus the remaining value of alternative-vehicle assets that are attributable to the State Board of Administration's investment in each alternative investment vehicle.

6. The net internal rate of return of each alternative investment vehicle since inception.

7. The investment multiple of each alternative investment vehicle since inception.

8. The dollar amount of the total management fees and costs paid on an annual fiscal-year-end basis by the State Board of Administration to each alternative investment vehicle.

9. The dollar amount of cash profit received by the State Board of Administration from each alternative investment vehicle on a fiscal-year-end basis.

The bill also provides definitions for alternative investment vehicle,[21] portfolio company,[22] and portfolio positions.[23]

Public Records Exemption for Alternative Investments: Operation

The bill makes proprietary confidential business information held by the State Board of Administration confidential and exempt from section 119.07(1), Florida Statutes, and article I, section 24(a) of the Florida Constitution for 10 years after the termination of the alternative investment.

The bill, however, permits access to inspect or copy a particular record under the provisions of section 119.07, Florida Statutes, if a proprietor, within a reasonable period of time after the request is made, fails to verify through a written declaration pursuant to section 92.525, Florida Statutes, that a particular records contains the following information:

1. Proprietary confidential business information and the specific location of that proprietary confidential business information within the record submitted to the State Board of Administration;

2. Information which is a trade secret as defined in s. 688.002;

3. Information that is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and

4. Information which would harm the business operations of the proprietor if disclosed to the public.

Public Records Exemption for Alternative Investments: Petition for Public Release

Any person may petition a court of competent jurisdiction in Leon County, Florida for an order for the public release of those portions of any record made confidential and exempt by operation of this bill. The petition must be served, along with any other initial pleadings, on the SBA and on the proprietor of the information sought to be released, if the proprietor can be determined through diligent inquiry.

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[21] Fla. HPCB GO 01-30, §1 (2005) (defined as "the limited partnership, limited liability company, or similar legal structure or investment manager through which the State Board of Administration invests in a portfolio company").
[22] Fla. HPCB GO 01-30, §1 (2005) (defined as "a corporation or other issuer, any of whose securities are owned by an alternative investment vehicle or the State Board of Administration and any subsidiary of such corporation or other issuer").
[23] Fla. HPCB GO 01-30, §1 (2005) (defined as "individual investments in portfolio companies which are made by the alternative investment vehicles, including information or specific investment terms associated with any portfolio company investment").

The bill requires the court to make three findings in any order for the release of a public record: (1) that the record or portion thereof is not a trade secret as defined in section 688.002, Florida Statutes; (2) that a compelling public interest is served by the release of the record or portions thereof which exceed the public necessity for maintaining the confidentiality of such record; and (3) that the release of the record will not cause damage to or adversely affect the interests of the proprietor of the released information, other private persons or business entities, the State Board of Administration, or any trust fund, the assets of which are invested by the State Board of Administration.

Public Records Exemption for Alternative Investments: Open Government Sunset Review Act

Section 119.15, Florida Statutes, requires the review and repeal or reenactment of any exemption from section 24, article I of the Florida Constitution and section 119.07(1), Florida Statutes, in the fifth year after the enactment of a new exemption. Unless the Legislature acts to reenact the newly created exemption, it is repealed on October 2nd of the fifth year. The bill recognizes this required review and provides for repeal on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

Public Records Exemption for Alternative Investments: Public Necessity Statement

This bill provides a public necessity statement to comport with the requirements of article 1, section 24(c) of the Florida Constitution.

C. SECTION DIRECTORY:

Section 1: Creates paragraph (c) of subsection 8 of section 215.44, Florida Statutes, to create a public records exemption for certain investment information held by the State Board of Administration.

Section 2: Sets forth the public necessity statement for the exemption.

Section 3: Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate any revenues of state government.

2. Expenditures:

   The bill likely could create a fiscal impact on the State Board of Administration because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, the State Board of Administration could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate any revenues of local governments.

2. Expenditures:

   This bill does not appear to create, modify, amend, or eliminate any expenditures of local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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 appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

2. Other:

Article 1, section 24(c) of the Florida Constitution contains three requirements for any general law creating an exemption to the constitutional right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf: (1) passed by a two-third votes of each house, (2) state with specificity the public necessity justifying the exemption, and (3) be no broader than necessary to accomplish the stated purpose of the law. As such, the bill requires a two-thirds vote for passage. The adequacy of the public necessity statement and whether the bill is broader than necessary are ultimately matters of judicial interpretation.

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

Not applicable.

1 A bill to be entitled
2 An act relating to public records exemption for
3 alternative investments; amending s. 215.44, F.S.;
4 providing definitions; defining "proprietary confidential
5 business information" and specifying information which
6 does not constitute proprietary confidential business
7 information; creating an exemption from public records
8 requirements for proprietary confidential business
9 information held by the State Board of Administration
10 regarding alternative investments; providing for limited
11 duration of the exemption; authorizing the State Board of
12 Administration to use such information in judicial or
13 administrative proceedings under specified circumstances;
14 providing for retroactive application of the exemption;
15 authorizing a proprietor of a record to certify the record
16 as proprietary confidential business information;
17 providing procedures and requirements with respect
18 thereto; authorizing a court to order the release of
19 portions of confidential and exempt records upon making
20 certain findings; providing for future review and repeal;
21 providing a statement of public necessity; providing an
22 effective date.
23
24 Be It Enacted by the Legislature of the State of Florida:
25
26 Section 1. Paragraph (c) is added to subsection (8) of
27 section 215.44, Florida Statutes, to read:
28 215.44 Board of Administration; powers and duties in
29 relation to investment of trust funds.--
30 (8)
31 <u>(c)1. As used in this paragraph, the term:</u>

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

32 a. "Alternative investment" means an investment by the
33 State Board of Administration in a private equity fund, venture
34 fund, hedge fund, or distress fund or a direct investment in a
35 portfolio company through an investment manager.
36 b. "Alternative investment vehicle" means the limited
37 partnership, limited liability company, or similar legal
38 structure or investment manager through which the State Board of
39 Administration invests in a portfolio company.
40 c. "Portfolio company" means a corporation or other issuer,
41 any of whose securities are owned by an alternative investment
42 vehicle or the State Board of Administration and any subsidiary
43 of such corporation or other issuer.
44 d. "Portfolio positions" means individual investments in
45 portfolio companies which are made by the alternative investment
46 vehicles, including information or specific investment terms
47 associated with any portfolio company investment.
48 e. "Proprietor" means an alternative investment vehicle, a
49 portfolio company in which the alternative investment vehicle is
50 invested, or an outside consultant, including the respective
51 authorized officers, employees, agents, or successors in
52 interest, which controls or owns information provided to the
53 State Board of Administration.
54 f. "Proprietary confidential business information" means
55 information that has been designated by the proprietor when
56 provided to the state board as information that is owned or
57 controlled by a proprietor; that is intended to be and is treated
58 by the proprietor as private, the disclosure of which would harm
59 the business operations of the proprietor and has not been
60 intentionally disclosed by the proprietor unless pursuant to a
61 private agreement that provides that the information will not be
62 released to the public except as required by law or legal

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63 process, or pursuant to law or an order of a court or
64 administrative body; and that concerns:
65 (I) Trade secrets as defined in s. 688.002.
66 (II) Information provided to the State Board of
67 Administration regarding a prospective investment in a private
68 equity fund, venture fund, hedge fund, distress fund, or
69 portfolio company which is proprietary to the provider of the
70 information.
71 (III) Financial statements and auditor reports of an
72 alternative investment vehicle.
73 (IV) Meeting materials of an alternative investment vehicle
74 relating to financial, operating, or marketing information of the
75 alternative investment vehicle.
76 (V) Information regarding the portfolio positions in which
77 the alternative investment vehicles invest.
78 (VI) Capital call and distribution notices to investors of
79 an alternative investment vehicle.
80 (VII) Alternative investment agreements and related
81 records.
82 (VIII) Information concerning investors, other than the
83 State Board of Administration, in an alternative investment
84 vehicle.
85 g. "Proprietary confidential business information" does not
86 include:
87 (I) The name, address, and vintage year of an alternative
88 investment vehicle and the identity of the principals involved in
89 the management of the alternative investment vehicle.
90 (II) The dollar amount of the commitment made by the State
91 Board of Administration to each alternative investment vehicle
92 since inception.
93 (III) The dollar amount and date of cash contributions made

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94 by the State Board of Administration to each alternative
95 investment vehicle since inception.
96 (IV) The dollar amount, on a fiscal-year-end basis, of cash
97 distributions received by the State Board of Administration from
98 each alternative investment vehicle.
99 (V) The dollar amount, on a fiscal-year-end basis, of cash
100 distributions received by the State Board of Administration plus
101 the remaining value of alternative-vehicle assets that are
102 attributable to the State Board of Administration's investment in
103 each alternative investment vehicle.
104 (VI) The net internal rate of return of each alternative
105 investment vehicle since inception.
106 (VII) The investment multiple of each alternative
107 investment vehicle since inception.
108 (VIII) The dollar amount of the total management fees and
109 costs paid on an annual fiscal-year-end basis by the State Board
110 of Administration to each alternative investment vehicle.
111 (IX) The dollar amount of cash profit received by the State
112 Board of Administration from each alternative investment vehicle
113 on a fiscal-year-end basis.
114 2. Proprietary confidential business information held by
115 the State Board of Administration regarding alternative
116 investments is confidential and exempt from s. 119.07(1) and s.
117 24(a), Art. I of the State Constitution for 10 years after the
118 termination of the alternative investment.
119 3. Notwithstanding the provisions of subparagraph 2.,
120 access to inspect or copy a particular record under s. 119.07
121 shall be granted if a proprietor fails, within a reasonable
122 period of time after the request is made, to verify through a
123 written declaration and as provided in s. 92.525 that the
124 particular record contains the following information:

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125 a. Proprietary confidential business information and the
126 specific location of that proprietary confidential business
127 information within the record submitted to the State Board of
128 Administration;
129 b. Information which is a trade secret as defined in s.
130 688.002;
131 c. Information that is intended to be and is treated by the
132 proprietor as private, is the subject of efforts of the
133 proprietor to maintain its privacy, and is not readily
134 ascertainable or publicly available from any other source; and
135 d. Information which would harm the business operations of
136 the proprietor if disclosed to the public.
137 4. Any person may petition a court of competent
138 jurisdiction for an order for the public release of those
139 portions of any record made confidential and exempt by
140 subparagraph 2. Any action under this subparagraph must be
141 brought in Leon County, Florida, and the petition or other
142 initial pleading shall be served on the State Board of
143 Administration and, if determinable upon diligent inquiry, on the
144 proprietor of the information sought to be released. In any order
145 for the public release of a record under this subparagraph, the
146 court shall make a finding that the record or portion thereof is
147 not a trade secret as defined in s. 688.002, that a compelling
148 public interest is served by the release of the record or
149 portions thereof which exceed the public necessity for
150 maintaining the confidentiality of such record, and that the
151 release of the record will not cause damage to or adversely
152 affect the interests of the proprietor of the released
153 information, other private persons or business entities, the
154 State Board of Administration, or any trust fund, the assets of
155 which are invested by the State Board of Administration.

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156 5. This paragraph is subject to the Open Government Sunset
157 Review Act in accordance with s. 119.15 and shall stand repealed
158 on October 2, 2011, unless reviewed and saved from repeal through
159 reenactment by the Legislature.
160 Section 2. The Legislature finds that it is a public
161 necessity that proprietary confidential business information held
162 by the State Board of Administration regarding alternative
163 investments be held confidential and exempt from s. 119.07(1),
164 Florida Statutes, and s. 24(a), Art. I of the State Constitution
165 for 10 years after the termination of the alternative investment.
166 Disclosing proprietary confidential business information,
167 including trade secrets as defined in s. 688.002, Florida
168 Statutes, used in determining how private equity investments are
169 made or managed by private partnerships investing assets on
170 behalf of the State Board of Administration would negatively
171 affect the business interests of private partnerships that rely
172 heavily on their information advantage to generate investment
173 returns, and competitor partnerships could gain an unfair
174 competitive advantage if provided access to such information.
175 Maintaining the information advantage of highly skilled private
176 equity investment managers is necessary in order for the State
177 Board of Administration to generate an adequate return from its
178 assets committed to this high-risk segment of the market, since
179 only those managers having a strong information advantage have
180 generated adequate risk-adjusted returns. Research shows that 60
181 percent of all private equity partnerships have delivered a
182 return less than that of the lower-risk public markets. Only 30
183 percent of all private equity partnerships have been able to
184 produce the State Board of Administration's required premium over
185 public-market returns to justify incurring the risks associated
186 with these investments. The ninth and tenth deciles of private

187 equity managers are those having a substantial information
188 advantage and they have generated sizable premiums over the
189 public markets, with net returns of 19.4 percent and 29.7
190 percent, respectively. The Legislature finds that the exemption
191 of proprietary confidential business information used in or
192 implying how private equity investments are made or managed is
193 necessary for the effective and efficient administration of the
194 State Board of Administration's asset-management program. Assets
195 of the Florida Retirement System must grow rapidly in order to
196 keep pace with growth in the system's liabilities and to manage
197 the costs of employer contributions. In order to meet its
198 investment objectives, the State Board of Administration must
199 invest in diversified asset types, including high-return, high-
200 risk private equity partnerships. Those partnerships that have
201 and are able to maintain a substantial information advantage over
202 their competitors are likely to provide an adequate return. The
203 release of proprietary confidential business information,
204 including trade secrets, revealing how private equity investments
205 are made or managed could result in inadequate returns and
206 ultimately frustrate attainment of the investment objective of
207 the State Board of Administration, subsequently increasing
208 contribution costs for employers in the Florida Retirement System
209 and lowering the system's funded ratio. It is the Legislature's
210 intent to allow the public access to sufficient information in
211 order to be informed regarding the alternative investments of the
212 State Board of Administration and to balance the public's right
213 to information against the right of private business entities to
214 be protected from harmful disclosure of confidential and exempt
215 proprietary confidential business information, the disclosure of
216 which would injure them in the marketplace, impair the ability of
217 the State Board of Administration to invest in the best

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218 performing alternative investment vehicles, and diminish
219 investment earnings in the Florida Retirement System Trust Fund.
220 It is also the Legislature's intent to establish consistency with
221 regard to the classification of information relating to
222 alternative investments by the State Board of Administration as
223 either confidential or suitable for public disclosure. In finding
224 that the public records exemption created by this act is a public
225 necessity, the Legislature finds that the public and private harm
226 in disclosing proprietary confidential business information
227 relating to alternative investments by the State Board of
228 Administration significantly outweighs any public benefit derived
229 from disclosure; that the exemption created by this act will
230 enhance the ability of the State Board of Administration to
231 fulfill its duties as an investment fiduciary by making it more
232 effective and competitive in the marketplace as an investor that
233 is able to gain access to the best alternative investment
234 vehicles; and that the public's ability to be informed regarding
235 the alternative investments made by the State Board of
236 Administration is preserved by the disclosure of information
237 excepted from the created exemption.
238 Section 3. This act shall take effect October 1, 2006.

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PCB GO 06-34

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-34 Procurement of Contractual Services by a State Agency
SPONSOR(S): Governmental Operations Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2518

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Brown	Williamson
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill creates the Council on Efficient Government within the Department of Management Services. The council is an advisory body that reviews and consults on outsourcing projects initiated by state agencies. Cabinet agencies are exempt from these requirements.

The bill creates outsourcing categories based on project cost and creates business case requirements for each category. The bill identifies specific criteria that must be addressed in each business case and specific criteria that an agency must include in any contract to outsource.

The bill grants rulemaking authority to DMS to train certified contract negotiators. These negotiators are required for larger project categories. At the highest level, negotiators must be trained by the Project Management Institute.

The bill abolishes the State Council on Competitive Government, created by s. 14.203, F.S.

The bill provides DMS with $1.75 million in additional recurring funding in 2006-2007. The Council receives $1.25 million to create 10 full-time equivalent positions, and $500,000 is earmarked towards training state employees in negotiation skills.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates 10 full-time equivalent positions at the Department of Management Services and grants the department additional rulemaking authority to train and certify contract negotiators. The bill creates business case requirements for certain categories of outsourced service contracts.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Since the 1950's, Florida has statutorily required competitive bidding in state procurement.[1] Through the years, the Legislature has amended the requirements numerous times with control over the procurement process passing from the State Purchasing Commission to the Department of General Services, now known as the Department of Management Services (DMS).[2]

Currently, Part I of Chapter 287, F.S., sets forth the requirements for the procurement of commodities and contractual services by state agencies. The law directs DMS, as the centralized authority, to oversee the implementation of competitive bidding requirements and to create uniform rules for procurement. The purchasing process also is partly decentralized. Except in the cases where state term contracts exist, agencies may buy commodities and contractual services themselves.[3]

As the state has increasingly shifted to external provision of services,[4] it has occasionally experienced challenges in ensuring that the desired results are achieved. Recent studies and audits have suggested that the state's procurement of large, complex initiatives could be improved:

- In June 2003, the Governor's Chief Inspector General released an audit report entitled "A Road Map to Excellence in Contracting."[5] It found problems with procurement, particularly with performance monitoring, procurement methodologies, and contract writing. The report suggested a variety of solutions, including revising Ch. 287, F.S., improving leadership by the DMS, instating a negotiation training program, and facilitating interagency communication among procurement staff.
- In January 2004, the Office of Program Policy Analysis and Government Accountability (OPPAGA) released a report entitled "The Legislature Could Strengthen State's Privatization[6] Accountability Requirements."[7] OPPAGA concurred with the Chief Inspector General's June 2003 findings and suggested Legislative actions including mandating the use of business cases, strengthening requirements for performance contracting, and strengthening oversight of agency privatization initiatives.
- Various reports by the Auditor General have identified problems. For example:
    - In the MyFloridaAlliance initiative of the State Technology Office (STO) involving outsourcing multiple functions, the STO had not conducted full feasibility studies, cost analyses, or risk assessments to determine if the outsourcing of these functions would

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[1] See generally Ch. 287, F.S.
[2] Relatively recent substantial changes include Ch. 82-196, L.O.F. (submitting contractual services to competition requirements), Ch. 92-279, L.O.F. (creating the Department of Management Services from the previous Department of General Services and Department of Administration), and Ch. 2002-207, L.O.F (introducing Invitation to Negotiate language and procedures).
[3] Section 287.056, F.S.
[4] The last-available data from the Center for Efficient Government documented at least 138 outsourcing projects undertaken between January 1999 and June 2004.
[5] Available online here: http://www.myflorida.com/eog/inspector_general/reports.html.
[6] OPPAGA uses "privatization" as a generic term encompassing such techniques and activities as contracting out, outsourcing, and public-private partnerships.
[7] Available online here: http://www.oppaga.state.fl.us/reports/pdf/0402rpt.pdf.

provide the best value to the state. Additionally, the information provided in the solicitation documents did not provide sufficient detail about STO operations, services, and needs to allow for a responsible vendor to adequately respond to the listed key initiatives. The contracts with Accenture and BearingPoint lacked certain provisions to adequately protect state resources.[8] The STO subsequently cancelled the contracts.
    - In DMS's procurement of the MyFloridaMarketplace e-procurement system, the department planning process did not include timely completion of a cost-benefit or risk analysis.[9]
    - In the Department of Business and Professional Regulation's On-line Licensing and Call Center Services procurement, the department did not perform a feasibility study for the procurement's Application Management Services component.[10] Additionally, the contract, which is funded through a shared-savings model, failed to provide specifics about how to define and share savings.[11]
- The Inspector General of DMS has identified similar problems regarding correctional privatization. In its 2005 internal audit, [12] the DMS Inspector General identified serious deficiencies including:
    - Failure to enforce contract provisions.
    - Allowing vendors to waive contract requirements without similarly adjusting payments to vendors.
    - Making over $1 million in overpayments and failing to attempt to recover such losses, after discovering them.
    - Artificially inflating per-diem rates and maintenance costs, resulting in hundreds of thousands of dollars in additional unnecessary and unbudgeted payments.

Previous Initiatives to Improve Outsourcing

The Governor issued an Executive Order on March 11, 2004, creating the Center for Efficient Government (Center) within DMS. [13] The executive order stated that the Center was the "enterprise wide gateway for best business practices in order to improve the way state agencies deliver services to Florida's citizens." The order required the Center to:

- Establish a five-member oversight panel made up of agency heads;
- Create a centralized, multi-stage, gate process for the review, evaluation, and approval of agency outsourcing[14] initiatives;
- Provide documentation at the completion of each stage to the Legislature prior to initiation of the next stage;
- Review past outsourcing projects for best business practices and existing outsourcing plans to ensure agency compliance with center standards;
- Maintain a database with information about initiatives being performed by contractors that includes a description of the work being performed, applicable performance measures, and contractor and subcontractor identification; and
- Implement a program to transition impacted state employees.

The Center's policies required all agency outsourcing projects to undergo a sequential review and validation process, referred to as the "Gate Process." The oversight board, however, only reviewed

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[8] Auditor General Report No. 2005-08, *State Technology Office: MyFlorida Alliance Operational Audit*, July 2004.
[9] Auditor General Report No. 2005-116, *Department of Management Services: MyFloridaMarketplace Operational Audit*, February 2005.
[10] Auditor General Report No. 2002-112, *On-Line Licensing System & Call Center Services Agreement- Department of Business & Professional Regulation - Operational Audit*, December 2001.
[11] Auditor General Report No. 2004-112, *Department of Business & Professional Regulation - On-Line Licensing System & Call Center Services Agreement Operational Audit*, January 2004.
[12] Department of Management Services Internal Audit Report Number 2005-61, *Contract Management of Private Correctional Facilities*, June 30, 2005, pages i - iii.
[13] Executive Order 04-45.
[14] The center defined an "outsourced function or service" as "one which was previously performed by state employees and is now operated by a third party entity while the state remains fully responsible for the provision of affected services and maintains control over management and policy decisions." *Center for Efficient Government FAQ's.*

and validated projects with an estimated value of more than $10 million per fiscal year and enterprise-wide projects proposed by the center. As an agency completed each stage, the oversight board was to review the agency's progress and determine whether to validate that progress so that the agency could continue to the next stage. However, the board had no authority to accept or deny a project, or challenge the documentation provided by an agency.

The Center began operations in April 2004. The Executive Order stated that it was to continue until January 3, 2007. However, the Governor's veto of SB 1146 on June 27, 2005, effectively prohibited any further funding of the Center.

As a result of the 2003 "Road Map to Excellence" report, DMS began a series of training classes for purchasing employees. The Public Purchasing Training and Certification program[15] trains Purchasing Agents, Purchasing Managers, Certified Contract Managers, and Certified Negotiators. DMS reports that 108 employees out of approximately 700 have completed at least one of these series.[16]

Proposed Changes

The Florida Efficient Government Act

The bill implements the Florida Efficient Government Act (the "Act"). The intent of the Act is to ensure that state agencies focus on core missions and contract with private-sector vendors, "whenever vendors can more effectively and efficiently provide services and reduce the cost of government." In order to ensure this efficiency, the Act requires agencies to create detailed business cases for all outsourcing projects. These projects are broken down into three categories: those under $1 million, those between $1 million and $10 million, and those over $10 million. Varying levels of scrutiny apply to each category.

Some contracts are exempt from the Act. Contracts made pursuant to s. 287.057(5) (e),[17] (f),[18] and (g),[19] F.S., are exempt, as are contracts made under s. 287.057(22), F.S.[20] In addition, contracts made under the Consultants' Competitive Negotiation Act[21] are exempt, as are road construction contracts let by the Department of Transportation.

The Council for Efficient Government

The Act creates the Council on Efficient Government (the "Council"). The council is tasked with reviewing business cases submitted by agencies, advising agencies on outsourcing projects, and issuing advisory opinions to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The Council consists of seven members:

- The Secretary of DMS;
- A cabinet member other than the Governor;
- Two executive-branch agency heads; and
- Three members from the private sector, having complex, large-scale project-implementation experience.

The council is appointed by the Governor and confirmed by the Senate, pursuant to s. 20.052(5), F.S. The bill directs the council to comply with all necessary requirements contained in s. 20.052(3) and (4), F.S., including staggered appointments and compliance with all public records and public meetings

[15] See generally http://dms.myflorida.com/purchasing/florida_s_public_purchasing_training_and_certification.
[16] Names of the employees certified under each category are available online at: http://dms.myflorida.com/dms/purchasing/florida_s_public_purchasing_training_and_certification/florida_purchasing_certification_holders.
[17] Certain medical devices.
[18] Personal services contracts (i.e., lectures by individuals, artistic services, legal services).
[19] Continuing education events offered to the general public.
[20] A contract with an independent, non-profit accredited college or university, when such contract is made "on the same basis as [the agency] may contract with any state university or college."
[21] Section 287.055, F.S. The CCNA covers architectural, engineering, and other construction-related services.

laws. The council is headed by a director appointed by the Secretary of DMS, and DMS is tasked with administrative support.

Business Case Requirements

The Council is directed to receive business cases from an agency for each outsourcing project the agency wishes to undertake. The contents of the required business case include:

- A description of the service to be provided;
- An analysis of the agency's current "in-house" performance of the service;
- The goals and rationale of the project;
- A citation of the legal authority underpinning the project;
- A description of available options for achieving the stated goals;
- An analysis of the advantages and disadvantages of each option;
- A description of the current marketplace for the services;
- A detailed cost-benefit analysis;
- A change management plan regarding the current and future processes involved, among all potentially affected agencies;
- A description of appropriate performance standards;
- Projected timeframes for key events;
- Public records compliance plans;
- Contingency plans for non-performance;
- A transition plan for affected state employees; and
- A description of legislative and budgetary actions necessary to accomplish the project.

For contracts less than $1 million, a business case must be submitted to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives after the agency has negotiated with the vendor, but 30 days before the contract is signed with the vendor. For contracts between $1 million and $10 million, an initial business case must be submitted 30 days before the solicitation is released. This is followed by a final business case, to be submitted at least 30 days before the contract is signed. For contracts in excess of $10 million, the initial business case must be submitted 60 days in advance of the agency's solicitation, and the council must respond to the agency by providing its own evaluation of the business case within 30 days of the solicitation.[22] As in the other project categories, a final business case must be submitted after the negotiation but before the contract is signed.

Contract Requirements

The Act also addresses contracts ultimately issued by agencies. In addition to current contract requirements,[23] outsourcing contracts must contain:

- A detailed scope of work;
- A service level agreement describing all requirements and responsibilities of the contractor;
- A cost-schedule, payment terms, and other financial items;
- A specific transition implementation schedule;
- Clear and specific identification of all required performance standards;
- Specific accounting requirements;
- Clear and specific records-access provisions;
- A requirement that the contractor interview and consider for employment all affected state employees; and
- A requirement to include a contingency plan in the event of nonperformance by the contractor.

The bill provides that contractors may not be prohibited from lobbying the executive or legislative branch with regard to a current contract held by the contractor. A contractor may not knowingly be involved in the agency's purchase of services from a company in which the contractor has a material

[22] The council's report also is sent to the Governor, the Speaker of the House of Representatives, and the President of the Senate.
[23] See generally s. 287.058, F.S.

interest. The bill also provides that contract personnel may not direct the employment activities of state employees.

Negotiation & Rulemaking

For any contract in excess of $1 million dollars, at least one of the persons conducting the negotiations for the state must be certified as a contract negotiator.[24] If the value of the contract is in excess of $10 million dollars, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute.

As part of the negotiation certification process, DMS is granted rulemaking authority to ensure that certified contract negotiators are knowledgeable about negotiation strategies, capable of effectively implementing those strategies, and involved appropriately in the larger procurement process. The rulemaking authority is specifically detailed to address:

- The qualifications required for certification;
- The method of certification; and
- The procedure for involving the certified negotiator.

Other Issues

All solicitations are required to contain a "no contact" provision ensuring that contractors do not attempt to influence or discuss an active solicitation with purchasing employees. Inappropriate contact may be grounds for rejecting a bidder's submission. Current statutes do not address the issue of improper contact, although DMS forms contain language implementing a specific question-and-answer process.[25]

Renewals and extensions of current contracts over $10 million are not permitted before the agency submits a written report regarding the contractor's performance to the Governor, the Speaker of the House of Representatives, and the President of the Senate.

The bill repeals s. 14.203, F.S., establishing the State Council on Competitive Government.

C. SECTION DIRECTORY:

Section 1 amends s. 287.057, F.S., relating to the procurement of commodities or contractual services.

Section 2 creates s. 287.0571, F.S., creating the Florida Efficient Government Act.

Section 3 creates s. 287.05721, F.S., providing definitions for the Florida Efficient Government Act.

Section 4 creates s. 287.0573, F.S., establishing the Council on Efficient Government.

Section 5 creates s. 287.0574, F.S., detailing the business case required for each category of outsourcing project; providing additional contract requirements for such projects.

Section 6 amends s. 287.058, F.S., clarifying a contractor's ability to lobby the government concerning the scope of services already provided by the contractor.

Section 7 creates section 287.074, F.S., relating to actions by contractor personnel.

Section 8 prohibits a contractor from participating in agency procurements in which the contractor has a material interest.

Section 9 repeals s. 14.203, F.S., relating to the State Council on Competitive Government.

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[24] Additional requirements for negotiation teams can be found at s. 287.057(17)(b), F.S.

[25] See Form PUR 1001, paragraph 5.

Section 10 provides funding for 10 full-time equivalent positions in the council.

Section 11 provides funding for negotiation training.

Section 12 exempts cabinet agencies from the provisions of the act.

Section 13 amends s. 119.071, F.S., relating to public records exemptions.

Section 14 provides that the act shall take effect upon becoming a law.

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:

   Department of Management Services
   General Revenue Fund

	FY 2006-07
Recurring Costs:	
Salaries and Benefits (10 FTE)	$1,250,000
Negotiation Training	500,000
Total – recurring	$1,750,000

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:

The bill has no direct economic impact on the private sector.

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:

DMS is granted rulemaking authority to establish a negotiation certification regime. The language is specifically tailored to give clear direction to the agency. Specifically, DMS is authorized to set the qualifications required for negotiation certification, the method by which employees attain certification, and the procurement procedures for involving a certified negotiator, during the purchasing process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to procurement of contractual services by
3 a state agency; amending s. 287.057, F.S.; prohibiting a
4 state agency from renewing or amending a contract for
5 outsourcing under certain conditions; requiring certain
6 qualifications for persons chosen to conduct negotiations
7 during specified procurements; requiring the Department of
8 Management Services to adopt rules governing those
9 qualifications; requiring that a specified statement be
10 included in procurements of commodities and services which
11 prohibits contact between respondents and specified
12 employees of the executive and legislative branches;
13 creating s. 287.0571, F.S.; creating the Florida Efficient
14 Government Act; providing legislative intent; providing
15 that procurements of specified commodities and services
16 are not subject to the act; creating s. 287.05721, F.S.;
17 providing definitions; creating s. 287.0573, F.S.;
18 creating the Council on Efficient Government within the
19 Department of Management Services; providing the purpose
20 and membership of the council; providing duties and
21 responsibilities of the council; requiring the council to
22 review and issue advisory reports on certain state agency
23 procurements; requiring the department to employ adequate
24 number of staff; requiring the council to be headed by a
25 director appointed by the Secretary of Management
26 Services; requiring state agencies to submit materials
27 required by the council; creating s. 287.0574, F.S.;
28 providing requirements for certain business cases to
29 outsource by a state agency; requiring a state agency to

30 develop a business case that describes and analyzes a
31 contractual services procurement under consideration;
32 providing that the business case is not subject to
33 challenge or protest under the Administrative Procedure
34 Act; providing required components of a business case;
35 providing contract requirements for an outsourcing
36 procurement; amending s. 287.058, F.S.; providing that a
37 contract may not prohibit a contractor from lobbying the
38 executive or legislative branches concerning specified
39 contract issues, within specified time lines; creating s.
40 287.074, F.S.; requiring that only public officers or
41 employees shall perform certain functions; prohibiting a
42 contractor from participating in the procurement of
43 contractual services by a state agency; repealing s.
44 14.203, F.S., which creates the State Council on
45 Competitive Government and provides duties and authority
46 of the council; providing appropriations; providing that
47 certain state agencies are subject to the act; amending s.
48 119.071, F.S.; removing a cross-reference; clarifying the
49 meaning of "commercial activity" to conform to the removal
50 of the reference; providing an effective date.
51
52 Be It Enacted by the Legislature of the State of Florida:
53
54 Section 1. Paragraph (a) of subsection (14) and paragraph
55 (b) of subsection (17) of section 287.057, Florida Statutes, are
56 amended, and subsection (26) is added to that section, to read:
57 287.057 Procurement of commodities or contractual
58 services.--

59 (14)(a) Contracts for commodities or contractual services
60 may be renewed for a period that may not exceed 3 years or the
61 term of the original contract, whichever period is longer.
62 Renewal of a contract for commodities or contractual services
63 shall be in writing and shall be subject to the same terms and
64 conditions set forth in the initial contract. If the commodity or
65 contractual service is purchased as a result of the solicitation
66 of bids, proposals, or replies, the price of the commodity or
67 contractual service to be renewed shall be specified in the bid,
68 proposal, or reply. A renewal contract may not include any
69 compensation for costs associated with the renewal. Renewals
70 shall be contingent upon satisfactory performance evaluations by
71 the agency and subject to the availability of funds. Exceptional
72 purchase contracts pursuant to paragraphs (5)(a) and (c) may not
73 be renewed. <u>With the exception of subsection (13), if a contract</u>
74 <u>amendment results in a longer contract term or increased</u>
75 <u>payments, a state agency may not renew or amend a contract for</u>
76 <u>the outsourcing of a service or activity that has an original</u>
77 <u>term value exceeding the sum of $10 million before submitting a</u>
78 <u>written report concerning contract performance to the Governor,</u>
79 <u>the President of the Senate, and the Speaker of the House of</u>
80 <u>Representatives at least 90 days before execution of the renewal</u>
81 <u>or amendment.</u>
82 (17) For a contract in excess of the threshold amount
83 provided in s. 287.017 for CATEGORY FOUR, the agency head shall
84 appoint:
85 (b) At least three persons to conduct negotiations during a
86 competitive sealed reply procurement who collectively have
87 experience and knowledge in negotiating contracts, contract

88 procurement, and the program areas and service requirements for
89 which commodities or contractual services are sought. When the
90 value of a contract is in excess of $1 million in any fiscal
91 year, at least one of the persons conducting negotiations must be
92 certified as a contract negotiator based upon rules adopted by
93 the Department of Management Services in order to ensure that
94 certified contract negotiators are knowledgeable about effective
95 negotiation strategies, capable of successfully implementing
96 those strategies, and involved appropriately in the procurement
97 process. At a minimum, the rules must address the qualifications
98 required for certification, the method of certification, and the
99 procedure for involving the certified negotiator. If the value of
100 a contract is in excess of $10 million in any fiscal year, at
101 least one of the persons conducting negotiations must be a
102 Project Management Professional, as certified by the Project
103 Management Institute.
104 (26) Each solicitation for the procurement of commodities
105 or contractual services shall include the following provision:
106 "Respondents to this solicitation or persons acting on their
107 behalf may not contact, between the release of the solicitation
108 and the execution of the resulting contract, any employee or
109 officer of the executive or legislative branch concerning any
110 aspect of this solicitation, except in writing to the procurement
111 officer or as provided in the solicitation documents. Violation
112 of this provision may be grounds for rejecting a response."
113 Section 2. Section 287.0571, Florida Statutes, is created
114 to read:
115 287.0571 Applicability of ss. 287.0571-287.0574.--
116 (1) Sections 287.0571-287.0574 may be cited as the "Florida

117 Efficient Government Act."
118 (2) It is the intent of the Legislature that each state
119 agency focus on its core mission and deliver services effectively
120 and efficiently by leveraging resources and contracting with
121 private-sector vendors whenever vendors can more effectively and
122 efficiently provide services and reduce the cost of government.
123 (3) It is further the intent of the Legislature that
124 business cases to outsource be evaluated for feasibility, cost-
125 effectiveness, and efficiency before a state agency proceeds with
126 any outsourcing of services.
127 (4) Sections 287.0571-287.0574 do not apply to:
128 (a) A procurement of commodities and contractual services
129 listed in s. 287.057(5)(e), (f), and (g) and (22).
130 (b) A procurement of contractual services subject to s.
131 287.055.
132 (c) A contract in support of the planning, development,
133 implementation, operation, or maintenance of the road, bridge,
134 and public transportation construction program of the Department
135 of Transportation.
136 (d) A procurement of commodities or contractual services
137 which does not constitute an outsourcing of services or
138 activities.
139 Section 3. Section 287.05721, Florida Statutes, is created
140 to read:
141 287.05721 Definitions.--As used in ss. 287.0571-287.0574,
142 the term:
143 (1) "Council" means the Council on Efficient Government.
144 (2) "Outsource" means the process of contracting with a
145 vendor to provide a service as defined in s. 216.011(1)(f), in

146 whole or in part, or an activity as defined in s. 216.011(1)(rr),
147 while a state agency retains the responsibility and
148 accountability for the service or activity and there is a
149 transfer of management responsibility for the delivery of
150 resources and the performance of those resources.
151 Section 4. Section 287.0573, Florida Statutes, is created
152 to read:
153 287.0573 Council on Efficient Government; membership;
154 duties.--
155 (1) There is created a Council on Efficient Government
156 within the Department of Management Services to review, evaluate,
157 and issue advisory reports on business cases submitted to the
158 council as specified in this section.
159 (2) The council shall consist of seven members appointed by
160 the Governor pursuant to s. 20.052 and confirmed by the Senate:
161 (a) The Secretary of Management Services, who shall serve
162 as chair.
163 (b) A Cabinet member other than the Governor, or his or her
164 senior management or executive staff designee.
165 (c) Two heads of executive branch agencies.
166 (d) Three members from the private sector who,
167 collectively, have experience with procurement, successfully
168 increasing operational efficiency, and implementing complex
169 projects in the private-sector business environment. A private-
170 sector member of the council may not at any time during his or
171 her appointment to the council be registered to lobby the
172 executive or legislative branch.
173 (3) Within 45 days after the effective date of this
174 section, the Governor shall appoint two private-sector members

175 and two state agency heads for terms of 1 year and one private-
176 sector member and two agency heads for terms of 2 years.
177 Thereafter, each member shall be appointed for a term of 2 years.
178 The private-sector members shall serve without compensation, but
179 are entitled to reimbursement for per diem and travel expenses
180 pursuant to s. 112.061.
181 (4) A state agency member of the council may not
182 participate in a council review of a business case to outsource
183 if his or her state agency is conducting the proposed
184 outsourcing. A private-sector member of the council may not
185 participate in a council review of a business case to outsource
186 if he or she has a business relationship with an entity that is
187 involved or could potentially be involved in the proposed
188 outsourcing.
189 (5) A member of the council, except the Cabinet member, may
190 not delegate his or her membership to a designee.
191 (6) A quorum shall consist of at least four members,
192 including at least two private-sector members.
193 (7) Any vacancy on the council shall be filled in the same
194 manner as the original appointment, and any member appointed to
195 fill a vacancy occurring for a reason other than the expiration
196 of a term shall serve only for the unexpired term of the member's
197 predecessor.
198 (8) The council shall:
199 (a) Employ a standard process for reviewing business cases
200 to outsource.
201 (b) Review and evaluate business cases to outsource as
202 requested by the Governor or the state agency head whose agency
203 is proposing to outsource or as required by ss. 287.0571-287.0574

204 or by law.
205 (c) No later than 30 days before a state agency's issuance
206 of a solicitation of $10 million or more, provide to the agency
207 conducting the procurement, the Governor, the President of the
208 Senate, and the Speaker of the House of Representatives an
209 advisory report for each business case reviewed and evaluated by
210 the council. The report must contain all versions of the business
211 case, an evaluation of the business case, any relevant
212 recommendations, and sufficient information to assist the state
213 agency proposing to outsource in determining whether the business
214 case to outsource should be included with the legislative budget
215 request.
216 (d) Recommend and implement standard processes for state
217 agency and council review, including the development of templates
218 for use by state agencies in submitting business cases to the
219 council, and evaluate state agency business cases to outsource.
220 (e) Develop standards and best-practice procedures for use
221 by state agencies in evaluating business cases to outsource.
222 (f) Recommend standards, processes, and guidelines for use
223 by state agencies in developing business cases to outsource.
224 (g) Incorporate any lessons learned from outsourcing
225 services and activities into council standards, procedures, and
226 guidelines, as appropriate, and identify and disseminate to
227 agencies information regarding best practices in outsourcing
228 efforts.
229 (h) Develop, in consultation with the Agency for Workforce
230 Innovation, guidelines for assisting state employees whose jobs
231 are eliminated as a result of outsourcing.
232 (i) Identify and report yearly to the Legislature on

233 innovative methods of delivering government services which would
234 improve the efficiency, effectiveness, or competition in the
235 delivery of government services, including, but not limited to,
236 enterprise-wide proposals.
237 (j) Report to the Legislature, yearly, on the outsourcing
238 efforts of each state agency. Such reporting shall include, but
239 need not be limited to, the number of outsourcing business cases
240 and solicitations generated by each state agency, the number and
241 dollar value of outsourcing contracts by each state agency, and
242 the status of extensions, renewals, and amendments of state
243 agency outsourcing contracts.
244 (9) The council shall make available to the Governor and
245 the Legislature minutes of all meetings, a summary report on each
246 proposal that describes funding options, including the need for
247 any budget amendments or new appropriations, and an annual report
248 of the activities and recommendations of the council.
249 (10) The department shall employ an adequate number of
250 staff who collectively possess significant expertise and
251 experience as required to carry out the responsibilities of this
252 act.
253 (11) The council shall be headed by a director appointed by
254 the secretary.
255 (12) Each state agency shall submit to the council all
256 information, documents, or other materials required by the
257 council or this chapter.
258 Section 5. Section 287.0574, Florida Statutes, is created
259 to read:
260 287.0574 Business cases to outsource; review and analysis;
261 requirements.--

262 (1) A business case to outsource having a projected cost
263 exceeding $10 million in any fiscal year shall require:
264 (a) An initial business case analysis conducted by the
265 state agency and submitted to the council, the Governor, the
266 President of the Senate, and the Speaker of the House of
267 Representatives at least 60 days before a solicitation is issued.
268 The council shall evaluate the business case analysis and submit
269 the evaluation to the state agency, the Governor, the President
270 of the Senate, and the Speaker of the House of Representatives
271 when the business case evaluation is completed, but at least 30
272 days before issuing a solicitation.
273 (b) A final business case analysis conducted by the state
274 agency and submitted after the conclusion of any negotiations, at
275 least 30 days before execution of a contract, to the council, the
276 Governor, the President of the Senate, and the Speaker of the
277 House of Representatives.
278 (2) A proposal to outsource having a projected cost that
279 ranges from $1 million to $10 million in any fiscal year shall
280 require:
281 (a) An initial business case analysis conducted by the
282 state agency and submission of the business case at least 30 days
283 before issuing a solicitation to the council, the Governor, the
284 President of the Senate, and the Speaker of the House of
285 Representatives.
286 (b) A final business case analysis conducted by the state
287 agency and submitted after the conclusion of any negotiations, at
288 least 30 days before execution of a contract, to the council, the
289 Governor, the President of the Senate, and the Speaker of the
290 House of Representatives.

291 (3) A business case to outsource having a projected cost
292 that is less than $1 million in any fiscal year shall require a
293 final business case analysis conducted by the state agency after
294 the conclusion of any negotiations and provided at least 30 days
295 before execution of a contract to the council. The council shall
296 provide such business cases in its annual report to the
297 Legislature.
298 (4) For any proposed outsourcing, the state agency shall
299 develop a business case that justifies the proposal to outsource.
300 In order to reduce any administrative burden, the council may
301 allow a state agency to submit the business case in the form
302 required by the budget instructions issued pursuant to s.
303 216.023, augmented with additional information if necessary, to
304 ensure that the requirements of this section are met. The
305 business case is not subject to challenge or protest pursuant to
306 chapter 120. The business case must include, but need not be
307 limited to:
308 (a) A detailed description of the service or activity for
309 which the outsourcing is proposed.
310 (b) A description and analysis of the state agency's
311 current performance, based on existing performance metrics if the
312 state agency is currently performing the service or activity.
313 (c) The goals desired to be achieved through the proposed
314 outsourcing and the rationale for such goals.
315 (d) A citation to the existing or proposed legal authority
316 for outsourcing the service or activity.
317 (e) A description of available options for achieving the
318 goals.
319 (f) An analysis of the advantages and disadvantages of each

320 option, including, at a minimum, potential performance
321 improvements and risks.
322 (g) A description of the current market for the contractual
323 services that are under consideration for outsourcing.
324 (h) A cost-benefit analysis documenting the direct and
325 indirect specific baseline costs, savings, and qualitative and
326 quantitative benefits involved in or resulting from the
327 implementation of the recommended option or options. Such
328 analysis must specify the schedule that, at a minimum, must be
329 adhered to in order to achieve the estimated savings. All
330 elements of cost must be clearly identified in the cost-benefit
331 analysis, described in the business case, and supported by
332 applicable records and reports. The state agency head shall
333 attest that, based on the data and information underlying the
334 business case, to the best of his or her knowledge, all projected
335 costs, savings, and benefits are valid and achievable. As used in
336 this section, the term "cost" means the reasonable, relevant, and
337 verifiable cost, which may include, but is not limited to,
338 elements such as personnel, materials and supplies, services,
339 equipment, capital depreciation, rent, maintenance and repairs,
340 utilities, insurance, personnel travel, overhead, and interim and
341 final payments. The appropriate elements shall depend on the
342 nature of the specific initiative. As used in this section, the
343 term "savings" means the difference between the direct and
344 indirect actual annual baseline costs compared to the projected
345 annual cost for the contracted functions or responsibilities in
346 any succeeding state fiscal year during the term of the contract.
347 (i) A description of differences among current state agency
348 policies and processes and, as appropriate, a discussion of

349 options for or a plan to standardize, consolidate, or revise
350 current policies and processes, if any, to reduce the
351 customization of any proposed solution that would otherwise be
352 required.
353 (j) A description of the specific performance standards
354 that must, at a minimum, be met to ensure adequate performance.
355 (k) The projected timeframe for key events from the
356 beginning of the procurement process through the expiration of a
357 contract.
358 (l) A plan to ensure compliance with the public records
359 law.
360 (m) A specific and feasible contingency plan addressing
361 contractor nonperformance and a description of the tasks involved
362 in and costs required for its implementation.
363 (n) A state agency's transition plan for addressing changes
364 in the number of agency personnel, affected business processes,
365 employee transition issues, and communication with affected
366 stakeholders, such as agency clients and the public. The
367 transition plan must contain a reemployment and retraining
368 assistance plan for employees who are not retained by the state
369 agency or employed by the contractor.
370 (o) A plan for ensuring access by persons with disabilities
371 in compliance with applicable state and federal law.
372 (p) A description of legislative and budgetary actions
373 necessary to accomplish the proposed outsourcing.
374 (5) In addition to the contract requirements provided in s.
375 287.058, each contract resulting from an outsourcing must
376 include, but need not be limited to:
377 (a) A detailed scope of work which clearly specifies each

378 service or activity to be provided, including a description of
379 each deliverable that is quantifiable, measurable, and
380 verifiable.
381 (b) A service-level agreement describing all services to be
382 provided under the terms of the agreement, the state agency's
383 service requirements and performance objectives, and specific
384 responsibilities of the state agency and the contractor.
385 (c) Associated costs, specific payment terms and payment
386 schedules, including incentive and financial disincentive
387 provisions and criteria governing payment.
388 (d) A clear and specific transition implementation schedule
389 that will be implemented in order to complete all required
390 activities needed to transfer the service or activity from the
391 state agency to the contractor and operate the service or
392 activity successfully.
393 (e) Clear and specific identification of all required
394 performance standards, which must include, at a minimum:
395 1. Detailed measurable acceptance criteria for each
396 deliverable and service to be provided to the state agency under
397 the terms of the contract for outsourcing which document the
398 required performance level.
399 2. A method for monitoring and reporting progress in
400 achieving specified performance standards and levels.
401 3. The sanctions or disincentives that shall be imposed for
402 nonperformance by the contractor or state agency.
403 (f) A requirement that the contractor maintain adequate
404 accounting records that comply with all applicable federal and
405 state laws and generally accepted accounting principles.
406 (g) A requirement authorizing state access to and audit of

407 all records related to the contract or any responsibilities or
408 functions under the contract for state audit and legislative
409 oversight purposes and a requirement for service organization
410 audits in accordance with professional auditing standards, if
411 appropriate.
412 (h) A requirement that the contractor interview and
413 consider for employment with the contractor each displaced state
414 employee who is interested in such employment.
415 (i) A contingency plan that describes the mechanism for
416 continuing the operation of the service or activity if the
417 contractor fails to perform and comply with the performance
418 standards and levels of the contract and the contract is
419 terminated.
420 Section 6. Subsection (6) is added to section 287.058,
421 Florida Statutes, to read:
422 287.058 Contract document.--
423 (6) A contract may not prohibit a contractor from lobbying
424 the executive or legislative branch concerning the scope of
425 services, performance, term, or compensation regarding any
426 contract to which the contractor and a state agency are parties,
427 after contract execution and during the contract term. The
428 provisions of this subsection are supplemental to the provisions
429 of ss. 11.062 and 216.347 and any other law prohibiting the use
430 of state funds for lobbying purposes.
431 Section 7. Section 287.074, Florida Statutes, is created to
432 read:
433 287.074 Prohibited actions by contractor personnel.--
434 (1) Only a public officer or a public employee upon whom
435 the public officer has delegated authority shall, consistent with

436 law, take actions, including, but not limited to:
437 (a) Selecting state employees;
438 (b) Approving position descriptions, performance standards,
439 or salary adjustments for state employees; and
440 (c) Hiring, promoting, disciplining, demoting, and
441 dismissing a state employee.
442 (2) Only a public officer shall, consistent with law,
443 commission and appoint state officers.
444 Section 8. A contractor, as defined in chapter 287, Florida
445 Statutes, or its employees, agents, or subcontractors, may not
446 knowingly participate, through decision, approval, disapproval,
447 or preparation of any part of a purchase request, investigation,
448 or audit, in the procurement of commodities or contractual
449 services by a state agency from an entity in which the
450 contractor, or its employees, agents, or subcontractors, has a
451 material interest.
452 Section 9. Section 14.203, Florida Statutes, is repealed.
453 Section 10. For the 2006-2007 fiscal year, the sum of $1.25
454 million in recurring funds from the General Revenue Fund in a
455 qualified expenditure category is appropriated and 10 full-time
456 equivalent positions are authorized to the Department of
457 Management Services to carry out the activities of the Council on
458 Efficient Government as provided in this act.
459 Section 11. The Department of Management Services may
460 implement a program to train state agency employees who are
461 involved in managing outsourcings as Project Management
462 Professionals, as certified by the Project Management Institute.
463 For the 2006-2007 fiscal year, the sum of $500,000 in recurring
464 funds from the General Revenue Fund is appropriated to the

465 Department of Management Services to implement this program. The
466 Department of Management Services, in consultation with entities
467 subject to this act, shall identify personnel to participate in
468 this training based on requested need and ensure that each agency
469 is represented. The Department of Management Services may remit
470 payment for this training on behalf of all participating
471 personnel.
472 Section 12. Notwithstanding any law to the contrary, a
473 state agency under the individual control of the Attorney
474 General, the Chief Financial Officer, or the Commissioner of
475 Agriculture are subject to this act.
476 Section 13. Paragraph (a) of subsection (5) of section
477 119.071, Florida Statutes, is amended to read:
478 119.071 General exemptions from inspection or copying of
479 public records.--
480 (5) OTHER PERSONAL INFORMATION.--
481 (a)1. The Legislature acknowledges that the social security
482 number was never intended to be used for business purposes but
483 was intended to be used solely for the administration of the
484 federal Social Security System. The Legislature is further aware
485 that over time this unique numeric identifier has been used
486 extensively for identity verification purposes and other
487 legitimate consensual purposes. The Legislature is also cognizant
488 of the fact that the social security number can be used as a tool
489 to perpetuate fraud against a person and to acquire sensitive
490 personal, financial, medical, and familial information, the
491 release of which could cause great financial or personal harm to
492 an individual. The Legislature intends to monitor the commercial
493 use of social security numbers held by state agencies in order to

494 maintain a balanced public policy.
495 2. An agency shall not collect an individual's social
496 security number unless authorized by law to do so or unless the
497 collection of the social security number is otherwise imperative
498 for the performance of that agency's duties and responsibilities
499 as prescribed by law. Social security numbers collected by an
500 agency must be relevant to the purpose for which collected and
501 shall not be collected until and unless the need for social
502 security numbers has been clearly documented. An agency that
503 collects social security numbers shall also segregate that number
504 on a separate page from the rest of the record, or as otherwise
505 appropriate, in order that the social security number be more
506 easily redacted, if required, pursuant to a public records
507 request. An agency collecting a person's social security number
508 shall, upon that person's request, at the time of or prior to the
509 actual collection of the social security number by that agency,
510 provide that person with a statement of the purpose or purposes
511 for which the social security number is being collected and used.
512 Social security numbers collected by an agency shall not be used
513 by that agency for any purpose other than the purpose stated.
514 Social security numbers collected by an agency prior to May 13,
515 2002, shall be reviewed for compliance with this subparagraph. If
516 the collection of a social security number prior to May 13, 2002,
517 is found to be unwarranted, the agency shall immediately
518 discontinue the collection of social security numbers for that
519 purpose.
520 3. Effective October 1, 2002, all social security numbers
521 held by an agency are confidential and exempt from s. 119.07(1)
522 and s. 24(a), Art. I of the State Constitution. This exemption

523 applies to all social security numbers held by an agency before,
524 on, or after the effective date of this exemption.
525 4. Social security numbers may be disclosed to another
526 governmental entity or its agents, employees, or contractors if
527 disclosure is necessary for the receiving entity to perform its
528 duties and responsibilities. The receiving governmental entity
529 and its agents, employees, and contractors shall maintain the
530 confidential and exempt status of such numbers.
531 5. An agency shall not deny a commercial entity engaged in
532 the performance of a commercial activity, which, for purposes of
533 this section, means an activity that provides a product or
534 service that is available from a private source, ~~as defined in s.~~
535 ~~14.203~~ or its agents, employees, or contractors access to social
536 security numbers, provided the social security numbers will be
537 used only in the normal course of business for legitimate
538 business purposes, and provided the commercial entity makes a
539 written request for social security numbers, verified as provided
540 in s. 92.525, legibly signed by an authorized officer, employee,
541 or agent of the commercial entity. The verified written request
542 must contain the commercial entity's name, business mailing and
543 location addresses, business telephone number, and a statement of
544 the specific purposes for which it needs the social security
545 numbers and how the social security numbers will be used in the
546 normal course of business for legitimate business purposes. The
547 aggregate of these requests shall serve as the basis for the
548 agency report required in subparagraph 8. An agency may request
549 any other information reasonably necessary to verify the identity
550 of the entity requesting the social security numbers and the
551 specific purposes for which such numbers will be used; however,

552 an agency has no duty to inquire beyond the information contained
553 in the verified written request. A legitimate business purpose
554 includes verification of the accuracy of personal information
555 received by a commercial entity in the normal course of its
556 business; use in a civil, criminal, or administrative proceeding;
557 use for insurance purposes; use in law enforcement and
558 investigation of crimes; use in identifying and preventing fraud;
559 use in matching, verifying, or retrieving information; and use in
560 research activities. A legitimate business purpose does not
561 include the display or bulk sale of social security numbers to
562 the general public or the distribution of such numbers to any
563 customer that is not identifiable by the distributor.
564 6. Any person who makes a false representation in order to
565 obtain a social security number pursuant to this paragraph, or
566 any person who willfully and knowingly violates this paragraph,
567 commits a felony of the third degree, punishable as provided in
568 s. 775.082 or s. 775.083. Any public officer who violates this
569 paragraph is guilty of a noncriminal infraction, punishable by a
570 fine not exceeding $500. A commercial entity that provides access
571 to public records containing social security numbers in
572 accordance with this paragraph is not subject to the penalty
573 provisions of this subparagraph.
574 7.a. On or after October 1, 2002, a person preparing or
575 filing a document to be recorded in the official records by the
576 county recorder as provided for in chapter 28 may not include any
577 person's social security number in that document, unless
578 otherwise expressly required by law. If a social security number
579 is or has been included in a document presented to the county
580 recorder for recording in the official records of the county

581 before, on, or after October 1, 2002, it may be made available as
582 part of the official record available for public inspection and
583 copying.
584 b. Any person, or his or her attorney or legal guardian,
585 has the right to request that a county recorder remove, from an
586 image or copy of an official record placed on a county recorder's
587 publicly available Internet website or a publicly available
588 Internet website used by a county recorder to display public
589 records or otherwise made electronically available to the general
590 public by such recorder, his or her social security number
591 contained in that official record. Such request must be made in
592 writing, legibly signed by the requester and delivered by mail,
593 facsimile, or electronic transmission, or delivered in person, to
594 the county recorder. The request must specify the identification
595 page number that contains the social security number to be
596 redacted. The county recorder has no duty to inquire beyond the
597 written request to verify the identity of a person requesting
598 redaction. A fee shall not be charged for the redaction of a
599 social security number pursuant to such request.
600 c. A county recorder shall immediately and conspicuously
601 post signs throughout his or her offices for public viewing and
602 shall immediately and conspicuously post, on any Internet website
603 or remote electronic site made available by the county recorder
604 and used for the ordering or display of official records or
605 images or copies of official records, a notice stating, in
606 substantially similar form, the following:
607 (I) On or after October 1, 2002, any person preparing or
608 filing a document for recordation in the official records may not
609 include a social security number in such document, unless

610 required by law.
611 (II) Any person has a right to request a county recorder to
612 remove, from an image or copy of an official record placed on a
613 county recorder's publicly available Internet website or on a
614 publicly available Internet website used by a county recorder to
615 display public records or otherwise made electronically available
616 to the general public, any social security number contained in an
617 official record. Such request must be made in writing and
618 delivered by mail, facsimile, or electronic transmission, or
619 delivered in person, to the county recorder. The request must
620 specify the identification page number that contains the social
621 security number to be redacted. No fee will be charged for the
622 redaction of a social security number pursuant to such a request.
623 d. Until January 1, 2007, if a social security number, made
624 confidential and exempt pursuant to this paragraph, or a complete
625 bank account, debit, charge, or credit card number made exempt
626 pursuant to paragraph (b) is or has been included in a court
627 file, such number may be included as part of the court record
628 available for public inspection and copying unless redaction is
629 requested by the holder of such number, or by the holder's
630 attorney or legal guardian, in a signed, legibly written request
631 specifying the case name, case number, document heading, and page
632 number. The request must be delivered by mail, facsimile,
633 electronic transmission, or in person to the clerk of the circuit
634 court. The clerk of the circuit court does not have a duty to
635 inquire beyond the written request to verify the identity of a
636 person requesting redaction. A fee may not be charged for the
637 redaction of a social security number or a bank account, debit,
638 charge, or credit card number pursuant to such request.

639 e. Any person who prepares or files a document to be
640 recorded in the official records by the county recorder as
641 provided in chapter 28 may not include a person's social security
642 number or complete bank account, debit, charge, or credit card
643 number in that document unless otherwise expressly required by
644 law. Until January 1, 2007, if a social security number or a
645 complete bank account, debit, charge, or credit card number is or
646 has been included in a document presented to the county recorder
647 for recording in the official records of the county, such number
648 may be made available as part of the official record available
649 for public inspection and copying. Any person, or his or her
650 attorney or legal guardian, may request that a county recorder
651 remove from an image or copy of an official record placed on a
652 county recorder's publicly available Internet website, or a
653 publicly available Internet website used by a county recorder to
654 display public records outside the office or otherwise made
655 electronically available outside the county recorder's office to
656 the general public, his or her social security number or complete
657 account, debit, charge, or credit card number contained in that
658 official record. Such request must be legibly written, signed by
659 the requester, and delivered by mail, facsimile, electronic
660 transmission, or in person to the county recorder. The request
661 must specify the identification page number of the document that
662 contains the number to be redacted. The county recorder does not
663 have a duty to inquire beyond the written request to verify the
664 identity of a person requesting redaction. A fee may not be
665 charged for redacting such numbers.
666 f. Subparagraphs 2. and 3. do not apply to the clerks of
667 the court or the county recorder with respect to circuit court

668 records and official records.
669 g. On January 1, 2007, and thereafter, the clerk of the
670 circuit court and the county recorder must keep complete bank
671 account, debit, charge, and credit card numbers exempt as
672 provided for in paragraph (b), and must keep social security
673 numbers confidential and exempt as provided for in subparagraph
674 3., without any person having to request redaction.
675 8. Beginning January 31, 2004, and each January 31
676 thereafter, every agency must file a report with the Secretary of
677 State, the President of the Senate, and the Speaker of the House
678 of Representatives listing the identity of all commercial
679 entities that have requested social security numbers during the
680 preceding calendar year and the specific purpose or purposes
681 stated by each commercial entity regarding its need for social
682 security numbers. If no disclosure requests were made, the agency
683 shall so indicate.
684 9. Any affected person may petition the circuit court for
685 an order directing compliance with this paragraph.
686 10. This paragraph does not supersede any other applicable
687 public records exemptions existing prior to May 13, 2002, or
688 created thereafter.
689 11. This paragraph is subject to the Open Government Sunset
690 Review Act in accordance with s. 119.15 and shall stand repealed
691 October 2, 2007, unless reviewed and saved from repeal through
692 reenactment by the Legislature.
693 Section 14. This act shall take effect upon becoming a law.