Governmental Operations Committee

Wednesday, March 29, 2006
2:45 – 4:00 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 29, 2006 02:45 pm
End Date and Time:	Wednesday, March 29, 2006 04:00 pm
Location:	Morris Hall (17 HOB)
Duration:	1.25 hrs

Consideration of the following bill(s):

HB 563 CS Juvenile Animal Cruelty by Culp
HB 769 CS University Building Designations by Galvano
HB 829 CS Prison Industries by Holloway
HB 861 Verification of Identity by Allen
HB 995 Agency Inspectors General by Bean
HB 1129 Florida State Employees' Charitable Campaign by Henriquez
HB 1161 Okeechobee County by Machek
HB 1165 Florida Retirement System by Barreiro
HB 1219 City of Tampa, Hillsborough County by Joyner
HB 1251 Firefighter and Municipal Police Pensions by Davis, D.
HB 1335 Monroe County by Sorensen
HB 1411 Public Records by Benson
HB 7085 Succession to the Office of Governor by Domestic Security Committee
HB 7137 Drug Testing Within the Department Of Corrections by Criminal Justice Committee

Consideration of the following proposed committee bill(s):

PCB GO 06-04a -- OGSR Medical and Health Records
PCB GO 06-07b -- OGSR Communications Services Tax Simplification Law
PCB GO 06-31 -- Institute of Food & Agricultural Sciences Supplemental Retirement Program
PCB GO 06-35 -- Custodial Requirements for Public Records

Consideration of the following bill(s) with proposed committee substitute(s):

HB 13 Department of Elderly Affairs by Robaina

NOTICE FINALIZED on 03/27/2006 16:24 by TUCK.SHIRLEY

HB 563 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 563 CS Juvenile Animal Cruelty
SPONSOR(S): Culp
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Juvenile Justice Committee	4 Y, 0 N, w/CS	White	White
2) Governmental Operations Committee		Brown	Williamson
3) Criminal Justice Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

The bill creates the Task Force on Juvenile Cruelty to Animals (Task Force) within the Department. The Task Force's duties include reviewing and summarizing juvenile animal cruelty data and recommending improvements for the assessment, treatment, and rehabilitation of juvenile animal cruelty offenders by the Department. The Task Force must report its findings and recommendations to the Legislature and the Governor by January 1, 2007.

The potential fiscal impact of this bill, as projected by the Department, is $29,482; however, this amount may be substantially less if the Department recruits members for the Task Force who reside locally. *See* Section II., A. "Fiscal Impact on State Government," *infra.*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill creates the Task Force on Juvenile Cruelty to Animals within the Department.

B. EFFECT OF PROPOSED CHANGES:

Background

Juvenile Animal Cruelty Research

Multiple studies have found statistically significant correlations between acts of animal cruelty committed by juveniles and acts of violent behavior against persons. For example, the Florida Senate Criminal Justice Committee in its report entitled, "The Connection Between Domestic Violence, Child Abuse and Cruelty to Animals," noted:

> Childhood cruelty to animals has been linked to adult criminal behavior in studies reviewed and summarized by Professor Ascione. The results of these studies indicate childhood or adolescent histories of animal cruelty in:
>
> - 25% of aggressive male prison inmates
> - 30% of convicted child molestors
> - 36% of assaultive women offenders
> - 46% of incarcerated sexual homicide perpetrators
> - 48% of convicted rapists. . . .[1]

Further, in 2001, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) issued a report entitled, "Animal Abuse and Youth Violence," in which it was concluded after a review of six studies that, "Taken together, these studies suggest that animal abuse may be characteristic of the developmental histories of between one in four and nearly two in three violent adult offenders."[2] And most recently, a 2003 study published in the book, "Animal Cruelty: Pathway to Violence Against People,"[3] found that adult violent offenders are significantly more likely than nonviolent offenders to have abused pets and stray animals during their childhood.[4]

The OJJDP report notes that juvenile acts of animal abuse are often underreported because historically these acts have not been systematically monitored in national crime reporting systems.[5] In recent years, however, assessment instruments that identify juvenile delinquents with a history of animal abuse have been developed and are being implemented in Florida and in other states.

Further, the OJJDP report and other studies indicate that early intervention is imperative to ensuring that juvenile animal abusers do not continue on a path of violent behavior; however, formal protocols for the treatment of juvenile animal abusers have only recently begun to emerge. These protocols include animal-assisted therapy wherein juveniles are trained to care for and interact in a nurturing manner with animals in order to reduce propensities for aggression and violence. The OJJDP report

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[1] *The Connection Between Domestic Violence, Child Abuse and Cruelty to Animals,* Florida Senate Criminal Justice Committee, Interim Project Report 2005-125, November 2004, p. 4.
[2] *Animal Abuse and Youth Violence*, Office of Juvenile Justice and Delinquency Prevention, September 2001, pp. 3-4.
[3] *Animal Cruelty: Pathway to Violence Against People,* Linda Merz-Perez and Kathleen M. Heide, Ph.D., AltaMira Press, 2004.
[4] *USF Study Finds Childhood Animal Cruelty is [an] Indicator for Violent Offenders,* News at University of South Florida, Michelle Cobas, March 1, 2003.
[5] *Animal Abuse and Youth Violence* at pp. 2-3.

states, "Developing a sense of empathy for animals is assumed to be a bridge to greater empathy for fellow human beings, making violence toward them less likely."[6]

Juvenile Animal Cruelty in Florida

Section 828.12, F.S., criminalizes animal cruelty in Florida. Statistics provided by the Department indicate that between Fiscal Years (FYs) 2001 and 2005, there were a total of 303 juvenile delinquency referrals for violations of s. 828.12, F.S., which were based upon juvenile acts causing pain and suffering or death to animals.

Regarding these statistics, the Department states in its bill analysis that:

> Very few youth are referred annually to the Department for animal cruelty; however, animal cruelty is often a hidden, covert behavior and the research suggests that it is far more prevalent among the youth the Department serves than referral numbers would suggest.[7]

In October 2005, the Department adopted a new screening tool, referred to as the Positive Achievement Change Tool (PACT), for juvenile probation officers to use in assessing and identifying the needs of youth referred to the Department who are at risk of recidivism. One of the recidivism indicators scored by the PACT is whether the juvenile has a history of animal cruelty that has not been reported in the juvenile's delinquency history. Accordingly, the PACT should assist the Department in identifying juvenile animal cruelty offenders who are referred to it for delinquent acts other than a violation of s. 828.12, F.S.

Effect of Bill

The bill provides legislative findings indicating: (a) that multiple research studies have found statistically significant correlations between acts of animal cruelty by juveniles and violent behavior against persons; and (b) that it is critical for the protection of society that the Department provide programs that will rehabilitate juvenile animal cruelty offenders and halt further antisocial conduct. The term "juvenile animal cruelty offender" is defined by the bill to mean, "a juvenile referred to the department who has violated s. 828.12, Florida Statutes, or who otherwise has a history of engaging in one or more acts of animal cruelty."

The bill creates the Task Force on Juvenile Animal Cruelty, which may consist of up to twelve members appointed by the Secretary of the Department.[8] The Task Force is directed to submit a report by January 1, 2007, to the Legislature and the Governor that includes, but is not limited to the following findings and recommendations:

- Findings -- identification of animal cruelty statutes; a profile of the dispositions for, and the delinquency and criminal histories of, youth who have violated s. 828.12, F.S., between FYs 2001 and 2006; a summary of the department's methods for identifying juvenile animal cruelty offenders referred to the Department for delinquent acts other than a violation of 828.12, F.S.; identification of the department's practices, procedures, and programs for the treatment and rehabilitation of juvenile animal cruelty offenders; a summary of research regarding juvenile animal cruelty offenders; and identification of best and evidence-based practices and model programs used in other jurisdictions to treat and rehabilitate juvenile animal cruelty offenders.
- Recommendations -- identification of methods to assess the needs of juvenile animal cruelty offenders, treatment programs for the rehabilitation of such offenders, service delivery mechanisms

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[6] *Id.* at pp. 10-11; *USF Study Finds Childhood Animal Cruelty is [an] Indicator for Violent Offenders* at pp. 10-11.
[7] *Bill Analysis for HB 563*, Department of Juvenile Justice, p. 1.
[8] The bill specifies that membership of the task force must include, but is not limited to: (a) three persons who collectively have experience with the conduct of juvenile animal cruelty research and with the treatment and rehabilitation of juvenile animal cruelty offenders; two Department employees who collectively are responsible for research and planning and delinquency prevention and treatment programming; and two representatives of providers of juvenile delinquency prevention, treatment, and rehabilitation services.

to ensure that treatment programs are available statewide, and funding needs for such programming.

The bill further specifies that the Department must provide administrative support for the Task Force; that members of the Task Force are entitled to travel and per diem reimbursement in accordance with s. 112.061, F.S.; and that the Task Force is dissolved upon completion of its duties.

The bill takes effect on July 1, 2006.

C. SECTION DIRECTORY:

Section 1 creates the Task Force on Juvenile Cruelty to Animals within the Department; provides definitions; provides powers and duties; specifies membership; requires a report; provides for administrative support and travel reimbursement; provides for dissolution of the task force upon completion of its duties.

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:

Based on its recent experience in administering the Task Force on Juvenile Sexual Offenders and their Victims,[9] the Department estimates the following fiscal impacts for the Task Force created by this bill:

- $9,482 to hire a part-time OPS professional staff person to perform administrative, research, and writing duties for the Task Force. This figure is based upon the Task Force's 22-week duration, 20 hours per week, an hourly salary of $20.00, and 7.75% for F.I.C.A.
- Up to $20,000 for travel and per diem reimbursement. The Department anticipates that five meetings will be required for the Task Force. Further, the Department estimates that up to six members of the Task Force may be from outside of the Tallahassee area. These members would be entitled to travel and per diem reimbursement under the bill. According to the Department, such reimbursement may average as much as $666.00 per member per meeting.

Thus, the total potential fiscal impact of this bill, as estimated by the Department, is $29,482; however, the Department indicates that this fiscal Impact could be significantly less if members of the Task Force reside in Tallahassee. The Department expects that it will be able to recruit qualified local members for the Task Force from Tallahassee's universities and state government.

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.

[9] *See* Chapter 2005-263, s. 10 (creating the Task Force on Juvenile Sexual Offenders and their Victims within the Department).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 25, 2006, the Juvenile Justice Committee adopted one amendment to the bill, which defined the terms "department" and "juvenile animal cruelty offender" and which specified that the Task Force must make findings regarding the Department's methods for identifying juvenile animal cruelty offenders who are referred to the Department for delinquent acts other than a violation of s. 828.12, F.S.

CHAMBER ACTION

The Juvenile Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to juvenile animal cruelty; providing legislative findings; providing definitions; creating a task force on juvenile cruelty to animals; providing powers and duties; requiring the task force to consider specified issues and make recommendations; providing membership; requiring a report; providing for administrative support and travel reimbursement; providing for dissolution of the task force; providing an effective date.

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

Section 1. Task force on juvenile cruelty to animals.--

(1) The Legislature recognizes that multiple research studies have found statistically significant correlations between acts of animal cruelty by juveniles and violent behavior against persons and that a literature review conducted by the federal Office of Juvenile Justice Delinquency Prevention found

24 that juvenile animal cruelty may be characteristic of the
25 developmental histories of 25 to 60 percent of violent adult
26 offenders. The Legislature further recognizes that it is
27 critical for the rehabilitation of juvenile animal cruelty
28 offenders and for the protection of society that the Legislature
29 establish a policy requiring the Department of Juvenile Justice
30 to assess the specific rehabilitation needs of juvenile animal
31 cruelty offenders and to provide programs that will treat these
32 offenders and halt further antisocial conduct.
33 (2) For purposes of this section, the term:
34 (a) "Department" means the Department of Juvenile Justice.
35 (b) "Juvenile animal cruelty offender" means a juvenile
36 referred to the department who has violated s. 828.12, Florida
37 Statutes, or who otherwise has a history of engaging in one or
38 more acts of animal cruelty.
39 (3) There is created a task force to review and evaluate
40 the state's laws that define and address animal cruelty and the
41 department's practices for treating and rehabilitating juvenile
42 animal cruelty offenders. The task force shall make findings
43 that include, but are not limited to:
44 (a) Identification of statutes that address animal
45 cruelty.
46 (b) Compilation of statistics regarding the number of
47 juveniles in this state who have been found, between July 1,
48 2001, and June 30, 2006, to have committed an act of animal
49 cruelty in violation of s. 828.12, Florida Statutes, and
50 identification of the disposition imposed in each of those
51 cases.

52 (c) A profile of the delinquency and criminal histories of
53 the juveniles involved in the cases identified in paragraph (b)
54 before and after commission of the act of animal cruelty.
55 (d) A summary of the department's methods for identifying
56 juvenile animal cruelty offenders who are referred to the
57 department for a delinquent act other than a violation of s.
58 828.12, Florida Statutes.
59 (e) Identification of the department's practices,
60 procedures, and programs for the treatment and rehabilitation of
61 juvenile animal cruelty offenders.
62 (f) A summary of research regarding juvenile animal
63 cruelty offenders and of any recommendations contained therein
64 for the treatment and rehabilitation of these offenders.
65 (g) Identification of best and evidence-based practices
66 and model programs used in other jurisdictions for the treatment
67 and rehabilitation of juvenile animal cruelty offenders.
68 (4) Based on its findings, the task force shall make
69 recommendations for the improvement of the state's policies and
70 laws that address juvenile animal cruelty. Such recommendations
71 shall specifically include, but are not limited to,
72 identification of methods to assess the needs of juvenile animal
73 cruelty offenders, treatment programs that will best
74 rehabilitate juvenile animal cruelty offenders, service delivery
75 mechanisms to ensure that recommended treatment programs are
76 available statewide, and any funding needs above existing
77 resources to ensure adequate availability of recommended
78 treatment programs.

79 (5) On or before August 1, 2006, the secretary of the
80 department shall appoint up to 12 members to the task force. The
81 task force membership shall include, but is not limited to:
82 three persons who collectively have experience with the conduct
83 of juvenile animal cruelty research and with the treatment and
84 rehabilitation of juvenile animal cruelty offenders; two
85 department employees who collectively are responsible for
86 research and planning and delinquency prevention and treatment
87 programming; and two representatives of providers of juvenile
88 delinquency prevention, treatment, and rehabilitation services.
89 (6) The task force shall submit a written report of its
90 findings and recommendations to the Governor, the President of
91 the Senate, and the Speaker of the House of Representatives by
92 January 1, 2007.
93 (7) Administrative support for the task force shall be
94 provided by the department. Members of the task force shall
95 serve without compensation, but are entitled to reimbursement
96 under s. 112.061, Florida Statutes, for travel and per diem
97 expenses incurred in the performance of their official duties.
98 The task force shall strive to minimize travel and per diem
99 expenses by performing, when practicable, its duties in the
100 location where the majority of task force members reside.
101 (8) The task force shall be dissolved upon submission of
102 its report.
103 Section 2. This act shall take effect July 1, 2006.

HB 769 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 769 CS University Building Designations
SPONSOR(S): Galvano
TIED BILLS: **IDEN./SIM. BILLS:** SB 1616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Colleges & Universities Committee	10 Y, 0 N, w/CS	Davis	Tilton
2) Governmental Operations Committee		Ziegler	Williamson
3) Education Appropriations Committee			
4) Education Council			
5)			

SUMMARY ANALYSIS

Current law does not permit a state building, road, bridge, park, recreation complex, or similar facility to be named after a living person unless the name designation is approved by law. Pursuant to this requirement, if a university wishes to name a particular building or facility after a living person, the designation must be approved by the Legislature.

The bill provides the following university building designations at the University of Florida and directs the university to erect suitable markers to reflect the name designations:

- the new Structures and Materials Research Laboratory for the College of Engineering as the "Powell Family Structures and Materials Laboratory;"
- the proposed band rehearsal facility as "Steinbrenner Band Hall;"
- the building that will house the Graham Center and other programs as "Jim and Alexis Pugh Hall;" and
- the Dairy Science Building as the "L.E. 'Red' Larson Dairy Science Building."

The bill designates the proposed entrance pavilion at the John and Mable Ringling Museum of Art at the Florida State University Center for Cultural Arts in Sarasota as the "John M. McKay Visitors' Pavilion" and directs Florida State University to erect suitable markers to reflect this designation.

The bill designates the building at the University of South Florida that will house the Children's Medical Services of the Department of Health as the "John S. Curran, M.D., Children's Health Center" and directs the University of South Florida to erect suitable markers to reflect this designation.

The bill designates the building at the University of South Florida St. Petersburg known as Coquina Hall as "H. William Heller Hall" and directs the University of South Florida St. Petersburg to erect suitable markers to reflect this designation.

The bill provides the following university building designations at the Florida Agricultural and Mechanical University and directs the university to erect suitable markers to reflect the designations:

- the School of Business and Industry Building as the "Sybil C. Mobley Business Building;"
- the new Allied Health Building as the "Margaret W. Lewis/Jacqueline B. Beck Allied Health Building;"
- the Architecture Building as the "Walter L. Smith Architecture Building;" and
- the Archives Building as the "Carrie Meek/James N. Eaton, Sr., Southeastern Regional Black Archives Research Center and Museum."

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:

Section 267.062, F.S., provides that no state building, road, bridge, park, recreational complex, or similar facility can be named after a living person unless approved by law. Therefore, if a university wishes to name a particular building or facility after a living person, the designation must be approved by the Legislature.

A section by section analysis of the bill follows. Biographical information was provided by the sponsors of the proposed designations.

Section 1: The bill designates the new Structures and Materials Researcher Laboratory for the College of Engineering at the University of Florida as the "Powell Family Structures and Materials Laboratory" and directs the University of Florida to erect suitable markers.

Robert O. Powell and Ann Catherine Powell have a long history with the University of Florida. The couple met at the university while he was in his last year in the College of Engineering and she was pursuing a baccalaureate degree from the College of Education. Both of Mrs. Powell's parents, as well as Mr. Powell's brother and business partner attended the university. The couple's son and daughter-in-law also have degrees from the University of Florida.

The Powells have been members of the University of Florida's President's Council since 1993 and were honorees at the President's Council Weekend in 1993. They recently served on the University Foundation's *It's Performance that Counts* Broward County campaign committee. The couple, along with Steve and Carol Powell, donated $3 million to help establish Powell Hall, the exhibit and public education facility for the Florida Museum of Natural History, which opened to the public in January 1998.

Section 2: The bill designates the proposed band rehearsal facility at the University of Florida as "Steinbrenner Band Hall" and directs the University of Florida to erect suitable markers.

George Steinbrenner is a longtime Tampa-area Bull Gator and an enthusiast of band music. Mr. Steinbrenner is the head of the American Shipbuilding Company and the principal owner of the New York Yankees baseball team. He is the founder of the Silver Shield and Gold Shield Foundations, which provide support to families of police officers and firefighters killed in the line of duty. He is currently a member of the University of Florida's President's Council and also has served on the Veterinary Medicine Advisory Council and the University of Florida Foundation Board. He was elected to the UF Athletic Hall of Fame in 1981 and chosen to give the keynote address at the Corporate Leaders Weekend in 1995.

Mr. Steinbrenner made a substantial contribution to the University of Florida for the new band rehearsal facility. In recognition of his donation, the University of Florida Board of Trustees approved the naming of the facility in his honor. The first phase of construction of the facility is scheduled to begin this spring.

Section 3: The bill designates the building that will house the Bob Graham Center for Public Service and other programs at the University of Florida as "Jim and Alexis Pugh Hall" and directs the University of Florida to erect suitable markers to read "Pugh Hall."

Jim Pugh earned his baccalaureate degree in building construction from the University of Florida in 1963. He is the owner of Epoch Properties, which is a company that builds hotels, time shares, and rental housing nationwide. Mr. Pugh also is the chairman of Epoch Management, a real estate management firm. In 2004, Mr. Pugh was recognized as one of the "Most Influential Floridians" by *Florida Trend* magazine and in 2005, the *Orlando Business Journal* named him the "Most Influential Businessman."

Jim and Alexis Pugh donated $5 million to the University of Florida College of Liberal Arts and Sciences for the construction of the building that will house the Bob Graham Center for Public Service. The Bob Graham Center is intended to host distinguished scholars, international leaders, and policy makers to help train students at the University of Florida for leadership in public service.

Section 4: The bill designates the Dairy Science Building at the University of Florida as the "L.E. 'Red' Larson Dairy Science Building" and directs the University of Florida to erect suitable markers to read "Larson Hall".

Louis E. "Red" Larson has been a dairy farmer for more than 57 years. At age 81, he is currently the owner and president of Larson Dairy, Inc., in Okeechobee, FL. In 2005, Mr. Larson earned the Southeastern Farmer of the Year Award at the annual Lancaster-Sunbelt Expo in Moultrie, GA. He has also been elected to the Florida Agricultural Hall of Fame and the Dairy Hall of Fame. In 1999, he was chosen as the Dairyman of the Century and received the Olympian Dairyman Award.

Section 5: The bill designates the proposed entrance pavilion at the John and Mable Ringling Museum of Art at the Florida State University Center for Cultural Arts in Sarasota, FL as the "John M. McKay Visitor's Pavilion" and directs the Florida State University to erect suitable markers.

John McKay graduated from Florida State University in 1971. Since then, he has dedicated his life to serving Floridians. In 1990 he was elected to the Florida Senate, where he served two consecutive terms. Senator McKay earned several awards for his leadership and service. Senator McKay was instrumental in passing legislation that established the affiliation between Florida State University and the John and Mable Ringling Museum of Art.

Section 6: The bill designates the building at the University of South Florida that will house the Children's Medical Services of the Department of Health as the "John S. Curran, M.D., Children's Health Center" and directs the University of South Florida to erect suitable markers.

John S. Curran graduated from the University of Pennsylvania College of Medicine with training in internal medicine and pediatrics at the University of Pennsylvania affiliated institutions. Dr. Curran is a charter faculty member of the University of South Florida College of Medicine. During his career at the College of Medicine, Dr. Curran served as Vice Dean, Executive Associate Dean, Interim Associate Dean for Administration, Associate Dean for Academic Affairs, and Professor of Pediatrics. He was the founding neonatologist at the Tampa General Hospital. He also was the Chief of Pediatrics at the hospital.

Dr. Curran is the State of Florida Neonatal Consultant for the Regional Perinatal Intensive Care Program and the Medical Director for the Tampa Bay Region for Children's Medical Services of the Department of Health. Dr. Curran serves as District Vice Chair for District X of the American Academy of Pediatrics (the Academy), acting as a liaison between state leaders and the Academy. He has been active on legislative initiatives regarding child health policy and the funding of Children's Medical Services.

The bill provides that this section shall take effect upon the effective date of retirement or resignation of John S. Curran from, or the termination of his employment with, the University of South Florida.

Section 7: The bill designates the building known as Coquina Hall at the University of South Florida St. Petersburg as "H. William Heller Hall" and designates the University of South Florida St. Petersburg to erect suitable markers.

H. William Heller is a professor at the University of South Florida St. Petersburg. A former Vice President of the St. Petersburg campus, Dr. Heller joined the staff of the University of South Florida in 1992. Since that time, he has been awarded more than $18 million in grants and contracts and is currently responsible for directing, as principal investigator, projects funded in excess of $1 million.

Dr. Heller has been awarded the Presidential Citation for Exemplary Performance as Vice-Chairman of the White House Conference on Handicapped Individuals as well as the Teacher Educator of the Year Award, Teaching Education Division by the Council of Exceptional Children and the Merrill Publishing Company. He also was the recipient of the 1991 E. Wallace Wallin Award by the Council for Exceptional Children. He has been awarded the United Way Alex de Tocqueville Society Volunteer Service Award, the Outstanding Service Award in Special Education by the Pioneer Division of the Council for Exceptional Children. In 2002, Dr. Heller was honored by the City of St. Petersburg for a "Decade of excellence" and August 21, 2002, was proclaimed Bill Heller Day by the City of St. Petersburg. He was recently nominated for the Outstanding Leadership Award in Special Education by the Council for Exceptional Children; the recipient will be announced in April 2006. In addition, Dr. Heller was selected by faculty to become the first recipient of the Excellence in Professional Service Award from the University of South Florida St. Petersburg.

Dr. Heller served two terms as the head of the Faculty Council for the St. Petersburg campus and was selected by the administration to chair the committee to revise the University of South Florida St. Petersburg Strategic Plan. His professional contributions include more than 350 presentations and publications.

The bill provides that this section shall take effect upon the effective date of retirement or resignation of H. William Heller from, or the termination of his employment with, the University of South Florida, St. Petersburg.

Section 8: The bill designates the School of Business and Industry Building at the Florida Agricultural and Mechanical University as the "Sybil C. Mobley Business Building" and directs the Florida Agricultural and Mechanical University to erect suitable markers.

Sybil Mobley has served Florida Agricultural and Mechanical University for more than two decades. She is the founding dean of the Florida Agricultural and Mechanical University School of Business and Industry, a program to prepare minority students to compete internationally in the business industry.

Section 9: The bill designates the new Allied Health Building at the Florida Agricultural and Mechanical University as the "Margaret W. Lewis/Jacqueline B. Beck Allied Health Building" and directs the Florida Agricultural and Mechanical University to erect suitable markers.

Dr. Margaret W. Lewis previously served as the dean of the Florida Agricultural and Mechanical University, School of Nursing. For 13 years, she has contributed to the university's nursing program.

Jacqueline B. Beck is the founding dean of the Florida Agricultural and Mechanical University School of Allied Health Sciences. She has been vigilant in expanding the school's programs and worked to secure more than $13 million in funding for research and academic programs.

Section 10: The bill designates the Architecture Building at the Florida Agricultural and Mechanical University as the "Walter L. Smith Architecture Building" and directs the Florida Agricultural and Mechanical University to erect suitable markers.

Dr. Walter Smith served as Florida Agricultural and Mechanical University's seventh president from 1977 to 1985. Under his leadership, the Florida Agricultural and Mechanical University was granted the

authority to offer its first Doctorate of Philosophy degree. Dr. Smith was instrumental in the merging of the Florida Agricultural and Mechanical University-Florida State University College of Engineering. He developed the statewide conference on the Education of Blacks, which resulted in the Florida Legislature developing and funding the Florida Statewide Advisory Committee on the Education of Blacks.

Section 11: The bill designates the Archives Building at the Florida Agricultural and Mechanical University as the "Carrie Meek/James N. Eaton, Sr., Southeastern Regional Black Archives Research Center and Museum" and directs the Florida Agricultural and Mechanical University to erect suitable markers.

Carrie Meek was the first African American elected to Congress from Florida since Reconstruction. She has had a successful career as a public servant, college administrator, and educator. Prior to serving in the United States Congress, Representative Meek was a member of the Florida House of Representatives and the Florida Senate. She has dedicated her life to serving the citizens of Florida, especially minorities, elderly, children, and people with disabilities.

Dr. James N. Eaton, Sr. was a Distinguished Professor of History and Director of the Southeastern Regional Black Archives Research Center and Museum at the Florida Agricultural and Mechanical University. Dr. Eaton dedicated 42 years to the university as a history professor. His contributions to the university include founding the Southeastern Regional Black Archives Research Center and Museum. Dr. Eaton has been selected as Florida Agricultural and Mechanical University "Teacher of the Year" twenty-five times and was the university's first Distinguished Professor.

Section 12: The bill provides an effective date of July 1, 2006, except as otherwise provided.

C. SECTION DIRECTORY:

Sections 1 through 4 designate buildings at the University of Florida.

Section 5 designates a building at the Florida State University.

Section 6 designates a building at the University of South Florida.

Section 7 designates a building at the University of South Florida St. Petersburg.

Sections 8 through 11 designate buildings at the Florida Agriculture and Mechanical University.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   Please see FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

There will be an insignificant impact associated with the universities erecting suitable markers for the name designations.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

2. Other:

The bill does not appear to raise constitutional issues.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 7, 2006, the Colleges and Universities Committee adopted amendments to HB 769. The bill was reported favorable with a Committee Substitute (CS). The CS differs from the original bill by adding the following designations:

- The building known as Coquina Hall at the University of South Florida St. Petersburg as "H. William Heller Hall";
- The School of Business and Industry Building at the Florida Agricultural and Mechanical University as the "Sybil C. Mobley Business Building";
- The new Allied Health Building at the Florida Agricultural and Mechanical University as the "Margaret W. Lewis/Jacqueline B. Beck Allied Health Building";
- The Architecture Building at the Florida Agricultural and Mechanical University as the "Walter L. Smith Architecture Building"; and
- The Archives Building at the Florida Agricultural and Mechanical University as the "Carrie Meek/James N. Eaton, Sr., Southeastern Regional Black Archives Research Center and Museum."

CHAMBER ACTION

The Colleges & Universities Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to university building designations; providing for the designation of buildings at the University of Florida, Florida State University, the University of South Florida, the University of South Florida St. Petersburg, and Florida Agricultural and Mechanical University; directing the universities to erect suitable markers; providing effective dates.

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

Section 1. Powell Family Structures and Materials Laboratory designated; University of Florida to erect suitable markers.--

(1) The new Structures and Materials Research Laboratory for the College of Engineering at the University of Florida is designated as the "Powell Family Structures and Materials Laboratory."

23 (2) The University of Florida is directed to erect
24 suitable markers designating the Powell Family Structures and
25 Materials Laboratory as described in subsection (1).
26 Section 2. Steinbrenner Band Hall designated; University
27 of Florida to erect suitable markers.--
28 (1) The proposed band rehearsal facility at the University
29 of Florida is designated as "Steinbrenner Band Hall."
30 (2) The University of Florida is directed to erect
31 suitable markers designating Steinbrenner Band Hall as described
32 in subsection (1).
33 Section 3. Jim and Alexis Pugh Hall designated; University
34 of Florida to erect suitable markers.--
35 (1) The building that will house the Graham Center and
36 other programs at the University of Florida to be built near
37 Newell Hall is designated as "Jim and Alexis Pugh Hall."
38 (2) The University of Florida is directed to erect
39 suitable markers which shall read "Pugh Hall."
40 Section 4. L. E. "Red" Larson Dairy Science Building
41 designated; University of Florida to erect suitable markers.--
42 (1) The Dairy Science Building at the University of
43 Florida is designated as the "L. E. 'Red' Larson Dairy Science
44 Building."
45 (2) The University of Florida is directed to erect
46 suitable markers which shall read "Larson Hall."
47 Section 5. John M. McKay Visitors' Pavilion designated;
48 Florida State University to erect suitable markers.--
49 (1) The proposed entrance pavilion at the John and Mable
50 Ringling Museum of Art at the Florida State University Center

51 for Cultural Arts in Sarasota is designated as the "John M.
52 McKay Visitors' Pavilion."
53 (2) Florida State University is directed to erect suitable
54 markers designating the John M. McKay Visitors' Pavilion as
55 described in subsection (1).
56 Section 6. John S. Curran, M.D., Children's Health Center
57 designated; University of South Florida to erect suitable
58 markers.--
59 (1) Notwithstanding s. 267.062, Florida Statutes, the
60 building located at the University of South Florida that will
61 house the Children's Medical Services of the Department of
62 Health is designated as the "John S. Curran, M.D., Children's
63 Health Center."
64 (2) The University of South Florida is directed to erect
65 suitable markers designating the John S. Curran, M.D.,
66 Children's Health Center as described in subsection (1).
67 (3) This section shall take effect upon the effective date
68 of retirement or resignation of John S. Curran from, or the
69 termination of his employment with, the University of South
70 Florida.
71 Section 7. H. William Heller Hall designated; University
72 of South Florida St. Petersburg to erect suitable markers.--
73 (1) Notwithstanding s. 267.062, Florida Statutes, the
74 building known as Coquina Hall, located on the campus of the
75 University of South Florida St. Petersburg in Pinellas County,
76 is designated as "H. William Heller Hall."

77 (2) The University of South Florida St. Petersburg is
78 directed to erect suitable markers designating H. William Heller
79 Hall as described in subsection (1).
80 (3) This section shall take effect upon the effective date
81 of the retirement or resignation of H. William Heller from, or
82 the termination of H. William Heller's employment with, the
83 University of South Florida St. Petersburg.
84 Section 8. Sybil C. Mobley Business Building designated;
85 Florida Agricultural and Mechanical University to erect suitable
86 markers.--
87 (1) The School of Business and Industry Building at
88 Florida Agricultural and Mechanical University is designated as
89 the "Sybil C. Mobley Business Building."
90 (2) Florida Agricultural and Mechanical University is
91 directed to erect suitable markers designating the Sybil C.
92 Mobley Business Building as described in subsection (1).
93 Section 9. Margaret W. Lewis/Jacqueline B. Beck Allied
94 Health Building designated; Florida Agricultural and Mechanical
95 University to erect suitable markers.--
96 (1) The new Allied Health Building at Florida Agricultural
97 and Mechanical University is designated as the "Margaret W.
98 Lewis/Jacqueline B. Beck Allied Health Building."
99 (2) Florida Agricultural and Mechanical University is
100 directed to erect suitable markers designating the Margaret W.
101 Lewis/Jacqueline B. Beck Allied Health Building as described in
102 subsection (1).

103 Section 10. Walter L. Smith Architecture Building
104 designated; Florida Agricultural and Mechanical University to
105 erect suitable markers.--
106 (1) The Architecture Building at Florida Agricultural and
107 Mechanical University is designated as the "Walter L. Smith
108 Architecture Building."
109 (2) Florida Agricultural and Mechanical University is
110 directed to erect suitable markers designating the Walter L.
111 Smith Architecture Building as described in subsection (1).
112 Section 11. Carrie Meek/James N. Eaton, Sr., Southeastern
113 Regional Black Archives Research Center and Museum designated;
114 Florida Agricultural and Mechanical University to erect suitable
115 markers.--
116 (1) The Archives Building at Florida Agricultural and
117 Mechanical University is designated as the "Carrie Meek/James N.
118 Eaton, Sr., Southeastern Regional Black Archives Research Center
119 and Museum."
120 (2) Florida Agricultural and Mechanical University is
121 directed to erect suitable markers designating the Carrie
122 Meek/James N. Eaton, Sr., Southeastern Regional Black Archives
123 Research Center and Museum as described in subsection (1).
124 Section 12. Except as otherwise expressly provided in this
125 act, this act shall take effect July 1, 2006.

HB 829 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 829 CS Prison Industries
SPONSOR(S): Holloway
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 192

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Cunningham	Kramer
2) Governmental Operations Committee		Brown	Williamson
3) Criminal Justice Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

This bill creates a task force to examine how well the prison industries program has fulfilled its purposes and missions. The task force is directed to report its findings to the Governor and the Legislature. The bill also clarifies the state's reversionary interest in property owned by PRIDE.

The bill will have a minimal fiscal impact related to the travel per diem of the task force members.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates a 13-member task force entitled to expenses under s. 112.061, F.S.

B. EFFECT OF PROPOSED CHANGES:

PRIDE'S History

Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) was created by the Legislature in 1981 as a private, non-profit corporation.[1] In 1983, the Legislature authorized PRIDE to lease and manage the state prison industries program which had been operated by the Department of Corrections. Section 946.501(1), F.S., notes that it is essential to the state that the correctional work programs provide inmates with activities that can then "lead to meaningful employment after release" to help reduce the number of inmates who return to the correctional system. Section 946.501, F.S., defines PRIDE's mission as:

- providing education, training, and post-release job placement to inmates to help reduce recommitment;
- enhancing security by reducing inmate idleness and providing an incentive for good behavior in prison;
- reducing the cost of state government by operating enterprises primarily with inmate labor while not unreasonably competing with private enterprise; and
- rehabilitating inmates by duplicating, as nearly as possible, the activities of a profit-making enterprise.

PRIDE was given several advantages to help offset some of its competitive disadvantages in the marketplace. It has sovereign immunity and is not required to pay unemployment compensation for inmate workers.[2] State agencies are required by statute to purchase products from PRIDE if the products are of similar quality and price to those offered by outside vendors.[3] Also, PRIDE is not under the authority of any state agency, although it is subject to the auditing and investigatory powers of the Legislature and the Governor.[4]

PRIDE currently operates 36 industrial training programs in 20 state prisons and offers 366 on-the-job training programs.[5] In 2004, 3,794 inmates were trained in jobs and worked 3,702,290 hours in the 36 industries.[6] Some of the industries operated by PRIDE are raising dairy calves, furniture manufacturing, agriculture, printing, binding, data entry, and document imaging services.[7] PRIDE does not receive funding from the Legislature and is supported by the revenues it generates from selling its products.[8] The State of Florida is its major purchaser, accounting for 51 percent of its revenues in 2004. Total revenues for that year were $65,694,450.[9]

PRIDE reports that its recidivism rate is lower than that of the general inmate population and that for fiscal years 2002, 2003, and 2004, that rate has steadily declined.[10] PRIDE also reported that it offers

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[1] http://www.pride-enterprises.org/compay_info_img/pdf/WorkerHistory.pdf.
[2] ss. 946.5026 and 946.513, F.S.
[3] s. 946.515(2), F.S.
[4] s. 946.517, F.S.
[5] http://www.pride-enterprises.org/table_company_information.aspx.
[6] http://www.pride-enterprises.org/compay_info_img/pdf/2004AnnualReport.pdf.
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*

a program which helps inmates begin making restitution payments while in prison so that their financial burden is reduced upon release from prison.[11]

Financial and Managerial Issues

In the late 1990's, PRIDE developed a new business plan which involved the creation of separate but related business companies to help PRIDE find ways to increase the number of inmate jobs and expand its mission. PRIDE formed Industries Training Corporation (ITC) in July 1999, to enter into business relationships and manage work programs for PRIDE. However, the number of inmate workstations declined by more than 500 between 2000 and 2002, and there are no statistics indicating any increase in the subsequent two years.

In its 2002 Annual Report issued December 2, 2002, the Florida Corrections Commission extensively reviewed PRIDE's history and current operations.[12] The report focused attention on PRIDE's fulfillment of its mission, particularly noting that the number of inmate workstations had not kept pace with the growth of the inmate population. The Corrections Commission also raised questions about the new corporate structure and affiliated entities.[13]

In December 2003, OPPAGA issued Report No. 03-68, "PRIDE Benefits the State but Needs to Improve Transparency in Operations."[14] OPPAGA focused on many of the same issues as the Corrections Commission, particularly concerning Pride's organizational structure. OPPAGA also noted some of the challenges faced by PRIDE in the current business operating environment, and that PRIDE sales had declined by more than $20 million over the preceding 5 years.[15] The OPPAGA report prompted Governor Bush to request his Chief Inspector General to conduct an audit of PRIDE and its related entities.

On February 28, 2005, the Office of the Chief Inspector General issued its findings.[16] In general, the audit noted the significant financial decline of PRIDE and its affiliates, was critical of PRIDE's internal controls and its business and organizational operation, a breakdown in accountability, as well as the Board of Director's lack of oversight.[17]

In September 2005, PRIDE filed suit against ITC, two of its affiliates, and its Treasurer and Chief Financial Officer. The suit sought monetary damages for actions which allegedly promoted the financial interests of some of the management groups while compromising the financial interests of PRIDE. This case is pending and has not been resolved.[18]

Reversionary Interest

Section 946.505, F.S., provides for the reversion of certain PRIDE property to the state if PRIDE dissolves or if a correctional work program ceases to function. Unless PRIDE intends to use the property for another correctional work program, all buildings, land, furnishings, equipment, and other chattels originally leased from the department automatically revert to full ownership by the department. The state also has a reversionary interest in any facilities[19] that are subsequently constructed or otherwise acquired in connection with the operation of the program. In its report, OPPAGA noted that the statute does not provide for reversion of all PRIDE property to the state, nor address the state's interest in property that is transferred by PRIDE during its existence.[20] In its response to the OPPAGA

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[11] *Id.*
[12] Available online here: http://www.fcc.state.fl.us/fcc/reports/pdf02.htm.
[13] *Id.*
[14] Available online here: http://www.oppaga.state.fl.us/reports/crime/r03-68s.html.
[15] *Id.*
[16] Available online here: http://www.myflorida.com/eog/inspector_general/pdfs/PRIDE_2005.pdf.
[17] *Id.*
[18] For a general overview of the litigation, see "Firm that employs inmates sues its spinoff company," St Petersburg Times, September 24, 2005. Available online here: http://www.sptimes.com/2005/09/24/State/Firm_that_employs_inm.shtml.
[19] "Facilities" is defined in s. 946.503(4), F.S., to mean buildings and land used in the operation of an industry program on state property.
[20] See fn 14.

report, PRIDE noted that the state's reversionary interest is ensured in PRIDE's articles of incorporation and further protected by its designation as a 501(c)(3) organization under the Internal Revenue Code.[21]

Effect of Proposed Changes:
The bill creates the Prison Industries Task Force to examine and report on the state's prison industries program. Previous reports concerning PRIDE have focused on structural and management issues, examining whether PRIDE is accomplishing its statutory missions. The bill provides a broader mission for the task force, which will determine: (1) how well the program has fulfilled its statutory missions and purposes; and (2) whether the program's statutory missions are still feasible and relevant and whether they will remain so in the future.

The task force will be housed within the Office of Legislative Services, with staff support provided by the Legislative Committee on Intergovernmental Relations. The Secretary of the Department of Corrections will chair the task force, and its first meeting must be held by July 15, 2006, and at least three meetings must be held. The task force must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than February 15, 2007. The bill abolishes the task force on July 1, 2007.

The task force will consist of the following 13 members:
- The Secretary of the Department of Corrections and 2 wardens of institutions that have prison industries programs;
- A representative from the Agency for Workforce Innovation;
- A representative from the Department of Education's Office of Workforce Education;
- A member of the Senate, appointed by the President of the Senate;
- A member of the House of Representatives, appointed by the Speaker of the House;
- A representative from the PRIDE board of directors;
- A representative from a local governmental entity that purchases products produced by prison industries;
- A representative from a private industry that regularly employs former inmates;
- A representative from a private industry that regularly trains inmates;
- A representative from the academic community with expertise in research concerning reentry of prisoners into society and the employment of former felons; and
- A former inmate who worked in the prison industries program.

The President of the Senate and the Speaker of the House of Representatives must jointly appoint the representatives of PRIDE, local government, private industry, and academia by July 1, 2006.

The bill requires the task force to receive testimony from the Auditor General, the Governor's Inspector General, OPPAGA, PRIDE, and other appropriate officials to address a number of questions regarding the correctional work program's missions:
- Whether the statutory missions of the program, as defined in s. 946.501(2), F.S., are still valid; whether there are other valid missions that should be included; and whether any of the valid current or recommended missions are in conflict;
- Whether the missions should be ranked in order of priority and the extent to which accomplishment of a higher-priority mission can be reduced to accomplish a lower-priority mission;
- Whether duplicating a free-enterprise operation as closely as possible is the most effective way of accomplishing the program's missions;
- Whether the program's management structure should be changed to facilitate accomplishment of the missions;
- Whether operating the program independently of state government is the most effective manner to accomplish its valid missions;

[21] *Id.*

- Whether PRIDE can fulfill the legislative intent in s. 946.502(6), F.S., that correctional work programs use inmates in all levels of custody, with emphasis on reducing idleness among inmates in close custody;
- The extent to which privatization and market changes have reduced PRIDE's sales and impeded its ability to expand training; and
- What creative strategies could enhance the program's ability to accomplish its valid missions.

Section 2 of the bill addresses the concern raised in OPPAGA Report No. 03-68 that state property interests in reversion of PRIDE property to the state need to be clarified. Section 946.505(1), F.S., is amended to clarify that all property and assets related to a correctional work program will revert to state ownership if the program closes and PRIDE does not intend to use the property and assets in another correctional work program. The property and assets would also revert to the state if PRIDE were dissolved. The bill does not address the status of property that is sold or otherwise transferred by PRIDE. However, PRIDE does not have authority to transfer title to property originally leased from the department or the state, or to permanent enhancements to facilities or work programs.

C. SECTION DIRECTORY:

Section 1 creates the Prison Industries Task Force within the Office of Legislative Services and requiring the task force to determine how well the prison industries program has fulfilled its statutory mission and purpose;

Section 2 amends s. 946.505, F.S., clarifying the state's reversionary interest in the facilities, property, and assets of the corporation operating a correctional work program.

Section 3 provides that the act takes 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:

   The fiscal impact to the government is expected to be insignificant. There will be some expense to the state for reimbursement of travel and per diem costs for task force members, but members are not authorized additional compensation, and the task force is directed to meet only three times. The task force will be supported by current state personnel.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Criminal Justice Committee adopted one amendment to the bill and reported the bill favorably with committee substitute. The amendment clarifies who will serve as chair of the task force, removes the Florida Tax Watch representative from the list of task force members, and deletes the provisions of the bill requiring that the task force be subject to executive branch open meeting and public records requirements.

CHAMBER ACTION

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1 The Criminal Justice Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to prison industries; creating the Prison
7 Industries Task Force within the Office of Legislative
8 Services; requiring the task force to determine how well
9 the prison industries program has fulfilled its statutory
10 mission and purpose; providing for the appointment of
11 members to the task force; requiring the task force to
12 hold a minimum number of meetings; providing for members
13 of the task force to be reimbursed for per diem and travel
14 expenses; requiring the Legislative Committee on
15 Intergovernmental Relations to provide staff support for
16 the task force; specifying the duties of the task force
17 with respect to taking testimony; requiring the task force
18 to submit a report to the Governor and the Legislature;
19 abolishing the task force on a future date; amending s.
20 946.505, F.S.; clarifying the state's reversionary
21 interest in the facilities, property, and assets of the
22 corporation operating a correctional work program;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:
26
27 Section 1. Prison Industries Task Force.--
28 (1)(a) There is created within the Office of Legislative
29 Services the Prison Industries Task Force to review how well
30 PRIDE has fulfilled its statutory missions and purposes and
31 whether the statutory missions of the prison industries program
32 are feasible and relevant today and in the future.
33 (b) The task force shall consist of the following 13
34 members:
35 1. The Secretary of Corrections, who shall serve as chair,
36 and two wardens of prisons that have prison industries programs;
37 2. A representative from the Agency for Workforce
38 Innovation;
39 3. A representative from the Office of Workforce Education
40 within the Department of Education;
41 4. A member of the Senate, appointed by the President of
42 the Senate;
43 5. A member of the House of Representatives, appointed by
44 the Speaker of the House of Representatives;
45 6. A representative from the board of directors of the
46 private nonprofit prison industries corporation, as defined in
47 s. 946.503, Florida Statutes;
48 7. A representative from a local governmental entity that
49 purchases products that are produced by prison industries;
50 8. A representative from a private industry that regularly
51 employs former inmates;

52 9. A representative from a private industry that regularly
53 trains inmates;
54 10. A representative from the academic community who has
55 expertise in research concerning the reentry of former prisoners
56 into society and the employment of former felons; and
57 11. A former inmate who has worked in the prison
58 industries program.
59 (c) The President of the Senate and the Speaker of the
60 House of Representatives shall jointly appoint the members of
61 the task force specified in subparagraphs (b)6.-11. by July 1,
62 2006.
63 (d) The task force shall hold its first meeting by July
64 15, 2006.
65 (e) All recommendations of the task force shall be by
66 majority vote.
67 (f) The task force shall meet at the call of the
68 chairperson and shall conduct at least three meetings.
69 (g) Members of the task force shall serve without
70 compensation, but are entitled to reimbursement for per diem and
71 travel expenses in accordance with s. 112.061, Florida Statutes.
72 (h) The Legislative Committee on Intergovernmental
73 Relations shall provide staff support for the task force.
74 (2)(a) The task force shall receive testimony from the
75 Auditor General, the Governor's Inspector General, the Office of
76 Program Policy Analysis and Government Accountability, PRIDE,
77 and other appropriate officials to address the following:

78 1. Are the statutory missions of the prison industries
79 program as defined in s. 946.501(2), Florida Statutes, still
80 valid?
81 2. Should other valid missions be included within the
82 program?
83 3. How do the current or recommended missions conflict
84 with any other valid missions?
85 4. Should the missions be ranked in order of priority and,
86 if so, to what extent can accomplishment of a higher-priority
87 mission be reduced in order to accomplish a lower-priority
88 mission?
89 5. Is the method of addressing the legislative finding in
90 s. 946.501(3), Florida Statutes, which is that it is in the best
91 interest of the state, inmates, and the general public to
92 duplicate as closely as possible free-enterprise production and
93 service operations, also the most effective manner in which to
94 accomplish the missions of the prison industries program?
95 6. Should the structure for managing the correctional work
96 program be changed in order to facilitate accomplishing the
97 missions of the program?
98 7. Is operating the prison industries program
99 independently of state government the most effective manner in
100 which to accomplish its valid mission?
101 8. To what extent can PRIDE fulfill the legislative intent
102 stated in s. 946.502(6), Florida Statutes, which is that prison
103 industries programs use inmates in all levels of custody, with
104 specific emphasis on reducing idleness among inmates in close
105 custody?

106 9. To what extent, if any, have privatization of
107 governmental functions and changing markets reduced sales by
108 PRIDE or impeded its ability to expand prison industry training?
109 10. What creative strategies could enhance the prison
110 industries program's ability to meet its valid missions?
111 (b) The task force shall submit a report of its findings
112 and recommendations to the Governor, the President of the
113 Senate, and the Speaker of the House of Representatives by
114 February 15, 2007.
115 (3) All meetings of the task force and all business of the
116 task force for which reimbursement may be requested must be
117 concluded before the report is filed. The task force is
118 abolished July 1, 2007.
119 Section 2. Subsection (1) of section 946.505, Florida
120 Statutes, is amended to read:
121 946.505 Reversion upon dissolution of corporation or
122 termination of lease.--
123 (1) In the event the corporation is dissolved or its lease
124 of any correctional work program expires or is otherwise
125 terminated, all property relating to such correctional work
126 program which ceases to function because of such termination or
127 dissolution, including all buildings, land, furnishings,
128 equipment, and other chattels and assets, whether originally
129 leased from the department or~~, as well as any~~ subsequently
130 constructed or otherwise acquired ~~facilities in connection with~~
131 ~~its continued operation of that program~~, automatically reverts
132 to full ownership by the department unless the corporation
133 intends to use ~~utilize~~ such property in another correctional

134 work program. Such a reversionary ownership interest of the
135 state in any and all such after-acquired facilities, property,
136 and assets by the corporation is in furtherance of the goals
137 established in s. 946.502(4), and such a present ownership
138 interest by the state is a continuing and insurable state
139 interest.
140 Section 3. This act shall take effect upon becoming a law.

HB 861

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 861 Verification of Identity
SPONSOR(S): Allen
TIED BILLS: **IDEN./SIM. BILLS:** SB 486

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee		Brown	Williamson
2) Ethics & Elections Committee			
3) State Administration Appropriations Committee			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill sets forth a list of criteria that all state agencies issuing licenses, permits, or other public benefits must review before relying on any foreign identification. Agencies cannot rely on the veracity of any identification document unless the document meets the qualifications contained in the bill.

Although the proposed legislation does not reach so far as to dictate Florida Driver's License standards, the requirements contained in the bill ultimately work to enforce portions of the Federal REAL ID Act of 2005 at the state level by requiring state agencies to rely only on identification from other states that meets certain requirements of the REAL ID Act.

The bill specifically identifies the Division of Elections as an entity which must follow the enumerated standards, notwithstanding the provisions of the Florida Voter Registration Act.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the number of regulations surrounding the application process for all state permits and licenses.

Maintain public security – The bill places restrictions on the types of government-issued documents that may be relied upon by state officials in an effort to ensure the citizenship and identification of the presenter.

B. EFFECT OF PROPOSED CHANGES:

Federal REAL ID Act of 2005

On May 11, 2005, President Bush signed into law the "REAL ID Act of 2005," which was attached to the "Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005."[1] Title II of the Act is entitled "Improved Security for Driver's Licenses and Personal Identification Cards," and repeals a December 2004 law that required a "cooperative state-federal process" to create federal driver's license standards.[2] The new law instead "directly imposes prescriptive driver's license standards."[3]

The REAL ID Act contains a provision regarding the verification of documents presented to a license-issuing state agency.[4] States must verify with all issuing agencies the issuance, validity, and completeness of all documents presented. The receiving entity also must verify a social security number, if given, with the Social Security Administration.

Before issuing a driver's license, a state must require and verify valid documentary evidence that the person (i) is a U.S. citizen, (ii) is an alien lawfully admitted for permanent or temporary residence; (iii) has conditional permanent resident status; (iv) is a refugee or has been granted asylum; (v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status, (vi) has a pending application for asylum, (vii) has a pending or approved application for temporary protected status, (viii) has approved deferred status, or (ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence or conditional permanent resident status.[5]

Basic driver's license standards also are contained in the act.[6] All licenses must contain:

- The person's name;
- The person's date of birth;
- The person's gender;
- A license number;
- A digital photograph;
- The person's legal address;
- Physical security features to prevent fraud or counterfeiting; and
- A common machine-readable technology with defined data elements.

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[1] H.R. 1268, P.L. 109-13.

[2] *NCSL REAL ID Act of 2005 Title Summary,* National Conference of State Legislators, available online here: http://www.ncsl.org/standcomm/sctran/realidsummary05.htm.

[3] *Id.*

[4] See generally REAL ID Act, s. 202(c)(3)(A), s. 202(d)(4), and s. 202(d)(5).

[5] REAL ID Act, s. 202(c)(2)(A) and (B).

[6] See generally REAL ID Act, s. 202(c) and (d).

Any state that issues a driver's license that does not conform to the REAL ID Act requirements must ensure that the license states on its face that it does not conform to the federal standards.[7] The license also must use a unique design or color indicator to alert agencies that it does not comply.[8]

State Licenses and Permits

The Department of Highway Safety and Motor Vehicles issues over 1.1 million original Florida drivers licenses and over 500,000 original Florida identification cards each year.[9] Section 322.08, F.S., specifies the current identification requirements for a Florida driver's license, and section 322.051, F.S., specifies the same for an identification card. These provisions allow identification paperwork which "have no photo identification, but which provide legitimacy to the applicant's presence" in the United States.[10]

The Florida Fish and Wildlife Conservation Commission (FWC) issues approximately 2.5 million licenses and permits annually.[11] These include recreational hunting, fresh- and salt-water fishing, commercial fresh- and salt-water fishing, and captive wildlife licenses and permits. Positive proof of identification is not required for these permits and licenses, with the exception of the Disabled Florida Resident License.[12] Approximately 909 different entities sell FWC licenses and permits.[13]

Department of Elections

Part II of Chapter 97, F.S., the "Florida Voter Registration Act," governs qualifications to register to vote. Section 97.052, F.S., outlines the registration application, which requires:

- The applicant's full name;
- Date of birth;
- Address of legal residence;
- Mailing address (if different);
- County of legal residence;
- Race or ethnicity that best describes the applicant;
- State or country of birth;
- Sex;
- Party affiliation;
- Whether or not the applicant needs assistance when voting;
- Name and address where last registered;
- Last four digit's of applicant's social security number;
- Florida Driver's license number or identidcation card number;
- An indication, if applicable, that applicant has no Florida driver's license or identification card;
- Telephone number (optional);
- Signature;
- Whether or not the registration is used for an initial filing, an update, or a replacement;
- A checkbox indicating whether or not the application is a U.S. citizen;
- A checkbox indicating that, if the applicant is a felon, that he or she has had his or her civil rights restored; and
- A statement indicating that, an applicant has never been adjudicated incapacitated with respect to voting, or if so, he or she has had his or her competency to vote restored.

Section 97.053, F.S. states that the application is complete if the items above are properly included on the form. The department must verify the "authenticity or non-existence of" the driver's license number, identification card, or last four digits of the social security number.

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[7] REAL ID Act. s. 202(d)(11).
[8] *Id.*
[9] *2006 Bill Analysis for HB 861,* Department of Highway Safety and Motor Vehicles, March 22, 2006.
[10] *Id.*
[11] *2006 Legislative Bill Analysis – HB 861*, Florida Fish and Wildlife Conservation Commission, March 21, 2006.
[12] *Id.*
[13] *Id.*

Proposed Changes

The bill sets forth a list of criteria that all state agencies[14] issuing licenses, permits, or other public benefits must review before relying on any foreign identification. Agencies must not rely on the veracity of any identification document unless the document is:

- A valid, unexpired passport issued by the United States;
- An immigration document issued by the Federal Government;
- Any document issued by an agency of the Federal Government or the Armed Services of the United States which bears a photograph of the person;
- A valid, unexpired passport issued by a foreign government if the passport includes or is accompanied by a document proving that the alien is lawfully in the United States;
- A valid, unexpired identification document issued by another state or political subdivision, if the document:
    - Bears a recent photograph of the person;
    - Is issued by a state or political subdivision which prohibits the issuance of identification cards to illegal immigrants; and
    - The state or political subdivision requires independent verification of the records offered by the person to prove identity when applying for the identification document.

Although the proposed legislation does not reach so far as to dictate Florida Driver's License standards, the requirements contained in the bill ultimately work to enforce portions of the REAL ID Act of 2005 at the state level by requiring state agencies to rely only on identification from other states that meets certain requirements of the REAL ID Act.

The bill specifically identifies the Division of Elections as an entity which must follow the enumerated standards, notwithstanding the provisions of Part II of Chapter 97, F.S.

C. SECTION DIRECTORY:

Section 1 creates an unnumbered statute relating to verification of identity for public benefits, licenses, permits, and voter registration.

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 FWC has identified a potential decrease in revenues due to the likelihood that permit and license seekers will not be able to comply with the additional scrutiny, and will not pay for permits and licenses at historical levels. As a result, recurring state revenue may decrease. Non-recurring state revenue may be lost, if FWC internet and phone-based sales are halted, and if private agents decline to continue their involvement in license and permit selling.

2. Expenditures:

   The FWC identifies an unspecified but substantial expenditure related to systems changes required to meet the higher standards promulgated by the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

[14] The bill applies to any "department, agency, commission, or other entity of the state, a political subdivision, or an officer or employee thereof."

2. Expenditures:

The FWC suggests that tax collectors acting as license agents may face increased costs relating to the verification of acceptable documents.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The heightened requirements will presumably result in a significant expense, which may be passed on to persons seeking a permit or license from the state. FWC expresses a concern that the raised barrier to a license or permit may lead to an increase in illegal unlicensed hunting or fishing and a reduction in the amount of dues collected under FWC programs.[15]

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:

The DHSMV has stated that the higher standards imposed by this law will negatively impact millions of Florida citizens, new residents, and visitors by blocking access to licenses or permits. The DHSMV also points out that the increased requirements will make a driver's license or identification card necessary for many transactions with Florida's government, increasing the amount of bureaucracy in citizen's lives. Finally, the DHSMV notes potential unintended consequences regarding "titling and registration of motor vehicles, vessels, etc."[16]

The FWC has identified a major concern regarding the ability or inability of its numerous vendors to properly screen identification documents and determine which are acceptable.[17] The FWC also states that its automated license system cannot be updated within the implementation timeframe given in the bill.[18]

The bill requires photographic identification to include a "recent" photograph, but no direction is given regarding the definition of "recent."

The Department of State has opined that the application of the increased identification standards may represent violations of current federal election laws.[19]

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[15] *Id.*
[16] *2006 Bill Analysis for HB 861,* Department of Highway Safety and Motor Vehicles, March 20, 2006.
[17] *2006 Legislative Bill Analysis – HB 861*, Florida Fish and Wildlife Conservation Commission, March 21, 2006.
[18] *Id.*
[19] Email from Department of State, February 21, 2006.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to verification of identity; prohibiting a
3 state agency, political subdivision, or officer or
4 employee thereof from recognizing documents other than the
5 documents specified in the act for purposes of proving the
6 identity of an applicant for a public benefit, license, or
7 permit or proving the identity of a person registering to
8 vote; providing specified documents that are acceptable to
9 prove identification of the person; providing an effective
10 date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Verification of identity for public benefits,
15 licenses, permits, and voter registration.--
16 (1) A department, agency, commission, or other entity of
17 the state, a political subdivision, or an officer or employee
18 thereof may not recognize or rely upon, or authorize the
19 recognition of or reliance upon, any document that is not
20 described in subsection (3) when the document is offered to
21 prove the identity of a person applying for a public benefit,
22 license, or permit.
23 (2) Notwithstanding part II of chapter 97, Florida
24 Statutes, a department or other entity of the state, a political
25 subdivision, or any agency or employee thereof authorized to
26 register a person to vote in any federal, state, or local
27 election may not recognize or rely upon, or authorize the
28 recognition of or reliance upon, any document that is not

29 described in subsection (3) when the document is offered to
30 prove the identity of a person attempting to register to vote in
31 this state.
32 (3) Documents acceptable to prove the identity of a person
33 are limited to:
34 (a) A valid, unexpired passport issued by the United
35 States, an immigration document issued by the Federal
36 Government, and any document issued by an agency of the Federal
37 Government or the Armed Services of the United States which
38 bears a photograph of the person.
39 (b) A valid, unexpired passport issued by a foreign
40 government if the passport includes or is accompanied by a
41 document proving that the alien is lawfully in the United
42 States.
43 (c) A valid, unexpired identification document issued by a
44 state or political subdivision if the document bears a recent
45 photograph of the individual, the issuing state or political
46 subdivision prohibits the issuance of the identification
47 document to an alien who is unlawfully in the United States, and
48 the state or political subdivision requires independent
49 verification of the records offered by the person to prove
50 identity when applying for the identification document.
51 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 995 Agency Inspectors General
SPONSOR(S): Bean
TIED BILLS: **IDEN./SIM. BILLS:** SB 1632

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

SUMMARY ANALYSIS

The bill amends agency inspector general provisions to create an investigatory challenge process. Entities under investigation by an agency inspector general are granted hearing rights during the investigatory process in order to challenge or rebut findings being made by the inspector general. In addition, the target of the investigation is entitled to present a report which must be attached to the inspector general's report.

The bill will have an indeterminate fiscal impact due to administrative costs of holding impartial hearings for entities wishing to challenge or rebut inspector general findings.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates an additional hearing process in the investigatory processes of agency inspectors general.

Safeguard individual liberty – The bill provides a hearing process for individuals under investigation by an agency.

B. EFFECT OF PROPOSED CHANGES:

Agency Inspectors General
Current law establishes an Office of Inspector General in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government.[1] Each inspector general, in carrying out his or her auditing duties and responsibilities, must review and evaluate internal controls necessary to ensure the fiscal accountability of the agency; conduct financial, compliance, electronic data processing, and performance audits of the agency; and prepare audit reports of his or her findings.[2] In carrying out his or her investigative duties and responsibilities, the inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses.[3] Agency investigations may involve processes and procedures of an agency, or may involve the actions of specific employees, vendors, or other individuals or entities.

Inspector General Working Materials
Audit workpapers and reports of the inspector general are public records less any confidential and exempt information.[4] However, when a complaint has been received by the inspector general, the name or identity of the individual filing the complaint must not be disclosed without the individual's written consent, unless disclosure is unavoidable during the course of an audit or investigation.[5]

Agency Hearings
The Florida Administrative Procedure Act (APA)[6] creates rights for administrative hearings for entities substantially affected by final agency actions. "Agency action" means "the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request [of a petition to initiate rulemaking]."[7]

Section 120.62, F.S., "Agency Investigations," provides that every person responding to an agency request or demand for written information or an oral statement is entitled to a transcript or recording of such oral statement at no more than cost. The section also provides that any person compelled to appear, or who appears voluntarily, before an agency is entitled to legal counsel or other qualified representatives.

Proposed Changes
The bill amends s. 20.055, F.S., to allow hearings challenging an inspector general's findings. Specifically, the bill requires each agency to:

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[1] Section 20.055(2), F.S.
[2] Section 20.055(5), F.S.
[3] Section 20.055(6), F.S.
[4] Section 20.055(5)(b), F.S.
[5] *Id.*
[6] Codified in Chapter 120, F.S.
[7] Section 120.52(2), F.S.

> Provide a meaningful opportunity, including the right to an impartial hearing, to challenge findings... contained in a report resulting from an inquiry, investigation, audit, or review before it is finalized and made public.... "

The challenger's response must be attached to the inspector general's final report, and delivered to any party requesting such report.

The bill also directs the Chief Inspector General in the Executive Office of the Governor[8] to develop procedures "by which all inspectors general will fully implement" the "meaningful opportunity" legislation described above. The initial procedures must be completed within 120 days after the effective date of the law, but no later than September 30, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 20.055, F.S., to create a right to hearing for individuals under investigation by an agency inspector general.

Section 2 provides an effective date of upon becoming a law, except for the procedures developed by the Executive Office of the Governor, which take effect on October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The bill will have an indeterminate fiscal impact on agencies. Additional costs will be incurred if the agency is required to grant informal hearings or formal DOAH hearings to the targets of inspector general investigations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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[8] Created by s. 14.32, F.S.

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:

The bill does not currently provide any rulemaking authority, but see "Rulemaking concerns" in "Drafting Issues or Other Comments," below.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Inspector General Autonomy
Section 20.055(3)(b), F.S., states that each inspector general "shall not be subject to supervision by any other employee of the state agency." Section 20.055(3)(d), F.S., states that the "agency head shall not prevent or prohibit the inspector general... from initiating, carrying out, or completing any audit or investigation." The purpose of these statutes is to ensure that employees of the agency, including the agency head, may not interfere in the operation of an inspector general investigation. This bill may create an opportunity for any employee, or any other entity related to the agency and subject to possible investigation, to hinder or delay inspector general obligations under s. 20.055, F.S., by repeatedly requesting hearings on each finding made by an inspector general during his or her investigation. Section 20.055(5)(d), F.S., provides a 'draft and response' procedure for audits of operational units inside the agency. It may be advisable to attempt to create a similar procedure for other investigations, rather than the current "impartial hearing" legislation.

Standing and APA Issues
The bill is unclear as to the individuals or entities granted hearing rights to challenge inspector general findings. The bill merely provides that each state agency shall "ensure a meaningful opportunity, including the right to an impartial hearing, to challenge findings..." The legislation does not identify to whom this "meaningful opportunity" is granted. The bill also is unclear whether the "impartial hearing" is an administrative hearing under the APA. If so, the matter of who has a right to a hearing may need to be more clearly addressed in order to identify which parties have standing and a right to a hearing under ss. 120.569 or 120.57, F.S. If the report is not final agency action, it is unclear what type of "impartial hearing" is required by this legislation, or what manner of uniform rules apply to such hearings (see also "Rulemaking concerns," below).

Public Records concerns
It is not clear, in the bill, to what extent the challenging party is entitled to review documents relating to the investigation that would otherwise be unavailable under the public records exemption for certain audit workpapers and reports.[9] The legislation may need to be amended to address the records access issue in order to clarify the challenger's right to review documents in light of the "impartial hearing" requirement of the bill.

Rulemaking concerns
The bill provides that the Chief Inspector General, part of the Executive Office of the Governor, shall create "specific procedures by which all inspectors general will implement" the hearing process described in the bill. Such procedures may require development through the administrative rulemaking process described in s. 120.54, F.S., in order to be valid assertions of agency action.

[9] Section 20.055(5)(b), F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to agency inspectors general; amending s.
3 20.055, F.S.; deleting the requirement that investigations
4 and inquiries by inspectors general be free of perceived
5 impairments to their independence; requiring provision of
6 opportunity to challenge an inspector general's report;
7 requiring development of procedures to ensure compliance
8 with requirements applicable to inspector general
9 investigations; prescribing applicability; providing
10 effective dates.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Subsection (6) of section 20.055, Florida
15 Statutes, is amended to read:
16 20.055 Agency inspectors general.--
17 (6)(a) In carrying out the investigative duties and
18 responsibilities specified in this section, each inspector
19 general shall initiate, conduct, supervise, and coordinate
20 investigations designed to detect, deter, prevent, and eradicate
21 fraud, waste, mismanagement, misconduct, and other abuses in
22 state government. For these purposes, each state agency shall:
23 1.~~(a)~~ Receive complaints and coordinate all activities of
24 the agency as required by the Whistle-blower's Act pursuant to
25 ss. 112.3187-112.31895.
26 2.~~(b)~~ Receive and consider the complaints which do not
27 meet the criteria for an investigation under the Whistle-
28 blower's Act and conduct, supervise, or coordinate such

29 inquiries, investigations, or reviews as the inspector general
30 deems appropriate.
31 3.~~(c)~~ Report expeditiously to the Department of Law
32 Enforcement or other law enforcement agencies, as appropriate,
33 whenever the inspector general has reasonable grounds to believe
34 there has been a violation of criminal law.
35 4.~~(d)~~ Conduct investigations and other inquiries free of
36 actual ~~or perceived~~ impairment to the independence of the
37 inspector general or the inspector general's office. This shall
38 include freedom from any interference with investigations and
39 timely access to records and other sources of information.
40 5.~~(e)~~ Submit in a timely fashion final reports on
41 investigations conducted by the inspector general to the agency
42 head, except for whistle-blower's investigations, which shall be
43 conducted and reported pursuant to s. 112.3189.
44 6. Ensure a meaningful opportunity, including the right to
45 an impartial hearing, to challenge findings, conclusions, and
46 recommendations contained in a report resulting from an inquiry,
47 investigation, audit, or review before it is finalized and made
48 public in a written response to the findings, conclusions, and
49 recommendations of the inspector general's final report, which
50 response must be attached to the inspector general's final
51 report and delivered to any party requesting such report at the
52 same time the report is delivered.
53 (b) Specific procedures by which all inspectors general
54 will fully implement this subsection shall be developed by the
55 Chief Inspector General in the Executive Office of the Governor.
56 Development of initial procedures must be completed within 120

57 days after this paragraph becomes a law, but no later than
58 September 30, 2006.
59 Section 2. This act, except for this section and paragraph
60 20.055(6)(b), Florida Statutes, created in section 1 which shall
61 take effect upon this act becoming a law, shall take effect
62 October 1, 2006.

HB 1129

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1129 Florida State Employees' Charitable Campaign
SPONSOR(S): Henriquez
TIED BILLS: **IDEN./SIM. BILLS:** SB 2026

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

SUMMARY ANALYSIS

The bill changes the distribution formula for undesignated contributions made by state employees participating in the Florida State Employees' Charitable Campaign. It requires that the distribution of undesignated funds in each local fiscal agent area be shared proportionately by the participating charitable organizations based upon their percentage of designations in each fiscal agent area.

There is no fiscal impact to the state.

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:

The Florida State Employees' Charitable Campaign (FSECC) is the only statutorily-recognized comprehensive giving program[1] that provides state employees with a payroll deduction system for their voluntary donations to qualified charitable non-profit organizations. There are five criteria that determine inclusion and exclusion in the campaign, as follows:[2]

Participation Criteria for the Florida State Employees' Charitable Campaign

Eligible	Ineligible
Public health and welfare	Fund raising/administrative expenses greater than 25%
Education	Primarily political, religious, professional, or fraternal societies
Environmental restoration and conservation	Organizations with prohibited discriminatory practices
Civil and human rights	Unregistered charitable organizations
Relief of human suffering and poverty	Organizations without 26 U.S.C. 501(c)(3) tax qualified status

The Department of Management Services (DMS) and the Department of Financial Services (DFS) provide administrative support for the campaign. The DMS competitively selects a fiscal agent for the processing of contributions to the designated charities and the DFS, as paymaster, provides the deduction codes through the state payroll system. The approved fiscal agent is permitted reasonable costs for the conduct of the campaign and must reimburse the DMS for the costs of coordinating the campaign, not to exceed one percent (1%) of gross pledges. All financial records associated with the fiscal intermediary duties and operations are open for inspection to the public upon reasonable notice. In each fiscal agent area, local steering committees, composed of state employees selected by the fiscal agent, assist in conducting the campaign and direct the distribution of undesignated funds. A total of $4.6 million was collected by the 2004 campaign and distributed to some 1300 participating organizations statewide.[3]

The current fiscal agent is the United Way of Florida, Incorporated.

Changes

The bill removes from the local steering committee the duty of directing the distribution of undesignated funds. Directing the distribution of undesignated funds currently is the only statutorily-defined duty of the local steering committee. The bill also removes from the fiscal agent the responsibility of selecting state employees for the local steering committees.

The bill requires that the distribution of undesignated funds in each local fiscal agent area be shared proportionately by the participating charitable organizations, based upon their percentage of

[1] Section 110.181, F.S.
[2] The rules administering the FSECC are found in Chapter 60L-39, F.A.C.
[3] Information taken from DMS website for FSECC, located here:
http://dms.myflorida.com/workforce/workforce_quick_links/state_employees_charitable_campaign.

designations in each fiscal agent area. The payment of shares of undesignated funds to each charity must be made in the same manner as the designations. This method of distribution is similar to the practices relating to distribution of undesignated funds with Title 5, Code of Federal Regulations, Part 950.501, for the Combined Federal Campaign for employees of federal agencies. Those federal regulations direct the proportional distribution of undesignated funds to charities in the same proportion that they received designations in the campaign.

C. SECTION DIRECTORY:

Section 1 amends s. 110.181 to change the distribution of undesignated funds in each fiscal area of the FSECC.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

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 state expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is no effect on the amount of gross pledges but there will be a redistribution of pledge amounts to charitable organizations that do not receive a proportionate share of funds relative to their share today. The deduction codes are processed on a calendar year basis. As a result, the impact of the bill should not be felt until the next deduction cycle begins in the year 2007.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to the Florida State Employees' Charitable
3 Campaign; amending s. 110.181, F.S.; requiring that
4 undesignated campaign funds be shared proportionally by
5 the participating charitable organizations based on the
6 percentage of designations in each fiscal agent area;
7 removing the fiscal agent's right to select the steering
8 committee members; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Paragraph (d) of subsection (2) of section
13 110.181, Florida Statutes, is amended to read:
14 110.181 Florida State Employees' Charitable Campaign.--
15 (2) SELECTION OF FISCAL AGENTS; COST.--
16 (d) A local steering committee shall be established in
17 each fiscal agent area to assist in conducting the campaign. ~~and~~
18 ~~to direct~~ The distribution of undesignated funds in each local
19 fiscal agent's area shall be shared proportionately by the
20 participating charitable organizations based on the percentage
21 of designations in each fiscal agent area. The payment of each
22 charity's share of undesignated funds shall be distributed in
23 the same manner as the designations. The committee shall be
24 composed of state employees ~~selected by the fiscal agent~~.
25 Section 2. This act shall take effect July 1, 2006.

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

HB 1161

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1161 Okeechobee County
SPONSOR(S): Machek
TIED BILLS: **IDEN./SIM. BILLS:** SB 2220

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

SUMMARY ANALYSIS

HB 1161 provides a career service system for employees of the Okeechobee County Sheriff's Office. The bill provides for the application of the act to all full-time sworn and civilian persons employed by the sheriff with specified exemptions. The bill also provides for probationary periods, a process for suspension or dismissal, the creation and duties of ad hoc career service appeal boards, and the transition of employees during a new administration.

The bill grants rulemaking authority to the sheriff to implement the rules, regulations, and procedures necessary to implement the legislation.

According to the Economic Impact Statement, this bill will not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates career service boards to hear employee disciplinary cases. These career service boards have subpoena power as part of the disciplinary hearing process. The sheriff is granted rulemaking authority to implement the legislation.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Sixty-six of Florida's 67 counties have elected sheriffs as their chief law-enforcement officers. Miami-Dade County has an appointed chief law-enforcement officer whose title is Director of the Miami-Dade Police Department. Sheriffs serve four-year terms, and have county-wide jurisdiction that includes incorporated as well as unincorporated areas.

Pursuant to s. 14, Art. III of the State Constitution, s. 125.01(1)(u), F.S., and s. 30.53, F.S., a civil service system for sheriff's employees may be created by local governments via local ordinance. Section 14 of Art. III of the State Constitution provides:

> By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor, and there may be authorized such boards as are necessary to prescribe the qualifications, method of selection and tenure of such employees and officers.

The powers of the governing body of a county are set forth in s. 125.01, F.S. This power includes the authority, as provided in paragraph (u) of subsection (1) of s.125.01, F.S., to "[c]reate civil service systems and boards." While the independence of a sheriff is preserved in s. 30.53, F.S., that section contains a further provision that it not be construed to "restrict the establishment or operation of any civil service system" or board created pursuant to s. 14, Art. III of the State Constitution. See, also, City of Casselberry v. Orange County Police Benevolent Association, 482 So. 2d 336 (Fla. 1986) (providing that local governments are vested with the authority to establish civil service systems via local ordinance).

A number of sheriffs have civil service systems established by the Legislature through special act, including: Alachua (chs. 84-388 and 86-342, L.O.F.), Bay (ch. 84-390, L.O.F.), Brevard (ch. 83-373, L.O.F.), Broward (ch. 93-370, L.O.F), Charlotte (chs. 79-436, 86-349 and 89-508, L.O.F.), Citrus (ch. 2001-296, L.O.F.), Clay (chs. 89-522 and 93-379, L.O.F.), Columbia (ch. 2004-413, L.O.F.), Escambia (ch. 89-492, L.O.F.), Flagler (chs. 90-450 and 2000-482, L.O.F.), Glades (ch. 2003-311, L.O.F.), Hernando (ch. 2000-414, L.O.F.), Indian River (ch. 2002-355, L.O.F.), Lake (chs. 90-386, 93-358 and 2005-349, L.O.F.), Lee (chs. 74-522, 87-547 and 95-514, L.O.F.), Leon (ch. 83-456, L.O.F.), Madison (95-470), Manatee (89-472), Marion (87-457), Martin (93-388), Monroe (78-567, 89-410, 89-461, 97-345 and 98-507, L.O.F.), Okaloosa (chs. 81-442, 85-472 and 90-492, L.O.F.), Orange (ch. 89-507, L.O.F.), Osceola (chs. 89-516 and 2000-388, L.O.F.), Palm Beach (chs. 93-367, 99-437 and 2004-404, L.O.F.), Pasco (ch. 90-491, L.O.F.), Pinellas (chs. 89-404 and 90-395, L.O.F.), Polk (chs. 88-443 and 98-516, L.O.F.), St. Lucie (ch. 89-475, L.O.F.), Santa Rosa (ch. 2002-385, L.O.F.), Sarasota (ch. 86-344, L.O.F.), and Seminole (ch. 77-653, 80-612, 88-451 and 97-376, L.O.F.) counties.

The Okeechobee County Sheriff's Office currently does not have a civil service system.[1]

Effect of Proposed Changes

HB 1161 creates a career service system for employees of the Okeechobee County Sheriff's Office. The bill provides for the application of the act to all full-time sworn and civilian persons employed by the sheriff. Specifically excluded from the provisions of the act are:

- the sheriff;
- the undersheriff;
- special deputies appointed pursuant to s. 30.09(4), F. S.;[2]
- members of the sheriff's reserve/auxiliary units; or
- persons appointed as part-time deputy sheriffs as defined by the Criminal Justice Standards and Training Commission, unless any such person also is employed full time by the sheriff.

The bill states that it is not the intent of the act to grant collective bargaining rights to persons in the employ of the Okeechobee County Sheriff's Office who do not otherwise have that right pursuant to law.[3]

When a covered employee has completed one calendar year of service,[4] the employee attains permanent status in the Sheriff's Office;[5] however, if an employee is placed on disciplinary probation for a period of six months or more, or is terminated and rehired at a later date, the employee is required to repeat this probationary period. Any employee who is required to serve a probationary period attendant to a promotion retains his or her permanent status, but may be returned to his or her prior rank during such probationary period without the right of appeal.

Once an employee has achieved career service status within the Sheriff's Office, he or she may only be suspended or dismissed for cause. Prior to any such action, the employee must be furnished with written notice and offered an opportunity to respond. In extraordinary situations, an employee may be suspended or dismissed immediately with notice provided within 24 hours or as soon as is practicable.

"Cause for suspension or dismissal" includes, but is not limited to:

- negligence;
- inefficiency or inability to perform assigned duties;
- insubordination;
- violation of provisions of law or office rules;
- conduct unbecoming a public employee;

---

[1] The terms "civil service system" and "career service system" are used interchangeably.

[2] This section designates special deputy sheriffs appointed by the sheriff: (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; (g) to serve as a parking enforcement specialist pursuant to s. 316.640(2), F.S.

[3] Section 6, Art. I of the State Constitution grants public employees the right to collectively bargain. In 2003, the Florida Supreme Court held that deputy sheriffs were "employees" for purposes of this constitutional right. See, Coastal Florida Police Benevolent Association, Inc. v. Williams, 838 So.2d 543 (Fla. 2003).

[4] All time of employment while in a Criminal Justice Standards and Training Commission-approved academy or other comparable training for certification as a sworn officer or deputy sheriff is not counted in determining whether an employee has attained one calendar year of minimum service.

[5] All sworn and civilian persons in the employ of the sheriff on the effective date of the act who have served for a period of one calendar year or more are considered career service employees. All other employees achieve this status subject to the provisions of the act upon reaching their one-calendar-year service anniversary.

- misconduct;
- alcohol abuse;
- prescription drug abuse, or illegal drug use;
- adjudication of guilt by a court of competent jurisdiction;
- a plea of guilty or of nolo contendere; or
- a verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation with respect to any felony, misdemeanor or major traffic infraction charges.

When a newly elected or appointed sheriff assumes office, he or she is required to continue the employment of all career service personnel unless cause for dismissal exists. The sheriff has the right to replace persons serving in the rank of captain or above, including the executive secretary, with personnel of his or her choosing. The sheriff may offer these persons any position that the sheriff chooses, or to cease their employment with the department. Career service employees holding the rank of lieutenant may be reduced to the next lowest rank at the current maximum pay step.[6] These actions are not appealable, nor are dismissals or demotions pursuant to across-the-board actions directed by the Okeechobee County Board of Commissioners, resulting from county fiscal impacts.

Ad hoc career service appeal boards are appointed for the purpose of hearing appeals arising from personnel actions which result in dismissal, suspension, demotion or reduction in pay. Lateral transfers, shift changes, oral or written reprimands, and suspensions of three working days or less (unless it is a subsequent such suspension within one calendar year) are not appealable. The scope of a career service appeal board is limited to disciplinary proceedings and termination actions. A career service appeal board has the authority to conduct hearings, and make findings of fact and recommendations to the sheriff. The board has no investigative powers.

A career service appeal board consists of three members of the Office of the Sheriff. The sheriff selects one member; the employee requesting the hearing selects another member; and these two individuals select a third member, who must hold the rank of lieutenant or above, to serve as chairperson. Each selected member is uncompensated, has the right to decline to serve, and must have no involvement with the issues under consideration.

A request for a hearing must be made in writing to the employee's immediate supervisor within 10 working days after notice of an appealable disciplinary action. The request must contain a brief statement of the matters to be considered by the board, and the name of the employee selected to be a board member. The supervisor is required to immediately forward the hearing request to the sheriff and the appropriate division commander. A career service appeal board must be impaneled and a hearing date scheduled by the sheriff within 10 working days after receipt of the request, unless this deadline is waived in writing by the employee. When summary discipline is imposed by any supervisor, the sheriff may order a career service appeal board to convene and review the action.

The employee and his or her representative has the right to be present during the hearing, and to offer any relevant evidence on the employee's behalf. During such hearings, the rules of evidence and civil or criminal rules of procedure are not applied. All witnesses must be notified in writing by the chairperson of the board, through the appropriate chain of command, of the date and time of the convening of the board. The board has the power to issue subpoenas upon request of any party or upon its own motion. Employees and their representatives have the opportunity to present evidence, conduct cross-examination, and submit rebuttal evidence.

The board must submit its written findings and recommendations to the sheriff within five days after the hearing. It may make any recommended disposition, including, but not limited to, oral or verbal reprimand, suspension, reduction of rank, termination of employment, sustention or reversal of the original decision, or recommendation of a more severe disposition. The sheriff is required to notify the employee of the decision of the career service appeal board. However, the sheriff has the right to make

[6] While this action would constitute a "demotion," it would not be "disciplinary," and thus not appealable, as specified by the act.

a final determination in the matter. In the event an employee is exonerated, he or she must be reinstated without prejudice or penalty.

No sworn or civilian employee of the Sheriff's Office may be discharged, disciplined, demoted, denied promotion or reassignment, or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, in retaliation for exercising the rights granted by the act.

The Sheriff is authorized to adopt such rules, regulations and procedures necessary for the administration and implementation of the act, although it is specified that nothing in the act may be construed as affecting the budget-making powers of the Okeechobee County Board of Commissioners.

The bill provides an effective date of upon becoming a law.

C. SECTION DIRECTORY:

Section 1 provides for applicability of the act; permanent status of employees; cause for suspension or dismissal; transition of career service employees; and administration.

Section 2 provides for career service appeal boards; creation; membership; and duties.

Section 3 provides for status as permanent employees; and prohibits actions to circumvent act.

Section 4 provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 18, 2006

WHERE? *The Okeechobee News*, a daily newspaper published in Okeechobee County, Florida.

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, the bill will have no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Sheriff is authorized to adopt such rules, regulations and procedures necessary for the administration and implementation of the act, although it is specified that nothing in the act may be construed as affecting the budget-making powers of the Okeechobee County Board of Commissioners.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The Sponsor may want to amend the bill to clarify that a promoted employee is required to serve a probationary period for his or her new position; and that those serving in the rank of captain or above, and the executive secretary, are not employed in career service positions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1161

The Okeechobee News

P.O. Box 639, Okeechobee, Florida 34973

(863) 763-3134

Published Daily

STATE OF FLORIDA
COUNTY OF OKEECHOBEE

Before the undersigned authority personally appeared Judy Kasten, who on oath says she is Publisher of the Okeechobee News, a DAILY Newspaper published at Okeechobee, in Okeechobee County, Florida; that the attached copy of advertisement, being a

Public Notice
ad # 109845

in the matter of

Notice of Local Legislation

NOTICE OF LOCAL LEGISLATION
TO WHOM IT MAY CONCERN:

Notice is hereby given of the Okeechobee County Sheriff's Office intent to apply to the 2006 Legislature for passage of an act relating to Okeechobee County providing for Career Service for the employees of the Okeechobee County Sheriff's Office: providing for application of the act, permanent status for employees, administration, providing for career service appeals board, providing severability, prohibiting certain actions to circumvent the and providing an effective date.

Okeechobee County Sheriff's Office
504 NW 4th Street
Okeechobee, FL 34972
January 18, 2006

109845 ON 1/18/06

in the 19th Judicial District of the Circuit Court of Okeechobee County, Florida, was published in said newspaper in the issues of

January 18, 2006

Affiant further says that the said Okeechobee News is a newspaper published at Okeechobee, in said Okeechobee County, Florida, and that said newspaper has heretofore been published continuously in said Okeechobee County, Florida each week and has been entered as second class mail matter at the post office in Okeechobee, in said Okeechobee County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Judy Kasten

Sworn to and subscribed before me this 18th day of January A.D. 20 06

Karmen R. Brown

Notary Public, State of Florida at Large

Karmen R. Brown
Commission #DD272118
Expires: Jan 17, 2008
Bonded Thru
Atlantic Bonding Co., Inc

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: 1161
SPONSOR(S): Machek
RELATING TO: Okeechobee County Sheriff's Office
[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Okeechobee
CONTACT PERSON: Victoria Nowlan, Legislative Assistant to Rep. Machek

PHONE # and E-MAIL 561-279-1633 victoria.nowlan@myfloridahouse.gov

I. House policy requires that three things occur before a Council or Committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the bill's purpose cannot be accomplished at the local level; (2) a local public hearing must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation. ***Local bills will not be considered by a Council or Committee without a completed, original Local Bill Certification Form.***

Does the delegation certify that the purpose of the bill cannot be accomplished locally?
YES [X] NO [ ]

Has a public hearing been held? **YES [x] NO [ ]**

Date hearing held: 31 January, 2006
Location: Okeechobee County Commision Chambers, Okeechobee, FL

Was this bill formally approved by a majority of the delegation members?
YES [ ] NO [ ] UNIT RULE [ ] UNANIMOUS [ ]

II. Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided in general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.

Has this Constitutional requirement been met?

Notice published: **YES [x] NO [ ]** **Date:** _____

Where? _____ **County:** Okeechobee

Referendum in lieu of publication: **YES [ ] NO [x]**

III. Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district; unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

Has this constitutional requirement been met?
YES [ ] NO [ ] NOT APPLICABLE [x]

House policy requires that an Economic Impact Statement for Local Bills be prepared at the local level.

Frank Attkisson 1/31/06
Delegation Chair (Original Signature) Date

BILL #: _____

SPONSOR(S): Representative Richard Machek

RELATING TO: Okeechobee County

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 06-07	FY 07-08
Expenditures:	No Cost	No Cost

II, ANTICIPATED SOURCE(S) OF FUNDING:

	FY 06-07	FY 07-08
Federal:	No Cost	No Cost
State:	No Cost	No Cost
Local:	No Cost	No Cost

III. ANTICIPATED NEW, INCREASED, OR DECREASE REVENUES

	FY 06-07	FY 07-08
Revenues:	None	None

IV. ESTIMATED ECONIMIC IMPACT ON INDIVIDUALS, BUSINESS OR GOVERMENTS:

Advantages: Will provide no impact

Disadvantages: Will provide no impact

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT.

Will provide no impact

VI. DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDE SOURCE OF DATA):

After speaking with the Okeechobee County Administrator there is no foreseen impact on the County.

PREPARDED BY: _____ 01/31/06
Date

TITLE: LIEUTENANT

REPRESENTING: OKEECHOBEE COUNTY SHERIFF'S OFFICE

1 A bill to be entitled
2 An act relating to Okeechobee County; providing for career
3 service for employees of the Okeechobee County Sheriff's
4 Office; providing for application of the act, permanent
5 status of employees, suspension or dismissal, transition
6 of career service employees, and administration; providing
7 for a procedure with respect to complaints against
8 employees; providing for ad hoc career service appeal
9 boards and membership and responsibilities thereof;
10 providing for a disciplinary procedure and for appeals;
11 providing for status as permanent employees; prohibiting
12 certain actions to circumvent the act; providing an
13 effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Employees of the Okeechobee County Sheriff's
18 Office; applicability of the act; permanent status of employees;
19 administration.--
20 (1) APPLICABILITY.--The provisions of this act shall apply
21 to all full-time sworn and civilian persons in the employ of the
22 Okeechobee County Sheriff's Office. The provisions of this act
23 do not apply to the sheriff, undersheriff, special deputies
24 appointed pursuant to section 30.09(4), Florida Statutes,
25 members of the sheriff's reserve/auxiliary units, or persons
26 appointed as part-time deputy sheriffs as defined by the
27 Criminal Justice Standards and Training Commission, unless any
28 such person is also employed full time by the Okeechobee County

29 Sheriff's Office. As used in this act, the terms "employee,"
30 "employ," and "employment" refer to all persons, whether
31 employed or appointed, to whom the act applies. It is not,
32 however, the intent of this act to grant the right of collective
33 bargaining to persons in the employ of the Okeechobee County
34 Sheriff's Office who do not otherwise have that right pursuant
35 to law.
36 (2) PERMANENT STATUS; CAUSE FOR SUSPENSION OR DISMISSAL.--
37 (a)1. When an employee of the sheriff to whom the
38 provisions of this act apply has served in such employment for a
39 period of 1 calendar year, the employee shall have attained
40 permanent status in the Okeechobee County Sheriff's Office;
41 however, if an employee is placed on disciplinary probation for
42 a period of 6 months or more or is terminated and rehired at a
43 later date, the employee shall be required to complete 1
44 calendar year of service from the date of the disciplinary
45 action or rehire before being granted permanent status. The term
46 "career service employee" as used in this act means an employee
47 who has successfully completed his or her probationary period.
48 2. Any employee who is required to serve a probationary
49 period attendant to a promotion shall retain permanent status in
50 the Office of the Sheriff but may be returned to his or her
51 prior rank during such probationary period without the right of
52 appeal as provided in section 2. For the purpose of determining
53 career service status as defined in this act, all time in the
54 employment of the Office of the Sheriff while in a Criminal
55 Justice Standards and Training Commission-approved academy or
56 other comparable training for certification as a sworn officer

57 or deputy sheriff shall not be counted or considered in any
58 manner in determining whether the employee has attained 1
59 calendar year of minimum service.
60 (b) Any employee who has achieved career service status
61 with the Okeechobee County Sheriff's Office may only be
62 suspended or dismissed for cause, provided that, prior to such
63 action, the employee has been furnished written notice of the
64 proposed action and has been offered an opportunity to respond
65 to the reasons for the suspension or dismissal. In extraordinary
66 situations, however, such as when delay could result in damage
67 or injury to property or persons, an employee may be suspended
68 or dismissed immediately and then be provided notice thereof and
69 reasons therefor within 24 hours or as soon as is practicable if
70 circumstances surrounding such extraordinary situation make
71 notice within 24 hours impracticable. "Cause for suspension or
72 dismissal" includes, but is not limited to, negligence,
73 inefficiency or inability to perform assigned duties,
74 insubordination, violation of provisions of law or office rules,
75 conduct unbecoming a public employee, misconduct, alcohol abuse,
76 prescription drug abuse, or illegal drug use. "Cause for
77 suspension or dismissal" also includes, but is not limited to,
78 adjudication of guilt by a court of competent jurisdiction, a
79 plea of guilty or of nolo contendere, or a verdict of guilty
80 when adjudication of guilt is withheld and the accused is placed
81 on probation with respect to any felony, misdemeanor, or major
82 traffic infraction charges.
83 (3) TRANSITION OF CAREER SERVICE EMPLOYEES.--When a newly
84 elected or appointed sheriff assumes office, the new sheriff

85 shall continue the employment of all currently employed career
86 service personnel unless cause for dismissal, as provided in
87 this section, exists. The sheriff shall have the right to
88 replace persons serving in the rank of captain or above,
89 including the executive secretary, with new personnel of the
90 sheriff's choosing. The sheriff shall have the right to offer
91 these persons any position that the sheriff chooses or to cease
92 their employment with the department. The current employees
93 holding the rank of lieutenant who are career service employees
94 may be reduced to the next lowest rank at the current maximum
95 pay step, which rank shall be permanent unless later reduced by
96 disciplinary demotion or increased through subsequent promotion.
97 Their regular base salaries may be reduced or increased
98 accordingly. Actions taken pursuant to this subsection affecting
99 the undersheriff, colonels, majors, directors, or their
100 executive staff equivalents shall not be appealable under this
101 act. Dismissals or demotions pursuant to across-the-board
102 actions directed by the Okeechobee County Board of
103 Commissioners, resulting from county fiscal impacts, shall not
104 be appealable under the provisions of section 2.
105 (4) ADMINISTRATION.--The sheriff shall have full authority
106 to adopt such rules, regulations, and procedures necessary for
107 the administration and implementation of this act. However,
108 nothing in this act shall be construed as affecting the budget-
109 making powers of the Okeechobee County Board of Commissioners.
110 Section 2. Career service appeal boards; creation;
111 membership; duties.--

112 (1) FUNCTION OF BOARDS.--Ad hoc career service appeal
113 boards shall be appointed as provided in this section for the
114 purpose of hearing appeals of career service employees arising
115 from personnel actions brought under the rules, regulations, or
116 policies of the Office of the Sheriff which result in dismissal,
117 suspension, demotion, or reduction in pay. Lateral transfers,
118 shift changes, oral or written reprimands, and suspensions of 3
119 working days or fewer shall not be appealable to a career
120 service appeal board. However, no more than one such suspension
121 may occur within 1 calendar year without the right to appeal.
122 The scope of a career service appeal board is limited to
123 disciplinary proceedings and termination actions. A career
124 service appeal board shall have the authority to conduct
125 hearings and make findings of fact and recommendations to the
126 sheriff. The sheriff shall not be bound by the findings or
127 recommendations of such boards but shall consider them in making
128 his or her final decision.
129 (2) MEMBERSHIP AND RESPONSIBILITY OF CAREER SERVICE APPEAL
130 BOARD.--
131 (a) A career service appeal board shall consist of three
132 members of the Office of the Sheriff. The sheriff shall select
133 one member; the employee requesting the hearing shall select one
134 member; and these two members shall select the third member, who
135 must hold the rank of lieutenant or above, to serve as
136 chairperson. Each selected member shall have the right to
137 decline to serve.
138 (b) All members of the career service appeal board shall
139 be selected on the basis of fairness, objectivity, and

140 impartiality. The board shall have no investigative powers and
141 shall function in the capacity of a fact finder in an effort to
142 arrive at a fair and equitable recommendation in all matters
143 brought before it. Selected members shall have no involvement
144 with the issues under consideration. Membership of the board is
145 voluntary and is without remuneration. Members may not discuss
146 matters to be heard before the board until the board convenes
147 and then they may only discuss such matters during the
148 officially convened sessions of the board.
149 (c) The career service appeal board chairperson shall have
150 the responsibility to:
151 1. Chair all meetings using parliamentary rules of order.
152 2. Request that the employee provide the names of any
153 witnesses.
154 3. Schedule and provide written notification of all
155 meetings to the witnesses, board members, and the employee.
156 4. Provide copies of all charges to board members.
157 5. Ensure compliance with hearing procedures.
158 (3) PROCEDURE WITH RESPECT TO HEARINGS.--
159 (a) Any career service employee may request a hearing
160 before a career service appeal board for any appealable
161 disciplinary action of his or her superiors that adversely
162 affects his or her employment.
163 (b) A request for a hearing shall be made in writing to
164 the employee's immediate supervisor within 10 working days after
165 notice of appealable disciplinary action. The request shall
166 contain a brief statement of the matters to be considered by the
167 board and the name of the employee selected to be a member of

168 the board.
169 (c) The immediate supervisor shall forward the hearing
170 request to the sheriff and the appropriate division commander
171 without delay. A career service appeal board shall be impaneled
172 and a hearing date scheduled by the sheriff within 10 working
173 days after receipt of the request for a hearing unless waived in
174 writing by the employee.
175 (d) The employee and his or her representative have the
176 right to be present and to present any relevant evidence on the
177 employee's behalf. During such hearings, the technical rules of
178 evidence shall not apply. Neither the employee nor his or her
179 representative may disrupt the proceedings. The qualification of
180 disruptive conduct shall be at the exclusive determination of
181 the chairperson of the career service appeal board.
182 (e) The employee shall not discuss the circumstances of
183 the matter being brought before the board except through the
184 chairperson.
185 (f) All witnesses shall be notified in writing by the
186 chairperson of the board, through the appropriate chain of
187 command, of the date and time of the convening of the career
188 service appeal board. Nonemployee witnesses may be called to
189 appear before the board only at the request of the board.
190 (g) The board shall have the power to issue subpoenas upon
191 request of any party or upon its own motion.
192 (4) CONDUCT OF HEARING.--
193 (a) Career service appeal boards are designed to determine
194 the truth while maintaining an atmosphere of fundamental
195 fairness and shall not be controlled by civil or criminal rules

196 of procedure.
197 (b) Board members may receive verbal or written testimony
198 concerning any matter considered relevant by the board. The
199 board may review any record, including, but not limited to,
200 performance evaluations and disciplinary files.
201 (c) Employees and their representatives shall have
202 opportunity to present evidence, conduct cross-examination, and
203 submit rebuttal evidence.
204 (5) FINDINGS AND RECOMMENDATIONS OF THE CAREER SERVICE
205 APPEAL BOARD.--
206 (a) Each complaint shall receive a separate finding and
207 recommendation by a majority of the board. Each finding shall
208 consider the seriousness of the complaint, any extenuating
209 circumstances, the tenure of the employee, and the employee's
210 past conduct record. The board shall submit to the sheriff its
211 written findings of fact and recommendations within 5 days after
212 the hearing.
213 (b) The board may place before the sheriff any recommended
214 disposition that the board believes may be of benefit to the
215 Office of the Sheriff, including, but not limited to, oral or
216 verbal reprimand, suspension, reduction of rank, termination of
217 employment, sustention or reversal of the original decision, or
218 recommendation of a more severe disposition.
219 (c) The sheriff shall review the findings and
220 recommendations of the career service appeal board and may
221 either approve or disapprove them. The sheriff has the sole
222 discretion to overrule the findings of the board.
223 (d) The sheriff shall notify the employee of the final

224 results of the career service appeal board and the reasons
225 therefor.
226 (e) In the event the employee is exonerated, the employee
227 shall be reinstated without prejudice or penalty.
228 (f) When summary discipline is imposed by any supervisor,
229 the sheriff may order a career service appeal board to convene
230 and review the action of the supervisor.
231 (g) All proceedings of the board shall be retained by the
232 Human Resources Department of the Office of the Sheriff.
233 (h) All associated reports, paperwork, and personnel
234 action taken as a result of the appeal shall be retained by the
235 Human Resources Department of the Office of the Sheriff.
236 Section 3. (1) All sworn and civilian persons in the
237 employ of the Okeechobee County Sheriff's Office on the
238 effective date of this act who have served for a period of 1
239 calendar year or more as of such date shall be permanent
240 employees subject to the provisions of this act. All other
241 employees shall become permanent employees subject to the
242 provisions of this act upon reaching their 1-calendar-year
243 service anniversary date.
244 (2) No sworn or civilian employee of the Okeechobee County
245 Sheriff's Office shall be discharged; disciplined; demoted;
246 denied promotion, transfer, or reassignment; or otherwise
247 discriminated against in regard to his or her employment or
248 appointment, or be threatened with any such treatment, by reason
249 of his or her exercise of the rights granted by this act.
250 Section 4. This act shall take effect upon becoming a law.

HB 1165

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1165 Florida Retirement System
SPONSOR(S): Barreiro
TIED BILLS: **IDEN./SIM. BILLS:** SB 2182

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

Medical examiners and certain forensic employees were added to the Special Risk Class in 2005. This bill permits these medical examiners and forensic employees to purchase additional retirement credit to upgrade their previous service in the Florida Retirement System to Special Risk Class service. The bill requires the contributions for upgrading pervious service to be equal to the difference in the contributions paid and the contribution rate in effect for the period being claimed, plus interest. The bill permits an employer to purchase upgraded credit on behalf of a member.

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

This bill does not appear to have a fiscal impact on the revenues of the state or local governments. Yet, this bill does appear to have a fiscal impact on the expenditures of the state and local governments. The additional costs from this bill, as a result of the unfunded liability to the Florida Retirement System, are estimated at $87,000 for the state and $222,000 for local governments in Fiscal Year 2007.

The bill appears to raise two potential constitutional issues: (1) the bill is expected to create an unfunded liability for the Florida Retirement System which may violate the provisions of section 14, Article X of the Florida Constitution; and (2) the bill does not appear to satisfy the requirements of section 18 of article VII of the Florida Constitution because the bill does not provide that it fulfills an important state interest.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the members of the Special Risk Class who may upgrade previous service to Special Risk Class service.

B. EFFECT OF PROPOSED CHANGES:

Background on the Florida Retirement System

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]

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.[2] The FRS also has participating employees of 151 cities and 186 independent special districts who have elected to join the system.[3]

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.[4] Members of the FRS defined benefit plan belong to one of five membership classes:

Regular Class[5]	570,888 members	88.00%
Special Risk Class[6]	68,466 members	10.59%
Special Risk Administrative Support Class[7]	80 members	0.01%
Senior Management Service Class[8]	6,823 members	1.10%
Elected Officers Class[9]	2,122 members	0.30%

Each class is separately funded through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, Florida Statutes.[10]

Expansion of the Special Risk Class and Upgraded Service

The Special Risk Class of the FRS was created to recognize that certain employees, because of the nature of the work they perform,[11] may need to retire at an earlier age with less service than other types of employees.[12] The only employees originally in the Special Risk Class were law enforcement

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Dep't of Mgmt. Serv., Fla. Div. of Ret. at http://www.frs.state.fl.us/ (last visited Jan. 11, 2006).
[3] *Id.*
[4] *Id.*
[5] Fla. Stat. § 121.021(12) (2005).
[6] Fla. Stat. § 121.0515 (2005).
[7] Fla. Stat. § 121.0515(7) (2005).
[8] Fla. Stat. § 121.055 (2005).
[9] Fla. Stat. § 121.052 (2005).
[10] *See, e.g.,* Fla. Stat. 121.055(3)(a)1. (2005).
[11] Fla. Stat. § 121.0515(1) (2005) (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).
[12] *Id.*

officers, correctional officers, and firefighters.[13] Starting in 1999, however, the Legislature started dramatically expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics[14]
2000	Community-Based Correctional Probation Officers[15]
	Twenty-four types of employees of correctional or forensic facilities or institutions[16]
2001	Youth Custody Officers[17]
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline[18]

Another legislative trend has followed the dramatic expansion of the Special Risk Class: allowing members who have previous service in another class of the Florida Retirement System, usually the Regular Class, to purchase additional retirement credit to upgrade the previous service to Special Risk Class service. In 2001, the Legislature permitted emergency medical technicians and paramedics to purchase credit for upgraded service.[19] In 2002, the Legislature allowed members whose responsibilities included fire prevention or fire fighting training to purchase credit for upgraded service.[20]

Upgraded Service for Medical Examiners and Certain Forensic Employees

This bill permits medical examiners and certain forensic employees to purchase additional retirement credit to upgrade previous service in the Florida Retirement System to Special Risk Class service.[21] The bill requires the contributions for upgrading pervious service to Special Risk Class service to be equal to the difference in the contributions paid and the contribution rate in effect for the period being claimed, plus interest at a rate of 6.5 percent a year, compounded annually until the date of payment. The bill permits an employer to purchase upgraded credit on behalf of a member.

Constitutional Requirements for Retirement or Pension System Increases

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent

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[13] Ch. 78-308, Laws of Fla.
[14] Ch. 99-392, Laws of Fla., § 23.
[15] Ch. 2000-169, Laws of Fla. § 29.
[16] *Id.* (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietitian; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DCF; pharmacist; senior pharmacist (class codes 5248 and 5249); dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager.).
[17] Ch. 2001-125, Laws of Fla., § 43.
[18] Ch. 2005-167, Laws of Fla. § 1; codified as Fla. Stat. § 121.0515(2)(h) (2005) (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification). *See also* Int'l Ass'n for Identification at http://www.theiai.org/ (last visited Mar. 27, 2006).
[19] Ch. 2001-235, Laws of Fla., § 6.
[20] Ch. 2002-273, Laws of Fla., § 16.
[21] Fla. HB 1165 (2006) (to the extent of the percentages of the member's average final compensation provided in section 121.091(1)(a)2, Florida Statutes).

provisions for funding the increase in benefits are made on a sound actuarial basis.[22] *In its current form, without an appropriation, this bill does not appear to satisfy this constitutional requirement.*

This conclusion is based on a recent actuarial study on the costs to upgrade previous service of medical examiners and qualifying forensic employees:

> The projected increase in actuarial liabilities is $26.4 million offset by the projected cost the members would pay for the eligible service under this proposal of $22.1 million, which results in the net additional unfunded liabilities of $4.3 million.[23]

The actuarial study further notes that this change will require an overall increase of 0.01 percent in the employer contribution rates for the Special Risk Class.[24]

The actuarial study explains that this fiscal impact is, in part, a result of differences in benefit accrual rates and contribution rates for certain periods: Benefits now accrue at a rate of 3.0 percent per year for all periods after 1974; yet, contributions between 1978 and 1992 were only funded with contribution rates of 2.0 percent to 2.8 percent.[25] Thus, to the extent upgraded service includes this 1978 to 1992 period, there is a shortfall between the price paid by the upgrading members and the true estimated costs to the Florida Retirement System.

C. SECTION DIRECTORY:

Section 1: Amends section 121.0515, Florida Statutes, to permit medical examiners and certain forensic employees to purchase upgraded service in the Special Risk Class.

Section 2: Provides that this bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   This bill appears to have a fiscal impact on state government expenditures. The unfunded liability to the Florida Retirement System from this bill is estimated to cost the state $87,000 in Fiscal Year 2007.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

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[22] Part VII of chapter 112, Florida Statutes, the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of article X, section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

[23] Milliman, Inc., Actuarial Study, Service Upgrade for Specified Forensic Workers (Mar. 17, 2006), at p. 4.

[24] *Id.*

[25] *Id.*

2. Expenditures:

This bill appears to have a fiscal impact on local government expenditures. The unfunded liability to the Florida Retirement System from this bill is estimated to cost local governments $222,000 in Fiscal Year 2007.

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 the following fiscal note from the enrolled actuary regarding this bill:

> The cost proposed by this bill to be paid by the affected members/employees to upgrade the service is not sufficient to pay for this kind of benefit enhancement. Any costs not covered by this pricing structure would be shifted to the system and could result in increased contribution rates for all special risk employers...HB 1165 does not provide a funding source for the additional costs of such an improvement of retirement benefits.[26]

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 or municipalities to spend funds or to take an action requiring the expenditure of funds. Although the expenditures required by the bill appear to apply to all persons similarly situated, including the state and local governments, the bill does not appear to satisfy the requirements of section 18 of article VII of the Florida Constitution[27] because it does not provide that it fulfills an important state interest.

2. Other:

Article X, Section 14

As previously discussed, benefit increases to public retirement or pension systems may not be made unless funding is concurrently provided for the increase. This bill does not appear to provide sufficient funding for the proposed benefits increase.

B. RULE-MAKING AUTHORITY:

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

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[26] Fla. Dep't of Mgmt. Serv., HB 1165 (2006) Substantive Bill Analysis (Mar. 20, 2006) (on file with dep't).

[27] Section 18 of article VII of the Florida Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Calculation or Funding

To address the expected unfunded liability and its potential constitutional issues, the sponsor may wish to consider changing the manner in which the upgraded credit is calculated[28] or providing a funding source.

Drafting Issue: Important State Interest

In order to address the constitutional requirements for bills imposing fiscal impacts on local governments, the sponsor may wish to add a provision which states that the bill fulfills an important state interest.

Drafting Issue: Limited Timeframe

Because the costs of this bill increase for both the employee and the Florida Retirement System for each year in which an employee delays purchase, the sponsor may wish to consider limiting the timeframe in which an employee may avail himself or herself of its provisions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[28] For example, the following language appears to mitigate most of the unfunded liability: "Contributions for upgrading such service shall be equal to the difference in the contributions paid and the Special Risk contribution rate in effect on the effective date of this bill, plus interest thereon at the rate of 6.5 percent a year, compounded annually until the date of payment."

1 A bill to be entitled
2 An act relating to the Florida Retirement System; amending
3 s. 121.0515, F.S.; authorizing certain members to purchase
4 additional retirement credit to upgrade prior service to
5 Special Risk Class service; providing for the calculation
6 of contributions for such service upgrade; authorizing the
7 employer to purchase such additional credit for the
8 member; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Paragraph (c) is added to subsection (9) of
13 section 121.0515, Florida Statutes, to read:
14 121.0515 Special risk membership.--
15 (9) CREDIT FOR UPGRADED SERVICE.--
16 (c) Any member of the Special Risk Class who has earned
17 creditable service in another membership class of the Florida
18 Retirement System as a medical examiner or as an employee of a
19 law enforcement agency in a forensic discipline as described in
20 paragraph (2)(h), which service is within the purview of the
21 Special Risk Class, may purchase additional retirement credit to
22 upgrade such service to Special Risk Class service, to the
23 extent of the percentages of the member's average final
24 compensation provided in s. 121.091(1)(a)2. Contributions for
25 upgrading such service to Special Risk Class credit under this
26 subsection shall be equal to the difference in the contributions
27 paid and the Special Risk Class contribution rate as a
28 percentage of gross salary in effect for the period being

29 claimed, plus interest thereon at the rate of 6.5 percent a
30 year, compounded annually until the date of payment. This
31 service credit may be purchased by the employer on behalf of the
32 member.
33 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1219 City of Tampa, Hillsborough County
SPONSOR(S): Joyner and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2760

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

SUMMARY ANALYSIS

All general employees of the City of Tampa employed on or after October 1, 1981 are Division B employees under the General Employees' Pension Plan created by the Legislature. This General Employees' Pension Plan provides for longevity retirement benefits: after at least six years of service and attaining the age of 62, a Division B employee is entitled to a money pension payable for life equal to 1.15 percent of the average monthly salary multiplied by years of service.

This bill increases the multiplier percentage for Division B employees by 0.05 percent, from 1.15 percent to 1.20 percent.

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

This bill will have a fiscal impact of approximately $900,000 on the City of Tampa in Fiscal Year 2006-2007. This expenditure was ratified by Tampa City Council on November 17, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government – This bill increases retirement benefits for certain employees of the City of Tampa.

B. EFFECT OF PROPOSED CHANGES:

City of Tampa Pension System

In 1945, the Legislature created a pension fund for all permanent employees of the City of Tampa, Florida.[1] In 1981, the Legislature created two divisions within this pension system:

- Division A includes all those members who were employed prior to October 1, 1981 and who did not elect to join Division B.
- Division B includes all general employees employed on or after October 1, 1981, and all Division A employees who elected to join Division B.[2]

In creating these divisions, the Legislature also created different longevity retirement benefits for Division B employees: a monthly pension benefit equal to 1.1 percent of their average monthly salary multiplied by their service for those Division B employees who retired on or after their normal retirement date.[3] In 2005, the Legislature amended the longevity retirement benefits for Division B employees to increase the "multiplier" percentage to 1.15.[4] Now, after at least six years of service and attaining the age of 62, a Division B employee is entitled to a money pension payable for life equal to 1.15 percent of the average monthly salary multiplied by years of service. The average monthly salary is the total compensation received during the three years out of the last six years of continuous service which produces the highest average, divided by 36.[5]

Requirements for Increasing the Longevity Retirement Benefits

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.

Part VII of chapter 112, Florida Statutes, the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of article X, section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

Section 112.63, Florida Statutes, provides that no unit of local government shall agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body, and prior to the last public hearing thereon, has issued a

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[1] Ch. 23559, Laws of Fla. (1945).
[2] Ch. 81-497, Laws of Fla., §§ 1 and 3.
[3] *Id*, § 8.
[4] Ch. 2005-326, Laws of Fla., §2.
[5] General Employees' Pension Plan for the City of Tampa, Actuarial Impact Statement as of January 1, 2005.

statement of the actuarial impact of the proposed change upon the local retirement system, consistent with the actuarial review, and has furnished a copy of such statement to the Division of Retirement, Department of Management Services. The statement also is required to indicate whether the proposed changes are in compliance with article X, section 14 of the Florida Constitution, and with section 112.64, Florida Statutes, which relates to administration of funds and amortization of unfunded liability. It appears the requirements of this section were satisified.

Increasing the Longevity Retirement Benefits

This bill increases the multiplier of Division B employees by 0.05 percent, raising it from 1.15 percent to 1.20 percent. This bill would entitle an eligible Division B employee to a monthly pension plan equal to 1.20 percent of his or her average monthly salary multiplied by his or her years of service.

C. SECTION DIRECTORY:

Section 1: Amends section 8 of chapter 23559, Laws of Florida, as amended by chapter 2005-326, Laws of Florida, to increase the longevity retirement benefits multiplier.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? *January 12, 2006.*

WHERE? *Tampa Tribune, Tampa, Hillsborough County, Florida.*

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 impact is expected Fiscal Year 2005-2006. A fiscal impact of $900,000 in the form of implementation costs is expected for Fiscal Year 2006-2007.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Article X, Section 14

As previously discussed, benefit increases to public retirement or pension systems may not be made unless funding is concurrently provided for the increase. The City of Tampa ratified this increase on November 17, 2005.[6] In addition, according to the Department of Management Services, this bill complies with the requirements of section 14 of article X of the Florida Constitution and part VII of chapter 112, Florida Statutes.[7]

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[6] *See, e.g.,* Transcription, Tampa City Council Meeting, Nov. 17, 2005, 9:00 a.m., available at http://www.tampagov.net/appl_Cable_Communications_closed_captioning/frmAgenda.asp?pkey=1139&txtValidPage=1&txtPrevPage=index.asp&txtNextPage=frmAgenda.asp (last visited Mar. 24, 2006).

[7] Fla. Dep't of Mgmt. Serv., HB 1219 (2006) Staff Analysis (Mar. 21, 2005) (on file with dep't).

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Hillsborough County Legislative Delegation Explanatory Memorandum:

- "A negotiated increase in the pension multiplier of .05 percent to 1.2 for Division B employees was approved by the Amalgamated Transit Union on November 10, 2005 and ratified by Tampa City Council on November 17, 2005."
- "[The] Proposed change would make the City of Tampa Pension Plan Division B more consistent with the Florida Retirement System (FRS)."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1219

THE TAMPA TRIBUNE

Published Daily

Tampa, Hillsborough County, Florida

State of Florida }
County of Hillsborough } ss.

Before the undersigned authority personally appeared C. Pugh, who on oath says that she is the Advertising Billing Supervisor of The Tampa Tribune, a daily newspaper published at Tampa in Hillsborough County, Florida; that the attached copy of advertisement being a

LEGAL NOTICE IN THE TAMPA TRIBUNE

in the matter of NOTICE OF LEGISLATION

was published in said newspaper in the issues of

JANUARY 12, 2006

Affiant further says that the said The Tampa Tribune is a newspaper published at Tampa in said Hillsborough County, Florida, and that the said newspaper has heretofore been continuously published in said Hillsborough County, Florida, each day and has been entered as second class mail matter at the post office in Tampa, in said Hillsborough County, Florida for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, this advertisement for publication in the said newspaper.

C Pugh

Sworn to and subscribed by me, this 25 day of JANUARY, A.D. 2006

Personally Known ✓ or Produced Identification ____

Type of Identification Produced ____

Tanya Patrick

NOTARY PUBLIC STATE OF FLORIDA
OFFICIAL NOTARY SEAL
TANYA PATRICK
COMMISSION NUMBER
DD 136745
MY COMMISSION EXP.
JULY 7, 2006

NOTICE OF LEGISLATION

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned intends to apply to the Legislature of the State of Florida at its regular session held in the year 2006, or at a subsequent special session, for passage of a bill to be entitled

An act relating to the City of Tampa, Hillsborough County; amending s. 8, Chapter 23559, Laws of Florida, 1945, as amended; revising longevity retirement provisions to provide for a multiplier of 1.20 percent for employees in Division B, as amended; providing an effective date.

DATED at Tampa, Florida, the 12th day of January, 2006.

Senator Jim Sebesta/Rep. Arthenia Joyner
Hillsborough County Legislative Delegation
P.O. Box 1110
Tampa, FL 33601

2806 1/12/06

w-2 City of TPA Gen. Emp.

(2)

1-7-06

Kr C. Ambler

Representative Kevin Ambler

ABSENT

Representative Frank Peterman

Representative Trey Treviesa

Representative Faye Culp

Robert R. Henriquez #58

Representative Bob Henriquez

Arthenia Joyner

Representative Arthenia Joyner

Representative Ed Homan

Ken Littlefield #61

Representative Ken Littlefield

Representative Rich Glorioso

Representative Dennis Ross

Ron Reagan

Representative Ron Reagan

Bill Galvano

Representative Bill Galvano

City of Tampa pension

Joyner

Unclude Pettiman by request

er + mailed David 1/11/06

HOUSE LOCAL GOVERNMENT & VETERANS' AFFAIRS COMMITTEE

2006 LOCAL BILL CERTIFICATION

BILL #:
SPONSOR(S): Rep. Arthenia Joyner
RELATING TO: City of Tampa general employees' pension fund
[Indicate Area Affected (City, County, Special District) and Subject]
NAME OF DELEGATION: Hillsborough County Legislative Delegation
CONTACT PERSON: Candace G. Hundley, Director
SUNCOM or PHONE #: 813-272-5865 SunCom 543-5865 or Hundleyc@hillsboroughcounty.org

I. *House policy requires that, before the House Committee on Local Government & Veterans' Affairs or its subcommittees considers a local bill, three things must occur: (1) The members of the local legislative delegation must certify that the bill's purpose cannot be accomplished at the local level; (2) a public hearing must be held in the area affected; and (3) at or after any public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by the legislative delegation.* ***Local bills will not be considered by a subcommittee or the Committee without a completed, original Local Bill Certification Form.***

Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [X] NO [ ]

Has a public hearing been held? YES [X] NO [ ]

Date hearing held: January 7, 2006

Location: Hillsborough Community College Brandon Campus, 10414 E. Columbus Drive, Tampa, FL

Was this bill formally approved by a majority of the delegation members?
YES [ ] NO [ ] UNIT RULE [ ] UNANIMOUS [ ] The 16-member Hillsborough Delegation requires that a minimum of 4 of its Senators and 8 of its House members vote favorably for the bill to be filed in Tallahassee. This bill was passed with 4 Senators voting "Yes," 11 Representatives voting "Yes," and 1 member absent.

II. *Article VIII, Section 10, of the State Constitution prohibits passage of any special act unless the bill has been advertised in advance (as provided in s. 11.02, F. S.) or is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this Constitutional requirement been met?

Notice published: YES [X] NO [ ]

Referendum in lieu of publication: YES [ ] NO [X]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional requirement been met?
YES [ ] NO [ ] NOT APPLICABLE [X]

IV. *House policy requires that economic impact statements for local bills be prepared at the local level.*

Kevin C. Arthur

Delegation Chair (*Original Signature*) Date 01/10/06

Revised 8/05

House Committee on Community Affairs

2006 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is files.

BILL#:
SPONSOR(S): Senator Jim Sebesta/Representative Arthenia Joyner
RELATING TO: City of Tampa
[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 05-06	FY06-07
Implementation Costs:	$0	$900,000

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 05-06	FY06-07
Federal:	None	None
State:	None	None
Local: Taxes, Water, Sewer, and Other Revenues	$0	$900,000

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 05-06	FY06-07
Revenues:	None	

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: The benefit increase demonstrates the City's desire to improve employees' retirement benefits.

Disadvantages: None

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

The increased benefit improves the City's ability to attract and retain talented employees.

VI. DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDING SOURCE[S] OF DATA):

The City provides payroll and benefit information on active and retired employees to its actuary (AON). The actuary uses the Entry Age Normal with Frozen Initial Liability method to determine costs. The City's actuary performed the preliminary cost study for this benefit improvement and will provide a detailed impact statement prior to December 31, 2005.

PREPARED BY: Lee Huffstutler 11/17/05
Date

TITLE: Chief Accountant

REPRESENTING: City of Tampa

PHONE: 813-274-8631

1 A bill to be entitled
2 An act relating to the City of Tampa, Hillsborough County;
3 amending s. 8, chapter 23559, Laws of Florida, 1945, as
4 amended; revising longevity retirement provisions to
5 provide for a multiplier of 1.20 percent for employees in
6 Division B, as amended; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 8 of chapter 23559, Laws of Florida,
11 1945, as amended by chapter 2005-326, Laws of Florida, is
12 amended to read:
13 Section 8. Longevity Retirement Benefits.
14 (A) Division A Employees: An Employee in Division A whose
15 employment terminates on or after his or her Normal Retirement
16 Date shall receive a monthly pension benefit equal to 2 percent
17 of his or her Average Monthly Salary multiplied by his or her
18 Service, plus an additional .5 percent of his or her Average
19 Monthly Salary for each additional year of Service for
20 employment after 15 years for years served on or after January
21 1, 1975, until a maximum of 30 years of Service is reached.
22 (B) Division B Employees:
23 1. An Employee in Division B whose employment terminates
24 on or after his or her Normal Retirement Date shall receive a
25 monthly pension benefit equal to 1.20 ~~1.15~~ percent of his or her
26 Average Monthly Salary multiplied by his or her Service.
27 2. An Employee in Division B who was previously a member
28 of Division A whose employment terminates on or after his or her

29 Normal Retirement Date shall receive a pension calculated as in
30 subsection (B) 1. of this section subject to the following
31 minimum benefits: said Employee shall not receive less than his
32 or her Accrued Pension in Division A (calculated as in (A)
33 above), plus 1.20 ~~1.15~~ percent of his or her Average Monthly
34 Salary multiplied by his or her Service after his or her Date of
35 Election. For the purposes of determining an Employee's Accrued
36 Pension in Division A under this subsection, his or her Average
37 Monthly Salary shall be calculated as of the Date of Election
38 and his or her Service shall be Service prior to the Date of
39 Election.
40 Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1251 Firefighter and Municipal Police Pensions
SPONSOR(S): Davis and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2028

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

This bill expands the authority contained in the Marvin B. Clayton Firefighters Pension Trust Fund Act and the Marvin B. Clayton Police Officers Pension Trust Fund Act:

- Increases, from two years to four years, the terms of office for members of the boards of trustees;
- Adds specific fiduciary standards for executing the general powers and duties of the board of trustees;
- Significantly broadens the authorized investments of the board of trustees to mirror the investment authority of the State Board of Administration;
- Permits boards of trustees to designate two individuals, other than the chair and the secretary, to sign drafts on accounts; and
- Requires the boards of trustees to establish a maximum entrance age.

Although this bill does not appear to specifically create, modify, or eliminate rulemaking authority, the bill will require changes in the rules, regulations, resolutions, and ordinances which govern police officer and firefighter pension boards for local governments.

This bill does not appear to have a fiscal impact on state government revenues or expenditures. This bill does not appear to have a fiscal impact on local government revenues or expenditures, but may create some compliance costs for the municipal and special district pension boards.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases terms of office, authorized investments, and authorized signatories for the boards of trustees of the pension trust funds. The bill also requires the boards of trustees to establish a maximum entrance age.

B. EFFECT OF PROPOSED CHANGES:

Background on Municipal and Special District Firefighter Pensions

Firefighters working for municipalities or special districts that have a constituted fire department or an authorized volunteer fire department,[1] which owns and uses equipment for fighting fires that was in compliance with National Fire Protection Association Standards for Automotive Fire Apparatus at the time of purchase,[2] have pension plans pursuant to chapter 175, Florida Statutes. Chapter 175, Florida Statutes, is the Marvin B. Clayton Firefighters Pension Trust Fund Act ("Firefighters PTFA").[3] The Firefighters PTFA sets forth the minimum benefits and minimum standards for municipal and special district firefighter pension plans. There currently are 20 special fire control districts and 159 municipalities that have established plans pursuant to the Firefighters PTFA.[4] These plans had revenues of approximately $66,319,992 in 2004; $5,096,380 of those revenues were generated by special fire control districts.[5]

Background on Municipal Police Officer Pensions

Police officers[6] working for municipalities with a regularly organized police department, which uses equipment in serviceable condition with a value exceeding $500 for the prevention of crime and for the preservation of life and property, have pension plans pursuant to chapter 185, Florida Statutes. Chapter 185, Florida Statutes is the Marvin B. Clayton Police Officers Pension Trust Fund Act ("Police Officer PTFA"). The Police Officer PTFA sets forth the minimum benefits and minimum standards for municipal police officer pension plans.

Similarities between the Acts

The Firefighter PTFA and the Police Officer PTFA have a number of provisions which mirror each other. For example, both the Firefighter PTFA and the Police Officer PTFA provide the following sources of funding for pension trust funds:

- Payment from the "premium tax" - the net proceeds of the excise tax upon insurance companies, insurance associations, or other property insurers on their gross receipts on premiums from holders of certain policies within the legal boundaries of the municipality or special district;
- Payment of a designated percentage deducted from the salary of each firefighter or police officer;
- Payment of all fines and forfeitures imposed and collected from the violation of any rule and regulation promulgated by the board of trustees;

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[1] Fla. Stat. § 175.041(1) (2005).
[2] Fla. Stat. § 175.041(2) (2005).
[3] Fla. Stat. § 175.025 (2005).
[4] Dep't of Mgmt. Serv., HB 381 (2006) Staff Analysis (Nov. 25, 2005) (on file with dep't).
[5] *Id.*
[6] Fla. Stat. § 185.02(11) (2005).

- Mandatory payment of the normal cost of and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of chapter 112, Florida Statutes;
- All gifts, bequests, and devises when donated;
- All increases in the fund by way of interest or dividends on bank deposits; and
- All other sources or income authorized by law for the augmentation of such pension trust funds.[7]

The Firefighter PTFA and the Police Officer PTFA also provide for governance by a board of trustees consisting of five members: two members who are legal residents of the special district or municipality and are appointed by its legislative body; two members who are full-time firefighters or police officers elected by a majority of the active firefighters or police officers who are members of such plan; a fifth member who must be chosen by a majority of the other four members.[8] This board of trustees must meet quarterly.[9]

Among the powers of these board of trustees: invest and reinvest the assets of the firefighter pension fund in certain authorized investments, issue drafts, keep required records, retain a qualified independent consultant every three years, and employ legal counsel, independent actuaries, and other advisors.[10]

Both the Firefighter PTFA and the Police Officer PTFA provide requirements for the retirement,[11] disability,[12] death,[13] and presumed injuries[14] of firefighters and police officers under the plan.

The Division of Retirement is responsible for the daily oversight and monitoring of any firefighter or police officer pension plan under the Firefighter PTFA and the Police Officer PTFA.[15] Actuarial deficits are not, however, obligations of the State of Florida.[16]

Changes to Board of Trustee Terms

Currently each member of the board of trustee serves two years and may succeed himself or herself. This bill changes the period of the term to four years.

Express Fiduciary Responsibilities

As this is not explicitly stated within these chapters, this bill provides that boards of trustees under the Firefighter PTFA and the Police Officer PTFA are expressly subject to certain fiduciary standards[17] in the exercise of their general powers and duties.

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[7] Fla. Stat. §§ 175.091 and 185.07 (2005).
[8] Fla. Stat. § 175.061(1) (2005) (The membership of the board of trustees for a chapter plan shall consist of five members, two of whom, unless otherwise prohibited by law, shall be legal residents of the municipality or special fire control district, who shall be appointed by the governing body of the municipality or special fire control district, and two of whom shall be full-time firefighters as defined in s. 175.032 who shall be elected by a majority of the active firefighters who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters to vote in such elections, retirees may continue to vote in such elections. The fifth member shall be chosen by a majority of the previous four members as provided for herein, and such person's name shall be submitted to the governing body of the municipality or special fire control district.). Fla. Stat. § 185.05 (2005).
[9] Fla. Stat. §§ 175.061(3) and 185.05(3) (2005).
[10] Fla. Stat. §§ 175.071 and 185.06 (2005).
[11] Fla. Stat. §§ 175.162 and 185.16 (2005).
[12] Fla. Stat. §§ 175.191 and 185.18 (2005).
[13] Fla. Stat. §§ 175.201 and 185.21 (2005).
[14] Fla. Stat. § 175.231 (2005) (Conditions or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty after passing a physical examination and subject to rebuttal); Fla. Stat. § 185.34 (2005).
[15] Fla. Stat. §§ 175.341 and 185.23 (2005).
[16] Fla. Stat. §§ 175.051 and 185.04 (2005).
[17] Fla. Stat. §§ 112.611 (requiring compliance with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974), 112.311 to 112.3187 (Code of Ethics), and 518.11 (prudent investor rule) (2005).

Changes to the Authorized Investments

The Firefighter PTFA and the Police Officer PTFA each provide five authorized investments and reinvestments:[18]

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building, and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia.[19]

5. Foreign securities not to exceed 10 percent of plan assets.

Boards of trustees may, however, request a variance from these authorized investments through a municipal ordinance, special act of the Legislature, or resolution by the governing body of the special fire control district. In addition, where a special act, or a municipal ordinance, adopted prior to July 1, 1998, permits greater than a 50-percent equity investment, these municipalities are not required to comply with the aggregate equity investment provisions.

This bill removes these authorized investments and expands the investment authority of these boards of trustees to mirror authorized investments of the State Board of Administration:

Authorized Investments – Without Limitation. There are currently 14 types of investments that the State Board of Administration is authorized to invest in without limitation.[20] 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."[21]

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[18] Fla. Stat. §§ 175.071 and 185.06 (2005).

[19] *Id.* (The corporation must be listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service. These investments may not exceed more than five percent of the assets of the board of trustees in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of that company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the assets of the fund.).

[20] Fla. Stat. § 215.47(1) (2005).

[21] Fla. Stat. § 215.47(1)(j) (2005). Although not defined in chapter 215, Florida Statutes, a nationally recognized rating service appears to be the same as a nationally recognized statistical rating organization ("NRSROs") – an organization that has been identified by the United States Securities and Exchange Commission through the no-action letter process. *See* 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). 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"). Each of these NRSROs has its own set of credit ratings. For example, Moody's long-term issue credit ratings range from Aaa to C and Moody's "appends numerical modifiers to each generic rating classification from

- 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.[22]

- 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.[23]

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."[24] Most of these "25-percent-authorized investments" also must meet certain criteria:

- 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.[25] If only one nationally recognized rating service has rated the obligation, the rating must be in one of the two highest classifications.[26]

Source	Requirement	S&P	Moody's
Current Law - two ratings	Three Highest Ratings	AAA, AA, A	Aaa, Aa1, Aa2
Current Law - one rating	Two Highest Ratings	AAA, AA	Aaa, Aa1

- 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.[27]

- 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

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Aa to Caa." See 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) ("Obligations rated Aaa are judged to be of the highest quality, with minimal credit risk. Obligations rated C are the lowest rated class of bonds and are typically in default, with little prospect for recovery of principal or interest."). By contrast, S&P long-term issue credit ratings range from AAA to D and "may be modified by the addition of a plus or minus sign to show relative standing within the major categories." *See* 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) ("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. 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.").

[22] Fla. Stat. § 215.47(1)(h) (2005).
[23] Fla. Stat. § 215.47(1)(k) (2005).
[24] Fla. Stat. § 215.47(2) (2005).
[25] Fla. Stat. § 215.47(2)(a) (2005).
[26] *Id.*
[27] Fla. Stat. § 215.47(2)(b) (2005).

or Federal Government.[28] 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.[29] If one of these mortgages becomes more than three months delinquent, the lender is required to substitute a mortgage of equal or greater value.[30]

- Certain mortgage securities. The State Board of Administration is authorized to invest in mortgage securities which represent participation in or are collateralized by mortgage loans secured by real property, provided those securities are issued by an agency of or enterprise sponsored by the United States Government, including, but not limited to, the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

- 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 provided that the amount invested with any one insurer does not exceed three percent of its assets.[31]

- Certain Real and Personal Property Interests. This authorization includes mortgages and related instruments on commercial or industrial real property, with provisions for equity or income participation or with provisions for convertibility to equity ownership. It also includes interests in collective investment funds.

- Fixed-Income Obligations of Foreign Governments. The State Board of Administration is authorized to invest in fixed-income obligations issued by foreign governments or political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities, if the obligations are rated investment grade by at least one nationally recognized rating service.

- Israeli Bonds. The State Board of Administration may invest in rated or unrated bonds, notes, or instruments backed by the full faith and credit of the government of Israel.

- Other Authorized Obligations. The State Board of Administration may authorize obligations of the United States under the Florida Retirement System Defined Benefit Plan Investment Policy Statement established in section 215.475, Florida Statutes.

- Dollar-Denominated Obligations. The State Board of Administration is authorized to invest in United States dollar-denominated obligations issued by foreign governments, or political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities.

- Other Asset Backed-Securities. The State Board of Administration is authorized to invest in other asset-backed securities.

Authorized Investments – Stock and Corporate Obligations. The State Board of Administration is authorized, subject to certain restrictions, to invest no more than 80 percent of any fund in common stock, preferred stock, and obligations which may be converted to common stock, provided the corporation is organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia or is listed on any one or more of the recognized national

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[28] Fla. Stat. § 215.47(2)(c) (2005).
[29] *Id.*
[30] *Id.*
[31] Fla. Stat. § 215.47(2)(e) (2005).

stock exchanges in the United States and conforms with the periodic reporting requirements under the Securities Exchange Act of 1934.[32]

Authorized Investments – Certain Interest-Bearing Obligations. The State Board of Administration may invest no more than 80 percent of any fund in interest-bearing obligations with a fixed maturity of any corporation or commercial entity within the United States.[33]

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.[34] 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.[35]

Authorized Investments – Five Percent Notwithstanding. The State Board of Administration is authorized to invest no more than five percent of any fund outside of the investment authorizations and limitations in section 215.47, Florida Statutes.[36]

The investment authority of the State Board of Administration includes repurchase agreements or reverse repurchase agreements[37] as well as the buying and selling of futures and options.[38] The State Board of Administration may also loan its purchased or held securities or investments to securities dealers or financial institutions.[39]

Changes to Draft Authority

Currently, in order to issue drafts upon the pension trust funds, the drafts must be consecutively numbered, signed by the chair and secretary, and state the purpose for the drafts. This bill will allow two individuals designated by the board to sign drafts.

Establishing a Maximum Age

There is currently not a maximum age for entrance into either type of pension fund. This bill requires the boards of trustees to establish a maximum age for entrance into the fund, with the provisions of section 112.044, Florida Statutes, which prohibits discrimination based on age.

Changes Affecting Only the Firefighter PTFA

Section 175.032, Florida Statutes, provides the definitions for the Firefighters PTFA, including a definition for "firefighter." This bill expands the definition of firefighter to include all certified supervisory and command personnel whose duties include the supervision, training, guidance, and management

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[32] Fla. Stat. § 215.47(3) (2005) (This is provided that not more than 75 percent of the fund may be in internally managed common stock; provided that no more than 10 percent of the equity assets of any fund are invested in the common stock, preferred stock, and interest-bearing obligations having an option to convert into common stock, of any one issuing corporation; and provided that no more than three percent of the equity assets of any fund may be invested in the securities of any one issuing corporation except to the extent a higher percentage of the same issue is included in a nationally recognized market index, based on market values, at least as broad as the Standard and Poor's Composite Index of 500 Companies, or except upon a specific finding by the board that such higher percentage is in the best interest of the fund.).
[33] Fla. Stat. § 215.47(4) (2005).
[34] Fla. Stat. § 215.47(5) (2005).
[35] *Id.*
[36] Fla. Stat. § 215.47(6) (2006).
[37] Fla. Stat. § 215.47(8) (2006).
[38] Fla. Stat. § 215.47(10) (2006) (This is provided the instruments for such purpose are traded on a securities exchange or board of trade regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission, unless the board by rule authorizes a different market.).
[39] Fla. Stat. § 215.47(16) (2005) (This is provided the loan is collateralized by cash or securities having a market value of at least 100 percent of the market value of the securities loaned.).

responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters, but does not include part-time firefighters or auxiliary firefighters. This is similar to a provision in the Police Officers PTFA in section 185.02(11), Florida Statutes.

C. SECTION DIRECTORY:

Section 1: Amends section 175.032, Florida Statutes, to expand the definition of firefighter.

Section 2: Amends section 175.061, Florida Statutes, to change terms of office for the boards of trustees.

Section 3: Amends section 175.071, Florida Statutes, to expand the fiduciary standards, authorized investments, drafting authority, and entrance ages.

Section 4: Amends section 185.05, Florida Statutes to change terms of office for the boards of trustees.

Section 6: Amends section 185.06, Florida Statutes, to expand the fiduciary standards, authorized investments, drafting authority, and entrance ages.

Section 6: Sets forth a severability clause.

Section 7: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There does not appear to be a fiscal impact on state government revenues.

2. Expenditures:

   There does not appear to be a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   There does not appear to be a fiscal impact on local government revenues.

2. Expenditures:

   There does not appear to be fiscal impact on local government expenditures. The bill, however, may create some compliance costs for the municipal and special district pension boards.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The expanded investment authority of the municipal and special district pension boards may have a positive, direct impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services provided a fiscal note from the enrolled actuary regarding this bill: "There are no actuarial or benefit issues associated with this bill."[40]

[40] Fla. Dep't of Mgmt. Serv., HB 1251 (2006) Substantive Bill Analysis (Mar. 24, 2006) (on file with dep't).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require municipalities or counties 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 municipalities or counties. This bill does not appear to reduce the authority that municipalities or counties have to raise revenue.

2. Other:

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis. Since this bill does not directly increase benefits, this constitutional requirement does not apply. The Department of Management Services reached the same conclusion.[41]

B. RULE-MAKING AUTHORITY:

Although this bill does not appear to specifically create, modify, or eliminate rulemaking authority, the bill will require changes in the rules, regulations, resolutions, and ordinances which govern police officer and firefighter pension boards for local governments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Division of Retirement within the Department of Management Services, which is responsible for the daily oversight and monitoring for actuarial soundness, made the following comments on the bill. These comments appear to raise valid issues which the sponsor of the bill may wish to address.

Optional Increase to Terms of Office

Because there are many existing local ordinances, legislative acts, and resolutions related to the pension plans, the change to the terms of office of the boards of trustees should be optional.[42]

Additional Fiduciary Standard

Section 112.656, Florida Statutes, which relates to fiduciary duties and fiduciaries for retirement systems, should be added to the fiduciary standards included in the bill.[43]

Do Not Mirror the Authorized Investments in Section 215.47, Florida Statutes

"Chapters 175 and 185, Florida Statutes, allow for the adoption of more liberal investment standards, which may match or exceed the standards in section 215.47, Florida Statutes, with the exception of the 10 percent foreign restriction. It is suggested that the existing law simply be amended to change the 10 percent foreign restriction to 20 percent. In this manner, existing plan provisions that have been adopted by many local law cities/districts are not adversely affected and a foreign investment restriction is maintained that matches the restriction placed on the State Board of Administration in investing the assets of the Florida Retirement System."[44]

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[41] *Id.*
[42] *Id.* at 2.
[43] *Id.* at 3.
[44] *Id* at 4-5.

"Many municipalities and fire control districts take comfort in the comparatively conservative investment parameters established under chapters 175 and 185, Florida Statutes. Since the municipalities and special districts are ultimately responsible for the proper funding of pension plans, they enjoy the legislative control that they have over granting more liberal investment parameters."

Two Designated Signatories for Drafts

The provision allowing the board to designate two individuals to sign disbursements from the trust fund "appears to erode the responsibility and direction of the board of trustees. No criteria are established for the selection of these two individuals and no fiduciary designation is required. While it is not clear why this amendment is needed, if it is maintained in the proposal, it is suggested that additional language be added to require the designated individuals to be considered 'fiduciaries' to the plan."[45]

Establishing an Entrance Age

"The requirement that boards of trustees establish an entrance age appears to violate the legislative intent in establishing chapters 175 and 185 plans and violates several existing statutory provisions with regard to firefighters, police officers and the board's authority. This requirement should be deleted."[46]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[45] *Id.* at 6.
[46] *Id.* at 7-8.

1 A bill to be entitled
2 An act relating to firefighter and municipal police
3 pensions; amending s. 175.032, F.S.; revising the
4 definition of "firefighter"; amending s. 175.061, F.S.;
5 revising terms of service for the board of trustees of the
6 firefighters' pension trust fund; amending s. 175.071,
7 F.S.; requiring the board of trustees to perform its
8 powers subject to certain fiduciary standards and ethics
9 provisions; revising the investments in which the board of
10 trustees may invest and reinvest the assets of the
11 firefighters' pension trust fund; authorizing two
12 individuals designated by the board to sign drafts issued
13 upon the firefighters' pension trust fund; authorizing the
14 board to establish the maximum age for entrance into the
15 fund; amending s. 185.05, F.S.; revising terms of service
16 for the board of trustees of the municipal police
17 officers' retirement trust fund; amending s. 185.06, F.S.;
18 requiring the board of trustees to perform its powers
19 subject to certain fiduciary standards and ethics
20 provisions; revising the investments in which the board of
21 trustees may invest and reinvest the assets of the
22 retirement trust fund; authorizing two individuals
23 designated by the board to sign drafts issued upon the
24 municipal police officers' retirement trust fund;
25 authorizing the board to establish the maximum age for
26 entrance into the fund; providing for severability;
27 providing an effective date.
28

29 Be It Enacted by the Legislature of the State of Florida:
30
31 Section 1. Paragraph (a) of subsection (8) of section
32 175.032, Florida Statutes, is amended to read:
33 175.032 Definitions.--For any municipality, special fire
34 control district, chapter plan, local law municipality, local
35 law special fire control district, or local law plan under this
36 chapter, the following words and phrases have the following
37 meanings:
38 (8)(a) "Firefighter" means any person employed solely by a
39 constituted fire department of any municipality or special fire
40 control district who is certified as a firefighter as a
41 condition of employment in accordance with the provisions of s.
42 633.35 and whose duty it is to extinguish fires, to protect
43 life, or to protect property. "Firefighter" includes all
44 certified supervisory and command personnel whose duties
45 include, in whole or in part, the supervision, training,
46 guidance, and management responsibilities of full-time
47 firefighters, part-time firefighters, or auxiliary firefighters,
48 but does not include part-time firefighters or auxiliary
49 firefighters. However, for purposes of this chapter only,
50 "firefighter" also includes public safety officers who are
51 responsible for performing both police and fire services, who
52 are certified as police officers or firefighters, and who are
53 certified by their employers to the Chief Financial Officer as
54 participating in this chapter prior to October 1, 1979.
55 Effective October 1, 1979, public safety officers who have not
56 been certified as participating in this chapter shall be

57 considered police officers for retirement purposes and shall be
58 eligible to participate in chapter 185. Any plan may provide
59 that the fire chief shall have an option to participate, or not,
60 in that plan.
61 Section 2. Paragraph (a) of subsection (1) of section
62 175.061, Florida Statutes, is amended to read:
63 175.061 Board of trustees; members; terms of office;
64 meetings; legal entity; costs; attorney's fees.--For any
65 municipality, special fire control district, chapter plan, local
66 law municipality, local law special fire control district, or
67 local law plan under this chapter:
68 (1) In each municipality and in each special fire control
69 district there is hereby created a board of trustees of the
70 firefighters' pension trust fund, which shall be solely
71 responsible for administering the trust fund. Effective October
72 1, 1986, and thereafter:
73 (a) The membership of the board of trustees for a chapter
74 plan shall consist of five members, two of whom, unless
75 otherwise prohibited by law, shall be legal residents of the
76 municipality or special fire control district, who shall be
77 appointed by the governing body of the municipality or special
78 fire control district, and two of whom shall be full-time
79 firefighters as defined in s. 175.032 who shall be elected by a
80 majority of the active firefighters who are members of such
81 plan. With respect to any chapter plan or local law plan that,
82 on January 1, 1997, allowed retired firefighters to vote in such
83 elections, retirees may continue to vote in such elections. The
84 fifth member shall be chosen by a majority of the previous four

85 members as provided for herein, and such person's name shall be
86 submitted to the governing body of the municipality or special
87 fire control district. Upon receipt of the fifth person's name,
88 the governing body of the municipality or special fire control
89 district shall, as a ministerial duty, appoint such person to
90 the board of trustees as its fifth member. The fifth member
91 shall have the same rights as each of the other four members
92 appointed or elected as herein provided, shall serve as trustee
93 for a period of 4 ~~2~~ years, and may succeed himself or herself in
94 office. Each resident member shall serve as trustee for a period
95 of 4 ~~2~~ years, unless sooner replaced by the governing body at
96 whose pleasure he or she shall serve, and may succeed himself or
97 herself as a trustee. Each firefighter member shall serve as
98 trustee for a period of 4 ~~2~~ years, unless he or she sooner
99 leaves the employment of the municipality or special fire
100 control district as a firefighter, whereupon a successor shall
101 be chosen in the same manner as an original appointment. Each
102 firefighter may succeed himself or herself in office.
103 Section 3. Subsection (1) of section 175.071, Florida
104 Statutes, is amended to read:
105 175.071 General powers and duties of board of
106 trustees.--For any municipality, special fire control district,
107 chapter plan, local law municipality, local law special fire
108 control district, or local law plan under this chapter:
109 (1) The board of trustees, subject to the fiduciary
110 standards in ss. 112.661 and 518.11 and the Code of Ethics in
111 ss. 112.311-112.3187, may:

112 (a) Invest and reinvest the assets of the firefighters'
113 pension trust fund in annuity and life insurance contracts of
114 life insurance companies in amounts sufficient to provide, in
115 whole or in part, the benefits to which all of the participants
116 in the firefighters' pension trust fund shall be entitled under
117 the provisions of this chapter and pay the initial and
118 subsequent premiums thereon.
119 (b) Invest and reinvest the assets of the firefighters'
120 pension trust fund in any lawful investment as provided in the
121 applicable provisions of s. 215.47(1)-(8), (10), and (16),
122 provided the investment is permitted in the written investment
123 policy adopted by the board as provided in part VII of chapter
124 112.~~:~~
125 ~~1. Time or savings accounts of a national bank, a state~~
126 ~~bank insured by the Bank Insurance Fund, or a savings, building,~~
127 ~~and loan association insured by the Savings Association~~
128 ~~Insurance Fund which is administered by the Federal Deposit~~
129 ~~Insurance Corporation or a state or federal chartered credit~~
130 ~~union whose share accounts are insured by the National Credit~~
131 ~~Union Share Insurance Fund.~~
132 ~~2. Obligations of the United States or obligations~~
133 ~~guaranteed as to principal and interest by the government of the~~
134 ~~United States.~~
135 ~~3. Bonds issued by the State of Israel.~~
136 ~~4. Bonds, stocks, or other evidences of indebtedness~~
137 ~~issued or guaranteed by a corporation organized under the laws~~
138 ~~of the United States, any state or organized territory of the~~
139 ~~United States, or the District of Columbia, provided:~~

140 ~~a. The corporation is listed on any one or more of the~~
141 ~~recognized national stock exchanges or on the National Market~~
142 ~~System of the NASDAQ Stock Market and, in the case of bonds~~
143 ~~only, holds a rating in one of the three highest classifications~~
144 ~~by a major rating service; and~~
145 ~~b. The board of trustees shall not invest more than 5~~
146 ~~percent of its assets in the common stock or capital stock of~~
147 ~~any one issuing company, nor shall the aggregate investment in~~
148 ~~any one issuing company exceed 5 percent of the outstanding~~
149 ~~capital stock of that company or the aggregate of its~~
150 ~~investments under this subparagraph at cost exceed 50 percent of~~
151 ~~the assets of the fund.~~
152
153 ~~This paragraph shall apply to all boards of trustees and~~
154 ~~participants. However, in the event that a municipality or~~
155 ~~special fire control district has a duly enacted pension plan~~
156 ~~pursuant to, and in compliance with, s. 175.351, and the~~
157 ~~trustees thereof desire to vary the investment procedures~~
158 ~~herein, the trustees of such plan shall request a variance of~~
159 ~~the investment procedures as outlined herein only through a~~
160 ~~municipal ordinance, special act of the Legislature, or~~
161 ~~resolution by the governing body of the special fire control~~
162 ~~district; where a special act, or a municipality by ordinance~~
163 ~~adopted prior to July 1, 1998, permits a greater than 50-percent~~
164 ~~equity investment, such municipality shall not be required to~~
165 ~~comply with the aggregate equity investment provisions of this~~
166 ~~paragraph. Notwithstanding any other provision of law to the~~
167 ~~contrary, nothing in this section may be construed to take away~~

168 ~~any preexisting legal authority to make equity investments that~~
169 ~~exceed the requirements of this paragraph. The board of trustees~~
170 ~~may invest up to 10 percent of plan assets in foreign~~
171 ~~securities.~~
172 (c) Issue drafts upon the firefighters' pension trust fund
173 pursuant to this act and rules and regulations prescribed by the
174 board of trustees. All such drafts shall be consecutively
175 numbered, be signed by the chair and secretary or two
176 individuals designated by the board, and state upon their faces
177 the purpose for which the drafts are drawn. The treasurer or
178 depository of each municipality or special fire control district
179 shall retain such drafts when paid, as permanent vouchers for
180 disbursements made, and no money shall be otherwise drawn from
181 the fund.
182 (d) Convert into cash any securities of the fund.
183 (e) Keep a complete record of all receipts and
184 disbursements and of the board's acts and proceedings.
185 (f) Establish the maximum age for entrance into the fund
186 within the provisions of s. 112.044. In the case of conflict
187 with any provision of law, this paragraph shall control in all
188 matters relating to administration of firefighters' pension
189 trust funds.
190 Section 4. Paragraph (a) of subsection (1) of section
191 185.05, Florida Statutes, is amended to read:
192 185.05 Board of trustees; members; terms of office;
193 meetings; legal entity; costs; attorney's fees.--For any
194 municipality, chapter plan, local law municipality, or local law
195 plan under this chapter:

196 (1) In each municipality described in s. 185.03 there is
197 hereby created a board of trustees of the municipal police
198 officers' retirement trust fund, which shall be solely
199 responsible for administering the trust fund. Effective October
200 1, 1986, and thereafter:
201 (a) The membership of the board of trustees for chapter
202 plans shall consist of five members, two of whom, unless
203 otherwise prohibited by law, shall be legal residents of the
204 municipality, who shall be appointed by the legislative body of
205 the municipality, and two of whom shall be police officers as
206 defined in s. 185.02 who shall be elected by a majority of the
207 active police officers who are members of such plan. With
208 respect to any chapter plan or local law plan that, on January
209 1, 1997, allowed retired police officers to vote in such
210 elections, retirees may continue to vote in such elections. The
211 fifth member shall be chosen by a majority of the previous four
212 members, and such person's name shall be submitted to the
213 legislative body of the municipality. Upon receipt of the fifth
214 person's name, the legislative body of the municipality shall,
215 as a ministerial duty, appoint such person to the board of
216 trustees as its fifth member. The fifth member shall have the
217 same rights as each of the other four members appointed or
218 elected as herein provided, shall serve as trustee for a period
219 of 4 ~~2~~ years, and may succeed himself or herself in office. Each
220 resident member shall serve as trustee for a period of 4 ~~2~~
221 years, unless sooner replaced by the legislative body at whose
222 pleasure the member shall serve, and may succeed himself or
223 herself as a trustee. Each police officer member shall serve as

224 trustee for a period of 4 ~~2~~ years, unless he or she sooner
225 leaves the employment of the municipality as a police officer,
226 whereupon the legislative body of the municipality shall choose
227 a successor in the same manner as an original appointment. Each
228 police officer may succeed himself or herself in office.
229 Section 5. Subsection (1) of section 185.06, Florida
230 Statutes, is amended to read:
231 185.06 General powers and duties of board of
232 trustees.--For any municipality, chapter plan, local law
233 municipality, or local law plan under this chapter:
234 (1) The board of trustees, subject to the fiduciary
235 standards in ss. 112.661 and 518.11 and the Code of Ethics in
236 ss. 112.311-112.3187, may:
237 (a) Invest and reinvest the assets of the retirement trust
238 fund in annuity and life insurance contracts of life insurance
239 companies in amounts sufficient to provide, in whole or in part,
240 the benefits to which all of the participants in the municipal
241 police officers' retirement trust fund shall be entitled under
242 the provisions of this chapter, and pay the initial and
243 subsequent premiums thereon.
244 (b) Invest and reinvest the assets of the retirement trust
245 fund in any lawful investment as provided in the applicable
246 provisions of s. 215.47(1)-(8), (10), and (16), provided the
247 investment is permitted in the written investment policy adopted
248 by the board as provided in part VII of chapter 112.~~:~~
249 ~~1. Time or savings accounts of a national bank, a state~~
250 ~~bank insured by the Bank Insurance Fund, or a savings and loan~~
251 ~~association insured by the Savings Association Insurance Fund~~

252 ~~which is administered by the Federal Deposit Insurance~~
253 ~~Corporation or a state or federal chartered credit union whose~~
254 ~~share accounts are insured by the National Credit Union Share~~
255 ~~Insurance Fund.~~
256 ~~2. Obligations of the United States or obligations~~
257 ~~guaranteed as to principal and interest by the United States.~~
258 ~~3. Bonds issued by the State of Israel.~~
259 ~~4. Bonds, stocks, or other evidences of indebtedness~~
260 ~~issued or guaranteed by a corporation organized under the laws~~
261 ~~of the United States, any state or organized territory of the~~
262 ~~United States, or the District of Columbia, provided:~~
263 ~~a. The corporation is listed on any one or more of the~~
264 ~~recognized national stock exchanges or on the National Market~~
265 ~~System of the NASDAQ Stock Market and, in the case of bonds~~
266 ~~only, holds a rating in one of the three highest classifications~~
267 ~~by a major rating service; and~~
268 ~~b. The board of trustees shall not invest more than 5~~
269 ~~percent of its assets in the common stock or capital stock of~~
270 ~~any one issuing company, nor shall the aggregate investment in~~
271 ~~any one issuing company exceed 5 percent of the outstanding~~
272 ~~capital stock of the company or the aggregate of its investments~~
273 ~~under this subparagraph at cost exceed 50 percent of the fund's~~
274 ~~assets.~~
275
276 ~~This paragraph shall apply to all boards of trustees and~~
277 ~~participants. However, in the event that a municipality has a~~
278 ~~duly enacted pension plan pursuant to, and in compliance with,~~
279 ~~s. 185.35 and the trustees thereof desire to vary the investment~~

280 ~~procedures herein, the trustees of such plan shall request a~~
281 ~~variance of the investment procedures as outlined herein only~~
282 ~~through a municipal ordinance or special act of the Legislature;~~
283 ~~where a special act, or a municipality by ordinance adopted~~
284 ~~prior to July 1, 1998, permits a greater than 50 percent equity~~
285 ~~investment, such municipality shall not be required to comply~~
286 ~~with the aggregate equity investment provisions of this~~
287 ~~paragraph. Notwithstanding any other provision of law to the~~
288 ~~contrary, nothing in this section may be construed to take away~~
289 ~~any preexisting legal authority to make equity investments that~~
290 ~~exceed the requirements of this paragraph. The board of trustees~~
291 ~~may invest up to 10 percent of plan assets in foreign~~
292 ~~securities.~~
293 (c) Issue drafts upon the municipal police officers'
294 retirement trust fund pursuant to this act and rules and
295 regulations prescribed by the board of trustees. All such drafts
296 shall be consecutively numbered, be signed by the chair and
297 secretary <u>or two individuals designated by the board</u>, and state
298 upon their faces the purposes for which the drafts are drawn.
299 The city treasurer or other depository shall retain such drafts
300 when paid, as permanent vouchers for disbursements made, and no
301 money shall otherwise be drawn from the fund.
302 (d) Finally decide all claims to relief under the board's
303 rules and regulations and pursuant to the provisions of this
304 act.
305 (e) Convert into cash any securities of the fund.
306 (f) Keep a complete record of all receipts and
307 disbursements and of the board's acts and proceedings.

308 (g) Establish the maximum age for entrance into the fund
309 within the provisions of s. 112.044. In the case of conflict
310 with any provision of law, this paragraph shall control in all
311 matters relating to administration of municipal police officers'
312 retirement trust funds.
313 Section 6. If any provision of this act or its application
314 to any person or circumstance is held invalid, the invalidity
315 does not affect other provisions or applications of the act
316 which can be given effect without the invalid provision or
317 application, and to this end the provisions of this act are
318 severable.
319 Section 7. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1335 Monroe County
SPONSOR(S): Sorensen
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

HB 1335 provides that one or more members of the Monroe County Board of County Commissioners who participate in a special meeting using teleconferencing equipment be deemed in attendance for purposes of establishing a quorum. "Teleconferencing equipment" is defined to mean the electronic transmission of audio, full-motion video, freeze-frame video, compressed video and digital video by any method available that allows a person in one location to meet with another person in a different location. The bill also provides that special meetings authorized by the act must comply with the provisions of current general law.

The act has an effective date of July1, 2006, and repeals in one year.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this 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

NON-CHARTER COUNTY GOVERNMENT

Counties not operating under county charters have the power of self-government as is provided by general or special law. See, s.1 (f) of Art. VIII of the State Constitution. Section 125.001, F.S. provides that regular and special meetings of a board of county commissioners may be held at any appropriate public place in the county upon the giving of due public notice. Section 125.01(a), F.S., provides that the legislative and governing body of a county has the power to set the time and place of its official meetings.

THE ADMINISTRATIVE PROCEDURES ACT

Section 120.54(5)(b)2., F.S., of the Administrative Procedure Act, states that the uniform rules adopted by the Administration Commission must include "uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. . . ." These rules must provide that all evidence, testimony and argument presented be afforded equal consideration, regardless of the method of communication. A notice is required to state if a public meeting, hearing or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means. The notice for public meetings, hearings and workshops utilizing communications media technology must state how persons interested in attending may do so and name locations, if any, where communications media technology facilities will be available. Nothing in this subsection is to be construed to diminish the right to inspect public records under ch. 119, F.S. Limiting points of access to public meetings, hearings and workshops subject to the provisions of s. 286.011, F.S., to places not normally open to the public is presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. This section provides that other laws relating to public meetings, hearings and workshops, including penal and remedial provisions, apply to public meetings, hearings and workshops conducted by means of communications media technology, and will be liberally construed in their application to such public meetings, hearings and workshops. As used in this subparagraph, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video and digital video by any method available.

NOTICES OF MEETINGS AND HEARINGS; RECORD REQUIRED TO APPEAL

Section 286.0105, F.S., provides that:

> Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the

testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

FLORIDA'S GOVERNMENT IN THE SUNSHINE LAW

Section 286.011, F.S., provides, in relevant part, that:

> All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

FLORIDA'S VOTING REQUIREMENT LAW

Section 286.012, F.S., provides:

> No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.

Effect of Proposed Changes

Monroe County, Florida, has a non-charter government. The Board of County Commissioners consists of five members elected at large for staggered terms of four years in the November general election in even years. Regular meetings are held every three weeks on a rotating basis at Key Largo Library in the Upper Keys, the Marathon Government Center, and the Commission Chambers of the Harvey Government Center at Historic Truman School in Key West. When there are conflicting schedules, meetings are held at other locations.

HB 1335 provides that one or more members of the Monroe County Board of County Commissions who participate in a special meeting using teleconferencing equipment shall be deemed in attendance for purposes of establishing a quorum. "Teleconferencing equipment" is defined to mean the electronic transmission of audio, full-motion video, freeze-frame video, compressed video and digital video by any method available that allows a person in one location to meet with another person in a different location.

The bill also provides that special meetings authorized by the act must comply with the provisions of ss. 286.0105, 286.011, and 286.012, F. S. These provisions require, respectively, that the county commission advise in their meeting notices that a record of the proceedings is required to appeal; that the county commission hold its meetings in compliance with the Sunshine Law, and that the county commission comply with Florida's voting requirement law. All meetings of these groups are required to comply with these laws so this language is inconsequential.

The bill prefaces the allowance of teleconferencing equipment on the exclusion of the provisions of s. 120.54(5)(b)2., F.S. While there is no question that a county commission is an "agency"[1] for purposes

[1] See, s. 120.52(1)(c), F.S.., defining "agency" for purposes of Ch. 120 to include "each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions...."

of application of ch.120, F.S., the language of s.120.54(5)(b)2., F.S., limits its terms only to uniform rules for state agencies.

Theoretically, this bill could allow the entire county board to conduct a meeting and public business via telephone. See, Section III A, "Constitutional Issues," of this analysis.

The bill provides for an effective date of July 1, 2006, and provides that the special act repeals on June 30, 2007.

C. SECTION DIRECTORY:

Section 1: Provides definitions; provides for a quorum using teleconferencing equipment; requires that meetings must comply with the provisions of ss. 286.0105, 286.011, and 286.012, F.S.; provides for repeal of special act on June 30, 2007.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 27 and 28, 2006

WHERE? *The Reporter*, a weekly newspaper published in Monroe County, Florida, and *The Citizen*, a daily newspaper published in Monroe County, Florida.

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, this bill will have a positive fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 24 (b) of Art. 1 of the State Constitution, provides:

> All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

The Office of the Attorney General (OAG) has issued numerous opinions regarding the participation of local governmental board members in public meetings through use of telecommunications media and the compliance of such meetings with Florida's public meetings laws. In AGO 92-44, the OAG concluded that a county commissioner who was physically unable to attend a commission meeting because of medical treatment could participate in the meeting by using an interactive video and

telephone system that allowed her to see the other members of the board and the audience at the meeting and that allowed the board and audience to see her. The opinion recognized that s. 125.001, F.S., required that meetings of the county commission be held in a public place in the county but noted that a quorum of the members of the county commission would be present at the public place. A similar conclusion was reached in AGO 98-28, which concluded that a district school board could use electronic media technology in order to allow a physically absent member to attend a public meeting if a quorum of the members of the board was physically present at the meeting site.

However, in general, the OAG has displayed a reluctance to allow local board members to use telecommunications media:

> Allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission. While the convenience and cost savings of allowing members from diverse geographical areas to meet electronically might be attractive to a local board or commission such as a school board, the representation on a school board is local and such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting.[2]

The OAG has argued that a concern about the validity of official actions taken by a public body when less than a quorum is present requires a very conservative reading of the statutes. Thus, the OAG has concluded that, in the absence of a statute to the contrary, a quorum of the members must be physically present at a meeting in order to take action.[3]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The Sponsor may want to consider an amendment which deletes the language on Lines 21 and 22 which states "Notwithstanding section 120.54(5)(b)2., Florida Statutes," as this provision does not apply to local governments.

Other Comments – "Special meeting"

The bill authorizes the use of teleconferencing equipment for establishing a quorum of board members for a *special meeting* of the Board of County Commissioners of Monroe County. A "special meeting" is defined as "a public meeting of the board at which official action is taken, but does not include regular monthly meetings of the board."

In a 2005 informal opinion issued by the OAG to the Mayor Pro-tem, District Three, Monroe County Commission, the OAG stated:

> . . . the use of electronic media technology for official meetings has limitations when there is a need for a quorum or when a meeting must be held at a designated location. For workshops and special meetings at which no formal action will be taken, it would appear that such technology may be used. The county must be vigilant, however, in adhering to the requirements of the Sunshine Law and ensure that the meetings or

---

[2] See, AGO 98-28.

[3] See, AGOs 83-100, and 89-39, quoting 62 C.J.S. Municipal Corporations s. 399, p. 757, which provides: "In order to constitute a quorum the requisite number of members must be actually present at the meeting and the requisite number cannot be made up by telephoning absent members and obtaining their vote over the telephone."

workshops using electronic media technology are not forums for the commission to undertake formal decisionmaking.[4]

As such, it would appear more appropriate to require a quorum at which a majority of the members is physically present when *official action* is taken, which would not include special meetings as defined by this bill.

Other Comments – Monroe County

The County Administrator for Monroe County has indicted that Monroe County's geography as a 140-mile chain of islands connected by bridges and a single road necessitates the use of teleconferencing equipment to conduct public meetings. He indicates that Monroe County would like to receive legislative approval under a one-year "test program." According to the administrator, the use of technology would:

- allow greater public access and input by residents of the county regardless of the meeting location or the location of the resident;
- allow county commissioners to attend board meetings held outside their districts without the need to travel up to 100-plus miles; and
- save considerable salary and travel expenses by reducing the need for staff to travel to attend board meetings.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill in that it may provide an exemption to Florida law regarding public meetings.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

[4] Informal AGO issued November 29, 2005, relating to Sunshine Law, video conferencing of workshops.

1335

Your Upper Keys Connection

THE REPORTER

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PROOF OF PUBLICATION

STATE OF FLORIDA
COUNTY OF MONROE

Before the undersigned authority personally appeared JON O'NEILL who on oath, says that he is EDITOR of THE REPORTER, a weekly newspaper entitled to publish legal advertising published at Tavernier, Monroe County, Florida: that the attached copy of advertisement, being LEGAL NOTICE in said newspaper in the issue of:

January 27th 2006

Affiant further says that THE REPORTER is a newspaper published at Tavernier, in said Monroe County, Florida, and that the said newspaper has heretofore been continuously published in the said Monroe County, Florida, each week (on Friday), and has been entered as second class mail matter at the Post Office in Tavernier, in said County of Monroe, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any firm, person, or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper and that The Reporter is in full compliance with Chapter 50 of the Florida State Statutes on Legal and Official Advertisements.

Sworn to and subscribed before me this 27th day of January 2006.

MARGARET J. WHISENHUNT
MY COMMISSION #DD443753
EXPIRES: JUN 22, 2009
Bonded through 1st State Insurance

Margaret J Whisenhunt
Notary 1/27/06

NOTICE OF INTENT TO SEEK LEGISLATION

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2006 Legislature and any Special or Extended Sessions for passage of an act relating to Monroe County authorizing teleconferencing attendance by county commissioners of Monroe County to obtain and qualify a quorum at special meetings. The act would allow a county commissioner to be present for purposes of obtaining a quorum of the Board of County Commissioners by means of teleconferencing technology. It is proposed to be effective for a trial period of one year commencing July 1, 2006 and ending June 30, 2007. The act does not apply to regular monthly meetings of the Board of County Commissioners.

Copies of the proposed bill are available at the office of Representative Ken Sorensen, 90311 Overseas Highway, Tavernier, Florida and at the office of the Monroe County Administrator, 1100 Simonton Street, Key West, Florida.

Dated this 24th day of January, 2006.

Publish: 1/27/06, The Reporter, Tavernier, FL 33070 Ad# 12318

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Dated this 24th day of January, 2006. KW Citizen 1/29/06

211602

THE CITIZEN KEY WEST
The Florida Keys Only Daily Newspaper, Est. 1876
Cooke Communications, LLC
Florida Keys

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STATE OF FLORIDA
COUNTY OF MONROE

Before the undersigned authority personally appeared Randy G. Erickson, who on oath says that he is Vice-President of Advertising Operations of the Key West Citizen, a daily newspaper published in Key West, in Monroe County, Florida; that the attached copy of advertisement, being a legal notice in the matter of Notice of Intent to Seek Legislation

In the _____ Court, was published in said newspaper in the issues of January 29, 2006.

Affiant further says that the Key West Citizen is a newspaper published in Key West, in said Monroe County, Florida and that the said newspaper has heretofore been continuously published in said Monroe County, Florida every and has been entered as second-class mail matter at the post office in Key West, in said Monroe County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Signature of Affiant

Sworn and subscribed before me this 31 day of January, 2006

Notary Public: Marsha F Kirkwood Marsha F Kirkwood

Expires: September 15, 2009 Notary Seal

MARSHA F. KIRKWOOD
Notary Public - State of Florida
My Commission Expires Sep 15, 2009
Commission # DD 472620
Bonded By National Notary Assn.

Personally Known ___x___ Produced Identification _____
Type of Identification Produced _____

FLORIDA KEYS
KEYNOTER
Published Twice Weekly
Marathon, Monroe County, Florida

PROOF OF PUBLICATION

STATE OF FLORIDA
COUNTY OF MONROE

Before the undersigned authority personally appeared **WAYNE MARKHAM** who on oath, says that he is **PUBLISHER of the FLORIDA KEYS KEYNOTER**, a twice weekly newspaper published in Marathon, in Monroe County, Florida: that the attached copy of advertisement was published in said newspaper in the issues of: *(date(s) of publication)*

January 28, 2006

Affiant further says that the said FLORIDA KEYS KEYNOTER is a newspaper published at Marathon, in said Monroe County, Florida, and that the said newspaper has heretofore been continuously published in said Monroe County, Florida, twice each week (on Wednesday and Saturday) and has been entered as a second class mail matter at the post office in Marathon, in Monroe County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement. The affiant further says that he has neither paid nor promised any person, firm, or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper(s) and that The Florida Keys Keynoter is in full compliance with Chapter 50 of the Florida State Statutes on Legal and Official Advertisements.

Wayne Mar

Sworn to and subscribed before me this 31 Day of January 2006
(SEAL)

Kathleen Bryan
Notary

KATHLEEN BRYAN
Comm# DD0241827
Expires 12/12/2007
Bonded thru (800)432-4254
Florida Notary Assn., Inc

NOTICE OF INTENT TO SEEK LEGISLATION

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2006 Legislature and any Special or Extended Sessions for passage of an act relating to Monroe County authorizing teleconferencing attendance by county commissioners of Monroe County to obtain and qualify a quorum at special meetings. The act would allow a county commissioner to be present for purposes of obtaining a quorum of the Board of County Commissioners by means of teleconferencing technology. It is proposed to be effective for a trial period of one year commencing July 1, 2006 and ending June 30, 2007. The act does not apply to regular monthly meetings of the Board of County Commissioners.

Copies of the proposed bill are available at the office of Representative Ken Sorensen, 90311 Overseas Highway, Tavernier, Florida and at the Office of the Monroe County Administrator, 1100 Simonton Street, Key West, Florida.

Dated this 24th day of January, 2006.

Published Keynoter 1/28/06

1335

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: (Tracking # 14792)

SPONSOR(S): Ken Sorensen

RELATING TO: Monroe County, Teleconferencing Technology
[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Monroe

CONTACT PERSON: Rep. Ken Sorensen

PHONE # and E-Mail: (305) 853-1947 ken.sorensen@myfloridahouse.gov

I. *House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation.* ***Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.***

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [X] NO [ ]

(2) Has a public hearing been held? YES [X] NO [ ]

Date hearing held: February 3, 2006

Location: Key Largo

(3) Was this bill formally approved by a majority of the delegation members?
YES [X] NO [ ] UNIT RULE [ ] UNANIMOUS [ ]

II. *Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [X] NO [ ] DATE [January 28, 2006 **]**

Where? Monroe County **County** Monroe

Referendum in lieu of publication: YES [ ] NO [X]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional taxation requirement been met?
YES [ ] NO [ ] NOT APPLICABLE [X]

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

Ken Sorensen 2/03/06

Delegation Chair (*Original Signature*) **Date**

HOUSE OF REPRESENTATIVES

2006 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL #: (Tracking # 14792)

SPONSOR(S): Representative Ken Sorenson

RELATING TO: Monroe County- Telecommunication Technology

[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 06-07	FY 07-08
Expenditures:	12,000.00	0

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 06-07	FY 07-08
Federal:	0	0
State:	0	0
Local:	12,000.00	0

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 06-07	FY 07-08
Revenues:	0	0

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: **Reduction in travel costs-staff and public**

Reduction in staff costs-county

Disadvantages: **none**

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

None

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

True expense data received from Monroe County Sheriff's office. They presently use the technology.

PREPARED BY: _____ 2/2/06
[Must be signed by Preparer] Date

TITLE: County Administrator

REPRESENTING: Monroe County

PHONE: (305-292-4441)

E-Mail Address: willi-tom@monroecounty-fl.gov

1 A bill to be entitled
2 An act relating to Monroe County; providing definitions;
3 authorizing teleconferencing attendance by county
4 commissioners to qualify for a quorum at certain meetings;
5 requiring compliance with certain public meetings laws;
6 providing for future repeal; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. (1) As used in this section, the term:
11 (a) "Board" means the Board of County Commissioners of
12 Monroe County.
13 (b) "Special meeting" means a public meeting of the board
14 at which official action is taken, but does not include regular
15 monthly meetings of the board.
16 (c) "Teleconferencing equipment" means the electronic
17 transmission of audio, full-motion video, freeze-frame video,
18 compressed video, and digital video by any method available that
19 allows a person in one location to meet with another person in a
20 different location.
21 (2) Notwithstanding section 120.54(5)(b)2., Florida
22 Statutes, one or more board members participating through the
23 use of teleconferencing equipment shall be deemed in attendance
24 for purposes of establishing a quorum of board members for a
25 special meeting.
26 (3) Special meetings authorized through this section must
27 comply with the provisions of sections 286.0105, 286.011, and
28 286.012, Florida Statutes.

29 (4) This section is repealed June 30, 2007.

30 Section 2. This act shall take effect July 1, 2006.

HB 1411

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1411 Public Records
SPONSOR(S): Benson
TIED BILLS: HB 1409 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	9 Y, 0 N	Bell	Mitchell
2) Governmental Operations Committee		Williamson	Williamson
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1411 creates a public records exemption for certain information held by the Florida Health Information Network, Inc., established in HB 1409. Information made confidential and exempt includes:

- A patient's medical or health record;
- Trade secrets as defined in the Uniform Trade Secrets Act; and
- Any information received from a person from another state or nation or the Federal Government, which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

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

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 limits access to public records.

Safeguard Individual Liberty – The bill provides that patient medical records or health records held by the Florida Health Information Network, Inc., are confidential and exempt from public disclosure.

B. EFFECT OF PROPOSED CHANGES:

HB 1411 creates s. 408.0641, F.S., to provide a public records exemption for certain information held by the Florida Health Information Network, Inc. The confidential and exempt[1] information includes:

- A patient's medical or health record;
- Trade secrets as defined in the Uniform Trade Secrets Act;[2] and
- Any information received from a person from another state or nation or the Federal Government, which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

The bill provides for future review and repeal of the exemption on October 2, 2011, pursuant to the Open Government Sunset Review Act.[3] It also provides a statement of public necessity and provides a contingent effective date.

HB 1409

HB 1409 creates the Florida Health Information Network Act as a public/private partnership that will implement a statewide electronic medical records network. It establishes the Florida Health Information Network, Inc., as a not-for-profit corporation, which will be managed by an uncompensated board of directors. The initial board will consist of the current Governor's Health Information Infrastructure Advisory Board (for 18 months).

The primary duties of the Florida Health Information Network, Inc., are to oversee, coordinate, and implement a statewide electronic medical records network. Among the many duties listed in the enabling legislation, the Florida Health Information Network is charged with development of technical standards for electronic medical records and recruiting participants into the network.

The Agency for Health Care Administration (AHCA) will provide oversight of the Florida Health Information Network, Inc.

C. SECTION DIRECTORY:

Section 1. Creates s. 408.0641, F.S., to create a public records exemption for the Florida Health Information Network, Inc.

Section 2. Provides a statement of public necessity.

---

[1] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

[2] Section 688.002, F.S.

[3] Section 119.15, F.S.

Section 3. Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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 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

None.

1 A bill to be entitled
2 An act relating to public records; creating s. 408.0641,
3 F.S.; providing an exemption from public records
4 requirements for patient medical or health records, trade
5 secrets, and certain other information that is
6 confidential or exempt contained in records of the Florida
7 Health Information Network, Inc.; providing for review and
8 repeal; providing a statement of public necessity;
9 providing a contingent effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Section 408.0641, Florida Statutes, is created
14 to read:
15 408.0641 Florida Health Information Network, Inc.; public
16 records exemption.--
17 (1) The following information held by the Florida Health
18 Information Network, Inc., is confidential and exempt from of s.
19 119.07(1) and s. 24, Art. I of the State Constitution:
20 (a) A patient's medical or health record.
21 (b) Trade secrets as defined in s. 688.002.
22 (c) Any information received from a person from another
23 state or nation or the Federal Government which is otherwise
24 confidential or exempt pursuant to the laws of that state or
25 nation or pursuant to federal law.
26 (2) This section is subject to the Open Government Sunset
27 Review Act in accordance with s. 119.15 and shall stand repealed

28 on October 2, 2011, unless reviewed and saved from repeal
29 through reenactment by the Legislature.
30 Section 2. The Legislature finds that it is a public
31 necessity that a patient's medical or health record held by the
32 Florida Health Information Network, Inc., a not-for-profit
33 corporation, be made confidential and exempt from public records
34 requirements. Matters of personal health are traditionally
35 private and confidential concerns between the patient and the
36 health care provider. The private and confidential nature of
37 personal health matters pervades both the public and private
38 health care sectors. For these reasons, the individual's
39 expectation of and right to privacy in all matters regarding his
40 or her personal health necessitates this exemption. The
41 Legislature further finds that it is a public necessity to
42 protect a patient's medical record or health record because the
43 release of such record could be defamatory to the patient or
44 could cause unwarranted damage to the name or reputation of that
45 patient. The Legislature also finds that it is a public
46 necessity to protect the release of a trade secret as defined in
47 s. 688.002, Florida Statutes. A trade secret derives independent
48 economic value, actual or potential, from not being generally
49 known to, and not being readily ascertainable by proper means
50 by, other persons who can obtain economic value from its
51 disclosure or use. Without an exemption from public records
52 requirements for a trade secret as defined in s. 688.002,
53 Florida Statutes, that trade secret becomes a public record when
54 held by the Florida Health Information Network, Inc., and must
55 be divulged upon request. Divulgence of any trade secret under

56 the public records law would destroy the value of that property.
57 Release of that information would give business competitors an
58 unfair advantage and weaken the position of the corporation in
59 the marketplace. Thus, the Legislature finds that it is a public
60 necessity that a trade secret be made confidential and exempt
61 from public records requirements. Finally, the Legislature finds
62 that it is a public necessity to protect information received by
63 the Florida Health Information Network, Inc., from a person from
64 another state or nation or the Federal Government which is
65 otherwise exempt or confidential pursuant to the laws of that
66 state or nation or pursuant to federal law. Without this
67 protection, another state or nation or the Federal Government
68 might be less likely to provide information to the corporation
69 in the furtherance of its duties and responsibilities.
70 Section 3. This act shall take effect July 1, 2006, if
71 House Bill 1409 or similar legislation is adopted in the same
72 legislative session or an extension thereof and becomes law.

HB 7085

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7085 PCB DS 06-03 Succession to the Office of Governor
SPONSOR(S): Domestic Security Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Domestic Security Committee	9 Y, 0 N	Wiggins	Newton
1) Governmental Operations Committee		Mitchell	Williamson
2) State Administration Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill revises the statutory succession to the office of Governor. In the event of a vacancy in the office of Governor and the office of Lieutenant Governor, the bill provides for the following officers/persons to become Governor: Attorney General, then Chief Financial Officer, then Commissioner of Agriculture, and ultimately a person elected by a majority vote in a joint session of the Legislature if there are vacancies in all of the other offices.

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

This bill does not appear to have a fiscal impact on state government revenues or expenditures. This bill does not appear to have an impact on local government revenues or expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill revises the line of succession for the office of Governor in the event of a vacancy in the office of Governor and the office of Lieutenant Governor.

B. EFFECT OF PROPOSED CHANGES:

Succession to the Office of Governor

Article IV, section 3(a) of the Florida Constitution provides that the Lieutenant Governor becomes Governor upon a vacancy in the office of Governor. This section requires further succession to the office of Governor be prescribed by law, provided any successor must serve for the remainder of the term.

Section 14.055, Florida Statutes, was created in 1970 to fulfill the constitutional requirement of further succession provided by law. This section mirrors the Florida Constitution in providing for the Lieutenant Governor to become Governor upon a vacancy in the Office of the Governor.

This section, as amended by the Legislature in 2003, then provides for a vacancy in the office of Lieutenant Governor and allows the Governor to appoint a successor to serve for the remainder of the term. This successor is prohibited, however, from becoming Governor if there is a vacancy in the office of Governor with more than 28 months remaining in the term; instead, this section requires a Governor and Lieutenant Governor to be determined at the next statewide general election.

If there is a vacancy in the office of the Governor and the office of Lieutenant Governor, this section currently sets forth the following succession:

- Secretary of State
- Attorney General
- Comptroller
- Treasurer
- Commissioner of Education
- Commissioner of Agriculture
- Person elected by a majority vote in a joint session of the Legislature within 15 days.

Each of the designated positions was previously a statewide elected office and a member of the Florida Cabinet. In November 1998, however, voters approved Revision Number 8, which was proposed by the 1997-1998 Constitutional Revision Commission. Effective January 7, 2003,[1] this revision merged the Cabinet offices of Treasurer and Comptroller into one Chief Financial Officer and removed the Secretary of State and Commissioner of Education as elected Cabinet offices. Thus, the Cabinet now consists of the Chief Financial Officer, the Attorney General, and the Agriculture Commissioner.[2]

This bill amends the line of succession in the event of a vacancy in the office of Governor and the office of Lieutenant Governor:

- Attorney General
- Chief Financial Officer
- Commissioner of Agriculture

[1] Fla. Const., art. XII, § 24.
[2] Fla. Const., art. IV, § 4.

- Person elected by a majority vote in a joint session of the Legislature within 15 days.

These changes appear consistent with the original statutory succession enacted by the Legislature; that is, it follows the original ordering to provide for statewide, elected officers and members of the Cabinet to become Governor and removes positions which are now appointed.

C. SECTION DIRECTORY:

Section 1: Amends section 14.055, Florida Statutes, to change the succession to the office of Governor.

Section 2: Provides that the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

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 counties or municipalities have to raise revenue.

2. Other:

   <u>Succession to Office of Governor</u>

   Article IV, section 3(a) of the Florida Constitution requires succession to the office of Governor to be prescribed by law with the successor serving the remainder of the term. The changes in this bill do

not appear to violate this provision. The provision of existing law which prohibits a Lieutenant Governor, who was appointed by a Governor to fill a vacancy in the office of Lieutenant Governor, from becoming Governor if there is more than 28 months remaining in the term may violate the provisions of this section.[3]

B. RULE-MAKING AUTHORITY:

This 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

None.

[3] *But see* Fla. Const., art. IV, § 1(f) (which authorizes the Governor to fill any vacancy, not otherwise provided for in the Florida Constitution, for the remainder of the term of office if less than twenty-eight months or otherwise until the next general election); *cf.* Fla. Const., art. IV, sec. 5(a) (requiring joint candidacies for the offices of Governor and Lieutenant Governor).

1 A bill to be entitled
2 An act relating to succession to the office of Governor;
3 amending s. 14.055, F.S.; revising the provision of law
4 specifying the authorized successors to the office of
5 Governor and their order or succession; providing an
6 effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 14.055, Florida Statutes, is amended to
11 read:
12 14.055 Succession to office of Governor.--Upon vacancy in
13 the office of Governor, the Lieutenant Governor shall become
14 Governor. Upon vacancy in the office of Lieutenant Governor, the
15 Governor shall appoint a successor who shall serve for the
16 remainder of the term, provided that if after the ~~such~~
17 appointment a vacancy occurs ~~shall occur~~ in the office of
18 Governor with more than 28 months remaining in the term, then at
19 the next statewide general election the electors shall choose a
20 Governor and Lieutenant Governor to fill the remainder of the
21 term in the manner provided in s. 5, Art. IV of the State
22 Constitution. Upon vacancy in the office of Governor and in the
23 office of Lieutenant Governor, ~~the Secretary of State shall~~
24 ~~become Governor; or if the office of Secretary of State be~~
25 ~~vacant, then~~ the Attorney General shall become Governor; ~~or~~ if
26 the office of Attorney General is ~~be~~ vacant, ~~then the~~
27 ~~Comptroller shall become Governor; or if the office of~~
28 ~~Comptroller be vacant, then~~ the Chief Financial Officer

29 ~~Treasurer~~ shall become Governor; or if the office of Chief
30 Financial Officer is ~~Treasurer be~~ vacant, ~~then the Commissioner~~
31 ~~of Education shall become Governor; or if the office of~~
32 ~~Commissioner of Education be vacant, then~~ the Commissioner of
33 Agriculture shall become Governor. Except as otherwise provided
34 in this section with respect to an appointed successor to the
35 office of Lieutenant Governor, a successor under this section
36 shall serve for the remainder of the term and shall receive all
37 the rights, privileges, and emoluments of the Governor. In case
38 a vacancy occurs ~~shall occur~~ in the office of Governor and
39 provision is not made in this section ~~herein~~ for filling the
40 ~~such~~ vacancy, ~~then~~ the Speaker of the House of Representatives
41 and the President of the Senate shall convene the Legislature by
42 joint proclamation within 15 days for the purpose of choosing a
43 person to serve as Governor for the remainder of the term. A
44 successor shall be elected by a majority vote in a joint session
45 of both houses.
46 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7137 PCB CRJU 06-06 DOC Random Drug Testing
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	8 Y, 0 N	Cunningham	Kramer
1) Governmental Operations Committee		Mitchell	Williamson
2) Criminal Justice Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

The Department of Corrections is authorized to test its employees for the illegal use of controlled substances, including anabolic steroids, using *random* drug testing. The Department of Corrections is, however, precluded from testing its employees for the illegal use of steroids using *reasonable suspicion* drug testing under the Drug-Free Workplace Act because it does not include anabolic steroids in the definition of "drugs."

This bill authorizes the Department of Corrections to develop a program to test employees in "safety-sensitive" and "high-risk" positions for anabolic steroids using *reasonable suspicion* drug testing. The reasonable suspicion drug testing must be conducted in a manner "consistent with" the Drug-Free Workplace Act, but may also be conducted based on violent acts or violent behavior on or off duty.

This bill grants rulemaking authority to the Department of Corrections. Because this bill does not define safety-sensitive or high-risk positions or the testing procedure, this rulemaking authority is very broad and may raise constitutional issues.

This bill does not appear to have a fiscal impact on state government revenues. The Department of Corrections estimates a "minimal" fiscal impact on state government expenditures. This bill does not appear to have a fiscal impact on local government revenues or expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill authorizes the Department of Corrections to conduct reasonable suspicion drug testing of certain employees for the illegal use of steroids. This bill increases the rulemaking authority of the Department of Corrections.

B. EFFECT OF PROPOSED CHANGES:

Drug Free-Workplace Act: Generally

Section 112.0455, Florida Statutes, is the Drug-Free Workplace Act. The Drug-Free Workplace Act authorizes[1] employers to conduct four types of drug tests: job applicant, reasonable suspicion, routine fitness for duty,[2] and follow-up.[3] The Drug-Free Workplace Act sets forth procedures for the collection of all specimens[4] and standards for laboratories.[5] The Drug-Free Workplace Act also provides employee protections[6] and confidentiality.[7]

Drug Free-Workplace Act: Reasonable Suspicion Drug Testing

Under the Drug-Free Workplace Act, *reasonable suspicion* drug testing is based on a belief that an employee is using or has used drugs in violation of the employer's policy and is drawn from specific, objective, and articulable facts and reasonable inferences from those facts in light of experience.[8] Among the facts and inferences permitted by the Drug-Free Workplace Act:

- Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug.
- Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
- A report of drug use, provided by a reliable and credible source, which has been independently corroborated.
- Evidence that an individual has tampered with a drug test during employment with the current employer.
- Information that an employee has caused, or contributed to, an accident while at work.
- Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

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[1] Fla. Stat. § 112.0455(4) (2005) (employers do not have a legal duty to request that an employee undergo drug testing).
[2] Fla. Stat. § 112.0455(7)(c) (2005) (testing conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group.).
[3] Fla. Stat. § 112.0455(7)(d) (2005) (testing which the employer may conduct for up to 2 years after an employee enters an employee assistance program for drug-related problems, or an alcohol and drug rehabilitation program.).
[4] Fla. Stat. § 112.0455(8) (2005).
[5] Fla. Stat. § 112.0455(12) (2005).
[6] Fla. Stat. § 112.0455(8) (2005).
[7] Fla. Stat. § 112.0455(11) (2005).
[8] Fla. Stat. § 112.0455(5)(j) (2005) (The DFWA provides that reasonable suspicion drug testing shall not be required except upon the recommendation of a supervisor who is at least one level of supervision higher than the immediate supervisor of the employee in question.).

Drug Free-Workplace Act: Steroids Not Tested

The drugs and metabolites tested by the Drug-Free Workplace Act do not include steroids.[9] Thus, state agencies are precluded from testing employees for steroids through *reasonable suspicion* drug testing under the Drug-Free Workplace Act.

Random Drug Testing: Department of Corrections

Section 944.474, Florida Statutes, prohibits employees of the Department of Corrections from testing positive for the illegal use of controlled substances and authorizes the Department of Corrections to develop a program for the *random* drug testing of all employees. Section 944.474, Florida Statutes, does not, however, define controlled substances or random drug testing.

Yet, the Department of Corrections, by rule, defines "random drug testing" as "a drug test conducted based on a computer generated random sampling in positions identified as being subject to random testing, administered for purposes of determining the presence of drugs or their metabolites."[10] Relying on the definition for "controlled substances" in section 893.02(4), Florida Statutes,[11] which includes steroids, the Department of Corrections tests employees for steroids through *random* drug testing.

Effect of the Bill

This bill authorizes the Department of Corrections to conduct *reasonable suspicion* drug testing of employees in safety-sensitive and high-risk positions for anabolic steroids[12]. The reasonable suspicion drug testing must be conducted in a manner consistent with the DFWA, but may also be conducted based on violent acts or violent behavior on or off duty.

C. SECTION DIRECTORY:

Section 1: Amends s. 944.474, F.S., to authorize the Department of Corrections to conduct reasonable suspicion drug testing of employees in safety sensitive or high risk positions for steroids.

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 have a fiscal impact on state government revenues.

2. Expenditures:

   The Department of Corrections expects the fiscal impact on state government revenues to be "minimal," with any costs will be absorbed into the existing budget.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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[9] Fla. Stat. § 121.0455(13) (2005).
[10] Rule 33-208.403, F.A.C.
[11] Fla. Stat. § 893.02(4) (2005) (means any substance named or described in Schedules I-V of section 893.03, Florida Statutes).
[12] Fla. Stat. § 893.03(3)(d) (2005) (An anabolic steroid is any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth and includes 48 listed substances).

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Fourth Amendment

The primary issues raised by employee drug testing policies revolve around Fourth Amendment rights against unlawful search and seizure. In general, the courts have upheld reasonable suspicion drug testing policies based upon *on-duty* drug use or impairment.[13] Courts have been divided, however, on the issue of whether *off-duty* drug use or impairment can form a legitimate basis for reasonable suspicion drug testing without falling afoul of the Fourth Amendment. The distinguishing factor seems to be whether the employee is in a safety-sensitive position.

For example, in *Benavidez v. Albuquerque*,[14] the court indicated that "information which would lead a reasonable person to suspect non safety sensitive employees . . . of on-the job drug use, possession, or impairment" would provide a sufficient basis for reasonable suspicion drug testing. Additionally, in *American Federation of Government Employees v. Roberts*,[15] the court found that employees of a correctional institution were primary law enforcement officers and therefore could be subjected to reasonable suspicion drug testing based upon either on or off duty conduct. Moreover, in *American Federation of Government Employees v. Martin*,[16] the court held that reasonable suspicion of safety sensitive employees could be conducted based on off-duty drug use or impairment.

Conversely, in *National Treasury Employees v. Yeutter*,[17] the court held that a reasonable suspicion drug testing program that tested non-safety sensitive employees for off duty drug use was unconstitutional. Similarly, in *Rutherford v. Albuquerque*,[18] the court found drug testing unreasonable, in part, because it screened for off-duty drug use which was wholly unrelated to employer's asserted interest in on the job safety.

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[13] *See e.g., Saavedra v. Albuquerque*, 73 F.3d 1525 (10th Cir. 1996); *Garrison v. Department of Justice*, 72 F.3d 1566 (Fed. Cir. 1995).
[14] 101 F. 3d 620 (10th Cir. 1996)
[15] 9 F.3d at 1468 (9th Cir. 1993)
[16] 969 F. 2d 788, 792-93 (9th Cir. 1992)
[17] 918 F. 2d 968 (D.C. Cir. 1990)
[18] 77 F. 3d 1258, 1263 (10th Cir. 1996)

By limiting reasonable suspicion drug testing to employees in safety-sensitive and high-risk positions, this bill is consistent with the line of authorities which support testing employees in safety-sensitive positions.

Delegation of Legislative Power

The lack of definitions and procedures may constitute an unconstitutional delegation of legislative power because the bill may not provide adequate guidelines for proper implementation.[19]

First, the bill does not define what constitutes employment in a "safety-sensitive" or "high-risk" position. The Department of Corrections, however, needs definitions in order to implement this legislation. Without additional guidance, the Department of Corrections could define "high-risk" to have the same definition as "special risk" in section 121.0455(5)(n), Florida Statutes, and then subject all certified corrections officers to reasonable suspicion drug testing.

Second, the bill requires reasonable suspicion drug testing to be conducted in a manner that is consistent with section 112.0455, Florida Statutes. Section 112.0455, Florida Statutes, however, provides very detailed procedures and rights. It is not clear how much of section 112.0455, Florida Statutes, that the Department of Corrections needs to incorporate in its reasonable suspicion drug testing to be "consistent" with this section.

B. RULE-MAKING AUTHORITY:

This bill requires the Department of Corrections to adopt rules. While the authorization language is standard, the amount of discretion vested with the Department of Corrections to provide definitions and a testing procedure may constitute an unconstitutional delegation of legislative power.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Lack of Definitions

The Legislature may wish to define "safety-sensitive"[20] and "high-risk" positions to assist the Department of Corrections in implementing this legislation and to resolve any potential issues related to being an unconstitutional delegation of legislative power.

Drafting Issue: Lack of Procedures

It is not clear whether employees who are legally using a controlled substance, such as a prescription drug, will be disciplined should they receive a positive drug test. The Drug-Free Workplace Act, which is normally applicable to *reasonable suspicion* drug testing, addresses this concern by requiring agencies with drug-testing programs to give employees being tested a copy of the agency's drug-testing policy, which must include procedures for employees to confidentially report the use of prescription or nonprescription medications both before and after being tested.[21] Additionally, the drug-testing policy must include a statement that an employee who receives a positive confirmed drug test result may contest or explain the result to the employer within five working days after written notification of the positive test result.[22] The Legislature may wish to designate which procedures in section 112.0455, Florida Statutes, should be used by the Department of Corrections in implementing reasonable suspicion drug testing.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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[19] *See, e.g., Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).
[20] Section 112.0455(5)(m), Florida Statutes, provides such a definition.
[21] Fla. Stat. § 112.0455 (2005).
[22] *Id.*

1 A bill to be entitled
2 An act relating to drug testing within the Department of
3 Corrections; amending s. 944.474, F.S.; authorizing the
4 department to develop a program for testing employees who
5 are in safety-sensitive and high-risk positions for
6 certain controlled substances based upon a reasonable
7 suspicion; providing for the reasonable suspicion to
8 include violent acts or behavior of an employee while on
9 or off duty; requiring the department to adopt rules;
10 providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Subsection (2) of section 944.474, Florida
15 Statutes, is amended to read:
16 944.474 Legislative intent; employee wellness program;
17 drug and alcohol testing.--
18 (2) Under no circumstances shall employees of the
19 department test positive for illegal use of controlled
20 substances. An employee of the department may not be under the
21 influence of alcohol while on duty. In order to ensure that
22 these prohibitions are adhered to by all employees of the
23 department and notwithstanding s. 112.0455, the department may
24 develop a program for the random drug testing of all employees.
25 The department may randomly evaluate employees for the
26 contemporaneous use or influence of alcohol through the use of
27 alcohol tests and observation methods. Notwithstanding s.
28 112.0455, the department may develop a program for the

29 reasonable suspicion drug testing of employees who are in
30 safety-sensitive and high-risk positions for controlled
31 substances listed in s. 893.03(3)(d). The reasonable suspicion
32 drug testing authorized by this subsection shall be conducted in
33 a manner that is consistent with s. 112.0455, but may also
34 include testing upon reasonable suspicion based on violent acts
35 or violent behavior of an employee who is on or off duty. The
36 department shall adopt rules pursuant to ss. 120.536(1) and
37 120.54 that are necessary to administer this subsection.
38 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-04 OGSR Medical and Health Information
SPONSOR(S): Governmental Operations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

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

Current law provides a public records exemption for medical information, health information, and financial account numbers held by the Department of Health. The bill reenacts and expands the exemption for medical and health records making it applicable to all agencies. It repeals the public records exemption for financial account numbers because it is duplicative of an exemption found in current law.

This bill provides for retroactive application and for future review and repeal of the exemption. It also provides a statement of public necessity as required by the State Constitution.

The bill may have a minimal non-recurring 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 expands the public records exemption thereby decreasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

Financial Account Numbers

Chapter 119, F.S., provides a public records exemption for bank account, debit, charge, and credit card numbers (financial account numbers).[1] The exemption applies to all agencies.[2]

Medical and Health Information

Current law provides several agency-specific public records exemptions for medical and health information. For example, the Florida Automobile Joint Underwriting Association has a public records exemption for information relating to the medical condition or medical status of an employee.[3] Medical information pertaining to an agency employee is exempt from public records requirements.[4] The health records of a veteran admitted to residency at the Veterans' Domiciliary Home of Florida are confidential and exempt.[5] An exemption applicable to all agencies for medical and health information does not exist.

Department of Health

Current law provides a public records exemption for personal identifying information and financial account numbers contained in records relating to a person's health or eligibility for health-related services when in the possession of the Department of Health.[6] The information is confidential and exempt[7] and may be released:

- With the written consent of the person or the person's legal representative.
- In a medical emergency.
- By court order.
- To a health research entity pursuant to a research protocol approved by the department; however, the department may deny the entity's request if certain requirements are not met.

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[1] Section 119.071(5)(b), F.S.

[2] "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government. It also includes the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any public or private agency, person, partnership, corporation, or business acting on behalf of a public agency. Section 119.011(2), F.S.

[3] Section 627.311(4), F.S.

[4] Section 119.071(4)(b), F.S.

[5] Section 296.09, F.S.

[6] Section 119.0712(1), F.S.

[7] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

Pursuant to the Open Government Sunset Review Act,[8] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill reenacts and expands the public records exemption for the Department of Health. The bill expands the exemption to include medical and health information held by *any* agency, thus, creating a general exemption from public records requirements. It provides for retroactive application of the exemption.[9]

The bill removes the exemption for financial account numbers because it is duplicative of the general exemption[10] found in current law.

Current law authorizes the release of medical or health information to a health research entity that has entered into a data-use agreement with the department. The bill continues this exception; however, it reorganizes the requirements that must be included in the data-use agreement.

The bill extends the repeal date from October 2, 2006, to October 2, 2011. It also provides a statement of public necessity as required by the State Constitution.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to reenact and expand the public records exemption for medical and health records.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 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:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   See FISCAL COMMENTS.

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[8] Section 119.15, F.S.

[9] In 2001, the Florida Supreme Court ruled that a public records exemption does not apply retroactively unless the legislation clearly provides for retroactive application of the exemption. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

[10] Section 119.071(5)(b), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal non-recurring increase in state and local government expenditures. A bill enacting or amending the public records law causes a non-recurring negative fiscal impact in the year of enactment due to training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees must be retrained. Because the bill expands the public records exemption, employee-training activities are required thus causing a minimal nonrecurring increase in expenditures.

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 State 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 *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill requires a two-thirds vote for passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

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

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

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

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding medical and health
4 information; amending s. 119.0721, F.S.; expanding the
5 public records exemption; providing for retroactive
6 application; providing for future review and repeal;
7 providing a statement 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 (1) of section 119.0712, Florida
13 Statutes, is renumbered as paragraph (g) of subsection (5) of
14 section 119.071, Florida Statutes, and is amended to read:
15 119.071 General exemptions from inspection or copying of
16 public records.--
17 (5) OTHER PERSONAL INFORMATION.--
18 (g)1. ~~119.0712 Executive branch agency-specific exemptions~~
19 ~~from inspection or copying of public records.--~~
20 ~~(1) DEPARTMENT OF HEALTH.--~~Medical records or health records
21 ~~All personal identifying information; bank account numbers; and~~
22 ~~debit, charge, and credit card numbers contained in records~~
23 ~~relating to an individual's personal health or eligibility for~~
24 ~~health-related services~~ held by an agency before, on, or after
25 October 1, 2006, ~~the Department of Health~~ are confidential and
26 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
27 Constitution~~, except as otherwise provided in this subsection~~.

28 2. Except as otherwise provided by law, medical records or
29 health records ~~information made confidential and exempt by this~~
30 ~~subsection~~ shall be disclosed:
31 a. ~~(a)~~ With the express written consent of the individual or
32 the individual's legally authorized representative.
33 b. ~~(b)~~ In a medical emergency, but only to the extent
34 necessary to protect the health or life of the individual.
35 c. ~~(c)~~ By court order upon a showing of good cause.
36 d. ~~(d)~~ To a health research entity performing research of
37 scientific merit~~,~~ if the request is not an administrative burden
38 for the agency and the entity enters into a data-use agreement
39 with the agency. The data-use agreement must provide that the
40 entity will:
41 I. Use ~~seeks~~ the records ~~or data~~ pursuant to a research
42 protocol approved by the agency and a human studies institutional
43 review board; ~~department,~~
44 II. Not permit the identification of persons;
45 III. Not use the records for any other purpose;
46 IV. Not conduct intrusive follow-back contacts;
47 V. Maintain ~~Maintains~~ the records ~~or data~~ in accordance
48 with the approved protocol;
49 VI. Acknowledge that the copies of records issued pursuant
50 to this subparagraph are the property of the agency;
51 VII. Destroy the records after the research is concluded;
52 VIII. Notify the agency in writing once the entity has
53 destroyed the records;~~,~~ and
54 VII. Pay the copying fees provided in ~~enters into a purchase~~
55 ~~and data-use agreement with the department, the fee provisions of~~
56 ~~which are consistent with~~ s. 119.07(4).

57
58 ~~The department may deny a request for records or data if the~~
59 ~~protocol provides for intrusive follow-back contacts, has not~~
60 ~~been approved by a human studies institutional review board, does~~
61 ~~not plan for the destruction of confidential records after the~~
62 ~~research is concluded, is administratively burdensome, or does~~
63 ~~not have scientific merit. The agreement must restrict the~~
64 ~~release of any information that would permit the identification~~
65 ~~of persons, limit the use of records or data to the approved~~
66 ~~research protocol, and prohibit any other use of the records or~~
67 ~~data. Copies of records or data issued pursuant to this paragraph~~
68 ~~remain the property of the department.~~
69 3. This paragraph ~~subsection~~ is subject to the Open
70 Government Sunset Review Act in accordance with s. 119.15 and
71 shall stand repealed on October 2, 2011 ~~2006~~, unless reviewed and
72 saved from repeal through reenactment by the Legislature.
73 Section 2. The Legislature finds that it is a public
74 necessity that medical records or health records held by an
75 agency before, on, or after October 1, 2006, be made confidential
76 and exempt from public records requirements, with certain
77 exceptions. Matters of personal health are traditionally private
78 and confidential concerns between the patient and the health care
79 provider. The private and confidential nature of personal health
80 matters pervades both the public and private health care sectors.
81 For these reasons, the individual's expectation of and right to
82 privacy in all matters regarding his or her personal health
83 necessitates this exemption. The Legislature further finds it is
84 a public necessity to protect a person's medical records or
85 health records held by an agency because the release of such

86 records could be defamatory to the person or could cause
87 unwarranted damage to the name or reputation of the person.
88 Section 3. This act shall take effect October 1, 2006.

PCB GO 06-07B

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

The bill reenacts the public records exemption for the Communications Services Tax Simplification Law. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Background

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

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

Effect of Bill

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

C. SECTION DIRECTORY:

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

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The bill may represent a minimal non-recurring positive impact on state government expenditures. A bill enacting or amending public records law causes a non-recurring negative fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees

[1] Chapter 2000-260, Laws of Florida, codified in chapter 202, F.S.
[2] A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year (s. 775.082(4)(a), F.S.) and a fine not to exceed $1,000 (s. 775.083(1)(d), F.S.).
[3] Section 119.15, F.S.

must be retrained. Because the bill eliminates the repeal, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

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

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

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

narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding the Communications Services
4 Tax Simplification Law; amending s. 213.053, F.S.; making
5 organizational and grammatical changes; deleting the
6 provision that provides for the repeal of the exemption
7 under the Open Government Sunset Review Act; providing an
8 effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 213.053, Florida Statutes, is amended to
13 read:
14 213.053 Confidentiality and information sharing.--
15 (1)~~(a) The provisions of~~ This section applies ~~apply~~ to:
16 (a) Section ~~s.~~ 125.0104, county government;
17 (b) Section ~~s.~~ 125.0108, tourist impact tax;
18 (c) Chapter 175, municipal firefighters' pension trust
19 funds;
20 (d) Chapter 185, municipal police officers' retirement
21 trust funds;
22 (e) Chapter 198, estate taxes;
23 (f) Chapter 199, intangible personal property taxes;
24 (g) Chapter 201, excise tax on documents;
25 (h) Chapter 202, the Communications Services Tax
26 Simplification Law;
27 (i) Chapter 203, gross receipts taxes;
28 (j) Chapter 211, tax on severance and production of
29 minerals;

30 (k) Chapter 212, tax on sales, use, and other transactions;
31 (l) Chapter 220, income tax code;
32 (m) Chapter 221, emergency excise tax;
33 (n) Section ~~s.~~ 252.372, emergency management, preparedness,
34 and assistance surcharge;
35 (o) Section s. 370.07(3), Apalachicola Bay oyster
36 surcharge;
37 (p) Chapter 376, pollutant spill prevention and control;
38 (q) Section ~~s.~~ 403.718, waste tire fees;
39 (r) Section ~~s.~~ 403.7185, lead-acid battery fees;
40 (s) Section ~~s.~~ 538.09, registration of secondhand dealers;
41 (t) Section ~~s.~~ 538.25, registration of secondary metals
42 recyclers;
43 (u) Sections ~~ss.~~ 624.501 and 624.509-624.515, insurance
44 code;
45 (v) Section ~~s.~~ 681.117, motor vehicle warranty enforcement;
46 and
47 (w) Section ~~s.~~ 896.102, reports of financial transactions
48 in trade or business.
49 ~~(b) The provisions of this section also apply to chapter~~
50 ~~202, the Communications Services Tax Simplification Law. This~~
51 ~~paragraph is subject to the Open Government Sunset Review Act of~~
52 ~~1995 in accordance with s. 119.15, and shall stand repealed on~~
53 ~~October 2, 2006, unless reviewed and saved from repeal through~~
54 ~~reenactment by the Legislature.~~
55 (2)(a) ~~Except as provided in subsections (3), (4), (5),~~
56 ~~(6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), and~~
57 ~~(17),~~ All information contained in returns, reports, accounts, ~~or~~
58 declarations received by the department, including investigative

59 reports and information and including letters of technical
60 advice, is confidential except for official purposes and is
61 exempt from ~~the provisions of~~ s. 119.07(1).
62 (b) Any officer or employee, or former officer or employee,
63 of the department who divulges any such information in any
64 manner, except for such official purposes, commits a misdemeanor
65 of the first degree, punishable as provided in s. 775.082 or s.
66 775.083.
67 (3) The department shall permit a taxpayer, his or her
68 authorized representative, or the personal representative of an
69 estate to inspect the taxpayer's return and may furnish him or
70 her an abstract of such return. A taxpayer may authorize the
71 department in writing to divulge specific information concerning
72 the taxpayer's account.
73 (4) The department, while providing unemployment tax
74 collection services under contract with the Agency for Workforce
75 Innovation through an interagency agreement pursuant to s.
76 443.1316, may release unemployment tax rate information to the
77 agent of an employer, which agent provides payroll services for
78 more than 500 employers, pursuant to the terms of a memorandum of
79 understanding. The memorandum of understanding must state that
80 the agent affirms, subject to the criminal penalties contained in
81 ss. 443.171 and 443.1715, that the agent will retain the
82 confidentiality of the information, that the agent has in effect
83 a power of attorney from the employer which permits the agent to
84 obtain unemployment tax rate information, and that the agent
85 shall provide the department with a copy of the employer's power
86 of attorney upon request.

87 (5) ~~(4)~~ Nothing contained in this section shall prevent the
88 department from:
89 (a) Publishing statistics so classified as to prevent the
90 identification of particular accounts, reports, declarations, or
91 returns; or ~~prevent the department from~~
92 (b) Disclosing to the Chief Financial Officer the names and
93 addresses of those taxpayers who have claimed an exemption
94 pursuant to s. 199.185(1)(i) or a deduction pursuant to s.
95 220.63(5).
96 (6) ~~(5)~~ The department may make available to the Secretary
97 of the Treasury of the United States or his or her delegate, the
98 Commissioner of Internal Revenue of the United States or his or
99 her delegate, the Secretary of the Department of the Interior of
100 the United States or his or her delegate, or the proper officer
101 of any state or his or her delegate, exclusively for official
102 purposes, information to comply with any formal agreement for the
103 mutual exchange of state information with the Internal Revenue
104 Service of the United States, the Department of the Interior of
105 the United States, or any state.
106 (7)(a) ~~(6)~~ Any information received by the Department of
107 Revenue in connection with the administration of taxes,
108 including, but not limited to, information contained in returns,
109 reports, accounts, or declarations filed by persons subject to
110 tax, shall be made available ~~by the department~~ to the following
111 in the performance of their official duties:
112 1. The Auditor General or his or her authorized agent; ~~,~~
113 2. The director of the Office of Program Policy Analysis
114 and Government Accountability or his or her authorized agent; ~~,~~

115 3. The Chief Financial Officer or his or her authorized
116 agent;~~,~~
117 4. The Director of the Office of Insurance Regulation of
118 the Financial Services Commission or his or her authorized
119 agent;~~, or~~
120 5. A property appraiser or tax collector or their
121 authorized agents pursuant to s. 195.084(1);~~, in the performance~~
122 ~~of their official duties,~~ or to
123 6. Designated employees of the Department of Education
124 solely for determination of each school district's price level
125 index pursuant to s. 1011.62(2).~~;~~
126 (b) ~~However,~~ No information shall be disclosed as provided
127 in paragraph (a) ~~to the Auditor General or his or her authorized~~
128 ~~agent, the director of the Office of Program Policy Analysis and~~
129 ~~Government Accountability or his or her authorized agent, the~~
130 ~~Chief Financial Officer or his or her authorized agent, the~~
131 ~~Director of the Office of Insurance Regulation or his or her~~
132 ~~authorized agent, or to a property appraiser or tax collector or~~
133 ~~their authorized agents, or to designated employees of the~~
134 ~~Department of Education~~ if such disclosure is prohibited by
135 federal law.
136 (c) Any person designated in paragraph (a) ~~The Auditor~~
137 ~~General or his or her authorized agent, the director of the~~
138 ~~Office of Program Policy Analysis and Government Accountability~~
139 ~~or his or her authorized agent, the Chief Financial Officer or~~
140 ~~his or her authorized agent, the Director of the Office of~~
141 ~~Insurance Regulation or his or her authorized agent, and the~~
142 ~~property appraiser or tax collector and their authorized agents,~~
143 ~~or designated employees of the Department of Education~~ shall be

144 subject to the same requirements of confidentiality and the same
145 penalties for violation of the requirements as the department.
146 (d) For the purpose of this subsection, "designated
147 employees of the Department of Education" means only those
148 employees directly responsible for calculation of price level
149 indices pursuant to s. 1011.62(2). It does not include the
150 supervisors of such employees or any other employees or elected
151 officials within the Department of Education.
152 (8) ~~(7)~~ Notwithstanding any other provision of this section,
153 the department may provide:
154 (a) Information relative to chapter 211, chapter 376, or
155 chapter 377 to the proper state agency in the conduct of its
156 official duties.
157 (b) Names, addresses, and dates of commencement of business
158 activities of corporations to the Division of Corporations of the
159 Department of State in the conduct of its official duties.
160 (c) Information relative to chapter 212 and chapters 561
161 through 568 to the Division of Alcoholic Beverages and Tobacco of
162 the Department of Business and Professional Regulation in the
163 conduct of its official duties.
164 (d) Names, addresses, and sales tax registration
165 information to the Division of Hotels and Restaurants of the
166 Department of Business and Professional Regulation in the conduct
167 of its official duties.
168 (e) Names, addresses, taxpayer identification numbers, and
169 outstanding tax liabilities to the Department of the Lottery and
170 the Office of Financial Regulation of the Financial Services
171 Commission in the conduct of their official duties.

172 (f) State tax information to the Nexus Program of the
173 Multistate Tax Commission pursuant to any formal agreement for
174 the exchange of mutual information between the department and the
175 commission.
176 (g) Tax information to principals, and their designees, of
177 the Revenue Estimating Conference for the purpose of developing
178 official revenue estimates.
179 (h) Names and addresses of persons paying taxes pursuant to
180 part IV of chapter 206 to the Department of Environmental
181 Protection in the conduct of its official duties.
182 (i) Information relative to chapters 212 and 326 to the
183 Division of Florida Land Sales, Condominiums, and Mobile Homes of
184 the Department of Business and Professional Regulation in the
185 conduct of its official duties.
186 (j) Information authorized pursuant to s. 213.0535 to
187 eligible participants and certified public accountants for such
188 participants in the Registration Information Sharing and Exchange
189 Program.
190 (k)1. Payment information relative to chapters 199, 201,
191 212, 220, 221, and 624 to the Office of Tourism, Trade, and
192 Economic Development, or its employees or agents that are
193 identified in writing by the office to the department, in the
194 administration of the tax refund program for qualified defense
195 contractors authorized by s. 288.1045 and the tax refund program
196 for qualified target industry businesses authorized by s.
197 288.106.
198 2. Information relative to tax credits taken by a business
199 under s. 220.191 and exemptions or tax refunds received by a
200 business under s. 212.08(5)(j) to the Office of Tourism, Trade,

201 and Economic Development, or its employees or agents that are
202 identified in writing by the office to the department, in the
203 administration and evaluation of the capital investment tax
204 credit program authorized in s. 220.191 and the semiconductor,
205 defense, and space tax exemption program authorized in s.
206 212.08(5)(j).
207 (l) Information relative to chapter 212 and the Bill of
208 Lading Program to the Office of Agriculture Law Enforcement of
209 the Department of Agriculture and Consumer Services in the
210 conduct of its official duties.
211 (m) Information relative to chapter 198 to the Agency for
212 Health Care Administration in the conduct of its official
213 business relating to ss. 409.901-409.9101.
214 (n) Information contained in returns, reports, accounts, or
215 declarations to the Board of Accountancy in connection with a
216 disciplinary proceeding conducted pursuant to chapter 473 when
217 related to a certified public accountant participating in the
218 certified audits project, or to the court in connection with a
219 civil proceeding brought by the department relating to a claim
220 for recovery of taxes due to negligence on the part of a
221 certified public accountant participating in the certified audits
222 project. In any judicial proceeding brought by the department,
223 upon motion for protective order, the court shall limit
224 disclosure of tax information when necessary to effectuate the
225 purposes of this section.
226 (o) Information relative to ss. 376.70 and 376.75 to the
227 Department of Environmental Protection in the conduct of its
228 official business and to the facility owner, facility operator,
229 and real property owners as defined in s. 376.301.

230 (p) Information relative to ss. 199.1055, 220.1845, and
231 376.30781 to the Department of Environmental Protection in the
232 conduct of its official business.
233 (q) Names, addresses, and sales tax registration
234 information to the Division of Consumer Services of the
235 Department of Agriculture and Consumer Services in the conduct of
236 its official duties.
237 (r) Information relative to the returns required by ss.
238 175.111 and 185.09 to the Department of Management Services in
239 the conduct of its official duties. The Department of Management
240 Services is, in turn, authorized to disclose payment information
241 to a governmental agency or the agency's agent for purposes
242 related to budget preparation, auditing, revenue or financial
243 administration, or administration of chapters 175 and 185.
244 (s) Names, addresses, and federal employer identification
245 numbers, or similar identifiers, to the Department of Highway
246 Safety and Motor Vehicles for use in the conduct of its official
247 duties.
248 (t) Information relative to the tax exemptions under ss.
249 212.031, 212.06, and 212.08 for those persons qualified under s.
250 288.1258 to the Office of Film and Entertainment. The Department
251 of Revenue shall provide the Office of Film and Entertainment
252 with information in the aggregate.
253 (u) Information relative to s. 220.187 to the Department of
254 Education in the conduct of its official business.
255 (v) Information relative to chapter 202 to each local
256 government that imposes a tax pursuant to s. 202.19 in the
257 conduct of its official duties as specified in chapter 202.
258 Information provided under this paragraph may include, but is not

259 limited to, any reports required pursuant to s. 202.231, audit
260 files, notices of intent to audit, tax returns, and other
261 confidential tax information in the department's possession
262 relating to chapter 202. A person or an entity designated by the
263 local government in writing to the department as requiring access
264 to confidential taxpayer information shall have reasonable access
265 to information provided pursuant to this paragraph. Such person
266 or entity may disclose such information to other persons or
267 entities with direct responsibility for budget preparation,
268 auditing, revenue or financial administration, or legal counsel.
269 Such information shall only be used for purposes related to
270 budget preparation, auditing, and revenue and financial
271 administration. Any confidential and exempt information furnished
272 to a local government, or to any person or entity designated by
273 the local government as authorized by this paragraph~~, that is~~
274 ~~exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I~~
275 ~~of the State Constitution pursuant to this section shall continue~~
276 ~~to be exempt when so provided, and~~ may not be further disclosed
277 by the recipient except as provided by this paragraph.
278 (w) Tax registration information to the Agency for
279 Workforce Innovation for use in the conduct of its official
280 duties, which information may not be redisclosed by the Agency
281 for Workforce Innovation.
282 (x) Rental car surcharge revenues authorized by s.
283 212.0606, reported according to the county to which the surcharge
284 was attributed to the Department of Transportation.
285
286 Disclosure of information under this subsection shall be pursuant
287 to a written agreement between the executive director and the

288 agency. Such agencies, governmental or nongovernmental, shall be
289 bound by the same requirements of confidentiality as the
290 Department of Revenue. Breach of confidentiality is a misdemeanor
291 of the first degree, punishable as provided by s. 775.082 or s.
292 775.083.
293 (9) ~~(8)~~ The Department of Revenue shall provide returns,
294 reports, accounts, or declarations received by the department,
295 including investigative reports and information, or information
296 contained in such documents, pursuant to an order of a judge of a
297 court of competent jurisdiction or pursuant to a subpoena duces
298 tecum only when the subpoena is:
299 (a) Issued by a state attorney, a United States attorney,
300 or a court in a criminal investigation or a criminal judicial
301 proceeding;
302 (b) Issued by a state or federal grand jury; or
303 (c) Issued by a state attorney, the Department of Legal
304 Affairs, the State Fire Marshal, a United States attorney, or a
305 court in the course of a civil investigation or a civil judicial
306 proceeding under the state or federal racketeer influenced and
307 corrupt organization act or under chapter 896.
308 (10) ~~(9)~~ (a) Notwithstanding other provisions of this
309 section, the department shall, subject to paragraph (c) and to
310 the safeguards and limitations of paragraphs (b) and (d),
311 disclose to the governing body of a municipality, a county, or a
312 subcounty district levying a local option tax, or any state tax
313 that ~~which~~ is distributed to units of local government based upon
314 place of collection, which the department is responsible for
315 administering, names and addresses only of the taxpayers granted
316 a certificate of registration pursuant to s. 212.18(3) who reside

317 within or adjacent to the taxing boundaries of such municipality,
318 county, or subcounty district when sufficient information is
319 supplied by the municipality, the county, or subcounty district
320 as the department by rule may prescribe, provided such governing
321 bodies are following s. 212.18(3) relative to the denial of an
322 occupational license after the department cancels a dealer's
323 sales tax certificate of registration.
324 (b) Such information shall be disclosed only if the
325 department receives an authenticated copy of a resolution adopted
326 by the governing body requesting it.
327 (c) After receipt of such information, the governing body
328 and its officers and employees are subject to the same
329 requirements of confidentiality and the same penalties for
330 violating confidentiality as the department and its employees.
331 (d) The resolution requesting such information shall
332 provide assurance that the governing body and its officers and
333 employees are aware of the confidentiality ~~those~~ requirements and
334 of the penalties for their violation of such requirements.~~, and~~
335 The resolution shall describe the measures that will be put into
336 effect to ensure such confidentiality. The officer of the
337 department who is authorized to receive, consider, and act upon
338 such requests shall, if satisfied that the assurances in the
339 resolution are adequate to assure confidentiality, grant the
340 request.
341 (e) ~~(d)~~ Nothing in this subsection authorizes disclosure of
342 any information prohibited by federal law from being disclosed.
343 (11) ~~(10)~~ Notwithstanding any other provision of this
344 section, with respect to a request for verification of a
345 certificate of registration issued pursuant to s. 212.18 to a

346 specified dealer or taxpayer or with respect to a request by a
347 law enforcement officer for verification of a certificate of
348 registration issued pursuant to s. 538.09 to a specified
349 secondhand dealer or pursuant to s. 538.25 to a specified
350 secondary metals recycler, the department may disclose whether
351 the specified person holds a valid certificate or whether a
352 specified certificate number is valid or whether a specified
353 certificate number has been canceled or is inactive or invalid
354 and the name of the holder of the certificate. This subsection
355 shall not be construed to create a duty to request verification
356 of any certificate of registration.
357 (12) ~~(11)~~ The department may provide to a United States
358 Trustee, or his or her designee, for any United States Bankruptcy
359 Court, exclusively for official purposes in connection with
360 administering a bankruptcy estate, information relating to
361 payment or nonpayment of taxes imposed by any revenue law of this
362 state by a trustee, debtor, or debtor in possession, including
363 any amount paid or due.
364 (13) ~~(12)~~ The department may disclose certain state sales
365 tax information relating to the cancellation or revocation of
366 sales and use tax certificates of registration for the failure to
367 collect and remit sales tax. This information is limited to the
368 sales tax certificate number, trade name, owner's name, business
369 location address, and the reason for the cancellation or
370 revocation.
371 (14) ~~(13)~~ Notwithstanding the provisions of s. 896.102(2),
372 the department may allow full access to the information and
373 documents required to be filed with it under s. 896.102(1) to
374 federal, state, and local law enforcement and prosecutorial

375 agencies, and to the Office of Financial Regulation of the
376 Financial Services Commission, and any of those agencies may use
377 the information and documents in any civil or criminal
378 investigation and in any court proceedings.
379 (15) ~~(14)~~ (a) Notwithstanding any other provision of this
380 section, the department shall, subject to the safeguards
381 specified in paragraph (c), disclose to the Division of
382 Corporations of the Department of State the name, address,
383 federal employer identification number, and duration of tax
384 filings with this state of all corporate or partnership entities
385 which are not on file or have a dissolved status with the
386 Division of Corporations and which have filed tax returns
387 pursuant to either chapter 199 or chapter 220.
388 (b) The Division of Corporations shall use such information
389 only in the pursuit of its official duties relative to
390 nonqualified foreign or dissolved corporations in the recovery of
391 fees and penalties due and owing the state.
392 (c) All information exchanged between the Division of
393 Corporations and the department shall be subject to the same
394 requirements of confidentiality as the Department of Revenue.
395 (16)(a) ~~(15)~~ The department may disclose confidential
396 taxpayer information contained in returns, reports, accounts, or
397 declarations filed with the department by persons subject to any
398 state or local tax to the child support enforcement program, to
399 assist in the location of parents who owe or potentially owe a
400 duty of support, as defined in s. 409.2554, pursuant to Title IV-
401 D of the Social Security Act, their assets, their income, and
402 their employer, and to the Department of Children and Family

403 Services for the purpose of diligent search activities pursuant
404 to chapter 39.
405 (b) Nothing in this subsection authorizes the disclosure of
406 information if such disclosure is prohibited by federal law.
407 Employees of the child support enforcement program and of the
408 Department of Children and Family Services are bound by the same
409 requirements of confidentiality and the same penalties for
410 violation of the requirements as the department.
411 (17) ~~(16)~~ The department may provide to the person against
412 whom transferee liability is being asserted pursuant to s.
413 212.10(1) information relating to the basis of the claim.
414 (18) ~~(17)~~ The department may disclose to a person entitled
415 to compensation pursuant to s. 213.30 the amount of any tax,
416 penalty, or interest collected as a result of information
417 furnished by such person.
418 Section 2. This act shall take effect October 1, 2006.

PCB GO 06-31

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-31 Institute of Food & Agricultural Sciences Supplemental Retirement Program
SPONSOR(S): Governmental Operations Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1042

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 consolidates the supplemental retirement benefit program of the Institute of Food and Agricultural Sciences into the Florida Retirement System. The bill requires the transfer of assets and the assumption of liabilities and obligations. The bill provides that these participants are not members of the Florida Retirement System. The bill makes conforming changes to the supplemental benefit program, sets the required employer contribution rate, and removes an investment limitation. The bill makes a legislative finding about fulfilling an important state interest.

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

This bill does not appear to have a fiscal impact on the revenues of state government. By setting the required employer contribution rate for supplemental benefit program participants, this bill appears to have a fiscal impact on the expenditures of state government. This contribution rate is lower than the current contribution rate and is expected, along with the consolidation, to eliminate the need for annual contribution rate increases and additional subsidies from the General Revenue Fund.

This bill does not appear to have a fiscal impact on the revenues or expenditures of local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – Government cost savings are anticipated from the consolidation of this supplemental retirement benefit program into the Florida Retirement System.

B. EFFECT OF PROPOSED CHANGES:

Background on the Institute of Food and Agricultural Science

The Institute of Food and Agricultural Sciences ("IFAS") is a federal-state-county partnership at the University of Florida that was created in 1964 and is "dedicated to developing knowledge in agriculture, human and natural resources, and the life sciences, and enhancing and sustaining the quality of human life by making that information accessible."[1]

- IFAS has 13 research and education centers with a total of 19 locations (including demonstration sites) throughout Florida.[2] IFAS also has Florida Cooperative Extension Service offices in all 67 counties that the counties operate and maintain.[3]

- For Fiscal Year 2004-2005, IFAS had a budget of $262 million. Approximately 52 percent or $136.4 million of that budget was General Revenue.[4]

- As of December 5, 2005, IFAS had approximately 2,262 full-time equivalent employees:

	On Campus	Off-Campus	County	Total
State Supported				
Faculty	355	164	255	774
Staff	583	405	18	1006
Totals	938	569	273	1780
Grant Supported				
Faculty	148	56	30	234
Staff	181	59	8	248
Totals	329	115	38	482

Supplemental Retirement Benefits Program: Background and Eligibility

Eighty-one of these IFAS employees[5] are participants in a supplemental retirement benefits program ("IFAS SRBP") the Legislature created in 1984.[6] The Legislature enacted this IFAS Supplemental Retirement Act to "provide a supplement to the monthly retirement benefits being paid under the federal Civil Service Retirement System to certain retired employees of the Institute of Food and Agricultural

[1] Univ. of Fla., Inst. of Food and Ag. Sci., *IFAS Facts*, available at http://analysis2001.ifas.ufl.edu/facts150.htm (last updated Feb. 1, 2006; last visited Mar. 19, 2006) (IFAS was created by the then governing body for higher education through the reorganization of existing programs).
[2] *Id.* (IFAS has 1,255 buildings, 3,190,448 gross square feet, and 16,591 acres throughout the state.).
[3] *Id.*
[4] *Id.* (This is the General Revenue breakdown: 22 percent for teaching (pass through), 46 percent for research, 24 percent for extension and 8 percent is for other.).
[5] Milliman, Inc., Actuarial Valuation of the IFAS Supplemental Retirement Program as of July 1, 2005, Exhibit B (Mar. 1, 2006) (on file with the Div. of Ret., Fla. Dep't of Mgmt. Serv) [hereinafter Milliman, 2005 IFAS Valuation].
[6] Ch. 84-358, Laws of Fla.

Sciences at the University of Florida, whose positions were ineligible for coverage under a state-supported retirement system."[7]

There are six eligibility requirements for participation in the IFAS SRBP:

(1) The person must have held both state and federal appointments while employed at the institute, and have completed 10 years of creditable service with the institute, subsequent to December 1, 1970.

(2) The person must be participating in the federal Civil Service Retirement System based on service at the institute.

(3) The person must have retired from the institute on or after January 1, 1985, and must have been eligible for benefits under the federal Civil Service Retirement System commencing immediately upon the termination of service with the institute.

(4) The person must have attained the age of 62.

(5) The person must not be entitled to any benefit from a state-supported retirement system or from social security based upon service as a cooperative extension employee of the institute. Participation in the Institute of Food and Agricultural Sciences Supplemental Retirement Program shall not constitute membership in the Florida Retirement System.

(6) The person must have been employed with the institute prior to, and on, July 1, 1983.[8]

It is this sixth criteria (IFAS employment prior/on July 1, 1983) which "closes" participation in the IFAS SRBP. In addition to the active employees, there are 97 retired participants and beneficiaries and 36 participants who are no longer employed by IFAS but have vested benefits.[9] Thus, there are a total of 228 participants in the IFAS SRBP.[10]

IFAS SRBP: Calculation and Funding

The amount of the IFAS SRBP benefit is the deficiency between the amount earned by the employee under the federal Civil Service Retirement System and the amount the employee would have received under the Florida Retirement System[11] and the primary insurance under Social Security at age 62.[12]

The IFAS SRBP is funded from two sources: a monthly contribution by IFAS of a specified percentage of an employee's gross monthly salary[13] and returns on investments. Yet, since 2002, these sources have been insufficient to fund the required supplemental benefits. This funding insufficiency can be attributed to three factors:

(1) *The closed nature of the plan.* With a closed plan, as more participants retire, there are a smaller number of active employees to bear the burden of any increased costs for the program.[14]

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[7] Fla. Stat. § 121.40(1) and (2) (2005).
[8] Fla. Stat. § 121.40(4) (2005).
[9] Milliman, 2005 IFAS Valuation.
[10] *Id.*
[11] Fla. Stat. § 121.40(5)(a) (2005) ("An amount equal to the option one retirement benefit that the employee would have been entitled to receive at his or her normal retirement age under the Florida Retirement System, attributable only to creditable service after December 1, 1970, as a cooperative extension employee of the institute, excluding any past or prior service credit, had such employee been a member of the Florida Retirement System.").
[12] Fla. Stat. § 121.40(5)(b) (2005).
[13] Fla. Stat. § 121.40(12) (2005).
[14] There are currently 81 active participants who can fund program insufficiencies through contributions for the 113 retired participants. Milliman, 2005 IFAS Valuation. This is in contrast to the Florida Retirement System which has three active employees for each person

(2) *The nature of the benefit.* Because part of the IFAS supplemental benefit payment is based on Social Security, it "varies inversely as a percentage of pay."[15] That is, it has higher costs, as a percentage of pay, at lower salary levels than at higher salary levels.

(3) *More limited returns on investments.* Returns on investments are more limited than those of the Florida Retirement System because the State Board of Administration is required to "consider investment techniques...which are directed toward developing minimum risk procedures supporting a prescribed liability schedule."[16] This has resulted in "underlying investments that are not diversified and simply not able to satisfy the benefit demands."[17]

With limited investment returns, only one other funding mechanism was available to address the increased benefit demands: increase the employer payroll contributions. From July 1, 2003 to July 1, 2005, the employer contribution rate was set at 13.83 percent – almost double the previous amounts of 6.96 percent and 7.17 percent.[18] Based on the actuarial valuation of the IFAS SRBP, the employer contribution rate was set at 20.23 percent for the period between July 1, 2005 through June 30, 2006.[19] The Legislature, however, appropriated $500,000 from the General Revenue Fund to fund the increased employer contribution for the IFAS SRBP.[20]

IFAS SRBP: Going Forward

The increased benefit demands on the IFAS SRBP are expected to continue. In fact, the most recent valuation of the IFAS SRBP recommends a contribution rate of 26.86 percent, effective July 1, 2006.[21] In its consideration of this issue, staff for the Committee on Governmental Oversight and Productivity noted three methods for addressing the recurring funding imbalance: (1) continue to raise the employer contribution rate as required; (2) place a limit on the employer contribution rate and provide annual supplemental appropriations to cover the increased costs; or (3) merge the IFAS SRBP with the Florida Retirement System.[22] Merging the IFAS SRBP with the Florida Retirement System was the recommended option:

> "Active and retired members and beneficiaries would not notice a change as their benefits would not be compromised. Due to the small asset and liability base of IFAS, its incorporation within the FRS would condition only a small adverse dollar impact. The FRS has more than $112 billion in assets and includes a $10 billion actuarial surplus. Under this option, no additional payroll costs would be passed along to its 840 member employers...
>
> ...Unlike the two other options that provide only annual or biennial relief, this alternative will permanently address the IFAS funding imbalance. After such transfer, the employer payroll costs will decline significantly and reflect the rates charged for the Regular Class in the Florida Retirement System."[23]

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receiving a benefit. Fla. Senate, Comm. on Gov't Over. and Prod., *Interim Project Report 2006-132: The Supplemental Retirement Program of the Institute of Food and Agricultural Sciences at the University of Florida*, (Sept. 2005) (available at http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-132go.pdf) (last visited Mar. 19, 2005) [hereinafter Interim Project Report].

[15] Milliman, 2005 IFAS Valuation.

[16] Fla. Stat. § 121.40(13) (2005).

[17] Interim Project Report at 2.

[18] Fla. Stat. 121.40(12) (2005).

[19] Ch. 2005-93, Laws of Fla.

[20] Ch. 2005-70, Laws of Fla., §8(5) ("From the funds in Specific Appropriation 2091, $500,000 is appropriated from the General Revenue Fund to the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida to fund the increased employer contribution for the IFAS retirement plan.").

[21] Milliman 2005 IFAS Valuation.

[22] Interim Project Report at 2.

[23] *Id.*

Transferring the IFAS SRBP to the Florida Retirement System

This proposed committee bill implements the recommendation to transfer the IFAS SRBP to the Florida Retirement System.

The bill consolidates the IFAS SRBP into the Florida Retirement System. The bill requires the transfer of assets and the assumption of all liabilities related to the payment of supplemental monthly benefits to retired employees of the IFAS and their surviving beneficiaries as well as all obligations in regard to funding and administering benefits accrued for the benefit of retired employees of the IFAS and their surviving beneficiaries.

The bill provides that participation in the IFAS SRBP does not constitute membership in the Florida Retirement System.

The bill makes conforming changes to the IFAS Supplemental Retirement Act, sets the required contribution rate at 17.57 percent, and removes the investment limitation.

The bill provides a legislative finding that it fulfills an important state interest.

The bill takes effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Creates section 121.047, Florida Statutes, to consolidate the IFAS SRBP with the Florida Retirement System.

Section 2: Amends section 121.40, Florida Statutes, to make conforming changes and remove investment limitations.

Section 3: Makes a legislative finding of important state interest.

Section 4: 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 have a fiscal impact on state government revenues.

2. Expenditures:

   The bill amends the contribution rate for participants of the IFAS SRBP, which is designed to fund the program in a way that is cost-neutral to the Florida Retirement System. When applied to the July 2005 payroll of IFAS, the 17.57 percent contribution rate yields the following estimated expenditures for IFAS:

Year 1 – FY 2006-2007	$1,012,134
Year 2 – FY 2007-2008	$ 975,086
Year 3 – FY 2008-2009	$ 872,535

   This rate is lower than the current rate of 20.23 percent and is expected to eliminate the need for annual increases to the contribution rate or further subsidies from the General Revenue Fund like the $500,000 provided in 2005.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

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 Enrolled Actuary retained by the Department of Management Services has concluded that "once an appropriate rate is determined, it should not harm the Florida Retirement System and should benefit the IFAS program to be consolidated within the system."[24]

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 counties or municipalities have to raise revenue.

2. Other:

<u>Retirement System Benefit Changes</u>

Benefit increases to publicly funded retirement systems 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.

This bill does not increase the benefits to the members or beneficiaries. According to the Department of Management Services, this bill complies with the requirements of section 14 of article X of the Florida Constitution.[25]

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[24] Fla. Dep't of Mgmt. Serv., SB 1042 (2006) Staff Analysis (Feb. 6, 2006) (on file with dep't).
[25] *Id.*

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to the Florida Retirement System; creating
3 s. 121.047, F.S.; consolidating the operation of the
4 Institute of Food and Agricultural Sciences Supplemental
5 Retirement Program under the Florida Retirement System;
6 providing for assumption of program liabilities and
7 obligations; abolishing the Institute of Food and
8 Agricultural Sciences Supplemental Retirement Trust Fund;
9 barring program participants from membership in the
10 Florida Retirement System; amending s. 121.40, F.S.,
11 relating to the establishment and administration of the
12 Institute of Food and Agricultural Sciences Supplemental
13 Retirement Program; conforming provisions to changes made
14 by the act; redefining the term "trust fund" for purposes
15 of administering the program; providing a rate of monthly
16 contributions; removing provisions relating to investments
17 of the program trust fund; providing a declaration of
18 important state interest; providing an effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Section 121.047, Florida Statutes, is created to
23 read:
24 121.047 Consolidation of liabilities and assets; Institute
25 of Food and Agricultural Sciences Supplemental Retirement
26 Program; restriction.--
27 (1) Effective July 1, 2006, the Institute of Food and
28 Agricultural Sciences Supplemental Retirement Program, as
29 established under s. 121.40, shall be consolidated under the
30 Florida Retirement System and the system shall assume:

31 (a) All liabilities related to the payment of supplemental
32 monthly benefits to retired employees of the institute and their
33 surviving beneficiaries; and
34 (b) All obligations in regard to funding and administering
35 benefits accrued for the benefit of retired employees of the
36 institute and their surviving beneficiaries.
37 (2) The administrator shall, as of July 1, 2006, cause to
38 be transferred to the trust fund of the Florida Retirement System
39 all assets of the Institute of Food and Agricultural Sciences
40 Supplemental Retirement Trust Fund, including moneys, securities,
41 and other property accumulated to date, as well as all
42 liabilities and obligations connected therewith. Upon such
43 transfer of assets, liabilities, and obligations, the Institute
44 of Food and Agricultural Sciences Supplemental Retirement Trust
45 Fund shall be abolished and the administrator shall become the
46 trustee of any funds transferred to the Florida Retirement
47 System.
48 (3) Participation in the Institute of Food and Agricultural
49 Sciences Supplemental Retirement Program does not constitute
50 membership in the Florida Retirement System.
51 Section 2. Section 121.40, Florida Statutes, is amended to
52 read:
53 121.40 Cooperative extension personnel at the Institute of
54 Food and Agricultural Sciences; supplemental retirement
55 benefits.--
56 (1) SHORT TITLE.--This section shall be known and may be
57 cited as the "Institute of Food and Agricultural Sciences
58 Supplemental Retirement Act."
59 (2) PURPOSE.--The purpose of this act is to provide a
60 supplement to the monthly retirement benefits being paid under

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

61 the federal Civil Service Retirement System to, or with respect
62 to, certain retired employees of the Institute of Food and
63 Agricultural Sciences at the University of Florida, whose
64 positions were ineligible for coverage under a state-supported
65 retirement system.
66 (3) DEFINITIONS.--The definitions provided in s. 121.021
67 shall not apply to this program ~~section~~ except when specifically
68 cited. For the purposes of this section, the following words or
69 phrases have the respective meanings set forth:
70 (a) "Institute" means the Institute of Food and
71 Agricultural Sciences of the University of Florida.
72 (b) "Department" means the Department of Management
73 Services.
74 (c) "Participant" means any employee of the institute who
75 is eligible to receive a supplemental benefit under this program
76 as provided in subsection (4).
77 (d) "Trust fund" means the Florida Retirement System
78 ~~Institute of Food and Agricultural Sciences Supplemental~~
79 ~~Retirement~~ Trust Fund.
80 (e) "Creditable service" means any service subsequent to
81 December 1, 1970, with the institute as a cooperative extension
82 employee holding both state and federal appointments, that is
83 credited for retirement purposes by the institute toward a
84 federal Civil Service Retirement System annuity.
85 (4) ELIGIBILITY FOR SUPPLEMENT.--To be eligible for a
86 benefit under this program pursuant to the provisions of this
87 section, a person must meet all of the following eligibility
88 criteria:
89 (a) The person must have held both state and federal
90 appointments while employed at the institute, and have completed

91 10 years of creditable service with the institute, subsequent to
92 December 1, 1970.
93 (b) The person must be participating in the federal Civil
94 Service Retirement System based on service at the institute.
95 (c) The person must have retired from the institute on or
96 after January 1, 1985, and must have been eligible for benefits
97 under the federal Civil Service Retirement System commencing
98 immediately upon the termination of service with the institute.
99 (d) The person must have attained the age of 62.
100 (e) The person must not be entitled to any benefit from a
101 state-supported retirement system or from social security based
102 upon service as a cooperative extension employee of the
103 institute. Participation in the Institute of Food and
104 Agricultural Sciences Supplemental Retirement Program shall not
105 constitute membership in the Florida Retirement System.
106 (f) The person must have been employed with the institute
107 prior to, and on, July 1, 1983.
108 (5) SUPPLEMENT AMOUNT.--The supplemental payment shall
109 provide a benefit to the retiree equal to the amount by which the
110 retirement annuity, without a survivor benefit, earned by the
111 employee under the federal Civil Service Retirement System with
112 respect to service as a cooperative extension employee of the
113 institute after December 1, 1970, is inferior to:
114 (a) An amount equal to the option one retirement benefit
115 that the employee would have been entitled to receive at his or
116 her normal retirement age under the Florida Retirement System,
117 attributable only to creditable service after December 1, 1970,
118 as a cooperative extension employee of the institute, excluding
119 any past or prior service credit, had such employee been a member
120 of the Florida Retirement System; plus

121 (b) An amount equal to the primary insurance amount that
122 the individual employee would have been entitled to receive under
123 social security at age 62 had he or she been covered for such
124 employment, such amount to be computed in accordance with the
125 Social Security Act only with respect to employment as a
126 cooperative extension employee of the institute after December 1,
127 1970.
128 (6) PAYMENT OF SUPPLEMENT.--Any participant who retires on
129 or after January 1, 1985, from the federal Civil Service
130 Retirement System as a cooperative extension employee of the
131 institute at the University of Florida and who satisfies all of
132 the eligibility criteria specified in subsection (4) shall be
133 entitled to receive a supplemental benefit <u>under this program</u>
134 computed in accordance with subsection (5), to begin July 1,
135 1985, or the month of retirement, or the month in which the
136 participant becomes age 62, whichever is later. Upon application
137 to the administrator, the participant shall receive a monthly
138 supplemental benefit which shall commence on the last day of the
139 month of retirement and shall be payable on the last day of the
140 month thereafter during his or her lifetime. A participant may
141 have federal income tax and health insurance premiums deducted
142 from his or her monthly supplemental benefit in the same manner
143 as provided in s. 121.091(14)(a) and (b) for monthly retirement
144 benefits under the Florida Retirement System.
145 (7) OPTIONAL FORMS OF SUPPLEMENTAL RETIREMENT
146 BENEFITS.--Prior to the receipt of the first monthly supplemental
147 retirement payment <u>under this program</u>, a participant shall elect
148 to receive the supplemental retirement benefits to which he or
149 she is entitled under subsection (6) in accordance with s.
150 121.091(6).

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

151 (8) DEATH BENEFITS.--
152 (a) If the employment of a participant of this program is
153 terminated by reason of his or her death subsequent to the
154 completion of 10 years of creditable service with the institute
155 but prior to his or her actual retirement, such 10-year period
156 having commenced on or after December 1, 1970, it shall be
157 assumed that the participant had met all of the eligibility
158 requirements under this section and had retired from the federal
159 Civil Service Retirement System and under this section as of the
160 date of death, having elected, in accordance with subsection (7),
161 the optional form of supplemental payment most favorable to his
162 or her beneficiary, as determined by the administrator. The
163 monthly supplemental benefit provided in this paragraph shall be
164 paid to the participant's beneficiary (spouse or other financial
165 dependent) upon such beneficiary's attaining the age of 62 and
166 shall be paid thereafter for the beneficiary's lifetime.
167 (b) If a participant of this program dies subsequent to his
168 or her actual retirement under the federal Civil Service
169 Retirement System but prior to attaining age 62, and such
170 participant was otherwise eligible for supplemental benefits
171 under this section, it shall be assumed that the participant had
172 met all of the eligibility requirements under this section and
173 had retired as of the date of death, having elected, in
174 accordance with subsection (7), the optional form of supplemental
175 payment most favorable to his or her beneficiary, as determined
176 by the administrator. The monthly supplemental benefit provided
177 in this paragraph shall be paid to the participant's beneficiary
178 (spouse or other financial dependent) upon such beneficiary's
179 attaining the age of 62 and shall be paid thereafter for the
180 beneficiary's lifetime.

181 (9) DESIGNATION OF BENEFICIARIES.--Each participant of this
182 program may designate beneficiaries in accordance with s.
183 121.091(8).
184 (10) COST-OF-LIVING ADJUSTMENT OF SUPPLEMENTAL
185 BENEFITS.--On each July 1, the supplemental benefit of each
186 retired participant of this program and each annuitant thereof
187 shall be adjusted as provided in s. 121.101.
188 (11) EMPLOYMENT AFTER RETIREMENT: LIMITATION.--Any person
189 who is receiving a supplemental retirement benefit under this
190 program ~~section~~ may be reemployed by any private or public
191 employer after retirement and receive supplemental retirement
192 benefits pursuant to this section and compensation from his or
193 her employer, without any limitations. However, if a retired
194 participant who is receiving a supplemental retirement benefit
195 under this section is reemployed at the institute in a position
196 as a cooperative extension employee of the institute, he or she
197 shall forfeit all rights to supplemental retirement benefits in
198 accordance with the eligibility provisions of paragraph (4)(e).
199 (12) CONTRIBUTIONS.--
200 (a) For the purpose ~~purposes~~ of funding the supplemental
201 benefits provided by this section, the institute is authorized
202 and required to pay, commencing July 1, 1985, the necessary
203 monthly contributions from its appropriated budget. These amounts
204 shall be paid into the Florida Retirement System ~~Institute of~~
205 ~~Food and Agricultural Sciences Supplemental Retirement~~ Trust
206 Fund~~, which is hereby created~~.
207 (b) The monthly contributions required to be paid pursuant
208 to paragraph (a) on the gross monthly salaries, from all sources
209 with respect to such employment, paid to those employees of the
210 institute who hold both state and federal appointments and who

211 participate in the federal Civil Service Retirement System shall
212 be as follows:
213

Dates of Contribution Rate Changes	Percentage Due
July 1, 1985, through December 31, 1988	6.68%
January 1, 1989, through December 31, 1993	6.35%
January 1, 1994, through December 31, 1994	6.69%
January 1, 1995, through June 30, 1996	6.82%
July 1, 1996, through June 30, 1998	5.64%
July 1, 1998, through June 30, 2001	7.17%
July 1, 2001, through June 30, 2003	6.96%
July 1, 2003, through June 30, 2005	13.83%

222

~~Effective~~ July 1, 2005, through June 30, 2006 ~~2007~~ 20.23%

223

Effective July 1, 2006 17.57%

224

225 ~~(13) INVESTMENT OF THE TRUST FUND.--~~

226 ~~(a) The State Board of Administration shall invest and~~
227 ~~reinvest available funds of the trust fund in accordance with the~~
228 ~~provisions of ss. 215.44-215.53. The board shall consider~~
229 ~~investment techniques, such as contingent immunization or the~~
230 ~~development of a dedicated portfolio, which are directed toward~~
231 ~~developing minimum-risk procedures for supporting a prescribed~~
232 ~~liability schedule.~~

233 ~~(b) Costs incurred in carrying out the provisions of this~~
234 ~~section shall be deducted from the interest earnings accruing to~~
235 ~~the trust fund.~~

236 (13) ~~(14)~~ ADMINISTRATION OF PROGRAM ~~SYSTEM~~.--

237 (a) The department shall make such rules as are necessary
238 for the effective and efficient administration of this program
239 ~~system~~. The secretary of the department shall be the
240 administrator of the program ~~system~~. The funds to pay the
241 expenses for such administration shall be appropriated from the
242 interest earned on investments made for the Florida Retirement
243 System Trust Fund.

244 (b) The department may ~~is authorized to~~ require oaths, by
245 affidavit or otherwise, and acknowledgments from persons in
246 connection with the administration of its duties and
247 responsibilities under this section.

248 ~~(c) The administrator shall cause an actuarial study of the~~
249 ~~system to be made at least once every 2 years and shall report~~

250 ~~the results of such study to the next session of the Legislature~~
251 ~~following completion of the study.~~
252 Section 3. The Legislature finds that a proper and
253 legitimate state purpose is served when employees and retirees of
254 the state and of its political subdivisions, and the dependents,
255 survivors, and beneficiaries of such employees and retirees, are
256 extended the basic protections afforded by governmental
257 retirement systems that provide fair and adequate benefits that
258 are managed, administered, and funded in an actuarially sound
259 manner, as required by s. 14, Art. X of the State Constitution
260 and part VII of chapter 112, Florida Statutes. Therefore, the
261 Legislature determines and declares that this act fulfills an
262 important state interest.
263 Section 4. This act shall take effect July 1, 2006.

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PCB GO 06-35

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-35 Custodial Requirements for Public Records
SPONSOR(S): Governmental Operations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill clarifies the custodial requirements for a custodian of public records. It clarifies that the custodian of public records deemed confidential and exempt from public records requirements cannot release such records, except as provided in statute or by court order. The bill further clarifies that an agency or other governmental entity authorized to receive a confidential and exempt record is required to maintain the confidential and exempt status of that record. These clarifications are the standard contained in case law. The bill makes it clear that the same standards apply to each record deemed confidential and exempt by expressly stating the standards in the Public Records Act.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

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 addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record.

Confidential and Exempt Records

There is a difference between records that the Legislature designates as exempt from public disclosure and those the Legislature deems confidential and exempt. Records classified exempt from public disclosure are permitted to be disclosed under certain circumstances.[1] If the Legislature designates certain records confidential and exempt from public disclosure, such records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in the statutory exemption.[2]

Definition of "Agency"

It should be noted that the definition of "agency" provided in the Public Records Act includes the phrase ". . . and any other public or private agency, person, partnership, corporation, or business entity *acting on behalf of any public agency*."[3] [Emphasis added.] Agencies often are authorized, and in some instances are required, to "outsource" certain functions. Under the current case law standard, an agency is not required to have explicit statutory authority to release public records in its control to its agents. Its agents, however, are required to comply with the same public records custodial requirements with which the agency must comply.

Confidentiality Travels

In *Ragsdale v. State*,[4] the Supreme Court held that

> [T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the

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[1] *See WFTV, Inc. v. The School Board of Seminole,* 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *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).

[2] *See Attorney General Opinion 85-62*, August 1, 1985.

[3] Section 119.011, F.S.

[4] 720 So.2d 203 (Fla. 1998).

policy behind the exemption and not on the simple fact that the information has changed agency hands.[5]

In *City of Riviera Beach v. Barfield*,[6] the court stated, "[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute."[7]

Effect of Bill

The bill clarifies the custodial requirements for a custodian of public records. It clarifies that the custodian of public records deemed confidential and exempt from public records requirements, as opposed to records only made exempt, cannot release such records except as provided in statute or by court order. This clarification is the standard contained in case law.

The bill further clarifies that an agency or other governmental entity authorized to receive a confidential and exempt record is required to maintain the confidential and exempt status of that record. This clarification also is the standard contained in case law; however, some confusion exists because some statutes explicitly state that the receiving agency or other governmental entity must maintain the confidential and exempt status of the record received while other statutes do not. The bill makes it clear that the same standard applies to each record that is confidential and exempt by expressly stating this standard in the Public Records Act.

The bill reiterates that the provisions do not limit access to any record by an agency or entity acting on behalf of a custodian of public records; the Legislature; or pursuant to court order.

Finally, the bill creates subheadings for s. 119.021, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 119.021, F.S., to clarify agency custodial requirements for records deemed confidential and exempt.

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 create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[5] *Id.* at 206, 207.

[6] 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public records exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined "once a record is transferred from one public agency to another, the record loses its exempt status." The court declined to accept the Attorney General's view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.

[7] *Id.* at 1137.

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

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 custodial requirements for public
3 records; amending s. 119.021, F.S.; clarifying custodial
4 requirements for confidential and exempt records; creating
5 subheadings; providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Section 119.021, Florida Statutes, is amended to
10 read:
11 119.021 Custodial requirements; maintenance, preservation,
12 and retention of public records.--
13 (1) MAINTENANCE AND PRESERVATION.--Public records shall be
14 maintained and preserved as follows:
15 (a) All public records should be kept in the buildings in
16 which they are ordinarily used.
17 (b) Insofar as practicable, a custodian of public records
18 of vital, permanent, or archival records shall keep them in
19 fireproof and waterproof safes, vaults, or rooms fitted with
20 noncombustible materials and in such arrangement as to be easily
21 accessible for convenient use.
22 (c)1. Record books should be copied or repaired, renovated,
23 or rebound if worn, mutilated, damaged, or difficult to read.
24 2. Whenever any state, county, or municipal records are in
25 need of repair, restoration, or rebinding, the head of the
26 concerned state agency, department, board, or commission; the
27 board of county commissioners of such county; or the governing
28 body of such municipality may authorize that such records be
29 removed from the building or office in which such records are

30 ordinarily kept for the length of time required to repair,
31 restore, or rebind them.
32 3. Any public official who causes a record book to be
33 copied shall attest and certify under oath that the copy is an
34 accurate copy of the original book. The copy shall then have the
35 force and effect of the original.
36 (2) RETENTION SCHEDULES.--
37 (a) The Division of Library and Information Services of the
38 Department of State shall adopt rules to establish retention
39 schedules and a disposal process for public records.
40 (b) Each agency shall comply with the rules establishing
41 retention schedules and disposal processes for public records
42 which are adopted by the records and information management
43 program of the division.
44 (c) Each public official shall systematically dispose of
45 records no longer needed, subject to the consent of the records
46 and information management program of the division in accordance
47 with s. 257.36.
48 (d) The division may ascertain the condition of public
49 records and shall give advice and assistance to public officials
50 to solve problems related to the preservation, creation, filing,
51 and public accessibility of public records in their custody.
52 Public officials shall assist the division by preparing an
53 inclusive inventory of categories of public records in their
54 custody. The division shall establish a time period for the
55 retention or disposal of each series of records. Upon the
56 completion of the inventory and schedule, the division shall,
57 subject to the availability of necessary space, staff, and other
58 facilities for such purposes, make space available in its records

59 center for the filing of semicurrent records so scheduled and in
60 its archives for noncurrent records of permanent value, and shall
61 render such other assistance as needed, including the
62 microfilming of records so scheduled.
63 (3) INDEX OF AGENCY ORDERS.-- Agency orders that comprise
64 final agency action and that must be indexed or listed pursuant
65 to s. 120.53 have continuing legal significance; therefore,
66 notwithstanding any other provision of this chapter or any
67 provision of chapter 257, each agency shall permanently maintain
68 records of such orders pursuant to the applicable rules of the
69 Department of State.
70 (4) TRANSFER OF CUSTODY.--~~(a)~~ Whoever has custody of any
71 public records shall deliver, at the expiration of his or her
72 term of office, to his or her successor or, if there be none, to
73 the records and information management program of the Division of
74 Library and Information Services of the Department of State, all
75 public records kept or received by him or her in the transaction
76 of official business.
77 (5) UNLAWFUL POSSESSION.--~~(b)~~ Whoever is entitled to
78 custody of public records shall demand them from any person
79 having illegal possession of them, who must forthwith deliver the
80 same to him or her. Any person unlawfully possessing public
81 records must within 10 days deliver such records to the lawful
82 custodian of public records unless just cause exists for failing
83 to deliver such records.
84 (6) CUSTODIAL REQUIREMENTS FOR CONFIDENTIAL AND EXEMPT
85 RECORDS.--
86 (a) A custodian of public records who holds a record that
87 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

88 of the State Constitution may not release such record except as
89 provided in statute or pursuant to court order.
90 (b) An agency or other governmental entity that is
91 authorized to receive a confidential and exempt record pursuant
92 to statute shall retain the confidential and exempt status of
93 such record, except as otherwise provided by law.
94 (c) A custodian of public records is authorized to require
95 the agency or other governmental entity that is authorized to
96 receive a confidential and exempt record pursuant to statute to
97 acknowledge in a written release that:
98 1. Such record is confidential and exempt; and
99 2. The receiving agency or other governmental entity is
100 required by law to retain the confidential and exempt status of
101 such record.
102 (d) This subsection does not limit access to any record by:
103 1. An agency or entity acting on behalf of a custodian of
104 public records;
105 2. The Legislature; or
106 3. Pursuant to court order.
107 Section 2. This act shall take effect July 1, 2006.

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

V

PCS FOR HB 13

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 13 Department of Elderly Affairs
SPONSOR(S): Governmental Operations Committee, Robaina
TIED BILLS: **IDEN./SIM. BILLS:** SB 1330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee		Brown	Williamson
1) Governmental Operations Committee			
2) Elder & Long-Term Care Committee			
3) Health Care Appropriations Committee			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

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

Subsequent contracts must be made competitively, in accordance with Chapter 287, F.S., and the competitive procurement process must begin within 180 days.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Current Situation

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

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

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

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

In the event any of these problems occur, the Department may rescind an AAA's official status or take intermediate measures including:[8]

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

Proposed Changes

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

The bill also provides that in the event the Department takes any "intermediate measures" against an AAA for services funded under the federal Older Americans Act, and the AAA fails to improve service delivery after at least 90 days, the Department may terminate the relevant contract(s) and re-contract for the service or provide the service directly to the affected population.

If the Department elects to re-contract for the service previously provided by the AAA, the subsequent contract must be made competitively, in accordance with Chapter 287, F.S.[9] The competitive procurement process must begin within 180 days of the termination of the AAA.

C. SECTION DIRECTORY:

Section 1 amends s. 430.04, F.S., to require an additonal evaluation before the Department can take action against an area agency on aging, and to permit the Department to terminate contracts and provide for alternative methods of service delivery, under certain circumstances.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

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.

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

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to the Department of Elderly Affairs;
7 amending s. 430.04, F.S.; requiring the Department of
8 Elderly Affairs to conduct a formal evaluation prior to
9 rescinding designation of or taking certain measures
10 against an area agency on aging; providing circumstances
11 under which the department may terminate an area agency on
12 aging contract; requiring the department to plan, fund,
13 and administer certain programs and services; providing an
14 effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Subsection (2) of section 430.04, Florida
19 Statutes, is amended, subsections (3) through (16) are
20 renumbered as subsections (4) through (17), respectively, and a
21 new subsection (3) is added to that section, to read:
22 430.04 Duties and responsibilities of the Department of
23 Elderly Affairs.--The Department of Elderly Affairs shall:

24 (2) Be responsible for ensuring that each area agency on
25 aging operates in a manner to ensure that the elderly of this
26 state receive the best services possible. The department shall
27 rescind designation of an area agency on aging or take
28 intermediate measures against the agency, including corrective
29 action, unannounced special monitoring, temporary assumption of
30 operation of one or more programs by the department, placement
31 on probationary status, imposing a moratorium on agency action,
32 imposing financial penalties for nonperformance, or other
33 administrative action pursuant to chapter 120, if, after an
34 evaluation, the department finds that:
35 (a) An intentional or negligent act of the agency has
36 materially affected the health, welfare, or safety of clients,
37 or substantially and negatively affected the operation of an
38 aging services program;~~.~~
39 (b) The agency lacks financial stability sufficient to
40 meet contractual obligations or that contractual funds have been
41 misappropriated;~~.~~
42 (c) The agency has committed multiple or repeated
43 violations of legal and regulatory requirements or department
44 standards;~~.~~
45 (d) The agency has failed to continue the provision or
46 expansion of services after the declaration of a state of
47 emergency;~~.~~
48 (e) The agency has exceeded its authority or otherwise
49 failed to adhere to the terms of its contract with the
50 department or has exceeded its authority or otherwise failed to

51 adhere to the provisions specifically provided by statute or
52 rule adopted by the department;~~.~~
53 (f) The agency has failed to properly determine client
54 eligibility as defined by the department or efficiently manage
55 program budgets; or~~.~~
56 (g) The agency has failed to implement and maintain a
57 department-approved client grievance resolution procedure.
58 (3) If the department takes an intermediate measure
59 against an area agency on aging as provided in subsection (2)
60 and the department determines, at least 90 days after such
61 measure is taken, that the area agency on aging has failed to
62 effectively plan, fund, or administer contracts for programs and
63 services not funded by the federal Older Americans Act, the
64 department may terminate an area agency on aging contract for
65 such programs or services. Notwithstanding any law to the
66 contrary, in the event of the termination of a contract with an
67 area agency on aging, the department shall directly, or
68 indirectly through a contract with an entity procured in
69 accordance with chapter 287, plan, fund, and administer the
70 programs and services previously under contract in the affected
71 planning and service area. Within 180 days of the termination of
72 a contract, the department shall initiate the competitive
73 procurement process. Any contract or referral agreement
74 effective on or after July 1, 2006, between an area agency on
75 aging and a lead agency or service provider must be assignable
76 to the department and subsequently to an entity competitively
77 selected under this subsection.
78 Section 2. This act shall take effect July 1, 2006.