Governmental Operations Committee

Wednesday, April 5, 2006
2:00 – 3:00 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, April 05, 2006 02:00 pm
End Date and Time:	Wednesday, April 05, 2006 03:00 pm
Location:	Morris Hall (17 HOB)
Duration:	1.00 hrs

Consideration of the following bill(s):

HB 169 Contractual Access and Use of Electronic and Information Technology for Persons with Disabilities by Llorente
HB 245 Florida Retirement System by Williams
HB 501 CS Assisted Care Communities by Clarke
HB 583 CS Correctional and Law Enforcement Officer Discipline by Traviesa
HB 659 Florida Retirement System by Arza
HB 671 Florida Retirement System by Davis, M.
HB 693 CS Florida Springs Protection Act by Stansel
HB 731 Florida Retirement System by Rice
HB 755 Department of the Lottery by Clarke
HB 897 Florida Retirement System by Davis, M.
HB 901 Florida Retirement System by Sobel
HB 977 Special Risk Class of the Florida Retirement System by Bogdanoff
HB 1097 Public Records by Vana
HB 1435 Division of Emergency Management of the Department of Community Affairs by Harrell
HB 1447 Licensing by Reagan
HB 1507 Public Records by Mealor

NOTICE FINALIZED on 04/03/2006 15:53 by TUCK.SHIRLEY

HB 169

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 169 Contractual Access and Use of Electronic and Information Technology for Persons with Disabilities
SPONSOR(S): Llorente and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee		Brown	Williamson
2) Elder & Long-Term Care Committee			
3) State Administration Appropriations Committee			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill requires state agencies and private contractors working for state agencies to comply with Section 508 of the Rehabilitation Act of 1973, part of the federal Americans with Disabilities Act. The bill grants the Department of Management Services rulemaking authority to implement the newly-created requirement.

The bill could have a substantial economic impact on existing and new electronic or web-based programs and projects created by and for state agencies.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill potentially introduces a broad set of technical requirements for internal and external governmental activities provided electronically. The bill increases rulemaking authority for the Department of Management Services.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 508 of the Rehabilitation Act of 1973[1] is part of the larger Americans with Disabilities Act. Section 508 requires federal agencies to ensure that their procurement of information technology takes into account the needs of all end users, including disabled persons, by providing detailed requirements for websites and computer programs.[2] Providing such requirements enhances the ability of federal employees with disabilities to have access to and use of information and data that is comparable to that provided to others. Under Section 508, "comparable access" is not required if it would impose an "undue burden" on the agency.[3]

Current Application of Federal Standards

A threshold question exists: To what extent are state agencies and their contractors already required to comply with Section 508 technical requirements? The Information Technology Technical Assistance and Training Center (ITTATC)[4] has stated that

> [The] Section 508 law applies only to federal agencies and departments. The standards, however, are available for anyone to incorporate in whole or in part. Thus, for example, state law may require state entities to comply with the standards. A non-federal entity such as a university or a city, county, or state government that receives federal monies needs to comply with Section 504 (of the Rehabilitation Act) [5] requirements to provide reasonable accommodations for people with disabilities; however, Section 504 does not require accommodations to be provided through conformance with Section 508 accessibility standards. Adherence to Section 508 requirements can be used as a way of meeting Section 504 obligations....[6]

On its MyFlorida.com portal, the State of Florida has adopted a formal statement on website accessibility for persons with disabilities (the "Accessibility Statement"). The statement reads in part:

> Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency.

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[1] Section 508 is codified at 29 U.S.C. s. 794d. See generally http:///www.section508.gov.
[2] The technical standards are contained in Subpart B of Section 508, available online here: http://www.section508.gov/index.cfm?FuseAction=Content&ID=12.
[3] 29 U.S.C. s. 794d(a)(1)(A).
[4] ITTATC is funded by the National Institute on Disability and Rehabilitation Research (NIDRR). It is charged with providing accessibility training and technical assistance related to Section 508 of the Rehabilitation Act and Section 255 of the Telecommunications Act. More information about the organization is available at its website: http://www.ittatc.org/.
[5] 29 U.S.C. s. 794(a)
[6] From ITTATC Frequently Asked Questions, online here: http://www.ittatc.org/technical/experts/answers.php?qa_id=23.

> Section 508 now establishes requirements for electronic and information technology developed, maintained, procured, or used by the Federal government. Section 508 requires Federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public. [...] While these standards currently apply to federal government, it is the direct responsibility of Florida state government agencies and their web designers and developers to become familiar with these accessibility guidelines and to apply these principles in designing and creating any official State of Florida web site.[7]

Although it does not carry the weight of law, the Accessibility Statement indicates that agencies aspire to comply with the technical requirements of Section 508. Further, as the statement points out, under the status quo Section 504 already applies to certain state agency activities. Section 504 requires reasonable accommodation (which is often satisfied by the Section 508 standards),[8] if such activities are part of "any program or activity receiving Federal financial assistance." "Program or activity" is defined as:

> all of the operations of--
>
> (1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or
>
> (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
>
> [...]
>
> any part of which is extended Federal financial assistance.[9]

In determining whether the Act applies, a determination is necessary as to whether the state program or project at issue qualifies as a "program or activity" under Section 504. To the extent that the agency program, whether provided directly by state employees or through contractors, receives federal funding, it may be that the program already requires "reasonable accommodation," which is often provided by complying with the technical provisions of Section 508. If a private contractor is involved, materials and services provided by the contractor must comply. The federal law does not reach 'inside' the contractor's business, to mandate compliant systems in the private entity's internal operating environment.[10]

Proposed Changes

The bill requires that state agency contractors comply with Section 508. The bill also requires that each contract entered into between an agency and a private contractor must contain a statement that the private contractor comply with the provisions of Section 508. It is not clear if the state legislation is intended to 'reach inside' the contractor's operations. The bill does provide that failure by a private contractor to comply with such provisions is considered a breach of the contract and constitutes grounds for revocation of the contract.

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[7] Available online here: http://www.myflorida.com/myflorida/accessibility.html.
[8] *Id.*
[9] *Id.* at subsection (b).
[10] "The rule was not intended to automatically apply to a contractor's internal workplaces. For example, EIT [Electronic and Information Technology] neither used nor accessed by Federal employees or members of the public is not subject to the Access Board's standards (contractor employees in their professional capacity are not members of the public for purposes of section 508)." *Final FAR Rule For Implementing Section 508 of the Rehab Act Electronic and Information Technology Accessibility for Persons with Disabilities*, as published in the Federal Register April 25, 2001. Available online here: http://www.section508.gov/index.cfm?FuseAction=Content&ID=13.

The bill requires that each state agency comply with the provisions of Section 508 when directly conducting any agency activities relating to access and use of electronic information and technology.

The bill provides authorization for the department to adopt any rules necessary to administer, implement, and enforce the bill.

C. SECTION DIRECTORY:

Section 1 creates s. 287.1346, F.S., requiring state agencies and contractors to comply with Section 508 of the Rehabilitation Act of 1973.

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 may have a significant though indeterminate effect on agency information technology projects. Depending on the scope of compliance (see discussion in II.D. below), the bill may require significant additional costs to re-program or otherwise modify existing websites and programs to comply with Section 508 technical requirements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have the effect of directing state dollars to private contractors offering computer consulting advice on ADA compliance issues, whether as a direct part of a new agency project, or as a third-party consultant on a project between an agency and a prime contractor.

D. FISCAL COMMENTS:

The Department of Management Services' Enterprise Information Technology Services (EITS) program has stated that paragraph 2 of the newly created statute may be extremely broad, and warns that the bill's broad scope will have a dramatic fiscal effect, as there are few legacy systems, if any, that currently meet the Section 508 technical requirements.[11] The proposed statute requires compliance "when conducting any agency activities related to access and use of electronic information and technology." The EITS division suggests that the scope of compliance be narrowed, perhaps to only include those applications which "face outward" to the public, and exempt those applications used internally by agency employees.[12]

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[11] *HB169 Substantive Bill Analysis,* Department of Management Services, November 22, 2005.
[12] *Id.*

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:

As the current grant of rulemaking authority is drafted, it could be interpreted as too broad. The legislation simply grants authority to "adopt any rules necessary" to carry out the statute's intent. Further discussion of this issue is included below as part of a larger discussion of the bill's scope.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Unclear Application

As drafted, the legislation requires both contractors and state agencies to "comply with Section 508 of the Rehabilitation Act of 1973." It may be more accurate to direct the agencies and contractors to comply with the specific technical requirements contained in Section 508. Section 508 itself speaks directly to federal agencies. An argument can be made that directing a state agency or private contractor to "comply with Section 508," does not actually require the agency or contractor to obey a mandate aimed expressly at federal agencies. The state agency could argue that, as it is not a federal agency, Section 508 does not require it to do anything. A more explicit direction from the Legislature directing state agencies to comply with the technical requirements contained in Section 508 removes this argument.

This problem of "vague application" also exists at the implementation level, as explained below.

> "Most procurements are coming out with a blanket paragraph that says 'Comply with Section 508.' Then we don't know specifically what [standards] we have to comply with." [said Monica Dussman, corporate Section 508 coordinator for systems integrator Science Applications International Corp. of San Diego...]
>
> But some agencies aren't writing their solicitations correctly, causing difficulties for vendors.... The regulation requires that the agency identify in the procurement document the specific accessibility standards that apply to the purchase.
>
> Requiring bidders to certify blanket compliance with the accessibility standards is an attempt to shift the burden for compliance onto the vendor, said Michael Mason, a Washington attorney who advises ITAA on Section 508. The procurement rule states the government buyer must identify specific standards that apply to the project and conduct market research to find accessible products.[13]

Rulemaking

Given the federal experiences discussed above, it may be advisable to provide more detailed instruction to the agencies regarding the specific standards to be implemented. Currently, the bill

[13] *Washington Technology* magazine, May 20, 2002. Available here: http://www.washingtontechnology.com/news/17_4/federal/18272-1.html.

provides the Department of Management Services with a general grant of rulemaking authority. The bill could more specifically grant authority for DMS to identify those specific technical standards that should apply to various types of online programs or projects operated by state agencies. As the current grant of rulemaking authority is drafted, it could be interpreted as too broad. On the other hand, if the statutory mandate is to comply with all of the technical standards in Section 508 for all state projects without exception, it may be that no rulemaking is necessary at all.

Retroactive Application

Additional direction may be needed with regards to existing agency programs and contracts and the potential retroactivity of the requirements contained in this bill. If current contracts require re-negotiation, vendors may attempt to increase prices in excess of the true cost of compliance, as they already have their "nose under the tent" and may not be required to go through a competitive procurement process. Alternatively, all affected projects would need to be re-procured – a potentially expensive undertaking.

Current Default Procedures

The bill provides that failure by a private contractor to comply with Section 508 "shall be considered a breach of the contract and constitutes grounds for revocation of the contract." It may be more consistent with chapter 287, F.S., and rule 60A-1.003, F.A.C., to state that failure to comply will constitute an instance of "contract default." This language would conform to the current vendor management mechanisms contained in chapter 287, F.S. and the due process provisions of the Administrative Procedure Act.[14]

Scope of Application

The bill directs agencies to comply with Section 508 "when conducting any agency activities relating to access and use of electronic information and technology." This phrase may create unintentional conflicts, as Section 508 itself defines the scope of agency actions covered by the federal provision. By attempting to restate the scope at the state level, there may be unintended consequences. To the extent that the legislation attempts to "piggyback" the federal requirements, it may be advisable to allow the federal law to define the breadth of the law's application. In the alternative, the bill could more explicitly define the scope of application, and "piggyback" only the technical standards. Another option to control the scope at the state level would be to re-create any desired technical standards in the Florida Statutes, and not attempt to rely on federal legislation at all.

State Agencies – Practices

It is unclear how several ancillary federal concepts are to be incorporated into state agency practices. Without additional detail, it is unclear whether or not the legislation intends to incorporate federal rulings (past and future) regarding the "undue burden" exemption or other 'loopholes' found in the federal law.[15] The "undue burden" test has been summarized as "significant difficulty or expense to the program or component for which the product is being developed, procured, maintained, or used. [This] interpretation of undue burden is consistent with case law, the [ADA] and Section 504…."[16] In determining whether a particular commodity or service would impose an undue burden, a federal agency must consider "all resources available to its program or component for which the supply or service is being acquired."[17] Federal agencies are required to request a waiver of Section 508 compliance.[18] No provision is made in this legislation for such waiver, nor is an agency identified as the recipient and approving agency for such waiver requests.

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[14] Ch. 120, F.S.

[15] For example, the Clinger-Cohen Act of 1996 exempts certain security systems from Section 508.

[16] *Section 508 Enforcement /Complaint Processing Under Section 508,* a presentation by Ms. Jean Mahoney, Office for Civil Rights, U.S. Department of Agriculture, available online (in MS Powerpoint) here: http://www.ocio.usda.gov/508/doc/ocr625_wo_graphics.ppt.

[17] *Id.*.

[18] *Id.*

Section 508 also does not apply to federal agencies making "micropurchases," defined under federal law as purchases under $2,500.[19] It is not clear whether or not similar or identical thresholds will apply to the state, which has a separate set of threshold amounts for various purchases.[20]

Under Section 508, private individuals have a cause of action against the federal agency.[21] This federal waiver of immunity does not speak to state actions (or inactions). The federal law cannot waive sovereign immunity for state actions. In order to provide a private right of action for failure to comply with the requirements, an additional state waiver of immunity would be required and right of action instituted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[19] Codified in the Office of Federal Procurement Policy Act, 41 U.S.C. s. 428(f).

[20] See generally s. 287.017, F.S., providing five financial thresholds, and 60A-1.012, F.A.C., providing for modification of such thresholds by rule.

[21] See 29 U.S.C. s. 794a(a)(2), *et seq.*

1 A bill to be entitled
2 An act relating to contractual access and use of
3 electronic and information technology for persons with
4 disabilities; creating s. 287.1346, F.S.; requiring
5 contractors to comply with certain federally mandated
6 Internet accessibility requirements for persons with
7 disabilities; specifying contract requirements; specifying
8 conditions for breach and termination of a contract;
9 requiring state agencies to comply with such federal
10 requirements under certain circumstances; requiring the
11 Department of Management Services to adopt rules;
12 providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Section 287.1346, Florida Statutes, is created
17 to read:
18 287.1346 Contractual access and use of electronic and
19 information technology for persons with disabilities; rules.--
20 (1) Any private contractor which contracts with an agency
21 to sell commodities or services to the state shall comply with
22 the provisions of section 508 of the Rehabilitation Act of 1973,
23 as amended, 29 U.S.C. s. 794(d). Each contract entered into
24 between an agency and a private contractor must contain a
25 requirement that the private contractor comply with the
26 provisions of section 508 of the Rehabilitation Act of 1973, as
27 amended, 29 U.S.C. s. 794(d). Failure by a private contractor to

28 comply with such provisions shall be considered a breach of the
29 contract and constitutes grounds for revocation of the contract.
30 (2) Each state agency shall comply with the provisions of
31 section 508 of the Rehabilitation Act of 1973, as amended, 29
32 U.S.C. s. 794(d), when contracting to purchase commodities or
33 services and when conducting any agency activities relating to
34 access and use of electronic information and technology.
35 (3) Pursuant to chapter 120, the department shall adopt
36 any rules necessary to administer, implement, and enforce this
37 section.
38 Section 2. This act shall take effect July 1, 2006.

HB 245

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 245 Florida Retirement System
SPONSOR(S): Williams
TIED BILLS: **IDEN./SIM. BILLS:** SB 1094

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

SUMMARY ANALYSIS

HB 245 amends the definition of "compensation" within the Florida Retirement System Act to include two types of salary supplements made to firefighters, paramedics, or emergency medical technicians: (1) salary supplements for the "successful completion of employer-approved educational training" and (2) salary supplements for "additional job-related duties and responsibilities." As a result, compensation levels and, ultimately, retirement benefits may be higher for some firefighters, paramedics, or emergency medical technicians.

The bill also provides that employer-reported contributions for supplemental payments are compensation for all periods prior to July 1, 2006.

The bill complies with the requirements of section 14 of article X of the Florida Constitution, which prohibits an increase in the benefits of members without providing funding for the increase on a sound actuarial basis.

There are some definitional, operational, and policy questions raised by the bill.

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

This bill may have a fiscal impact on state and local government expenditures through the employer contribution to the retirement system for these supplemental payments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to affect any of the House principles.

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 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]

To receive benefits under the FRS, a member must reach his or her "normal retirement date."[11] The normal retirement date depends on the membership class of the member and is based on a minimum number of years of credible service and age (*e.g.*, six or more years and age 62 for a Regular Class member) or specified amount of credible service regardless of age (*e.g.,* 30 years for a Regular Class member).[12]

The amount of benefits a member ultimately receives is based on three key factors: (1) years of service, (2) accrual rate, and (3) average final compensation. "Average final compensation" is the "average of the five highest fiscal years of compensation for credible service."[13]

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < http://www.frs.state.fl.us/>.
[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. § 121.021(29) (2005).
[12] *Id.*
[13] Fla. Stat. § 121.021(24) (2005).

Relevant to the definition of average final compensation is the definition of "compensation": the monthly salary a member is paid by his or her employer for work performed arising from that employment.[14] Compensation also includes overtime payments; accumulated annual leave payments; payments in addition to the base rate of pay of the employee if certain criteria are met; salary supplements made to classroom teachers who are certified by the National Board of Professional Teaching Standards; amounts withheld for tax sheltered annuities, deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code; and payments made in lieu of a permanent increase in the base rate of pay.[15]

Changing the Definition of Compensation

Effective July 1, 2006, the bill amends the definition of compensation to include two types of salary supplements made to firefighters, paramedics, or emergency medical technicians: (1) salary supplements for the "successful completion of employer-approved educational training" and (2) salary supplements for "additional job-related duties and responsibilities."

The bill also provides that employer-reported contributions on these salary supplements shall be compensation for all periods prior to July 1, 2006.

C. SECTION DIRECTORY:

Section 1 amends subsection (22) of section 121.021, Florida Statutes, to revise the definition of compensation.

Section 2 sets forth the legislative declarations and a determination that this act fulfills an important state interest.

Section 3 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   This bill may create, modify, amend, or eliminate state revenue expenditures.[16]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate a revenue source for local governments.

2. Expenditures:

   This bill may create, modify, amend, or eliminate revenue expenditures for local governments.[17]

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[14] Fla. Stat. § 121.021(22) (2005).
[15] *Id.*
[16] *See* Fiscal Comments *infra*.
[17] *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The Department of Management Services provided a fiscal note from the enrolled actuary regarding this bill:

> Allowing nonrecurring payments to be treated as compensation that may be recognized in the calculation of retirement benefits could lead to artificially inflated benefits. If benefit inflation occurs, it would be a source of actuarial losses which could lead to an increase in normal costs and unfunded actuarial liabilities, possibly resulting in higher contribution rates in the future for the FRS Special Risk Class. There would be a fiscal impact resulting from HB 245, but the nature and amount of these payments are not expected to be sufficient to require a specific increase in the Special Risk Class employer contribution rate to fund this proposal. Future actuarial experience studies and valuations of the FRS would reveal the impact, if any, of covering these payments as compensation for retirement purposes and be reflected in the contribution rate recommended by future valuations.[18]

The Department of Management Services also evaluated the fiscal impact of the bill:

> Under current law, the supplemental payments covered by this bill are not reported to the Division of Retirement, so the employer contribution portion of the cost impact cannot be directly determined from our records. Also, the language does not require employers to create new programs for these payments, only to report these payments as compensation for the FRS if they exist on or after July 1, 2006. Each impacted employer would pay an additional 18.53% of such payments to cover the contributions for the FRS benefit and the HIS. We identified approximately 126 employers with at minimum of 10,506 employees who could have additional compensation reported to the FRS under HB 245.[19]

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. Yet, the bill appears to satisfy the requirements of section 18 of article VII of the Florida Constitution[20] because it provides that the act fulfills an important state interest and the expenditures are required by a law which appears to apply to all persons similarly situated, including the state and local governments.

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[18] Fla. Dep't of Mgmt. Serv., HB 245 (2006) Staff Analysis (Nov. 9, 2005) (on file with dep't).

[19] *Id.* Emphasis added.

[20] 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.

2. Other:

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

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

According to the Department of Management Services, this bill complies with the requirements of section 14 of article X of the Florida Constitution.[21]

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comment – Additional Job-Related Duties and Responsibilities

The bill requires employers to report salary supplements for "additional job-related duties and responsibilities" in determining compensation. This term is not, however, defined and may lead to differences in interpretation between employers and members.

Other Comment – Policy Change: Bonuses

Currently the definition of compensation specifically excludes bonuses.[22] A bonus is "a payment made in addition to an employee's regular or overtime salary, is usually nonrecurring, does not increase the employee's base rate of pay, and includes no commitment for payment in a subsequent year."[23]

Bonus payments were excluded from the definition of average final compensation in 1984 and from the definition of compensation in 1989. The Department of Management Services described the reason for these changes:

> This change was enacted based upon recommendations from the consulting actuary and the Auditor General who sought to insure that promised benefits would be funded on a sound actuarial basis as required by the Florida Constitution. By excluding bonuses from consideration as compensation, retirement benefits would not be artificially inflated by payments at or near retirement that are not representative of the regular salary or regular payments received over a member's career. This way, unanticipated contribution rate increases are prevented and retirement benefits remain properly funded. Then, in 1989, the Legislature excluded bonus payments from the definition of "compensation," thereby making reported compensation consistent with compensation eligible for inclusion in a member's average final compensation.[24]

To the extent that salary supplements do not have the constraints of "payments in addition to an employee's base pay,"[25] they may operate like bonuses. Thus, the bill may create a potentially

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[21] *Id.*
[22] Fla. Stat. 121.021(22) (2005).
[23] Fla. Stat. 121.021(47) (2005).
[24] Fla. Dep't of Mgmt. Serv., *supra* note 18.
[25] Fla. Stat. 121.021(22)3. (2005).

significant policy change as it relates to bonuses as well as a conflict between the definition of compensation and the definition of bonuses.

Other Comment – Policy Change: Differential Treatment of Class Members

This bill permits certain salary supplements to be "compensation" for retirement purposes only for firefighters, paramedics, or emergency medical technicians. Yet, the special risk class also includes law enforcement officers,[26] correctional officers,[27] community-based correctional probation officers,[28] youth custody officers,[29] certain employees whose duties involve contact with patients or inmates in a correctional or forensic facility or institution,[30] and employees of a law enforcement agency or medical examiner's office who are engaged in a forensic discipline.[31] It is not clear how the salary supplements for firefighters, paramedics, or emergency medical technicians differ from those of the other class members such that the salary supplements for one group are counted for retirement purposes, but the salary supplements for the rest of the class are not.

Other Comment – Reporting for "All Periods Prior to July 1, 2006"

The bill also provides that employer-reported contributions on supplemental payments shall be compensation for all periods prior to July 1, 2006. It is not clear if that provision only applies to contributions that were previously reported to the FRS - even though these contributions may not have been allowed by law[32] - or if the bill allows reporting of previously unreported salary supplements.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

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[26] Fla. Stat. § 121.0515(2)(a) (2005).
[27] Fla. Stat. § 121.0515(2)(c) (2005).
[28] Fla. Stat. § 121.0515(2)(e) (2005).
[29] Fla. Stat. § 121.0515(2)(g) (2005).
[30] Fla. Stat. § 121.0515(2)(f) (2005).
[31] Fla. Stat. § 121.0515(2)(h) (2005).
[32] *Id.*

1 A bill to be entitled
2 An act relating to the Florida Retirement System; amending
3 s. 121.021, F.S.; redefining the term "compensation" to
4 include certain supplementary payments made to
5 firefighters, paramedics, and emergency medical
6 technicians and certain employer-reported retirement
7 contributions; providing legislative findings and a
8 declaration of important state interest; providing an
9 effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Paragraph (a) of subsection (22) of section
14 121.021, Florida Statutes, is amended to read:
15 121.021 Definitions.--The following words and phrases as
16 used in this chapter have the respective meanings set forth
17 unless a different meaning is plainly required by the context:
18 (22) "Compensation" means the monthly salary paid a member
19 by his or her employer for work performed arising from that
20 employment.
21 (a) Compensation shall include:
22 1. Overtime payments paid from a salary fund.
23 2. Accumulated annual leave payments.
24 3. Payments in addition to the employee's base rate of pay
25 if all the following apply:
26 a. The payments are paid according to a formal written
27 policy that applies to all eligible employees equally;
28 b. The policy provides that payments shall commence no

29 later than the 11th year of employment;
30 c. The payments are paid for as long as the employee
31 continues his or her employment; and
32 d. The payments are paid at least annually.
33 4. Amounts withheld for tax sheltered annuities or
34 deferred compensation programs, or any other type of salary
35 reduction plan authorized under the Internal Revenue Code.
36 5. Payments made in lieu of a permanent increase in the
37 base rate of pay, whether made annually or in 12 or 26 equal
38 payments within a 12-month period, when the member's base pay is
39 at the maximum of his or her pay range. When a portion of a
40 member's annual increase raises his or her pay range and the
41 excess is paid as a lump sum payment, such lump sum payment
42 shall be compensation for retirement purposes.
43 6. Effective July 1, 2002, salary supplements made
44 pursuant to s. 1012.72 requiring a valid National Board for
45 Professional Standards certificate, notwithstanding the
46 provisions of subparagraph 3.
47 7. Effective July 1, 2006, salary supplements made to
48 firefighters, paramedics, or emergency medical technicians for
49 the successful completion of employer-approved educational
50 training or for additional job-related duties and
51 responsibilities, notwithstanding the provisions of subparagraph
52 3. For all periods prior to July 1, 2006, employer-reported
53 retirement contributions on these supplemental payments shall be
54 compensation.
55 Section 2. It is declared by the Legislature that
56 firefighters, emergency medical technicians, and paramedics

57 perform state and municipal functions; that it is their duty to
58 protect life and property at their own risk and peril; that it
59 is their duty to continuously instruct school personnel, public
60 officials, and private citizens about safety; and that their
61 activities are vital to the public safety. Therefore, the
62 Legislature declares that it is a proper and legitimate state
63 purpose to provide a uniform retirement system for the benefit
64 of firefighters, emergency medical technicians, and paramedics
65 and intends, in implementing the provisions of s. 14, Art. X of
66 the State Constitution as they relate to municipal and special
67 district pension trust fund systems and plans, that such
68 retirement systems or plans be managed, administered, operated,
69 and funded in such manner as to maximize the protection of
70 pension trust funds. Pursuant to s. 18, Art. VII of the State
71 Constitution, the Legislature determines and declares that the
72 provisions of this act fulfill an important state interest.
73 Section 3. This act shall take effect July 1, 2006.

HB 501 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 501 CS Assisted Care Communities
SPONSOR(S): Clarke
TIED BILLS: **IDEN./SIM. BILLS:** SB 388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	8 Y, 0 N, w/CS	DePalma	Walsh
2) Future of Florida's Families Committee	7 Y, 0 N	Davis	Collins
3) Governmental Operations Committee		Ziegler	Williamson
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

The Committee Substitute for HB 501 transfers provisions relating to assisted living facilities, adult family-care homes and adult day care centers from Parts III, V and VII of Chapter 400, F.S., to newly-created Parts I, II and III of Chapter 429, F.S., to be entitled "Assisted Care Communities."

The CS makes multiple statutory revisions which specify each conforming change required to accurately move these sections to their new chapter.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The CS does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Regulation of Health Care Facilities and Services

Chapter 408, F.S., "Health Care Administration" contains the general statutory provisions assigned to the Agency for Health Care Administration (AHCA). The Agency, as created in s. 20.42, F.S., is responsible for:

- Health facility licensure, inspection, and regulatory enforcement;
- Investigation of consumer complaints related to health care facilities and managed care plans;
- Implementation of the certificate of need program;
- Operation of the State Center for Health Statistics;
- Administration of the Medicaid program;
- Administration of the contracts with the Florida Healthy Kids Corporation;
- Certification of health maintenance organizations and prepaid health clinics as set forth in part III of chapter 641, F.S.; and
- Any other duties prescribed by statute or agreement.

The statutory provisions for the health care facilities and services requiring licensure by, or registration with, AHCA, are found in chapters 112, 383, 390, 394, 395, 400, 440, 483, and 765, F.S. The facilities and services include drug free workplace laboratories, birth centers, abortion clinics, crisis stabilization units, short term residential treatment units, residential treatment facilities, residential treatment centers for children and adolescents, hospitals, ambulatory surgical centers, mobile surgical facilities, private review agents, health care risk managers, nursing homes, assisted living facilities, home health agencies, nurse registries, companion services or homemaker services providers, adult day care centers, hospices, adult family care homes, homes for special services, transitional living facilities, prescribed pediatric extended care centers, home medical equipment providers, intermediate care facilities for the developmentally disabled, health care services pools, health care clinics, clinical laboratories, multiphasic health testing centers, and organ and tissue procurement agencies.

These regulated health care facilities and services provide care in settings ranging from individual homes to institutions such as hospitals and nursing homes. The complexity of care provided ranges from companion and homemaker services in the home to trauma care and intensive care in hospitals. The duration of service ranges from short-term to long-term.

The Department of Elderly Affairs currently has rulemaking authority for the assisted living facility, adult family care home, adult day care center, and hospice programs. The Agency for Health Care Administration has rulemaking authority for the majority of other programs it licenses including hospitals, nursing homes, home health agencies, and others.

Nursing Homes and Related Health Care Facilities

Chapter 400, F.S., is entitled "Nursing Homes and Related Health Care Facilities" and consists of 13 parts.

Part	Title
I	Long-Term Care Facilities: Ombudsman Program
II	Nursing Homes
III	Assisted Living Facilities
IV	Home Health Agencies
V	Adult Day Care Centers
VI	Hospices
VII	Adult Family-Care Home Act
VIII	Intermediate, Special Services, and Transitional Living Facilities
IX	Prescribed Pediatric Extended Care Centers
X	Home Medical Equipment Providers
XI	Intermediate Care Facilities for Developmentally Disabled Persons
XII	Health Care Services Pools
XIII	Health Care Clinic Act

Assisted Living Facilities

Assisted Living Facilities (ALFs) are residential care facilities that provide housing, meals, personal care, and supportive services to older persons and disabled adults who are unable to live independently. The facilities are licensed under Chapter 400, part III, F.S., and are intended to be a less costly alternative to more restrictive institutional settings for individuals who do not require 24-hour nursing supervision. Generally speaking, ALFs provide supervision, assistance with personal and supportive services, and assistance with administration of medications to elders and disabled adults.

Nationally, it is estimated that an excess of 600,000 seniors currently reside in an ALF. In 2000, Florida's 2,305 assisted living facilities alone housed approximately 75,000 residents. Facilities operating on a for-profit basis account for the majority of the state's ALFs, as more than 83% of Florida's ALFs function as for-profit enterprises.[1]

In addition to a standard ALF operating license, there are three "specialty" ALF licenses: extended congregate care (ECC), limited nursing services (LNS), and limited mental health (LMH). An ALF holding an ECC license may provide additional nursing services and total assistance with personal care services. Residents living in ECC-licensed facilities may have greater impairment levels than those living in a standard ALF. Residents living in an ALF holding a LNS or LMH license must meet the same residency criteria as a standard-licensed ALF.

Regardless of the facility's license status, residents living in ALFs cannot have conditions that require 24-hour nursing supervision.[2]

Part III of Chapter 400, F.S., was created in 1975, and details the licensing and regulatory requirements for ALFs.

Adult Family Care Homes

Adult Family-Care Homes (AFCHs) are a familial-oriented living arrangement in a private home. AFCHs are licensed in accordance with Chapter 400, part VII, F.S., to provide room, board, and personal care on a 24-hour basis for up to five residents as an alternative to more restrictive institutional settings for individuals who need housing and supportive services, but not 24-hour nursing supervision. The provider must own or rent and live in the home operating as an AFCHs, and staff in AFCH are either employed by, or under contract with, the provider.

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[1] *Florida's Aging Population: Critical Issues for Florida's Future*, 2nd Edition (2004), Pepper Institute on Aging and Public Policy, FSU College of Social Sciences.

[2] An exception is made for an existing resident who is receiving licensed hospice services while residing in an ALF.

Part VII of Chapter 400, F.S., was created in 1985, and details the licensing and regulatory requirements for AFCHs.

Adult Day Care Centers

Adult Day Care Centers (ADCCs) provide a variety of therapeutic, social, and health activities and services to adults who have functional impairments, in an effort to help restore, remediate, or maintain optimal functioning and increase interaction with others in a non-institutional setting. Participants may utilize a variety of services offered during any part of a day but less than a 24-hour period.

Part V of Chapter 400, F.S., was created in 1978, and details the licensing and regulatory requirements for ADCCs.

Division of Statutory Revision

The Division of Statutory Revision (the "Division") is a unit within the Office of Legislative Services (OLS), which is responsible for editing, compiling, indexing, and publishing the Florida Statutes under the continuous permanent statutory revision plan established under ss. 11.241-11.243, F.S. The powers, duties, and functions of OLS as they pertain to the statutory revision program are specified by these sections of statute.

The provisions of s.11.242(1), F.S., charge the Division with conducting a systematic and continuing study of the statutes and laws of this state for the purpose of reducing their number and bulk, removing inconsistencies, redundancies, and unnecessary repetitions and otherwise improving their clarity and facilitating their correct and proper interpretation; and for the same purpose, to prepare and submit to the Legislature reviser's bills and bills for the amendment, consolidation, revision, repeal, or other alterations or changes in any general statute or laws or parts thereof of a general nature required as a result of legislation approved during the preceding session or sessions.

EFFECT OF PROPOSED CHANGES

The CS for HB 501 transfers all sections of parts III, V and VII of chapter 400, F.S., to chapter 429, F.S., entitling the chapter "Assisted Care Communities" and making multiple statutory revisions necessary to accurately reflect the move of part III of chapter 400, F.S., to chapter 429, F.S. Chapter 429, F.S. is organized into parts I, II and III as follows:

Chapter 400, F.S., part	Title	Transfer to Chapter 429, F.S., part
III	Assisted Living Facilities	I
VII	Adult Family-Care Home Act	II
V	Adult Day Care Centers	III

C. SECTION DIRECTORY:

Section 1: Creates Chapter 429, Assisted Care Communities.

Section 2: Renumbers ss. 400.401 through 400.454 as ss. 429.01 through 429.54 and designates those sections as Part I, Assisted Living Facilities.

Section 3: Renumbers ss. 400.616 through 400.629 as ss. 429.60 through 429.87 and designates those sections as Part II, Adult Family-Care Homes.

Section 4: Renumbers ss. 400.55 through 400.564 as ss. 429.90 through 429.933 and designates those sections as Part III, Adult Day Care Centers.

Sections 5 through 121: Specifies each conforming change required to reflect the relocation of Parts III, VII and V of Chapter 400, F.S., to newly-created Parts I, II, and III of Chapter 429, F.S.

Section 122: Directs the Division of Statutory Revision to prepare a reviser's bill for introduction at a subsequent legislative session making conforming changes to Florida Statutes.

Section 123: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Agency for Health Care Administration reports that there should be no fiscal impact through implementation of the provisions of the CS.

2. Expenditures:

   The Agency for Health Care Administration reports that there should be no fiscal impact through implementation of the provisions of the CS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The municipal/county mandates provision in Section 18 of Article VII of the Florida Constitution does not appear to be applicable since the CS does not appear to require counties or municipalities to take action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to 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

At its January 25, 2006 meeting, the Committee on Elder & Long-Term Care adopted a strike-all amendment to HB 501. The strike-all corrects several technical and conforming references throughout the bill.

The Committee favorably reported a Committee Substitute.

This analysis is drafted to the Committee Substitute.

CHAMBER ACTION

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1 The Elder & Long-Term Care 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 assisted care communities; creating ch.
7 429, F.S.; transferring pt. III of ch. 400, F.S., relating
8 to assisted living facilities, to pt. I of ch. 429, F.S.;
9 transferring pt. VII of ch. 400, F.S., relating to adult
10 family-care homes, to pt. II of ch. 429, F.S.;
11 transferring pt. V of ch. 400, F.S., relating to adult day
12 care centers, to pt. III of ch. 429, F.S.; amending ss.
13 101.655, 189.428, 196.1975, 202.125, 205.1965, 212.031,
14 212.08, 296.02, 381.0035, 381.745, 393.063, 393.506,
15 394.455, 394.4574, 394.463, 400.0063, 400.0069, 400.0073,
16 400.0077, 400.0239, 400.119, 400.141, 400.142, 400.191,
17 400.215, 400.402, 400.404, 400.407, 400.4071, 400.408,
18 400.411, 400.412, 400.414, 400.415, 400.417, 400.4174,
19 400.4176, 400.4178, 400.418, 400.419, 400.42, 400.422,
20 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.428,
21 400.429, 400.4293, 400.431, 400.441, 400.442, 400.444,
22 400.447, 400.452, 400.462, 400.464, 400.497, 400.552,
23 400.555, 400.556, 400.557, 400.5572, 400.601, 400.618,

24 400.6194, 400.621, 400.628, 400.93, 400.962, 400.980,
25 400.9905, 401.23, 402.164, 408.032, 408.033, 408.034,
26 408.07, 408.831, 409.212, 409.221, 409.905, 409.906,
27 409.907, 409.912, 410.031, 410.034, 415.1111, 419.001,
28 430.601, 430.703, 435.03, 435.04, 440.13, 465.0235,
29 468.1685, 468.505, 477.025, 483.285, 509.032, 509.241,
30 627.6617, 627.732, 651.011, 651.022, 651.023, 651.055,
31 651.095, 651.118, 765.1103, 765.205, 768.735, 893.13,
32 943.0585, and 943.059, F.S., to conform references to
33 changes made by the act; requesting the Division of
34 Statutory Revision to make necessary conforming changes to
35 the Florida Statutes; providing an effective date.
36
37 Be It Enacted by the Legislature of the State of Florida:
38
39 Section 1. Chapter 429, Florida Statutes, is created, to
40 be entitled "Assisted Care Communities."
41 Section 2. Sections 400.401, 400.402, 400.404, 400.407,
42 400.4071, 400.4075, 400.408, 400.411, 400.412, 400.414, 400.415,
43 400.417, 400.4174, 400.4176, 400.4177, 400.4178, 400.418,
44 400.419, 400.4195, 400.42, 400.421, 400.422, 400.423, 400.424,
45 400.4255, 400.4256, 400.426, 400.427, 400.4275, 400.428,
46 400.429, 400.4293, 400.4294, 400.4295, 400.4296, 400.4297,
47 400.4298, 400.431, 400.434, 400.435, 400.441, 400.442, 400.444,
48 400.4445, 400.447, 400.449, 400.451, 400.452, 400.453, and
49 400.454, Florida Statutes, are renumbered as sections 429.01,
50 429.02, 429.04, 429.07, 429.071, 429.075, 429.08, 429.11,
51 429.12, 429.14, 429.15, 429.17, 429.174, 429.176, 429.177,

52 429.178, 429.18, 429.19, 429.195, 429.20, 429.21, 429.22,
53 429.23, 429.24, 429.255, 429.256, 429.26, 429.27, 429.275,
54 429.28, 429.29, 429.293, 429.294, 429.295, 429.296, 429.297,
55 429.298, 429.31, 429.34, 429.35, 429.41, 429.42, 429.44,
56 429.445, 429.47, 429.49, 429.51, 429.52, 429.53, and 429.54,
57 Florida Statutes, respectively, designated as part I of chapter
58 429, Florida Statutes, and entitled "ASSISTED LIVING
59 FACILITIES."
60 Section 3. Sections 400.616, 400.617, 400.618, 400.619,
61 400.6194, 400.6196, 400.621, 400.6211, 400.622, 400.625,
62 400.6255, 400.628, and 400.629, Florida Statutes, are renumbered
63 as sections 429.60, 429.63, 429.65, 429.67, 429.69, 429.71,
64 429.73, 429.75, 429.77, 429.81, 429.83, 429.85, and 429.87,
65 Florida Statutes, respectively, designated as part II of chapter
66 429, Florida Statutes, and entitled "ADULT FAMILY-CARE HOMES."
67 Section 4. Sections 400.55, 400.551, 400.552, 400.553,
68 400.554, 400.555, 400.556, 400.5565, 400.557, 400.5571,
69 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562, 400.563,
70 and 400.564, Florida Statutes, are renumbered as sections
71 429.90, 429.901, 429.903, 429.905, 429.907, 429.909, 429.911,
72 429.913, 429.915, 429.917, 429.919, 429.921, 429.923, 429.925,
73 429.927, 429.929, 429.931, and 429.933, Florida Statutes,
74 designated as part III of chapter 429, Florida Statutes, and
75 entitled "ADULT DAY CARE CENTERS."
76 Section 5. Subsection (1) of section 101.655, Florida
77 Statutes, is amended to read:
78 101.655 Supervised voting by absent electors in certain
79 facilities.--

80 (1) The supervisor of elections of a county shall provide
81 supervised voting for absent electors residing in any assisted
82 living facility, as defined in s. 429.02 ~~s. 400.402~~, or nursing
83 home facility, as defined in s. 400.021, within that county at
84 the request of any administrator of such a facility. Such
85 request for supervised voting in the facility shall be made by
86 submitting a written request to the supervisor of elections no
87 later than 21 days prior to the election for which that request
88 is submitted. The request shall specify the name and address of
89 the facility and the name of the electors who wish to vote
90 absentee in that election. If the request contains the names of
91 fewer than five voters, the supervisor of elections is not
92 required to provide supervised voting.
93 Section 6. Subsection (9) of section 189.428, Florida
94 Statutes, is amended to read:
95 189.428 Special districts; oversight review process.--
96 (9) This section does not apply to a deepwater port listed
97 in s. 311.09(1) which is in compliance with a port master plan
98 adopted pursuant to s. 163.3178(2)(k), or to an airport
99 authority operating in compliance with an airport master plan
100 approved by the Federal Aviation Administration, or to any
101 special district organized to operate health systems and
102 facilities licensed under chapter 395, ~~or~~ chapter 400, or
103 chapter 429.
104 Section 7. Paragraph (b) of subsection (2) of section
105 196.1975, Florida Statutes, is amended to read:

106 196.1975 Exemption for property used by nonprofit homes
107 for the aged.--Nonprofit homes for the aged are exempt to the
108 extent that they meet the following criteria:
109 (2) A facility will not qualify as a "home for the aged"
110 unless at least 75 percent of the occupants are over the age of
111 62 years or totally and permanently disabled. For homes for the
112 aged which are exempt from paying income taxes to the United
113 States as specified in subsection (1), licensing by the Agency
114 for Health Care Administration is required for ad valorem tax
115 exemption hereunder only if the home:
116 (b) Qualifies as an assisted living facility under ~~part~~
117 ~~III of~~ chapter 429 ~~400~~.
118 Section 8. Paragraph (c) of subsection (4) of section
119 202.125, Florida Statutes, is amended to read:
120 202.125 Sales of communications services; specified
121 exemptions.--
122 (4) The sale of communications services to a home for the
123 aged, religious institution or educational institution that is
124 exempt from federal income tax under s. 501(c)(3) of the
125 Internal Revenue Code, or by a religious institution that is
126 exempt from federal income tax under s. 501(c)(3) of the
127 Internal Revenue Code having an established physical place for
128 worship at which nonprofit religious services and activities are
129 regularly conducted and carried on, is exempt from the taxes
130 imposed or administered pursuant to ss. 202.12 and 202.19. As
131 used in this subsection, the term:
132 (c) "Home for the aged" includes any nonprofit
133 corporation:

134 1. In which at least 75 percent of the occupants are 62
135 years of age or older or totally and permanently disabled; which
136 qualifies for an ad valorem property tax exemption under s.
137 196.196, s. 196.197, or s. 196.1975; and which is exempt from
138 the sales tax imposed under chapter 212.
139 2. Licensed as a nursing home under chapter 400 or an
140 assisted living facility under chapter 429 ~~400~~ and which is
141 exempt from the sales tax imposed under chapter 212.
142 Section 9. Section 205.1965, Florida Statutes, is amended
143 to read:
144 205.1965 Assisted living facilities.--A county or
145 municipality may not issue an occupational license for the
146 operation of an assisted living facility pursuant to ~~part III of~~
147 chapter 429 ~~400~~ without first ascertaining that the applicant
148 has been licensed by the Agency for Health Care Administration
149 to operate such facility at the specified location or locations.
150 The Agency for Health Care Administration shall furnish to local
151 agencies responsible for issuing occupational licenses
152 sufficient instructions for making the above required
153 determinations.
154 Section 10. Paragraph (b) of subsection (1) of section
155 212.031, Florida Statutes, is amended to read:
156 212.031 Tax on rental or license fee for use of real
157 property.--
158 (1)
159 (b) When a lease involves multiple use of real property
160 wherein a part of the real property is subject to the tax
161 herein, and a part of the property would be excluded from the

162 tax under subparagraph (a)1., subparagraph (a)2., subparagraph
163 (a)3., or subparagraph (a)5., the department shall determine,
164 from the lease or license and such other information as may be
165 available, that portion of the total rental charge which is
166 exempt from the tax imposed by this section. The portion of the
167 premises leased or rented by a for-profit entity providing a
168 residential facility for the aged will be exempt on the basis of
169 a pro rata portion calculated by combining the square footage of
170 the areas used for residential units by the aged and for the
171 care of such residents and dividing the resultant sum by the
172 total square footage of the rented premises. For purposes of
173 this section, the term "residential facility for the aged" means
174 a facility that is licensed or certified in whole or in part
175 under chapter 400, chapter 429, or chapter 651; or that provides
176 residences to the elderly and is financed by a mortgage or loan
177 made or insured by the United States Department of Housing and
178 Urban Development under s. 202, s. 202 with a s. 8 subsidy, s.
179 221(d)(3) or (4), s. 232, or s. 236 of the National Housing Act;
180 or other such similar facility that provides residences
181 primarily for the elderly.
182 Section 11. Paragraph (i) of subsection (7) of section
183 212.08, Florida Statutes, is amended to read:
184 212.08 Sales, rental, use, consumption, distribution, and
185 storage tax; specified exemptions.--The sale at retail, the
186 rental, the use, the consumption, the distribution, and the
187 storage to be used or consumed in this state of the following
188 are hereby specifically exempt from the tax imposed by this
189 chapter.

190 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
191 entity by this chapter do not inure to any transaction that is
192 otherwise taxable under this chapter when payment is made by a
193 representative or employee of the entity by any means,
194 including, but not limited to, cash, check, or credit card, even
195 when that representative or employee is subsequently reimbursed
196 by the entity. In addition, exemptions provided to any entity by
197 this subsection do not inure to any transaction that is
198 otherwise taxable under this chapter unless the entity has
199 obtained a sales tax exemption certificate from the department
200 or the entity obtains or provides other documentation as
201 required by the department. Eligible purchases or leases made
202 with such a certificate must be in strict compliance with this
203 subsection and departmental rules, and any person who makes an
204 exempt purchase with a certificate that is not in strict
205 compliance with this subsection and the rules is liable for and
206 shall pay the tax. The department may adopt rules to administer
207 this subsection.
208 (i) Hospital meals and rooms.--Also exempt from payment of
209 the tax imposed by this chapter on rentals and meals are
210 patients and inmates of any hospital or other physical plant or
211 facility designed and operated primarily for the care of persons
212 who are ill, aged, infirm, mentally or physically incapacitated,
213 or otherwise dependent on special care or attention. Residents
214 of a home for the aged are exempt from payment of taxes on meals
215 provided through the facility. A home for the aged is defined
216 as a facility that is licensed or certified in part or in whole
217 under chapter 400, chapter 429, or chapter 651, or that is

218 financed by a mortgage loan made or insured by the United States
219 Department of Housing and Urban Development under s. 202, s. 202
220 with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of
221 the National Housing Act, or other such similar facility
222 designed and operated primarily for the care of the aged.
223 Section 12. Subsection (5) of section 296.02, Florida
224 Statutes, is amended to read:
225 296.02 Definitions.--For the purposes of this part, except
226 where the context clearly indicates otherwise:
227 (5) "Extended congregate care" has the meaning given to
228 that term under s. 429.02 ~~s. 400.402~~.
229 Section 13. Subsections (1) and (3) of section 381.0035,
230 Florida Statutes, are amended to read:
231 381.0035 Educational course on HIV and AIDS; employees and
232 clients of certain health care facilities.--
233 (1) The Department of Health shall require all employees
234 and clients of facilities licensed under chapters 393, 394, and
235 397 and employees of facilities licensed under chapter 395, ~~and~~
236 parts II and~~,~~ III~~,~~ ~~IV, and VI~~ of chapter 400, and parts I and IV
237 of chapter 429 to complete, biennially, a continuing educational
238 course on the modes of transmission, infection control
239 procedures, clinical management, and prevention of human
240 immunodeficiency virus and acquired immune deficiency syndrome
241 with an emphasis on appropriate behavior and attitude change.
242 Such instruction shall include information on current Florida
243 law and its impact on testing, confidentiality of test results,
244 and treatment of patients and any protocols and procedures
245 applicable to human immunodeficiency counseling and testing,

246 reporting, the offering of HIV testing to pregnant women, and
247 partner notification issues pursuant to ss. 381.004 and 384.25.
248 (3) Facilities licensed under chapters 393, 394, 395, and
249 397, ~~and~~ parts II, III, and IV~~, and VI~~ of chapter 400, and part
250 I of chapter 429 shall maintain a record of employees and dates
251 of attendance at human immunodeficiency virus and acquired
252 immune deficiency syndrome educational courses.
253 Section 14. Subsection (9) of section 381.745, Florida
254 Statutes, is amended to read:
255 381.745 Definitions; ss. 381.739-381.79.--As used in ss.
256 381.739-381.79, the term:
257 (9) "Transitional living facility" means a state-approved
258 facility, as defined and licensed under chapter 400 or chapter
259 429, or a facility approved by the brain and spinal cord injury
260 program in accordance with this chapter.
261 Section 15. Subsection (24) of section 393.063, Florida
262 Statutes, is amended to read:
263 393.063 Definitions.--For the purposes of this chapter:
264 (24) "Intermediate care facility for the developmentally
265 disabled" or "ICF/DD" means a residential facility licensed and
266 certified pursuant to part VIII ~~XI~~ of chapter 400.
267 Section 16. Paragraph (b) of subsection (1) of section
268 393.506, Florida Statutes, is amended to read:
269 393.506 Administration of medication.--
270 (1) Notwithstanding the provisions of part I of chapter
271 464, the Nurse Practice Act, unlicensed direct care services
272 staff providing services to persons with developmental

273 disabilities may administer oral, transdermal, inhaled, or
274 topical prescription medications as provided in this section.
275 (b) For intermediate care facilities for the
276 developmentally disabled licensed pursuant to part VIII ~~XI~~ of
277 chapter 400, unlicensed staff designated by the director may
278 provide medication assistance under the general supervision of a
279 registered nurse licensed pursuant to chapter 464.
280 Section 17. Subsection (10) of section 394.455, Florida
281 Statutes, is amended to read:
282 394.455 Definitions.--As used in this part, unless the
283 context clearly requires otherwise, the term:
284 (10) "Facility" means any hospital, community facility,
285 public or private facility, or receiving or treatment facility
286 providing for the evaluation, diagnosis, care, treatment,
287 training, or hospitalization of persons who appear to have a
288 mental illness or have been diagnosed as having a mental
289 illness. "Facility" does not include any program or entity
290 licensed pursuant to chapter 400 or chapter 429.
291 Section 18. Paragraphs (b), (c), and (e) of subsection (2)
292 of section 394.4574, Florida Statutes, are amended to read:
293 394.4574 Department responsibilities for a mental health
294 resident who resides in an assisted living facility that holds a
295 limited mental health license.--
296 (2) The department must ensure that:
297 (b) A cooperative agreement, as required in s. 429.075 ~~s.~~
298 ~~400.4075~~, is developed between the mental health care services
299 provider that serves a mental health resident and the
300 administrator of the assisted living facility with a limited

301 mental health license in which the mental health resident is
302 living. Any entity that provides Medicaid prepaid health plan
303 services shall ensure the appropriate coordination of health
304 care services with an assisted living facility in cases where a
305 Medicaid recipient is both a member of the entity's prepaid
306 health plan and a resident of the assisted living facility. If
307 the entity is at risk for Medicaid targeted case management and
308 behavioral health services, the entity shall inform the assisted
309 living facility of the procedures to follow should an emergent
310 condition arise.
311 (c) The community living support plan, as defined in s.
312 429.02 ~~s. 400.402~~, has been prepared by a mental health resident
313 and a mental health case manager of that resident in
314 consultation with the administrator of the facility or the
315 administrator's designee. The plan must be provided to the
316 administrator of the assisted living facility with a limited
317 mental health license in which the mental health resident lives.
318 The support plan and the agreement may be in one document.
319 (e) The mental health services provider assigns a case
320 manager to each mental health resident who lives in an assisted
321 living facility with a limited mental health license. The case
322 manager is responsible for coordinating the development of and
323 implementation of the community living support plan defined in
324 s. 429.02 ~~s. 400.402~~. The plan must be updated at least
325 annually.
326 Section 19. Paragraph (b) of subsection (2) of section
327 394.463, Florida Statutes, is amended to read:
328 394.463 Involuntary examination.--

329 (2) INVOLUNTARY EXAMINATION.--
330 (b) A person shall not be removed from any program or
331 residential placement licensed under chapter 400 or chapter 429
332 and transported to a receiving facility for involuntary
333 examination unless an ex parte order, a professional
334 certificate, or a law enforcement officer's report is first
335 prepared. If the condition of the person is such that
336 preparation of a law enforcement officer's report is not
337 practicable before removal, the report shall be completed as
338 soon as possible after removal, but in any case before the
339 person is transported to a receiving facility. A receiving
340 facility admitting a person for involuntary examination who is
341 not accompanied by the required ex parte order, professional
342 certificate, or law enforcement officer's report shall notify
343 the Agency for Health Care Administration of such admission by
344 certified mail no later than the next working day. The
345 provisions of this paragraph do not apply when transportation is
346 provided by the patient's family or guardian.
347 Section 20. Paragraph (b) of subsection (3) of section
348 400.0063, Florida Statutes, is amended to read:
349 400.0063 Establishment of Office of State Long-Term Care
350 Ombudsman; designation of ombudsman and legal advocate.--
351 (3)
352 (b) The duties of the legal advocate shall include, but
353 not be limited to:
354 1. Assisting the ombudsman in carrying out the duties of
355 the office with respect to the abuse, neglect, or violation of
356 rights of residents of long-term care facilities.

357 2. Assisting the state and local ombudsman councils in
358 carrying out their responsibilities under this part.
359 3. Initiating and prosecuting legal and equitable actions
360 to enforce the rights of long-term care facility residents as
361 defined in this chapter or chapter 429.
362 4. Serving as legal counsel to the state and local
363 ombudsman councils, or individual members thereof, against whom
364 any suit or other legal action is initiated in connection with
365 the performance of the official duties of the councils or an
366 individual member.
367 Section 21. Subsection (3) of section 400.0069, Florida
368 Statutes, is amended to read:
369 400.0069 Local long-term care ombudsman councils; duties;
370 membership.--
371 (3) In order to carry out the duties specified in
372 subsection (2), the local ombudsman council is authorized,
373 pursuant to ss. 400.19(1) and 429.34 ~~400.434~~, to enter any long-
374 term care facility without notice or first obtaining a warrant,
375 subject to the provisions of s. 400.0073(5).
376 Section 22. Paragraphs (c) and (f) of subsection (5) and
377 subsection (6) of section 400.0073, Florida Statutes, are
378 amended to read:
379 400.0073 State and local ombudsman council
380 investigations.--
381 (5) Any onsite administrative inspection conducted by an
382 ombudsman council shall be subject to the following:
383 (c) Inspections shall be conducted in a manner which will
384 impose no unreasonable burden on nursing homes or long-term care

385 facilities, consistent with the underlying purposes of this part
386 and chapter 429. Unnecessary duplication of efforts among
387 council members or the councils shall be reduced to the extent
388 possible.
389 (f) All inspections shall be limited to compliance with
390 part ~~parts~~ II~~, III, and VII~~ of this chapter, chapter 429, and 42
391 U.S.C. ss. 1396(a) et seq., and any rules or regulations
392 promulgated pursuant to such laws.
393 (6) An inspection may not be accomplished by forcible
394 entry. Refusal of a long-term care facility to allow entry of
395 any ombudsman council member constitutes a violation of part II~~,~~
396 ~~part III, or part VII~~ of this chapter or chapter 429.
397 Section 23. Subsection (4) of section 400.0077, Florida
398 Statutes, is amended to read:
399 400.0077 Confidentiality.--
400 (4) Members of any state or local ombudsman council shall
401 not be required to testify in any court with respect to matters
402 held to be confidential under s. 429.14 ~~s. 400.414~~ except as may
403 be necessary to enforce the provisions of this act.
404 Section 24. Subsection (1) of section 400.0239, Florida
405 Statutes, is amended to read:
406 400.0239 Quality of Long-Term Care Facility Improvement
407 Trust Fund.--
408 (1) There is created within the Agency for Health Care
409 Administration a Quality of Long-Term Care Facility Improvement
410 Trust Fund to support activities and programs directly related
411 to improvement of the care of nursing home and assisted living
412 facility residents. The trust fund shall be funded through

413 proceeds generated pursuant to ss. 400.0238 and 429.298
414 ~~400.4298~~, through funds specifically appropriated by the
415 Legislature, through gifts, endowments, and other charitable
416 contributions allowed under federal and state law, and through
417 federal nursing home civil monetary penalties collected by the
418 Centers for Medicare and Medicaid Services and returned to the
419 state. These funds must be utilized in accordance with federal
420 requirements.
421 Section 25. Subsections (1) and (4) of section 400.119,
422 Florida Statutes, are amended to read:
423 400.119 Confidentiality of records and meetings of risk
424 management and quality assurance committees.--
425 (1) Records of meetings of the risk management and quality
426 assurance committee of a long-term care facility licensed under
427 this part or part I ~~III~~ of ~~this~~ chapter 429, as well as incident
428 reports filed with the facility's risk manager and
429 administrator, notifications of the occurrence of an adverse
430 incident, and adverse incident reports from the facility are
431 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
432 of the State Constitution. However, if the Agency for Health
433 Care Administration has a reasonable belief that conduct by a
434 staff member or employee of a facility is criminal activity or
435 grounds for disciplinary action by a regulatory board, the
436 agency may disclose such records to the appropriate law
437 enforcement agency or regulatory board.
438 (4) The meetings of an internal risk management and
439 quality assurance committee of a long-term care facility
440 licensed under this part or part I ~~III~~ of ~~this~~ chapter 429 are

441 exempt from s. 286.011 and s. 24(b), Art. I of the State
442 Constitution and are not open to the public.
443 Section 26. Subsections (4) and (7) of section 400.141,
444 Florida Statutes, are amended to read:
445 400.141 Administration and management of nursing home
446 facilities.--Every licensed facility shall comply with all
447 applicable standards and rules of the agency and shall:
448 (4) Provide for resident use of a community pharmacy as
449 specified in s. 400.022(1)(q). Any other law to the contrary
450 notwithstanding, a registered pharmacist licensed in Florida,
451 that is under contract with a facility licensed under this
452 chapter <u>or chapter 429</u>, shall repackage a nursing facility
453 resident's bulk prescription medication which has been packaged
454 by another pharmacist licensed in any state in the United States
455 into a unit dose system compatible with the system used by the
456 nursing facility, if the pharmacist is requested to offer such
457 service. In order to be eligible for the repackaging, a resident
458 or the resident's spouse must receive prescription medication
459 benefits provided through a former employer as part of his or
460 her retirement benefits, a qualified pension plan as specified
461 in s. 4972 of the Internal Revenue Code, a federal retirement
462 program as specified under 5 C.F.R. s. 831, or a long-term care
463 policy as defined in s. 627.9404(1). A pharmacist who correctly
464 repackages and relabels the medication and the nursing facility
465 which correctly administers such repackaged medication under the
466 provisions of this subsection shall not be held liable in any
467 civil or administrative action arising from the repackaging. In
468 order to be eligible for the repackaging, a nursing facility

469 resident for whom the medication is to be repackaged shall sign
470 an informed consent form provided by the facility which includes
471 an explanation of the repackaging process and which notifies the
472 resident of the immunities from liability provided herein. A
473 pharmacist who repackages and relabels prescription medications,
474 as authorized under this subsection, may charge a reasonable fee
475 for costs resulting from the implementation of this provision.
476 (7) If the facility has a standard license or is a Gold
477 Seal facility, exceeds the minimum required hours of licensed
478 nursing and certified nursing assistant direct care per resident
479 per day, and is part of a continuing care facility licensed
480 under chapter 651 or a retirement community that offers other
481 services pursuant to part III of this chapter or part I or part
482 III of chapter 429~~, part IV, or part V~~ on a single campus, be
483 allowed to share programming and staff. At the time of
484 inspection and in the semiannual report required pursuant to
485 subsection (15), a continuing care facility or retirement
486 community that uses this option must demonstrate through
487 staffing records that minimum staffing requirements for the
488 facility were met. Licensed nurses and certified nursing
489 assistants who work in the nursing home facility may be used to
490 provide services elsewhere on campus if the facility exceeds the
491 minimum number of direct care hours required per resident per
492 day and the total number of residents receiving direct care
493 services from a licensed nurse or a certified nursing assistant
494 does not cause the facility to violate the staffing ratios
495 required under s. 400.23(3)(a). Compliance with the minimum
496 staffing ratios shall be based on total number of residents

497 receiving direct care services, regardless of where they reside
498 on campus. If the facility receives a conditional license, it
499 may not share staff until the conditional license status ends.
500 This subsection does not restrict the agency's authority under
501 federal or state law to require additional staff if a facility
502 is cited for deficiencies in care which are caused by an
503 insufficient number of certified nursing assistants or licensed
504 nurses. The agency may adopt rules for the documentation
505 necessary to determine compliance with this provision.
506
507 Facilities that have been awarded a Gold Seal under the program
508 established in s. 400.235 may develop a plan to provide
509 certified nursing assistant training as prescribed by federal
510 regulations and state rules and may apply to the agency for
511 approval of their program.
512 Section 27. Subsection (1) of section 400.142, Florida
513 Statutes, is amended to read:
514 400.142 Emergency medication kits; orders not to
515 resuscitate.--
516 (1) Other provisions of this chapter or of chapter 429,
517 chapter 465, chapter 499, or chapter 893 to the contrary
518 notwithstanding, each nursing home operating pursuant to a
519 license issued by the agency may maintain an emergency
520 medication kit for the purpose of storing medicinal drugs to be
521 administered under emergency conditions to residents residing in
522 such facility.
523 Section 28. Paragraph (a) of subsection (2) of section
524 400.191, Florida Statutes, is amended to read:

525 400.191 Availability, distribution, and posting of reports
526 and records.--
527 (2) The agency shall provide additional information in
528 consumer-friendly printed and electronic formats to assist
529 consumers and their families in comparing and evaluating nursing
530 home facilities.
531 (a) The agency shall provide an Internet site which shall
532 include at least the following information either directly or
533 indirectly through a link to another established site or sites
534 of the agency's choosing:
535 1. A list by name and address of all nursing home
536 facilities in this state.
537 2. Whether such nursing home facilities are proprietary or
538 nonproprietary.
539 3. The current owner of the facility's license and the
540 year that that entity became the owner of the license.
541 4. The name of the owner or owners of each facility and
542 whether the facility is affiliated with a company or other
543 organization owning or managing more than one nursing facility
544 in this state.
545 5. The total number of beds in each facility.
546 6. The number of private and semiprivate rooms in each
547 facility.
548 7. The religious affiliation, if any, of each facility.
549 8. The languages spoken by the administrator and staff of
550 each facility.
551 9. Whether or not each facility accepts Medicare or
552 Medicaid recipients or insurance, health maintenance

553 organization, Veterans Administration, CHAMPUS program, or
554 workers' compensation coverage.
555 10. Recreational and other programs available at each
556 facility.
557 11. Special care units or programs offered at each
558 facility.
559 12. Whether the facility is a part of a retirement
560 community that offers other services pursuant to part III of
561 this chapter or part I or part III of chapter 429~~, part IV, or~~
562 ~~part V~~.
563 13. Survey and deficiency information contained on the
564 Online Survey Certification and Reporting (OSCAR) system of the
565 federal Health Care Financing Administration, including annual
566 survey, revisit, and complaint survey information, for each
567 facility for the past 45 months. For noncertified nursing
568 homes, state survey and deficiency information, including annual
569 survey, revisit, and complaint survey information for the past
570 45 months shall be provided.
571 14. A summary of the Online Survey Certification and
572 Reporting (OSCAR) data for each facility over the past 45
573 months. Such summary may include a score, rating, or comparison
574 ranking with respect to other facilities based on the number of
575 citations received by the facility of annual, revisit, and
576 complaint surveys; the severity and scope of the citations; and
577 the number of annual recertification surveys the facility has
578 had during the past 45 months. The score, rating, or comparison
579 ranking may be presented in either numeric or symbolic form for
580 the intended consumer audience.

581 Section 29. Paragraph (b) of subsection (2) of section
582 400.215, Florida Statutes, is amended to read:
583 400.215 Personnel screening requirement.--
584 (2) Employers and employees shall comply with the
585 requirements of s. 435.05.
586 (b) Employees qualified under the provisions of paragraph
587 (a) who have not maintained continuous residency within the
588 state for the 5 years immediately preceding the date of request
589 for background screening must complete level 2 screening, as
590 provided in chapter 435. Such employees may work in a
591 conditional status up to 180 days pending the receipt of written
592 findings evidencing the completion of level 2 screening. Level 2
593 screening shall not be required of employees or prospective
594 employees who attest in writing under penalty of perjury that
595 they meet the residency requirement. Completion of level 2
596 screening shall require the employee or prospective employee to
597 furnish to the nursing facility a full set of fingerprints to
598 enable a criminal background investigation to be conducted. The
599 nursing facility shall submit the completed fingerprint card to
600 the agency. The agency shall establish a record of the request
601 in the database provided for in paragraph (c) and forward the
602 request to the Department of Law Enforcement, which is
603 authorized to submit the fingerprints to the Federal Bureau of
604 Investigation for a national criminal history records check. The
605 results of the national criminal history records check shall be
606 returned to the agency, which shall maintain the results in the
607 database provided for in paragraph (c). The agency shall notify
608 the administrator of the requesting nursing facility or the

609 administrator of any other facility licensed under chapter 393,
610 chapter 394, chapter 395, chapter 397, chapter 429, or this
611 chapter, as requested by such facility, as to whether or not the
612 employee has qualified under level 1 or level 2 screening. An
613 employee or prospective employee who has qualified under level 2
614 screening and has maintained such continuous residency within
615 the state shall not be required to complete a subsequent level 2
616 screening as a condition of employment at another facility.
617 Section 30. Section 400.402, Florida Statutes, is
618 renumbered as section 429.02, Florida Statutes, and amended to
619 read:
620 429.02 ~~400.402~~ Definitions.--When used in this part, the
621 term:
622 (1) "Activities of daily living" means functions and tasks
623 for self-care, including ambulation, bathing, dressing, eating,
624 grooming, and toileting, and other similar tasks.
625 (2) "Administrator" means an individual at least 21 years
626 of age who is responsible for the operation and maintenance of
627 an assisted living facility.
628 (3) "Agency" means the Agency for Health Care
629 Administration.
630 (4) "Aging in place" or "age in place" means the process
631 of providing increased or adjusted services to a person to
632 compensate for the physical or mental decline that may occur
633 with the aging process, in order to maximize the person's
634 dignity and independence and permit them to remain in a
635 familiar, noninstitutional, residential environment for as long
636 as possible. Such services may be provided by facility staff,

637 volunteers, family, or friends, or through contractual
638 arrangements with a third party.
639 (5) "Applicant" means an individual owner, corporation,
640 partnership, firm, association, or governmental entity that
641 applies for a license.
642 (6) "Assisted living facility" means any building or
643 buildings, section or distinct part of a building, private home,
644 boarding home, home for the aged, or other residential facility,
645 whether operated for profit or not, which undertakes through its
646 ownership or management to provide housing, meals, and one or
647 more personal services for a period exceeding 24 hours to one or
648 more adults who are not relatives of the owner or administrator.
649 (7) "Chemical restraint" means a pharmacologic drug that
650 physically limits, restricts, or deprives an individual of
651 movement or mobility, and is used for discipline or convenience
652 and not required for the treatment of medical symptoms.
653 (8) "Community living support plan" means a written
654 document prepared by a mental health resident and the resident's
655 mental health case manager in consultation with the
656 administrator of an assisted living facility with a limited
657 mental health license or the administrator's designee. A copy
658 must be provided to the administrator. The plan must include
659 information about the supports, services, and special needs of
660 the resident which enable the resident to live in the assisted
661 living facility and a method by which facility staff can
662 recognize and respond to the signs and symptoms particular to
663 that resident which indicate the need for professional services.

664 (9) "Cooperative agreement" means a written statement of
665 understanding between a mental health care provider and the
666 administrator of the assisted living facility with a limited
667 mental health license in which a mental health resident is
668 living. The agreement must specify directions for accessing
669 emergency and after-hours care for the mental health resident. A
670 single cooperative agreement may service all mental health
671 residents who are clients of the same mental health care
672 provider.
673 (10) "Department" means the Department of Elderly Affairs.
674 (11) "Emergency" means a situation, physical condition, or
675 method of operation which presents imminent danger of death or
676 serious physical or mental harm to facility residents.
677 (12) "Extended congregate care" means acts beyond those
678 authorized in subsection (17) that may be performed pursuant to
679 part I of chapter 464 by persons licensed thereunder while
680 carrying out their professional duties, and other supportive
681 services which may be specified by rule. The purpose of such
682 services is to enable residents to age in place in a residential
683 environment despite mental or physical limitations that might
684 otherwise disqualify them from residency in a facility licensed
685 under this part.
686 (13) "Guardian" means a person to whom the law has
687 entrusted the custody and control of the person or property, or
688 both, of a person who has been legally adjudged incapacitated.
689 (14) "Limited nursing services" means acts that may be
690 performed pursuant to part I of chapter 464 by persons licensed
691 thereunder while carrying out their professional duties but

692 limited to those acts which the department specifies by rule.
693 Acts which may be specified by rule as allowable limited nursing
694 services shall be for persons who meet the admission criteria
695 established by the department for assisted living facilities and
696 shall not be complex enough to require 24-hour nursing
697 supervision and may include such services as the application and
698 care of routine dressings, and care of casts, braces, and
699 splints.
700 (15) "Managed risk" means the process by which the
701 facility staff discuss the service plan and the needs of the
702 resident with the resident and, if applicable, the resident's
703 representative or designee or the resident's surrogate,
704 guardian, or attorney in fact, in such a way that the
705 consequences of a decision, including any inherent risk, are
706 explained to all parties and reviewed periodically in
707 conjunction with the service plan, taking into account changes
708 in the resident's status and the ability of the facility to
709 respond accordingly.
710 (16) "Mental health resident" means an individual who
711 receives social security disability income due to a mental
712 disorder as determined by the Social Security Administration or
713 receives supplemental security income due to a mental disorder
714 as determined by the Social Security Administration and receives
715 optional state supplementation.
716 (17) "Personal services" means direct physical assistance
717 with or supervision of the activities of daily living and the
718 self-administration of medication and other similar services
719 which the department may define by rule. "Personal services"

720 shall not be construed to mean the provision of medical,
721 nursing, dental, or mental health services.
722 (18) "Physical restraint" means a device which physically
723 limits, restricts, or deprives an individual of movement or
724 mobility, including, but not limited to, a half-bed rail, a
725 full-bed rail, a geriatric chair, and a posey restraint. The
726 term "physical restraint" shall also include any device which
727 was not specifically manufactured as a restraint but which has
728 been altered, arranged, or otherwise used for this purpose. The
729 term shall not include bandage material used for the purpose of
730 binding a wound or injury.
731 (19) "Relative" means an individual who is the father,
732 mother, stepfather, stepmother, son, daughter, brother, sister,
733 grandmother, grandfather, great-grandmother, great-grandfather,
734 grandson, granddaughter, uncle, aunt, first cousin, nephew,
735 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
736 daughter-in-law, brother-in-law, sister-in-law, stepson,
737 stepdaughter, stepbrother, stepsister, half brother, or half
738 sister of an owner or administrator.
739 (20) "Resident" means a person 18 years of age or older,
740 residing in and receiving care from a facility.
741 (21) "Resident's representative or designee" means a
742 person other than the owner, or an agent or employee of the
743 facility, designated in writing by the resident, if legally
744 competent, to receive notice of changes in the contract executed
745 pursuant to s. 429.24 ~~s. 400.424~~; to receive notice of and to
746 participate in meetings between the resident and the facility
747 owner, administrator, or staff concerning the rights of the

748 resident; to assist the resident in contacting the ombudsman
749 council if the resident has a complaint against the facility; or
750 to bring legal action on behalf of the resident pursuant to s.
751 429.29 ~~s. 400.429~~.
752 (22) "Service plan" means a written plan, developed and
753 agreed upon by the resident and, if applicable, the resident's
754 representative or designee or the resident's surrogate,
755 guardian, or attorney in fact, if any, and the administrator or
756 designee representing the facility, which addresses the unique
757 physical and psychosocial needs, abilities, and personal
758 preferences of each resident receiving extended congregate care
759 services. The plan shall include a brief written description, in
760 easily understood language, of what services shall be provided,
761 who shall provide the services, when the services shall be
762 rendered, and the purposes and benefits of the services.
763 (23) "Shared responsibility" means exploring the options
764 available to a resident within a facility and the risks involved
765 with each option when making decisions pertaining to the
766 resident's abilities, preferences, and service needs, thereby
767 enabling the resident and, if applicable, the resident's
768 representative or designee, or the resident's surrogate,
769 guardian, or attorney in fact, and the facility to develop a
770 service plan which best meets the resident's needs and seeks to
771 improve the resident's quality of life.
772 (24) "Supervision" means reminding residents to engage in
773 activities of daily living and the self-administration of
774 medication, and, when necessary, observing or providing verbal
775 cuing to residents while they perform these activities.

776 (25) "Supplemental security income," Title XVI of the
777 Social Security Act, means a program through which the Federal
778 Government guarantees a minimum monthly income to every person
779 who is age 65 or older, or disabled, or blind and meets the
780 income and asset requirements.
781 (26) "Supportive services" means services designed to
782 encourage and assist aged persons or adults with disabilities to
783 remain in the least restrictive living environment and to
784 maintain their independence as long as possible.
785 (27) "Twenty-four-hour nursing supervision" means services
786 that are ordered by a physician for a resident whose condition
787 requires the supervision of a physician and continued monitoring
788 of vital signs and physical status. Such services shall be:
789 medically complex enough to require constant supervision,
790 assessment, planning, or intervention by a nurse; required to be
791 performed by or under the direct supervision of licensed nursing
792 personnel or other professional personnel for safe and effective
793 performance; required on a daily basis; and consistent with the
794 nature and severity of the resident's condition or the disease
795 state or stage.
796 Section 31. Section 400.404, Florida Statutes, is
797 renumbered as section 429.04, Florida Statutes, and amended to
798 read:
799 429.04 ~~400.404~~ Facilities to be licensed; exemptions.--
800 (1) For the administration of this part, facilities to be
801 licensed by the agency shall include all assisted living
802 facilities as defined in this part.

803 (2) The following are exempt from licensure under this
804 part:
805 (a) Any facility, institution, or other place operated by
806 the Federal Government or any agency of the Federal Government.
807 (b) Any facility or part of a facility licensed under
808 chapter 393 or chapter 394.
809 (c) Any facility licensed as an adult family-care home
810 under part II ~~VII~~.
811 (d) Any person who provides housing, meals, and one or
812 more personal services on a 24-hour basis in the person's own
813 home to not more than two adults who do not receive optional
814 state supplementation. The person who provides the housing,
815 meals, and personal services must own or rent the home and
816 reside therein.
817 (e) Any home or facility approved by the United States
818 Department of Veterans Affairs as a residential care home
819 wherein care is provided exclusively to three or fewer veterans.
820 (f) Any facility that has been incorporated in this state
821 for 50 years or more on or before July 1, 1983, and the board of
822 directors of which is nominated or elected by the residents,
823 until the facility is sold or its ownership is transferred; or
824 any facility, with improvements or additions thereto, which has
825 existed and operated continuously in this state for 60 years or
826 more on or before July 1, 1989, is directly or indirectly owned
827 and operated by a nationally recognized fraternal organization,
828 is not open to the public, and accepts only its own members and
829 their spouses as residents.

830 (g) Any facility certified under chapter 651, or a
831 retirement community, may provide services authorized under this
832 part or part III ~~IV~~ of ~~this~~ chapter 400 to its residents who
833 live in single-family homes, duplexes, quadruplexes, or
834 apartments located on the campus without obtaining a license to
835 operate an assisted living facility if residential units within
836 such buildings are used by residents who do not require staff
837 supervision for that portion of the day when personal services
838 are not being delivered and the owner obtains a home health
839 license to provide such services. However, any building or
840 distinct part of a building on the campus that is designated for
841 persons who receive personal services and require supervision
842 beyond that which is available while such services are being
843 rendered must be licensed in accordance with this part. If a
844 facility provides personal services to residents who do not
845 otherwise require supervision and the owner is not licensed as a
846 home health agency, the buildings or distinct parts of buildings
847 where such services are rendered must be licensed under this
848 part. A resident of a facility that obtains a home health
849 license may contract with a home health agency of his or her
850 choice, provided that the home health agency provides liability
851 insurance and workers' compensation coverage for its employees.
852 Facilities covered by this exemption may establish policies that
853 give residents the option of contracting for services and care
854 beyond that which is provided by the facility to enable them to
855 age in place. For purposes of this section, a retirement
856 community consists of a facility licensed under this part or

857 under part II of chapter 400, and apartments designed for
858 independent living located on the same campus.
859 (h) Any residential unit for independent living which is
860 located within a facility certified under chapter 651, or any
861 residential unit which is colocated with a nursing home licensed
862 under part II of chapter 400 or colocated with a facility
863 licensed under this part in which services are provided through
864 an outpatient clinic or a nursing home on an outpatient basis.
865 Section 32. Section 400.407, Florida Statutes, is
866 renumbered as section 429.07, Florida Statutes, and amended to
867 read:
868 429.07 ~~400.407~~ License required; fee, display.--
869 (1) A license issued by the agency is required for an
870 assisted living facility operating in this state.
871 (2) Separate licenses shall be required for facilities
872 maintained in separate premises, even though operated under the
873 same management. A separate license shall not be required for
874 separate buildings on the same grounds.
875 (3) Any license granted by the agency must state the
876 maximum resident capacity of the facility, the type of care for
877 which the license is granted, the date the license is issued,
878 the expiration date of the license, and any other information
879 deemed necessary by the agency. Licenses shall be issued for one
880 or more of the following categories of care: standard, extended
881 congregate care, limited nursing services, or limited mental
882 health.
883 (a) A standard license shall be issued to facilities
884 providing one or more of the personal services identified in s.

885 429.02 ~~s. 400.402~~. Such facilities may also employ or contract
886 with a person licensed under part I of chapter 464 to administer
887 medications and perform other tasks as specified in s. 429.255
888 ~~s. 400.4255~~.
889 (b) An extended congregate care license shall be issued to
890 facilities providing, directly or through contract, services
891 beyond those authorized in paragraph (a), including acts
892 performed pursuant to part I of chapter 464 by persons licensed
893 thereunder, and supportive services defined by rule to persons
894 who otherwise would be disqualified from continued residence in
895 a facility licensed under this part.
896 1. In order for extended congregate care services to be
897 provided in a facility licensed under this part, the agency must
898 first determine that all requirements established in law and
899 rule are met and must specifically designate, on the facility's
900 license, that such services may be provided and whether the
901 designation applies to all or part of a facility. Such
902 designation may be made at the time of initial licensure or
903 relicensure, or upon request in writing by a licensee under this
904 part. Notification of approval or denial of such request shall
905 be made within 90 days after receipt of such request and all
906 necessary documentation. Existing facilities qualifying to
907 provide extended congregate care services must have maintained a
908 standard license and may not have been subject to administrative
909 sanctions during the previous 2 years, or since initial
910 licensure if the facility has been licensed for less than 2
911 years, for any of the following reasons:
912 a. A class I or class II violation;

913 b. Three or more repeat or recurring class III violations
914 of identical or similar resident care standards as specified in
915 rule from which a pattern of noncompliance is found by the
916 agency;
917 c. Three or more class III violations that were not
918 corrected in accordance with the corrective action plan approved
919 by the agency;
920 d. Violation of resident care standards resulting in a
921 requirement to employ the services of a consultant pharmacist or
922 consultant dietitian;
923 e. Denial, suspension, or revocation of a license for
924 another facility under this part in which the applicant for an
925 extended congregate care license has at least 25 percent
926 ownership interest; or
927 f. Imposition of a moratorium on admissions or initiation
928 of injunctive proceedings.
929 2. Facilities that are licensed to provide extended
930 congregate care services shall maintain a written progress
931 report on each person who receives such services, which report
932 describes the type, amount, duration, scope, and outcome of
933 services that are rendered and the general status of the
934 resident's health. A registered nurse, or appropriate designee,
935 representing the agency shall visit such facilities at least
936 quarterly to monitor residents who are receiving extended
937 congregate care services and to determine if the facility is in
938 compliance with this part and with rules that relate to extended
939 congregate care. One of these visits may be in conjunction with
940 the regular survey. The monitoring visits may be provided

941 through contractual arrangements with appropriate community
942 agencies. A registered nurse shall serve as part of the team
943 that inspects such facility. The agency may waive one of the
944 required yearly monitoring visits for a facility that has been
945 licensed for at least 24 months to provide extended congregate
946 care services, if, during the inspection, the registered nurse
947 determines that extended congregate care services are being
948 provided appropriately, and if the facility has no class I or
949 class II violations and no uncorrected class III violations.
950 Before such decision is made, the agency shall consult with the
951 long-term care ombudsman council for the area in which the
952 facility is located to determine if any complaints have been
953 made and substantiated about the quality of services or care.
954 The agency may not waive one of the required yearly monitoring
955 visits if complaints have been made and substantiated.
956 3. Facilities that are licensed to provide extended
957 congregate care services shall:
958 a. Demonstrate the capability to meet unanticipated
959 resident service needs.
960 b. Offer a physical environment that promotes a homelike
961 setting, provides for resident privacy, promotes resident
962 independence, and allows sufficient congregate space as defined
963 by rule.
964 c. Have sufficient staff available, taking into account
965 the physical plant and firesafety features of the building, to
966 assist with the evacuation of residents in an emergency, as
967 necessary.

968 d. Adopt and follow policies and procedures that maximize
969 resident independence, dignity, choice, and decisionmaking to
970 permit residents to age in place to the extent possible, so that
971 moves due to changes in functional status are minimized or
972 avoided.
973 e. Allow residents or, if applicable, a resident's
974 representative, designee, surrogate, guardian, or attorney in
975 fact to make a variety of personal choices, participate in
976 developing service plans, and share responsibility in
977 decisionmaking.
978 f. Implement the concept of managed risk.
979 g. Provide, either directly or through contract, the
980 services of a person licensed pursuant to part I of chapter 464.
981 h. In addition to the training mandated in s. 429.52 ~~s.~~
982 ~~400.452~~, provide specialized training as defined by rule for
983 facility staff.
984 4. Facilities licensed to provide extended congregate care
985 services are exempt from the criteria for continued residency as
986 set forth in rules adopted under s. 429.41 ~~s. 400.441~~.
987 Facilities so licensed shall adopt their own requirements within
988 guidelines for continued residency set forth by the department
989 in rule. However, such facilities may not serve residents who
990 require 24-hour nursing supervision. Facilities licensed to
991 provide extended congregate care services shall provide each
992 resident with a written copy of facility policies governing
993 admission and retention.
994 5. The primary purpose of extended congregate care
995 services is to allow residents, as they become more impaired,

996 the option of remaining in a familiar setting from which they
997 would otherwise be disqualified for continued residency. A
998 facility licensed to provide extended congregate care services
999 may also admit an individual who exceeds the admission criteria
1000 for a facility with a standard license, if the individual is
1001 determined appropriate for admission to the extended congregate
1002 care facility.
1003 6. Before admission of an individual to a facility
1004 licensed to provide extended congregate care services, the
1005 individual must undergo a medical examination as provided in s.
1006 429.26(4) ~~s. 400.426(4)~~ and the facility must develop a
1007 preliminary service plan for the individual.
1008 7. When a facility can no longer provide or arrange for
1009 services in accordance with the resident's service plan and
1010 needs and the facility's policy, the facility shall make
1011 arrangements for relocating the person in accordance with s.
1012 429.28(1)(k) ~~s. 400.428(1)(k)~~.
1013 8. Failure to provide extended congregate care services
1014 may result in denial of extended congregate care license
1015 renewal.
1016 9. No later than January 1 of each year, the department,
1017 in consultation with the agency, shall prepare and submit to the
1018 Governor, the President of the Senate, the Speaker of the House
1019 of Representatives, and the chairs of appropriate legislative
1020 committees, a report on the status of, and recommendations
1021 related to, extended congregate care services. The status report
1022 must include, but need not be limited to, the following
1023 information:

1024 a. A description of the facilities licensed to provide
1025 such services, including total number of beds licensed under
1026 this part.
1027 b. The number and characteristics of residents receiving
1028 such services.
1029 c. The types of services rendered that could not be
1030 provided through a standard license.
1031 d. An analysis of deficiencies cited during licensure
1032 inspections.
1033 e. The number of residents who required extended
1034 congregate care services at admission and the source of
1035 admission.
1036 f. Recommendations for statutory or regulatory changes.
1037 g. The availability of extended congregate care to state
1038 clients residing in facilities licensed under this part and in
1039 need of additional services, and recommendations for
1040 appropriations to subsidize extended congregate care services
1041 for such persons.
1042 h. Such other information as the department considers
1043 appropriate.
1044 (c) A limited nursing services license shall be issued to
1045 a facility that provides services beyond those authorized in
1046 paragraph (a) and as specified in this paragraph.
1047 1. In order for limited nursing services to be provided in
1048 a facility licensed under this part, the agency must first
1049 determine that all requirements established in law and rule are
1050 met and must specifically designate, on the facility's license,
1051 that such services may be provided. Such designation may be made

1052 at the time of initial licensure or relicensure, or upon request
1053 in writing by a licensee under this part. Notification of
1054 approval or denial of such request shall be made within 90 days
1055 after receipt of such request and all necessary documentation.
1056 Existing facilities qualifying to provide limited nursing
1057 services shall have maintained a standard license and may not
1058 have been subject to administrative sanctions that affect the
1059 health, safety, and welfare of residents for the previous 2
1060 years or since initial licensure if the facility has been
1061 licensed for less than 2 years.
1062 2. Facilities that are licensed to provide limited nursing
1063 services shall maintain a written progress report on each person
1064 who receives such nursing services, which report describes the
1065 type, amount, duration, scope, and outcome of services that are
1066 rendered and the general status of the resident's health. A
1067 registered nurse representing the agency shall visit such
1068 facilities at least twice a year to monitor residents who are
1069 receiving limited nursing services and to determine if the
1070 facility is in compliance with applicable provisions of this
1071 part and with related rules. The monitoring visits may be
1072 provided through contractual arrangements with appropriate
1073 community agencies. A registered nurse shall also serve as part
1074 of the team that inspects such facility.
1075 3. A person who receives limited nursing services under
1076 this part must meet the admission criteria established by the
1077 agency for assisted living facilities. When a resident no
1078 longer meets the admission criteria for a facility licensed
1079 under this part, arrangements for relocating the person shall be

1080 made in accordance with s. 429.28(1)(k) ~~s. 400.428(1)(k)~~, unless
1081 the facility is licensed to provide extended congregate care
1082 services.
1083 (4)(a) The biennial license fee required of a facility is
1084 $300 per license, with an additional fee of $50 per resident
1085 based on the total licensed resident capacity of the facility,
1086 except that no additional fee will be assessed for beds
1087 designated for recipients of optional state supplementation
1088 payments provided for in s. 409.212. The total fee may not
1089 exceed $10,000, no part of which shall be returned to the
1090 facility. The agency shall adjust the per bed license fee and
1091 the total licensure fee annually by not more than the change in
1092 the consumer price index based on the 12 months immediately
1093 preceding the increase.
1094 (b) In addition to the total fee assessed under paragraph
1095 (a), the agency shall require facilities that are licensed to
1096 provide extended congregate care services under this part to pay
1097 an additional fee per licensed facility. The amount of the
1098 biennial fee shall be $400 per license, with an additional fee
1099 of $10 per resident based on the total licensed resident
1100 capacity of the facility. No part of this fee shall be returned
1101 to the facility. The agency may adjust the per bed license fee
1102 and the annual license fee once each year by not more than the
1103 average rate of inflation for the 12 months immediately
1104 preceding the increase.
1105 (c) In addition to the total fee assessed under paragraph
1106 (a), the agency shall require facilities that are licensed to
1107 provide limited nursing services under this part to pay an

1108 additional fee per licensed facility. The amount of the
1109 biennial fee shall be $250 per license, with an additional fee
1110 of $10 per resident based on the total licensed resident
1111 capacity of the facility. No part of this fee shall be returned
1112 to the facility. The agency may adjust the per bed license fee
1113 and the biennial license fee once each year by not more than the
1114 average rate of inflation for the 12 months immediately
1115 preceding the increase.
1116 (5) Counties or municipalities applying for licenses under
1117 this part are exempt from the payment of license fees.
1118 (6) The license shall be displayed in a conspicuous place
1119 inside the facility.
1120 (7) A license shall be valid only in the possession of the
1121 individual, firm, partnership, association, or corporation to
1122 which it is issued and shall not be subject to sale, assignment,
1123 or other transfer, voluntary or involuntary; nor shall a license
1124 be valid for any premises other than that for which originally
1125 issued.
1126 (8) A fee may be charged to a facility requesting a
1127 duplicate license. The fee shall not exceed the actual cost of
1128 duplication and postage.
1129 Section 33. Section 400.4071, Florida Statutes, is
1130 renumbered as section 429.071, Florida Statutes, and amended to
1131 read:
1132 429.071 ~~400.4071~~ Intergenerational respite care assisted
1133 living facility pilot program.--
1134 (1) It is the intent of the Legislature to establish a
1135 pilot program to:

1136 (a) Facilitate the receipt of in-home, family-based care
1137 by minors and adults with disabilities and elderly persons with
1138 special needs through respite care for up to 14 days.
1139 (b) Prevent caregiver "burnout," in which the caregiver's
1140 health declines and he or she is unable to continue to provide
1141 care so that the only option for the person with disabilities or
1142 special needs is to receive institutional care.
1143 (c) Foster the development of intergenerational respite
1144 care assisted living facilities to temporarily care for minors
1145 and adults with disabilities and elderly persons with special
1146 needs in the same facility and to give caregivers the time they
1147 need for rejuvenation and healing.
1148 (2) The Agency for Health Care Administration shall
1149 establish a 5-year pilot program, which shall license an
1150 intergenerational respite care assisted living facility that
1151 will provide temporary personal, respite, and custodial care to
1152 minors and adults with disabilities and elderly persons with
1153 special needs who do not require 24-hour nursing services. The
1154 intergenerational respite care assisted living facility must:
1155 (a) Meet all applicable requirements and standards
1156 contained in this part ~~III of this chapter~~, except that, for
1157 purposes of this section, the term "resident" means a person of
1158 any age temporarily residing in and receiving care from the
1159 facility.
1160 (b) Provide respite care services for minors and adults
1161 with disabilities and elderly persons with special needs for a
1162 period of at least 24 hours but not for more than 14 consecutive
1163 days.

1164 (c) Provide a facility or facilities in which minors and
1165 adults reside in distinct and separate living units.
1166 (d) Provide a facility that has a maximum of 48 beds, is
1167 located in Miami-Dade County, and is operated by a not-for-
1168 profit entity.
1169 (3) The agency may establish policies necessary to achieve
1170 the objectives specific to the pilot program and may adopt rules
1171 necessary to implement the program.
1172 (4) After 4 years, the agency shall present its report on
1173 the effectiveness of the pilot program to the President of the
1174 Senate and the Speaker of the House of Representatives and its
1175 recommendation as to whether the Legislature should make the
1176 program permanent.
1177 Section 34. Section 400.408, Florida Statutes, is
1178 renumbered as section 429.08, Florida Statutes, and amended to
1179 read:
1180 429.08 ~~400.408~~ Unlicensed facilities; referral of person
1181 for residency to unlicensed facility; penalties; verification of
1182 licensure status.--
1183 (1)(a) It is unlawful to own, operate, or maintain an
1184 assisted living facility without obtaining a license under this
1185 part.
1186 (b) Except as provided under paragraph (d), any person who
1187 owns, operates, or maintains an unlicensed assisted living
1188 facility commits a felony of the third degree, punishable as
1189 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
1190 continued operation is a separate offense.

1191 (c) Any person found guilty of violating paragraph (a) a
1192 second or subsequent time commits a felony of the second degree,
1193 punishable as provided under s. 775.082, s. 775.083, or s.
1194 775.084. Each day of continued operation is a separate offense.
1195 (d) Any person who owns, operates, or maintains an
1196 unlicensed assisted living facility due to a change in this part
1197 or a modification in department rule within 6 months after the
1198 effective date of such change and who, within 10 working days
1199 after receiving notification from the agency, fails to cease
1200 operation or apply for a license under this part commits a
1201 felony of the third degree, punishable as provided in s.
1202 775.082, s. 775.083, or s. 775.084. Each day of continued
1203 operation is a separate offense.
1204 (e) Any facility that fails to cease operation after
1205 agency notification may be fined for each day of noncompliance
1206 pursuant to s. 429.19 ~~s. 400.419~~.
1207 (f) When a licensee has an interest in more than one
1208 assisted living facility, and fails to license any one of these
1209 facilities, the agency may revoke the license, impose a
1210 moratorium, or impose a fine pursuant to s. 429.19 ~~s. 400.419~~,
1211 on any or all of the licensed facilities until such time as the
1212 unlicensed facility is licensed or ceases operation.
1213 (g) If the agency determines that an owner is operating or
1214 maintaining an assisted living facility without obtaining a
1215 license and determines that a condition exists in the facility
1216 that poses a threat to the health, safety, or welfare of a
1217 resident of the facility, the owner is subject to the same

1218 actions and fines imposed against a licensed facility as
1219 specified in ss. 429.14 and 429.19 ~~ss. 400.414 and 400.419~~.
1220 (h) Any person aware of the operation of an unlicensed
1221 assisted living facility must report that facility to the
1222 agency. The agency shall provide to the department's elder
1223 information and referral providers a list, by county, of
1224 licensed assisted living facilities, to assist persons who are
1225 considering an assisted living facility placement in locating a
1226 licensed facility.
1227 (i) Each field office of the Agency for Health Care
1228 Administration shall establish a local coordinating workgroup
1229 which includes representatives of local law enforcement
1230 agencies, state attorneys, the Medicaid Fraud Control Unit of
1231 the Department of Legal Affairs, local fire authorities, the
1232 Department of Children and Family Services, the district long-
1233 term care ombudsman council, and the district human rights
1234 advocacy committee to assist in identifying the operation of
1235 unlicensed facilities and to develop and implement a plan to
1236 ensure effective enforcement of state laws relating to such
1237 facilities. The workgroup shall report its findings, actions,
1238 and recommendations semiannually to the Director of Health
1239 Facility Regulation of the agency.
1240 (2) It is unlawful to knowingly refer a person for
1241 residency to an unlicensed assisted living facility; to an
1242 assisted living facility the license of which is under denial or
1243 has been suspended or revoked; or to an assisted living facility
1244 that has a moratorium on admissions. Any person who violates

1245 this subsection commits a noncriminal violation, punishable by a
1246 fine not exceeding $500 as provided in s. 775.083.
1247 (a) Any health care practitioner, as defined in s.
1248 456.001, who is aware of the operation of an unlicensed facility
1249 shall report that facility to the agency. Failure to report a
1250 facility that the practitioner knows or has reasonable cause to
1251 suspect is unlicensed shall be reported to the practitioner's
1252 licensing board.
1253 (b) Any hospital or community mental health center
1254 licensed under chapter 395 or chapter 394 which knowingly
1255 discharges a patient or client to an unlicensed facility is
1256 subject to sanction by the agency.
1257 (c) Any employee of the agency or department, or the
1258 Department of Children and Family Services, who knowingly refers
1259 a person for residency to an unlicensed facility; to a facility
1260 the license of which is under denial or has been suspended or
1261 revoked; or to a facility that has a moratorium on admissions is
1262 subject to disciplinary action by the agency or department, or
1263 the Department of Children and Family Services.
1264 (d) The employer of any person who is under contract with
1265 the agency or department, or the Department of Children and
1266 Family Services, and who knowingly refers a person for residency
1267 to an unlicensed facility; to a facility the license of which is
1268 under denial or has been suspended or revoked; or to a facility
1269 that has a moratorium on admissions shall be fined and required
1270 to prepare a corrective action plan designed to prevent such
1271 referrals.

1272 (e) The agency shall provide the department and the
1273 Department of Children and Family Services with a list of
1274 licensed facilities within each county and shall update the list
1275 at least quarterly.
1276 (f) At least annually, the agency shall notify, in
1277 appropriate trade publications, physicians licensed under
1278 chapter 458 or chapter 459, hospitals licensed under chapter
1279 395, nursing home facilities licensed under part II of ~~this~~
1280 chapter 400, and employees of the agency or the department, or
1281 the Department of Children and Family Services, who are
1282 responsible for referring persons for residency, that it is
1283 unlawful to knowingly refer a person for residency to an
1284 unlicensed assisted living facility and shall notify them of the
1285 penalty for violating such prohibition. The department and the
1286 Department of Children and Family Services shall, in turn,
1287 notify service providers under contract to the respective
1288 departments who have responsibility for resident referrals to
1289 facilities. Further, the notice must direct each noticed
1290 facility and individual to contact the appropriate agency office
1291 in order to verify the licensure status of any facility prior to
1292 referring any person for residency. Each notice must include the
1293 name, telephone number, and mailing address of the appropriate
1294 office to contact.
1295 Section 35. Section 400.411, Florida Statutes, is
1296 renumbered as section 429.11, Florida Statutes, and amended to
1297 read:
1298 429.11 ~~400.411~~ Initial application for license;
1299 provisional license.--

1300 (1) Application for a license shall be made to the agency
1301 on forms furnished by it and shall be accompanied by the
1302 appropriate license fee.
1303 (2) The applicant may be an individual owner, a
1304 corporation, a partnership, a firm, an association, or a
1305 governmental entity.
1306 (3) The application must be signed by the applicant under
1307 oath and must contain the following:
1308 (a) The name, address, date of birth, and social security
1309 number of the applicant and the name by which the facility is to
1310 be known. If the applicant is a firm, partnership, or
1311 association, the application shall contain the name, address,
1312 date of birth, and social security number of every member
1313 thereof. If the applicant is a corporation, the application
1314 shall contain the corporation's name and address; the name,
1315 address, date of birth, and social security number of each of
1316 its directors and officers; and the name and address of each
1317 person having at least a 5-percent ownership interest in the
1318 corporation.
1319 (b) The name and address of any professional service,
1320 firm, association, partnership, or corporation that is to
1321 provide goods, leases, or services to the facility if a 5-
1322 percent or greater ownership interest in the service, firm,
1323 association, partnership, or corporation is owned by a person
1324 whose name must be listed on the application under paragraph
1325 (a).
1326 (c) The name and address of any long-term care facility
1327 with which the applicant, administrator, or financial officer

1328 has been affiliated through ownership or employment within 5
1329 years of the date of this license application; and a signed
1330 affidavit disclosing any financial or ownership interest that
1331 the applicant, or any person listed in paragraph (a), holds or
1332 has held within the last 5 years in any facility licensed under
1333 this part, or in any other entity licensed by this state or
1334 another state to provide health or residential care, which
1335 facility or entity closed or ceased to operate as a result of
1336 financial problems, or has had a receiver appointed or a license
1337 denied, suspended or revoked, or was subject to a moratorium on
1338 admissions, or has had an injunctive proceeding initiated
1339 against it.
1340 (d) A description and explanation of any exclusions,
1341 permanent suspensions, or terminations of the applicant from the
1342 Medicare or Medicaid programs. Proof of compliance with
1343 disclosure of ownership and control interest requirements of the
1344 Medicaid or Medicare programs shall be accepted in lieu of this
1345 submission.
1346 (e) The names and addresses of persons of whom the agency
1347 may inquire as to the character, reputation, and financial
1348 responsibility of the owner and, if different from the
1349 applicant, the administrator and financial officer.
1350 (f) Identification of all other homes or facilities,
1351 including the addresses and the license or licenses under which
1352 they operate, if applicable, which are currently operated by the
1353 applicant or administrator and which provide housing, meals, and
1354 personal services to residents.

1355 (g) The location of the facility for which a license is
1356 sought and documentation, signed by the appropriate local
1357 government official, which states that the applicant has met
1358 local zoning requirements.
1359 (h) The name, address, date of birth, social security
1360 number, education, and experience of the administrator, if
1361 different from the applicant.
1362 (4) The applicant shall furnish satisfactory proof of
1363 financial ability to operate and conduct the facility in
1364 accordance with the requirements of this part. A certificate of
1365 authority, pursuant to chapter 651, may be provided as proof of
1366 financial ability.
1367 (5) If the applicant is a continuing care facility
1368 certified under chapter 651, a copy of the facility's
1369 certificate of authority must be provided.
1370 (6) The applicant shall provide proof of liability
1371 insurance as defined in s. 624.605.
1372 (7) If the applicant is a community residential home, the
1373 applicant must provide proof that it has met the requirements
1374 specified in chapter 419.
1375 (8) The applicant must provide the agency with proof of
1376 legal right to occupy the property.
1377 (9) The applicant must furnish proof that the facility has
1378 received a satisfactory firesafety inspection. The local
1379 authority having jurisdiction or the State Fire Marshal must
1380 conduct the inspection within 30 days after written request by
1381 the applicant.

1382 (10) The applicant must furnish documentation of a
1383 satisfactory sanitation inspection of the facility by the county
1384 health department.
1385 (11) The applicant must furnish proof of compliance with
1386 level 2 background screening as required under s. 429.174 ~~s.~~
1387 ~~400.4174~~.
1388 (12) A provisional license may be issued to an applicant
1389 making initial application for licensure or making application
1390 for a change of ownership. A provisional license shall be
1391 limited in duration to a specific period of time not to exceed 6
1392 months, as determined by the agency.
1393 (13) A county or municipality may not issue an
1394 occupational license that is being obtained for the purpose of
1395 operating a facility regulated under this part without first
1396 ascertaining that the applicant has been licensed to operate
1397 such facility at the specified location or locations by the
1398 agency. The agency shall furnish to local agencies responsible
1399 for issuing occupational licenses sufficient instruction for
1400 making such determinations.
1401 Section 36. Section 400.412, Florida Statutes, is
1402 renumbered as section 429.12, Florida Statutes, and amended to
1403 read:
1404 429.12 ~~400.412~~ Sale or transfer of ownership of a
1405 facility.--It is the intent of the Legislature to protect the
1406 rights of the residents of an assisted living facility when the
1407 facility is sold or the ownership thereof is transferred.
1408 Therefore, whenever a facility is sold or the ownership thereof
1409 is transferred, including leasing:

1410 (1) The transferee shall make application to the agency
1411 for a new license at least 60 days before the date of transfer
1412 of ownership. The application must comply with the provisions
1413 of s. 429.11 ~~s. 400.411~~.
1414 (2)(a) The transferor shall notify the agency in writing
1415 at least 60 days before the date of transfer of ownership.
1416 (b) The new owner shall notify the residents, in writing,
1417 of the transfer of ownership within 7 days of his or her receipt
1418 of the license.
1419 (3) The transferor shall be responsible and liable for:
1420 (a) The lawful operation of the facility and the welfare
1421 of the residents domiciled in the facility until the date the
1422 transferee is licensed by the agency.
1423 (b) Any and all penalties imposed against the facility for
1424 violations occurring before the date of transfer of ownership
1425 unless the penalty imposed is a moratorium on admissions or
1426 denial of licensure. The moratorium on admissions or denial of
1427 licensure remains in effect after the transfer of ownership,
1428 unless the agency has approved the transferee's corrective
1429 action plan or the conditions which created the moratorium or
1430 denial have been corrected, and may be grounds for denial of
1431 license to the transferee in accordance with chapter 120.
1432 (c) Any outstanding liability to the state, unless the
1433 transferee has agreed, as a condition of sale or transfer, to
1434 accept the outstanding liabilities and to guarantee payment
1435 therefor; except that, if the transferee fails to meet these
1436 obligations, the transferor shall remain liable for the
1437 outstanding liability.

1438 (4) The transferor of a facility the license of which is
1439 denied pending an administrative hearing shall, as a part of the
1440 written transfer-of-ownership contract, advise the transferee
1441 that a plan of correction must be submitted by the transferee
1442 and approved by the agency at least 7 days before the transfer
1443 of ownership and that failure to correct the condition which
1444 resulted in the moratorium on admissions or denial of licensure
1445 is grounds for denial of the transferee's license.
1446 (5) The transferee must provide the agency with proof of
1447 legal right to occupy the property before a license may be
1448 issued. Proof may include, but is not limited to, copies of
1449 warranty deeds, or copies of lease or rental agreements,
1450 contracts for deeds, quitclaim deeds, or other such
1451 documentation.
1452 Section 37. Section 400.414, Florida Statutes, is
1453 renumbered as section 429.14, Florida Statutes, and amended to
1454 read:
1455 429.14 ~~400.414~~ Denial, revocation, or suspension of
1456 license; imposition of administrative fine; grounds.--
1457 (1) The agency may deny, revoke, or suspend any license
1458 issued under this part, or impose an administrative fine in the
1459 manner provided in chapter 120, for any of the following actions
1460 by an assisted living facility, for the actions of any person
1461 subject to level 2 background screening under s. 429.174 ~~s.~~
1462 ~~400.4174~~, or for the actions of any facility employee:
1463 (a) An intentional or negligent act seriously affecting
1464 the health, safety, or welfare of a resident of the facility.

1465 (b) The determination by the agency that the owner lacks
1466 the financial ability to provide continuing adequate care to
1467 residents.
1468 (c) Misappropriation or conversion of the property of a
1469 resident of the facility.
1470 (d) Failure to follow the criteria and procedures provided
1471 under part I of chapter 394 relating to the transportation,
1472 voluntary admission, and involuntary examination of a facility
1473 resident.
1474 (e) A citation of any of the following deficiencies as
1475 defined in s. 429.19 ~~s. 400.419~~:
1476 1. One or more cited class I deficiencies.
1477 2. Three or more cited class II deficiencies.
1478 3. Five or more cited class III deficiencies that have
1479 been cited on a single survey and have not been corrected within
1480 the times specified.
1481 (f) A determination that a person subject to level 2
1482 background screening under s. 429.174(1) ~~s. 400.4174(1)~~ does not
1483 meet the screening standards of s. 435.04 or that the facility
1484 is retaining an employee subject to level 1 background screening
1485 standards under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet
1486 the screening standards of s. 435.03 and for whom exemptions
1487 from disqualification have not been provided by the agency.
1488 (g) A determination that an employee, volunteer,
1489 administrator, or owner, or person who otherwise has access to
1490 the residents of a facility does not meet the criteria specified
1491 in s. 435.03(2), and the owner or administrator has not taken
1492 action to remove the person. Exemptions from disqualification

1493 may be granted as set forth in s. 435.07. No administrative
1494 action may be taken against the facility if the person is
1495 granted an exemption.
1496 (h) Violation of a moratorium.
1497 (i) Failure of the license applicant, the licensee during
1498 relicensure, or a licensee that holds a provisional license to
1499 meet the minimum license requirements of this part, or related
1500 rules, at the time of license application or renewal.
1501 (j) A fraudulent statement or omission of any material
1502 fact on an application for a license or any other document
1503 required by the agency, including the submission of a license
1504 application that conceals the fact that any board member,
1505 officer, or person owning 5 percent or more of the facility may
1506 not meet the background screening requirements of s. 429.174 ~~s.~~
1507 ~~400.4174~~, or that the applicant has been excluded, permanently
1508 suspended, or terminated from the Medicaid or Medicare programs.
1509 (k) An intentional or negligent life-threatening act in
1510 violation of the uniform firesafety standards for assisted
1511 living facilities or other firesafety standards that threatens
1512 the health, safety, or welfare of a resident of a facility, as
1513 communicated to the agency by the local authority having
1514 jurisdiction or the State Fire Marshal.
1515 (l) Exclusion, permanent suspension, or termination from
1516 the Medicare or Medicaid programs.
1517 (m) Knowingly operating any unlicensed facility or
1518 providing without a license any service that must be licensed
1519 under this chapter or chapter 400.

1520 (n) Any act constituting a ground upon which application
1521 for a license may be denied.
1522
1523 Administrative proceedings challenging agency action under this
1524 subsection shall be reviewed on the basis of the facts and
1525 conditions that resulted in the agency action.
1526 (2) Upon notification by the local authority having
1527 jurisdiction or by the State Fire Marshal, the agency may deny
1528 or revoke the license of an assisted living facility that fails
1529 to correct cited fire code violations that affect or threaten
1530 the health, safety, or welfare of a resident of a facility.
1531 (3) The agency may deny a license to any applicant or to
1532 any officer or board member of an applicant who is a firm,
1533 corporation, partnership, or association or who owns 5 percent
1534 or more of the facility, if the applicant, officer, or board
1535 member has or had a 25-percent or greater financial or ownership
1536 interest in any other facility licensed under this part, or in
1537 any entity licensed by this state or another state to provide
1538 health or residential care, which facility or entity during the
1539 5 years prior to the application for a license closed due to
1540 financial inability to operate; had a receiver appointed or a
1541 license denied, suspended, or revoked; was subject to a
1542 moratorium on admissions; had an injunctive proceeding initiated
1543 against it; or has an outstanding fine assessed under this
1544 chapter <u>or chapter 400</u>.
1545 (4) The agency shall deny or revoke the license of an
1546 assisted living facility that has two or more class I violations
1547 that are similar or identical to violations identified by the

1548 agency during a survey, inspection, monitoring visit, or
1549 complaint investigation occurring within the previous 2 years.
1550 (5) An action taken by the agency to suspend, deny, or
1551 revoke a facility's license under this part, in which the agency
1552 claims that the facility owner or an employee of the facility
1553 has threatened the health, safety, or welfare of a resident of
1554 the facility be heard by the Division of Administrative Hearings
1555 of the Department of Management Services within 120 days after
1556 receipt of the facility's request for a hearing, unless that
1557 time limitation is waived by both parties. The administrative
1558 law judge must render a decision within 30 days after receipt of
1559 a proposed recommended order.
1560 (6) The agency shall provide to the Division of Hotels and
1561 Restaurants of the Department of Business and Professional
1562 Regulation, on a monthly basis, a list of those assisted living
1563 facilities that have had their licenses denied, suspended, or
1564 revoked or that are involved in an appellate proceeding pursuant
1565 to s. 120.60 related to the denial, suspension, or revocation of
1566 a license.
1567 (7) Agency notification of a license suspension or
1568 revocation, or denial of a license renewal, shall be posted and
1569 visible to the public at the facility.
1570 (8) The agency may issue a temporary license pending final
1571 disposition of a proceeding involving the suspension or
1572 revocation of an assisted living facility license.
1573 Section 38. Section 400.415, Florida Statutes, is
1574 renumbered as section 429.15, Florida Statutes, and amended to
1575 read:

1576 429.15 ~~400.415~~ Moratorium on admissions; notice.--The
1577 agency may impose an immediate moratorium on admissions to any
1578 assisted living facility if the agency determines that any
1579 condition in the facility presents a threat to the health,
1580 safety, or welfare of the residents in the facility.
1581 (1) A facility the license of which is denied, revoked, or
1582 suspended pursuant to s. 429.14 ~~s. 400.414~~ may be subject to
1583 immediate imposition of a moratorium on admissions to run
1584 concurrently with licensure denial, revocation, or suspension.
1585 (2) When a moratorium is placed on a facility, notice of
1586 the moratorium shall be posted and visible to the public at the
1587 facility until the moratorium is lifted.
1588 (3) The department may by rule establish conditions that
1589 constitute grounds for imposing a moratorium on a facility and
1590 procedures for imposing and lifting a moratorium, as necessary
1591 to administer this section.
1592 Section 39. Section 400.417, Florida Statutes, is
1593 renumbered as section 429.17, Florida Statutes, and amended to
1594 read:
1595 429.17 ~~400.417~~ Expiration of license; renewal; conditional
1596 license.--
1597 (1) Biennial licenses, unless sooner suspended or revoked,
1598 shall expire 2 years from the date of issuance. Limited nursing,
1599 extended congregate care, and limited mental health licenses
1600 shall expire at the same time as the facility's standard
1601 license, regardless of when issued. The agency shall notify the
1602 facility at least 120 days prior to expiration that a renewal
1603 license is necessary to continue operation. The notification

1604 must be provided electronically or by mail delivery. Ninety days
1605 prior to the expiration date, an application for renewal shall
1606 be submitted to the agency. Fees must be prorated. The failure
1607 to file a timely renewal application shall result in a late fee
1608 charged to the facility in an amount equal to 50 percent of the
1609 current fee.
1610 (2) A license shall be renewed within 90 days upon the
1611 timely filing of an application on forms furnished by the agency
1612 and the provision of satisfactory proof of ability to operate
1613 and conduct the facility in accordance with the requirements of
1614 this part and adopted rules, including proof that the facility
1615 has received a satisfactory firesafety inspection, conducted by
1616 the local authority having jurisdiction or the State Fire
1617 Marshal, within the preceding 12 months and an affidavit of
1618 compliance with the background screening requirements of s.
1619 429.174 ~~s. 400.4174~~.
1620 (3) An applicant for renewal of a license who has complied
1621 with the provisions of s. 429.11 ~~s. 400.411~~ with respect to
1622 proof of financial ability to operate shall not be required to
1623 provide further proof unless the facility or any other facility
1624 owned or operated in whole or in part by the same person has
1625 demonstrated financial instability as provided under s.
1626 429.47(2) ~~s. 400.447(2)~~ or unless the agency suspects that the
1627 facility is not financially stable as a result of the annual
1628 survey or complaints from the public or a report from the State
1629 Long-Term Care Ombudsman Council. Each facility must report to
1630 the agency any adverse court action concerning the facility's
1631 financial viability, within 7 days after its occurrence. The

1632 agency shall have access to books, records, and any other
1633 financial documents maintained by the facility to the extent
1634 necessary to determine the facility's financial stability. A
1635 license for the operation of a facility shall not be renewed if
1636 the licensee has any outstanding fines assessed pursuant to this
1637 part which are in final order status.
1638 (4) A licensee against whom a revocation or suspension
1639 proceeding is pending at the time of license renewal may be
1640 issued a conditional license effective until final disposition
1641 by the agency. If judicial relief is sought from the final
1642 disposition, the court having jurisdiction may issue a
1643 conditional license for the duration of the judicial proceeding.
1644 (5) A conditional license may be issued to an applicant
1645 for license renewal if the applicant fails to meet all standards
1646 and requirements for licensure. A conditional license issued
1647 under this subsection shall be limited in duration to a specific
1648 period of time not to exceed 6 months, as determined by the
1649 agency, and shall be accompanied by an agency-approved plan of
1650 correction.
1651 (6) When an extended care or limited nursing license is
1652 requested during a facility's biennial license period, the fee
1653 shall be prorated in order to permit the additional license to
1654 expire at the end of the biennial license period. The fee shall
1655 be calculated as of the date the additional license application
1656 is received by the agency.
1657 (7) The department may by rule establish renewal
1658 procedures, identify forms, and specify documentation necessary
1659 to administer this section.

1660 Section 40. Section 400.4174, Florida Statutes, is
1661 renumbered as section 429.174, Florida Statutes, and amended to
1662 read:
1663 429.174 ~~400.4174~~ Background screening; exemptions.--
1664 (1)(a) Level 2 background screening must be conducted on
1665 each of the following persons, who shall be considered employees
1666 for the purposes of conducting screening under chapter 435:
1667 1. The facility owner if an individual, the administrator,
1668 and the financial officer.
1669 2. An officer or board member if the facility owner is a
1670 firm, corporation, partnership, or association, or any person
1671 owning 5 percent or more of the facility if the agency has
1672 probable cause to believe that such person has been convicted of
1673 any offense prohibited by s. 435.04. For each officer, board
1674 member, or person owning 5 percent or more who has been
1675 convicted of any such offense, the facility shall submit to the
1676 agency a description and explanation of the conviction at the
1677 time of license application. This subparagraph does not apply to
1678 a board member of a not-for-profit corporation or organization
1679 if the board member serves solely in a voluntary capacity, does
1680 not regularly take part in the day-to-day operational decisions
1681 of the corporation or organization, receives no remuneration for
1682 his or her services, and has no financial interest and has no
1683 family members with a financial interest in the corporation or
1684 organization, provided that the board member and facility submit
1685 a statement affirming that the board member's relationship to
1686 the facility satisfies the requirements of this subparagraph.

1687 (b) Proof of compliance with level 2 screening standards
1688 which has been submitted within the previous 5 years to meet any
1689 facility or professional licensure requirements of the agency or
1690 the Department of Health satisfies the requirements of this
1691 subsection, provided that such proof is accompanied, under
1692 penalty of perjury, by an affidavit of compliance with the
1693 provisions of chapter 435. Proof of compliance with the
1694 background screening requirements of the Financial Services
1695 Commission and the Office of Insurance Regulation for applicants
1696 for a certificate of authority to operate a continuing care
1697 retirement community under chapter 651, submitted within the
1698 last 5 years, satisfies the Department of Law Enforcement and
1699 Federal Bureau of Investigation portions of a level 2 background
1700 check.
1701 (c) The agency may grant a provisional license to a
1702 facility applying for an initial license when each individual
1703 required by this subsection to undergo screening has completed
1704 the Department of Law Enforcement background checks, but has not
1705 yet received results from the Federal Bureau of Investigation,
1706 or when a request for an exemption from disqualification has
1707 been submitted to the agency pursuant to s. 435.07, but a
1708 response has not been issued.
1709 (2) The owner or administrator of an assisted living
1710 facility must conduct level 1 background screening, as set forth
1711 in chapter 435, on all employees hired on or after October 1,
1712 1998, who perform personal services as defined in s. 429.02(17)
1713 ~~s. 400.402(17)~~. The agency may exempt an individual from

1714 employment disqualification as set forth in chapter 435. Such
1715 persons shall be considered as having met this requirement if:
1716 (a) Proof of compliance with level 1 screening
1717 requirements obtained to meet any professional license
1718 requirements in this state is provided and accompanied, under
1719 penalty of perjury, by a copy of the person's current
1720 professional license and an affidavit of current compliance with
1721 the background screening requirements.
1722 (b) The person required to be screened has been
1723 continuously employed in the same type of occupation for which
1724 the person is seeking employment without a breach in service
1725 which exceeds 180 days, and proof of compliance with the level 1
1726 screening requirement which is no more than 2 years old is
1727 provided. Proof of compliance shall be provided directly from
1728 one employer or contractor to another, and not from the person
1729 screened. Upon request, a copy of screening results shall be
1730 provided by the employer retaining documentation of the
1731 screening to the person screened.
1732 (c) The person required to be screened is employed by a
1733 corporation or business entity or related corporation or
1734 business entity that owns, operates, or manages more than one
1735 facility or agency licensed under this chapter, and for whom a
1736 level 1 screening was conducted by the corporation or business
1737 entity as a condition of initial or continued employment.
1738 Section 41. Section 400.4176, Florida Statutes, is
1739 renumbered as section 429.176, Florida Statutes, and amended to
1740 read:

1741 429.176 ~~400.4176~~ Notice of change of administrator.--If,
1742 during the period for which a license is issued, the owner
1743 changes administrators, the owner must notify the agency of the
1744 change within 10 days and provide documentation within 90 days
1745 that the new administrator has completed the applicable core
1746 educational requirements under s. 429.52 ~~s. 400.452~~. Background
1747 screening shall be completed on any new administrator as
1748 specified in s. 429.174 ~~s. 400.4174~~.
1749 Section 42. Section 400.4178, Florida Statutes, is
1750 renumbered as section 429.178, Florida Statutes, and amended to
1751 read:
1752 429.178 ~~400.4178~~ Special care for persons with Alzheimer's
1753 disease or other related disorders.--
1754 (1) A facility which advertises that it provides special
1755 care for persons with Alzheimer's disease or other related
1756 disorders must meet the following standards of operation:
1757 (a)1. If the facility has 17 or more residents, have an
1758 awake staff member on duty at all hours of the day and night; or
1759 2. If the facility has fewer than 17 residents, have an
1760 awake staff member on duty at all hours of the day and night or
1761 have mechanisms in place to monitor and ensure the safety of the
1762 facility's residents.
1763 (b) Offer activities specifically designed for persons who
1764 are cognitively impaired.
1765 (c) Have a physical environment that provides for the
1766 safety and welfare of the facility's residents.
1767 (d) Employ staff who have completed the training and
1768 continuing education required in subsection (2).

1769 (2)(a) An individual who is employed by a facility that
1770 provides special care for residents with Alzheimer's disease or
1771 other related disorders, and who has regular contact with such
1772 residents, must complete up to 4 hours of initial dementia-
1773 specific training developed or approved by the department. The
1774 training shall be completed within 3 months after beginning
1775 employment and shall satisfy the core training requirements of
1776 s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.
1777 (b) A direct caregiver who is employed by a facility that
1778 provides special care for residents with Alzheimer's disease or
1779 other related disorders, and who provides direct care to such
1780 residents, must complete the required initial training and 4
1781 additional hours of training developed or approved by the
1782 department. The training shall be completed within 9 months
1783 after beginning employment and shall satisfy the core training
1784 requirements of s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.
1785 (c) An individual who is employed by a facility that
1786 provides special care for residents with Alzheimer's disease or
1787 other related disorders, but who only has incidental contact
1788 with such residents, must be given, at a minimum, general
1789 information on interacting with individuals with Alzheimer's
1790 disease or other related disorders, within 3 months after
1791 beginning employment.
1792 (3) In addition to the training required under subsection
1793 (2), a direct caregiver must participate in a minimum of 4
1794 contact hours of continuing education each calendar year. The
1795 continuing education must include one or more topics included in
1796 the dementia-specific training developed or approved by the

1797 department, in which the caregiver has not received previous
1798 training.
1799 (4) Upon completing any training listed in subsection (2),
1800 the employee or direct caregiver shall be issued a certificate
1801 that includes the name of the training provider, the topic
1802 covered, and the date and signature of the training provider.
1803 The certificate is evidence of completion of training in the
1804 identified topic, and the employee or direct caregiver is not
1805 required to repeat training in that topic if the employee or
1806 direct caregiver changes employment to a different facility.
1807 The employee or direct caregiver must comply with other
1808 applicable continuing education requirements.
1809 (5) The department, or its designee, shall approve the
1810 initial and continuing education courses and providers.
1811 (6) The department shall keep a current list of providers
1812 who are approved to provide initial and continuing education for
1813 staff of facilities that provide special care for persons with
1814 Alzheimer's disease or other related disorders.
1815 (7) Any facility more than 90 percent of whose residents
1816 receive monthly optional supplementation payments is not
1817 required to pay for the training and education programs required
1818 under this section. A facility that has one or more such
1819 residents shall pay a reduced fee that is proportional to the
1820 percentage of such residents in the facility. A facility that
1821 does not have any residents who receive monthly optional
1822 supplementation payments must pay a reasonable fee, as
1823 established by the department, for such training and education
1824 programs.

1825 (8) The department shall adopt rules to establish
1826 standards for trainers and training and to implement this
1827 section.
1828 Section 43. Section 400.418, Florida Statutes, is
1829 renumbered as section 429.18, Florida Statutes, and amended to
1830 read:
1831 429.18 ~~400.418~~ Disposition of fees and administrative
1832 fines.--
1833 (1) Income from license fees, inspection fees, late fees,
1834 and administrative fines generated pursuant to ss. 429.07,
1835 429.08, 429.17, 429.19, and 429.31 ~~ss. 400.407, 400.408,~~
1836 ~~400.417, 400.419, and 400.431~~ shall be deposited in the Health
1837 Care Trust Fund administered by the agency. Such funds shall be
1838 directed to and used by the agency for the following purposes:
1839 (a) Up to 50 percent of the trust funds accrued each
1840 fiscal year under this part may be used to offset the expenses
1841 of receivership, pursuant to s. 429.22 ~~s. 400.422~~, if the court
1842 determines that the income and assets of the facility are
1843 insufficient to provide for adequate management and operation.
1844 (b) An amount of $5,000 of the trust funds accrued each
1845 year under this part shall be allocated to pay for inspection-
1846 related physical and mental health examinations requested by the
1847 agency pursuant to s. 429.26 ~~s. 400.426~~ for residents who are
1848 either recipients of supplemental security income or have
1849 monthly incomes not in excess of the maximum combined federal
1850 and state cash subsidies available to supplemental security
1851 income recipients, as provided for in s. 409.212. Such funds

1852 shall only be used where the resident is ineligible for
1853 Medicaid.
1854 (c) Any trust funds accrued each year under this part and
1855 not used for the purposes specified in paragraphs (a) and (b)
1856 shall be used to offset the costs of the licensure program,
1857 including the costs of conducting background investigations,
1858 verifying information submitted, defraying the costs of
1859 processing the names of applicants, and conducting inspections
1860 and monitoring visits pursuant to this part.
1861 (2) Income from fees generated pursuant to s. 429.41(5) ~~s.~~
1862 ~~400.441(5)~~ shall be deposited in the Health Care Trust Fund and
1863 used to offset the costs of printing and postage.
1864 Section 44. Section 400.419, Florida Statutes, is
1865 renumbered as section 429.19, Florida Statutes, and amended to
1866 read:
1867 429.19 ~~400.419~~ Violations; imposition of administrative
1868 fines; grounds.--
1869 (1) The agency shall impose an administrative fine in the
1870 manner provided in chapter 120 for any of the actions or
1871 violations as set forth within this section by an assisted
1872 living facility, for the actions of any person subject to level
1873 2 background screening under s. 429.174 ~~s. 400.4174~~, for the
1874 actions of any facility employee, or for an intentional or
1875 negligent act seriously affecting the health, safety, or welfare
1876 of a resident of the facility.
1877 (2) Each violation of this part and adopted rules shall be
1878 classified according to the nature of the violation and the
1879 gravity of its probable effect on facility residents. The agency

1880 shall indicate the classification on the written notice of the
1881 violation as follows:
1882 (a) Class "I" violations are those conditions or
1883 occurrences related to the operation and maintenance of a
1884 facility or to the personal care of residents which the agency
1885 determines present an imminent danger to the residents or guests
1886 of the facility or a substantial probability that death or
1887 serious physical or emotional harm would result therefrom. The
1888 condition or practice constituting a class I violation shall be
1889 abated or eliminated within 24 hours, unless a fixed period, as
1890 determined by the agency, is required for correction. The agency
1891 shall impose an administrative fine for a cited class I
1892 violation in an amount not less than $5,000 and not exceeding
1893 $10,000 for each violation. A fine may be levied notwithstanding
1894 the correction of the violation.
1895 (b) Class "II" violations are those conditions or
1896 occurrences related to the operation and maintenance of a
1897 facility or to the personal care of residents which the agency
1898 determines directly threaten the physical or emotional health,
1899 safety, or security of the facility residents, other than class
1900 I violations. The agency shall impose an administrative fine for
1901 a cited class II violation in an amount not less than $1,000 and
1902 not exceeding $5,000 for each violation. A fine shall be levied
1903 notwithstanding the correction of the violation.
1904 (c) Class "III" violations are those conditions or
1905 occurrences related to the operation and maintenance of a
1906 facility or to the personal care of residents which the agency
1907 determines indirectly or potentially threaten the physical or

1908 emotional health, safety, or security of facility residents,
1909 other than class I or class II violations. The agency shall
1910 impose an administrative fine for a cited class III violation in
1911 an amount not less than $500 and not exceeding $1,000 for each
1912 violation. A citation for a class III violation must specify the
1913 time within which the violation is required to be corrected. If
1914 a class III violation is corrected within the time specified, no
1915 fine may be imposed, unless it is a repeated offense.
1916 (d) Class "IV" violations are those conditions or
1917 occurrences related to the operation and maintenance of a
1918 building or to required reports, forms, or documents that do not
1919 have the potential of negatively affecting residents. These
1920 violations are of a type that the agency determines do not
1921 threaten the health, safety, or security of residents of the
1922 facility. The agency shall impose an administrative fine for a
1923 cited class IV violation in an amount not less than $100 and not
1924 exceeding $200 for each violation. A citation for a class IV
1925 violation must specify the time within which the violation is
1926 required to be corrected. If a class IV violation is corrected
1927 within the time specified, no fine shall be imposed. Any class
1928 IV violation that is corrected during the time an agency survey
1929 is being conducted will be identified as an agency finding and
1930 not as a violation.
1931 (3) In determining if a penalty is to be imposed and in
1932 fixing the amount of the fine, the agency shall consider the
1933 following factors:
1934 (a) The gravity of the violation, including the
1935 probability that death or serious physical or emotional harm to

1936 a resident will result or has resulted, the severity of the
1937 action or potential harm, and the extent to which the provisions
1938 of the applicable laws or rules were violated.
1939 (b) Actions taken by the owner or administrator to correct
1940 violations.
1941 (c) Any previous violations.
1942 (d) The financial benefit to the facility of committing or
1943 continuing the violation.
1944 (e) The licensed capacity of the facility.
1945 (4) Each day of continuing violation after the date fixed
1946 for termination of the violation, as ordered by the agency,
1947 constitutes an additional, separate, and distinct violation.
1948 (5) Any action taken to correct a violation shall be
1949 documented in writing by the owner or administrator of the
1950 facility and verified through followup visits by agency
1951 personnel. The agency may impose a fine and, in the case of an
1952 owner-operated facility, revoke or deny a facility's license
1953 when a facility administrator fraudulently misrepresents action
1954 taken to correct a violation.
1955 (6) For fines that are upheld following administrative or
1956 judicial review, the violator shall pay the fine, plus interest
1957 at the rate as specified in s. 55.03, for each day beyond the
1958 date set by the agency for payment of the fine.
1959 (7) Any unlicensed facility that continues to operate
1960 after agency notification is subject to a $1,000 fine per day.
1961 (8) Any licensed facility whose owner or administrator
1962 concurrently operates an unlicensed facility shall be subject to
1963 an administrative fine of $5,000 per day.

1964 (9) Any facility whose owner fails to apply for a change-
1965 of-ownership license in accordance with s. 429.12 ~~s. 400.412~~ and
1966 operates the facility under the new ownership is subject to a
1967 fine of $5,000.
1968 (10) In addition to any administrative fines imposed, the
1969 agency may assess a survey fee, equal to the lesser of one half
1970 of the facility's biennial license and bed fee or $500, to cover
1971 the cost of conducting initial complaint investigations that
1972 result in the finding of a violation that was the subject of the
1973 complaint or monitoring visits conducted under s. 429.28(3)(c)
1974 ~~s. 400.428(3)(c)~~ to verify the correction of the violations.
1975 (11) The agency, as an alternative to or in conjunction
1976 with an administrative action against a facility for violations
1977 of this part and adopted rules, shall make a reasonable attempt
1978 to discuss each violation and recommended corrective action with
1979 the owner or administrator of the facility, prior to written
1980 notification. The agency, instead of fixing a period within
1981 which the facility shall enter into compliance with standards,
1982 may request a plan of corrective action from the facility which
1983 demonstrates a good faith effort to remedy each violation by a
1984 specific date, subject to the approval of the agency.
1985 (12) Administrative fines paid by any facility under this
1986 section shall be deposited into the Health Care Trust Fund and
1987 expended as provided in s. 429.18 ~~s. 400.418~~.
1988 (13) The agency shall develop and disseminate an annual
1989 list of all facilities sanctioned or fined $5,000 or more for
1990 violations of state standards, the number and class of
1991 violations involved, the penalties imposed, and the current

1992 status of cases. The list shall be disseminated, at no charge,
1993 to the Department of Elderly Affairs, the Department of Health,
1994 the Department of Children and Family Services, the area
1995 agencies on aging, the Florida Statewide Advocacy Council, and
1996 the state and local ombudsman councils. The Department of
1997 Children and Family Services shall disseminate the list to
1998 service providers under contract to the department who are
1999 responsible for referring persons to a facility for residency.
2000 The agency may charge a fee commensurate with the cost of
2001 printing and postage to other interested parties requesting a
2002 copy of this list.
2003 Section 45. Section 400.42, Florida Statutes, is
2004 renumbered as section 429.20, Florida Statutes, and amended to
2005 read:
2006 429.20 ~~400.42~~ Certain solicitation prohibited; third-party
2007 supplementation.--
2008 (1) A person may not, in connection with the solicitation
2009 of contributions by or on behalf of an assisted living facility
2010 or facilities, misrepresent or mislead any person, by any
2011 manner, means, practice, or device whatsoever, to believe that
2012 the receipts of such solicitation will be used for charitable
2013 purposes, if that is not the fact.
2014 (2) Solicitation of contributions of any kind in a
2015 threatening, coercive, or unduly forceful manner by or on behalf
2016 of an assisted living facility or facilities by any agent,
2017 employee, owner, or representative of any assisted living
2018 facility or facilities is grounds for denial, suspension, or
2019 revocation of the license of the assisted living facility or

2020 facilities by or on behalf of which such contributions were
2021 solicited.
2022 (3) The admission or maintenance of assisted living
2023 facility residents whose care is supported, in whole or in part,
2024 by state funds may not be conditioned upon the receipt of any
2025 manner of contribution or donation from any person. The
2026 solicitation or receipt of contributions in violation of this
2027 subsection is grounds for denial, suspension, or revocation of
2028 license, as provided in s. 429.14 ~~s. 400.414~~, for any assisted
2029 living facility by or on behalf of which such contributions were
2030 solicited.
2031 (4) An assisted living facility may accept additional
2032 supplementation from third parties on behalf of residents
2033 receiving optional state supplementation in accordance with s.
2034 409.212.
2035 Section 46. Section 400.422, Florida Statutes, is
2036 renumbered as section 429.22, Florida Statutes, and amended to
2037 read:
2038 429.22 ~~400.422~~ Receivership proceedings.--
2039 (1) As an alternative to or in conjunction with an
2040 injunctive proceeding, the agency may petition a court of
2041 competent jurisdiction for the appointment of a receiver, if
2042 suitable alternate placements are not available, when any of the
2043 following conditions exist:
2044 (a) The facility is operating without a license and
2045 refuses to make application for a license as required by ss.
2046 429.07 and 429.08 ~~ss. 400.407 and 400.408~~.

2047 (b) The facility is closing or has informed the agency
2048 that it intends to close and adequate arrangements have not been
2049 made for relocation of the residents within 7 days, exclusive of
2050 weekends and holidays, of the closing of the facility.
2051 (c) The agency determines there exist in the facility
2052 conditions which present an imminent danger to the health,
2053 safety, or welfare of the residents of the facility or a
2054 substantial probability that death or serious physical harm
2055 would result therefrom.
2056 (d) The facility cannot meet its financial obligation for
2057 providing food, shelter, care, and utilities.
2058 (2) Petitions for receivership shall take precedence over
2059 other court business unless the court determines that some other
2060 pending proceeding, having similar statutory precedence, shall
2061 have priority. A hearing shall be conducted within 5 days of
2062 the filing of the petition, at which time all interested parties
2063 shall have the opportunity to present evidence pertaining to the
2064 petition. The agency shall notify, by certified mail, the owner
2065 or administrator of the facility named in the petition and the
2066 facility resident or, if applicable, the resident's
2067 representative or designee, or the resident's surrogate,
2068 guardian, or attorney in fact, of its filing, the substance of
2069 the violation, and the date and place set for the hearing. The
2070 court shall grant the petition only upon finding that the
2071 health, safety, or welfare of facility residents would be
2072 threatened if a condition existing at the time the petition was
2073 filed is permitted to continue. A receiver shall not be
2074 appointed ex parte unless the court determines that one or more

2075 of the conditions in subsection (1) exist; that the facility
2076 owner or administrator cannot be found; that all reasonable
2077 means of locating the owner or administrator and notifying him
2078 or her of the petition and hearing have been exhausted; or that
2079 the owner or administrator after notification of the hearing
2080 chooses not to attend. After such findings, the court may
2081 appoint any qualified person as a receiver, except it may not
2082 appoint any owner or affiliate of the facility which is in
2083 receivership. The receiver may be selected from a list of
2084 persons qualified to act as receivers developed by the agency
2085 and presented to the court with each petition for receivership.
2086 Under no circumstances may the agency or designated agency
2087 employee be appointed as a receiver for more than 60 days;
2088 however, the receiver may petition the court, one time only, for
2089 a 30-day extension. The court shall grant the extension upon a
2090 showing of good cause.
2091 (3) The receiver must make provisions for the continued
2092 health, safety, and welfare of all residents of the facility
2093 and:
2094 (a) Shall exercise those powers and perform those duties
2095 set out by the court.
2096 (b) Shall operate the facility in such a manner as to
2097 assure safety and adequate health care for the residents.
2098 (c) Shall take such action as is reasonably necessary to
2099 protect or conserve the assets or property of the facility for
2100 which the receiver is appointed, or the proceeds from any
2101 transfer thereof, and may use them only in the performance of

2102 the powers and duties set forth in this section and by order of
2103 the court.
2104 (d) May use the building, fixtures, furnishings, and any
2105 accompanying consumable goods in the provision of care and
2106 services to residents and to any other persons receiving
2107 services from the facility at the time the petition for
2108 receivership was filed. The receiver shall collect payments for
2109 all goods and services provided to residents or others during
2110 the period of the receivership at the same rate of payment
2111 charged by the owners at the time the petition for receivership
2112 was filed, or at a fair and reasonable rate otherwise approved
2113 by the court.
2114 (e) May correct or eliminate any deficiency in the
2115 structure or furnishings of the facility which endangers the
2116 safety or health of residents while they remain in the facility,
2117 if the total cost of correction does not exceed $10,000. The
2118 court may order expenditures for this purpose in excess of
2119 $10,000 on application from the receiver after notice to the
2120 owner and a hearing.
2121 (f) May let contracts and hire agents and employees to
2122 carry out the powers and duties of the receiver.
2123 (g) Shall honor all leases, mortgages, and secured
2124 transactions governing the building in which the facility is
2125 located and all goods and fixtures in the building of which the
2126 receiver has taken possession, but only to the extent of
2127 payments which, in the case of a rental agreement, are for the
2128 use of the property during the period of the receivership, or

2129 which, in the case of a purchase agreement, become due during
2130 the period of the receivership.
2131 (h) Shall have full power to direct and manage and to
2132 discharge employees of the facility, subject to any contract
2133 rights they may have. The receiver shall pay employees at the
2134 rate of compensation, including benefits, approved by the court.
2135 A receivership does not relieve the owner of any obligation to
2136 employees made prior to the appointment of a receiver and not
2137 carried out by the receiver.
2138 (i) Shall be entitled to and take possession of all
2139 property or assets of residents which are in the possession of a
2140 facility or its owner. The receiver shall preserve all property,
2141 assets, and records of residents of which the receiver takes
2142 possession and shall provide for the prompt transfer of the
2143 property, assets, and records to the new placement of any
2144 transferred resident. An inventory list certified by the owner
2145 and receiver shall be made immediately at the time the receiver
2146 takes possession of the facility.
2147 (4)(a) A person who is served with notice of an order of
2148 the court appointing a receiver and of the receiver's name and
2149 address shall be liable to pay the receiver for any goods or
2150 services provided by the receiver after the date of the order if
2151 the person would have been liable for the goods or services as
2152 supplied by the owner. The receiver shall give a receipt for
2153 each payment and shall keep a copy of each receipt on file. The
2154 receiver shall deposit accounts received in a separate account
2155 and shall use this account for all disbursements.

2156 (b) The receiver may bring an action to enforce the
2157 liability created by paragraph (a).
2158 (c) A payment to the receiver of any sum owing to the
2159 facility or its owner shall discharge any obligation to the
2160 facility to the extent of the payment.
2161 (5)(a) A receiver may petition the court that he or she
2162 not be required to honor any lease, mortgage, secured
2163 transaction, or other wholly or partially executory contract
2164 entered into by the owner of the facility if the rent, price, or
2165 rate of interest required to be paid under the agreement was
2166 substantially in excess of a reasonable rent, price, or rate of
2167 interest at the time the contract was entered into, or if any
2168 material provision of the agreement was unreasonable, when
2169 compared to contracts negotiated under similar conditions. Any
2170 relief in this form provided by the court shall be limited to
2171 the life of the receivership, unless otherwise determined by the
2172 court.
2173 (b) If the receiver is in possession of real estate or
2174 goods subject to a lease, mortgage, or security interest which
2175 the receiver has obtained a court order to avoid under paragraph
2176 (a), and if the real estate or goods are necessary for the
2177 continued operation of the facility under this section, the
2178 receiver may apply to the court to set a reasonable rental,
2179 price, or rate of interest to be paid by the receiver during the
2180 duration of the receivership. The court shall hold a hearing on
2181 the application within 15 days. The receiver shall send notice
2182 of the application to any known persons who own the property
2183 involved at least 10 days prior to the hearing. Payment by the

2184 receiver of the amount determined by the court to be reasonable
2185 is a defense to any action against the receiver for payment or
2186 for possession of the goods or real estate subject to the lease,
2187 security interest, or mortgage involved by any person who
2188 received such notice, but the payment does not relieve the owner
2189 of the facility of any liability for the difference between the
2190 amount paid by the receiver and the amount due under the
2191 original lease, security interest, or mortgage involved.
2192 (6) The court shall set the compensation of the receiver,
2193 which will be considered a necessary expense of a receivership.
2194 (7) A receiver may be held liable in a personal capacity
2195 only for the receiver's own gross negligence, intentional acts,
2196 or breach of fiduciary duty.
2197 (8) The court may require a receiver to post a bond.
2198 (9) The court may direct the agency to allocate funds from
2199 the Health Care Trust Fund to the receiver, subject to the
2200 provisions of s. 429.18(1) ~~s. 400.418(1)~~.
2201 (10) The court may terminate a receivership when:
2202 (a) The court determines that the receivership is no
2203 longer necessary because the conditions which gave rise to the
2204 receivership no longer exist or the agency grants the facility a
2205 new license; or
2206 (b) All of the residents in the facility have been
2207 transferred or discharged.
2208 (11) Within 30 days after termination, the receiver shall
2209 give the court a complete accounting of all property of which
2210 the receiver has taken possession, of all funds collected, and
2211 of the expenses of the receivership.

2212 (12) Nothing in this section shall be deemed to relieve
2213 any owner, administrator, or employee of a facility placed in
2214 receivership of any civil or criminal liability incurred, or any
2215 duty imposed by law, by reason of acts or omissions of the
2216 owner, administrator, or employee prior to the appointment of a
2217 receiver; nor shall anything contained in this section be
2218 construed to suspend during the receivership any obligation of
2219 the owner, administrator, or employee for payment of taxes or
2220 other operating and maintenance expenses of the facility or of
2221 the owner, administrator, employee, or any other person for the
2222 payment of mortgages or liens. The owner shall retain the right
2223 to sell or mortgage any facility under receivership, subject to
2224 approval of the court which ordered the receivership.
2225 Section 47. Section 400.424, Florida Statutes, is
2226 renumbered as section 429.24, Florida Statutes, and amended to
2227 read:
2228 429.24 ~~400.424~~ Contracts.--
2229 (1) The presence of each resident in a facility shall be
2230 covered by a contract, executed at the time of admission or
2231 prior thereto, between the licensee and the resident or his or
2232 her designee or legal representative. Each party to the contract
2233 shall be provided with a duplicate original thereof, and the
2234 licensee shall keep on file in the facility all such contracts.
2235 The licensee may not destroy or otherwise dispose of any such
2236 contract until 5 years after its expiration.
2237 (2) Each contract must contain express provisions
2238 specifically setting forth the services and accommodations to be
2239 provided by the facility; the rates or charges; provision for at

2240 least 30 days' written notice of a rate increase; the rights,
2241 duties, and obligations of the residents, other than those
2242 specified in s. 429.28 ~~s. 400.428~~; and other matters that the
2243 parties deem appropriate. Whenever money is deposited or
2244 advanced by a resident in a contract as security for performance
2245 of the contract agreement or as advance rent for other than the
2246 next immediate rental period:
2247 (a) Such funds shall be deposited in a banking institution
2248 in this state that is located, if possible, in the same
2249 community in which the facility is located; shall be kept
2250 separate from the funds and property of the facility; may not be
2251 represented as part of the assets of the facility on financial
2252 statements; and shall be used, or otherwise expended, only for
2253 the account of the resident.
2254 (b) The licensee shall, within 30 days of receipt of
2255 advance rent or a security deposit, notify the resident or
2256 residents in writing of the manner in which the licensee is
2257 holding the advance rent or security deposit and state the name
2258 and address of the depository where the moneys are being held.
2259 The licensee shall notify residents of the facility's policy on
2260 advance deposits.
2261 (3)(a) The contract shall include a refund policy to be
2262 implemented at the time of a resident's transfer, discharge, or
2263 death. The refund policy shall provide that the resident or
2264 responsible party is entitled to a prorated refund based on the
2265 daily rate for any unused portion of payment beyond the
2266 termination date after all charges, including the cost of
2267 damages to the residential unit resulting from circumstances

2268 other than normal use, have been paid to the licensee. For the
2269 purpose of this paragraph, the termination date shall be the
2270 date the unit is vacated by the resident and cleared of all
2271 personal belongings. If the amount of belongings does not
2272 preclude renting the unit, the facility may clear the unit and
2273 charge the resident or his or her estate for moving and storing
2274 the items at a rate equal to the actual cost to the facility,
2275 not to exceed 20 percent of the regular rate for the unit,
2276 provided that 14 days' advance written notification is given.
2277 If the resident's possessions are not claimed within 45 days
2278 after notification, the facility may dispose of them. The
2279 contract shall also specify any other conditions under which
2280 claims will be made against the refund due the resident. Except
2281 in the case of death or a discharge due to medical reasons, the
2282 refunds shall be computed in accordance with the notice of
2283 relocation requirements specified in the contract. However, a
2284 resident may not be required to provide the licensee with more
2285 than 30 days' notice of termination. If after a contract is
2286 terminated, the facility intends to make a claim against a
2287 refund due the resident, the facility shall notify the resident
2288 or responsible party in writing of the claim and shall provide
2289 said party with a reasonable time period of no less than 14
2290 calendar days to respond. The facility shall provide a refund
2291 to the resident or responsible party within 45 days after the
2292 transfer, discharge, or death of the resident. The agency shall
2293 impose a fine upon a facility that fails to comply with the
2294 refund provisions of the paragraph, which fine shall be equal to
2295 three times the amount due to the resident. One-half of the fine

2296 shall be remitted to the resident or his or her estate, and the
2297 other half to the Health Care Trust Fund to be used for the
2298 purpose specified in s. 429.18 ~~s. 400.418~~.
2299 (b) If a licensee agrees to reserve a bed for a resident
2300 who is admitted to a medical facility, including, but not
2301 limited to, a nursing home, health care facility, or psychiatric
2302 facility, the resident or his or her responsible party shall
2303 notify the licensee of any change in status that would prevent
2304 the resident from returning to the facility. Until such notice
2305 is received, the agreed-upon daily rate may be charged by the
2306 licensee.
2307 (c) The purpose of any advance payment and a refund policy
2308 for such payment, including any advance payment for housing,
2309 meals, or personal services, shall be covered in the contract.
2310 (4) The contract shall state whether or not the facility
2311 is affiliated with any religious organization and, if so, which
2312 organization and its general responsibility to the facility.
2313 (5) Neither the contract nor any provision thereof
2314 relieves any licensee of any requirement or obligation imposed
2315 upon it by this part or rules adopted under this part.
2316 (6) In lieu of the provisions of this section, facilities
2317 certified under chapter 651 shall comply with the requirements
2318 of s. 651.055.
2319 (7) Notwithstanding the provisions of this section,
2320 facilities which consist of 60 or more apartments may require
2321 refund policies and termination notices in accordance with the
2322 provisions of part II of chapter 83, provided that the lease is
2323 terminated automatically without financial penalty in the event

2324 of a resident's death or relocation due to psychiatric
2325 hospitalization or to medical reasons which necessitate services
2326 or care beyond which the facility is licensed to provide. The
2327 date of termination in such instances shall be the date the unit
2328 is fully vacated. A lease may be substituted for the contract
2329 if it meets the disclosure requirements of this section. For
2330 the purpose of this section, the term "apartment" means a room
2331 or set of rooms with a kitchen or kitchenette and lavatory
2332 located within one or more buildings containing other similar or
2333 like residential units.
2334 (8) The department may by rule clarify terms, establish
2335 procedures, clarify refund policies and contract provisions, and
2336 specify documentation as necessary to administer this section.
2337 Section 48. Section 400.4255, Florida Statutes, is
2338 renumbered as section 429.255, Florida Statutes, and amended to
2339 read:
2340 429.255 ~~400.4255~~ Use of personnel; emergency care.--
2341 (1)(a) Persons under contract to the facility, facility
2342 staff, or volunteers, who are licensed according to part I of
2343 chapter 464, or those persons exempt under s. 464.022(1), and
2344 others as defined by rule, may administer medications to
2345 residents, take residents' vital signs, manage individual weekly
2346 pill organizers for residents who self-administer medication,
2347 give prepackaged enemas ordered by a physician, observe
2348 residents, document observations on the appropriate resident's
2349 record, report observations to the resident's physician, and
2350 contract or allow residents or a resident's representative,
2351 designee, surrogate, guardian, or attorney in fact to contract

2352 with a third party, provided residents meet the criteria for
2353 appropriate placement as defined in s. 429.26 ~~s. 400.426~~.
2354 Nursing assistants certified pursuant to part II of chapter 464
2355 may take residents' vital signs as directed by a licensed nurse
2356 or physician.
2357 (b) All staff in facilities licensed under this part shall
2358 exercise their professional responsibility to observe residents,
2359 to document observations on the appropriate resident's record,
2360 and to report the observations to the resident's physician.
2361 However, the owner or administrator of the facility shall be
2362 responsible for determining that the resident receiving services
2363 is appropriate for residence in the facility.
2364 (c) In an emergency situation, licensed personnel may
2365 carry out their professional duties pursuant to part I of
2366 chapter 464 until emergency medical personnel assume
2367 responsibility for care.
2368 (2) In facilities licensed to provide extended congregate
2369 care, persons under contract to the facility, facility staff, or
2370 volunteers, who are licensed according to part I of chapter 464,
2371 or those persons exempt under s. 464.022(1), or those persons
2372 certified as nursing assistants pursuant to part II of chapter
2373 464, may also perform all duties within the scope of their
2374 license or certification, as approved by the facility
2375 administrator and pursuant to this part.
2376 (3) Facility staff may withhold or withdraw
2377 cardiopulmonary resuscitation if presented with an order not to
2378 resuscitate executed pursuant to s. 401.45. The department shall
2379 adopt rules providing for the implementation of such orders.

2380 Facility staff and facilities shall not be subject to criminal
2381 prosecution or civil liability, nor be considered to have
2382 engaged in negligent or unprofessional conduct, for withholding
2383 or withdrawing cardiopulmonary resuscitation pursuant to such an
2384 order and rules adopted by the department. The absence of an
2385 order to resuscitate executed pursuant to s. 401.45 does not
2386 preclude a physician from withholding or withdrawing
2387 cardiopulmonary resuscitation as otherwise permitted by law.
2388 Section 49. Section 400.4256, Florida Statutes, is
2389 renumbered as section 429.256, Florida Statutes, and amended to
2390 read:
2391 429.256 ~~400.4256~~ Assistance with self-administration of
2392 medication.--
2393 (1) For the purposes of this section, the term:
2394 (a) "Informed consent" means advising the resident, or the
2395 resident's surrogate, guardian, or attorney in fact, that an
2396 assisted living facility is not required to have a licensed
2397 nurse on staff, that the resident may be receiving assistance
2398 with self-administration of medication from an unlicensed
2399 person, and that such assistance, if provided by an unlicensed
2400 person, will or will not be overseen by a licensed nurse.
2401 (b) "Unlicensed person" means an individual not currently
2402 licensed to practice nursing or medicine who is employed by or
2403 under contract to an assisted living facility and who has
2404 received training with respect to assisting with the self-
2405 administration of medication in an assisted living facility as
2406 provided under s. 429.52 ~~s. 400.452~~ prior to providing such
2407 assistance as described in this section.

2408 (2) Residents who are capable of self-administering their
2409 own medications without assistance shall be encouraged and
2410 allowed to do so. However, an unlicensed person may, consistent
2411 with a dispensed prescription's label or the package directions
2412 of an over-the-counter medication, assist a resident whose
2413 condition is medically stable with the self-administration of
2414 routine, regularly scheduled medications that are intended to be
2415 self-administered. Assistance with self-medication by an
2416 unlicensed person may occur only upon a documented request by,
2417 and the written informed consent of, a resident or the
2418 resident's surrogate, guardian, or attorney in fact. For the
2419 purposes of this section, self-administered medications include
2420 both legend and over-the-counter oral dosage forms, topical
2421 dosage forms and topical ophthalmic, otic, and nasal dosage
2422 forms including solutions, suspensions, sprays, and inhalers.
2423 (3) Assistance with self-administration of medication
2424 includes:
2425 (a) Taking the medication, in its previously dispensed,
2426 properly labeled container, from where it is stored, and
2427 bringing it to the resident.
2428 (b) In the presence of the resident, reading the label,
2429 opening the container, removing a prescribed amount of
2430 medication from the container, and closing the container.
2431 (c) Placing an oral dosage in the resident's hand or
2432 placing the dosage in another container and helping the resident
2433 by lifting the container to his or her mouth.
2434 (d) Applying topical medications.
2435 (e) Returning the medication container to proper storage.

2436 (f) Keeping a record of when a resident receives
2437 assistance with self-administration under this section.
2438 (4) Assistance with self-administration does not include:
2439 (a) Mixing, compounding, converting, or calculating
2440 medication doses, except for measuring a prescribed amount of
2441 liquid medication or breaking a scored tablet or crushing a
2442 tablet as prescribed.
2443 (b) The preparation of syringes for injection or the
2444 administration of medications by any injectable route.
2445 (c) Administration of medications through intermittent
2446 positive pressure breathing machines or a nebulizer.
2447 (d) Administration of medications by way of a tube
2448 inserted in a cavity of the body.
2449 (e) Administration of parenteral preparations.
2450 (f) Irrigations or debriding agents used in the treatment
2451 of a skin condition.
2452 (g) Rectal, urethral, or vaginal preparations.
2453 (h) Medications ordered by the physician or health care
2454 professional with prescriptive authority to be given "as
2455 needed," unless the order is written with specific parameters
2456 that preclude independent judgment on the part of the unlicensed
2457 person, and at the request of a competent resident.
2458 (i) Medications for which the time of administration, the
2459 amount, the strength of dosage, the method of administration, or
2460 the reason for administration requires judgment or discretion on
2461 the part of the unlicensed person.

2462 (5) Assistance with the self-administration of medication
2463 by an unlicensed person as described in this section shall not
2464 be considered administration as defined in s. 465.003.
2465 (6) The department may by rule establish facility
2466 procedures and interpret terms as necessary to implement this
2467 section.
2468 Section 50. Section 400.426, Florida Statutes, is
2469 renumbered as section 429.26, Florida Statutes, and amended to
2470 read:
2471 429.26 ~~400.426~~ Appropriateness of placements; examinations
2472 of residents.--
2473 (1) The owner or administrator of a facility is
2474 responsible for determining the appropriateness of admission of
2475 an individual to the facility and for determining the continued
2476 appropriateness of residence of an individual in the facility.
2477 A determination shall be based upon an assessment of the
2478 strengths, needs, and preferences of the resident, the care and
2479 services offered or arranged for by the facility in accordance
2480 with facility policy, and any limitations in law or rule related
2481 to admission criteria or continued residency for the type of
2482 license held by the facility under this part. A resident may
2483 not be moved from one facility to another without consultation
2484 with and agreement from the resident or, if applicable, the
2485 resident's representative or designee or the resident's family,
2486 guardian, surrogate, or attorney in fact. In the case of a
2487 resident who has been placed by the department or the Department
2488 of Children and Family Services, the administrator must notify
2489 the appropriate contact person in the applicable department.

2490 (2) A physician or nurse practitioner who is employed by
2491 an assisted living facility to provide an initial examination
2492 for admission purposes may not have financial interest in the
2493 facility.
2494 (3) Persons licensed under part I of chapter 464 who are
2495 employed by or under contract with a facility shall, on a
2496 routine basis or at least monthly, perform a nursing assessment
2497 of the residents for whom they are providing nursing services
2498 ordered by a physician, except administration of medication, and
2499 shall document such assessment, including any substantial
2500 changes in a resident's status which may necessitate relocation
2501 to a nursing home, hospital, or specialized health care
2502 facility. Such records shall be maintained in the facility for
2503 inspection by the agency and shall be forwarded to the
2504 resident's case manager, if applicable.
2505 (4) If possible, each resident shall have been examined by
2506 a licensed physician or a licensed nurse practitioner within 60
2507 days before admission to the facility. The signed and completed
2508 medical examination report shall be submitted to the owner or
2509 administrator of the facility who shall use the information
2510 contained therein to assist in the determination of the
2511 appropriateness of the resident's admission and continued stay
2512 in the facility. The medical examination report shall become a
2513 permanent part of the record of the resident at the facility and
2514 shall be made available to the agency during inspection or upon
2515 request. An assessment that has been completed through the
2516 Comprehensive Assessment and Review for Long-Term Care Services
2517 (CARES) Program fulfills the requirements for a medical

2518 examination under this subsection and s. 429.07(3)(b)6. ~~s.~~
2519 ~~400.407(3)(b)6.~~
2520 (5) Except as provided in s. 429.07 ~~s. 400.407~~, if a
2521 medical examination has not been completed within 60 days before
2522 the admission of the resident to the facility, a licensed
2523 physician or licensed nurse practitioner shall examine the
2524 resident and complete a medical examination form provided by the
2525 agency within 30 days following the admission to the facility to
2526 enable the facility owner or administrator to determine the
2527 appropriateness of the admission. The medical examination form
2528 shall become a permanent part of the record of the resident at
2529 the facility and shall be made available to the agency during
2530 inspection by the agency or upon request.
2531 (6) Any resident accepted in a facility and placed by the
2532 department or the Department of Children and Family Services
2533 shall have been examined by medical personnel within 30 days
2534 before placement in the facility. The examination shall include
2535 an assessment of the appropriateness of placement in a facility.
2536 The findings of this examination shall be recorded on the
2537 examination form provided by the agency. The completed form
2538 shall accompany the resident and shall be submitted to the
2539 facility owner or administrator. Additionally, in the case of a
2540 mental health resident, the Department of Children and Family
2541 Services must provide documentation that the individual has been
2542 assessed by a psychiatrist, clinical psychologist, clinical
2543 social worker, or psychiatric nurse, or an individual who is
2544 supervised by one of these professionals, and determined to be
2545 appropriate to reside in an assisted living facility. The

2546 documentation must be in the facility within 30 days after the
2547 mental health resident has been admitted to the facility. An
2548 evaluation completed upon discharge from a state mental hospital
2549 meets the requirements of this subsection related to
2550 appropriateness for placement as a mental health resident
2551 providing it was completed within 90 days prior to admission to
2552 the facility. The applicable department shall provide to the
2553 facility administrator any information about the resident that
2554 would help the administrator meet his or her responsibilities
2555 under subsection (1). Further, department personnel shall
2556 explain to the facility operator any special needs of the
2557 resident and advise the operator whom to call should problems
2558 arise. The applicable department shall advise and assist the
2559 facility administrator where the special needs of residents who
2560 are recipients of optional state supplementation require such
2561 assistance.
2562 (7) The facility must notify a licensed physician when a
2563 resident exhibits signs of dementia or cognitive impairment or
2564 has a change of condition in order to rule out the presence of
2565 an underlying physiological condition that may be contributing
2566 to such dementia or impairment. The notification must occur
2567 within 30 days after the acknowledgment of such signs by
2568 facility staff. If an underlying condition is determined to
2569 exist, the facility shall arrange, with the appropriate health
2570 care provider, the necessary care and services to treat the
2571 condition.
2572 (8) The Department of Children and Family Services may
2573 require an examination for supplemental security income and

2574 optional state supplementation recipients residing in facilities
2575 at any time and shall provide the examination whenever a
2576 resident's condition requires it. Any facility administrator;
2577 personnel of the agency, the department, or the Department of
2578 Children and Family Services; or long-term care ombudsman
2579 council member who believes a resident needs to be evaluated
2580 shall notify the resident's case manager, who shall take
2581 appropriate action. A report of the examination findings shall
2582 be provided to the resident's case manager and the facility
2583 administrator to help the administrator meet his or her
2584 responsibilities under subsection (1).
2585 (9) If, at any time after admission to a facility, a
2586 resident appears to need care beyond that which the facility is
2587 licensed to provide, the agency shall require the resident to be
2588 physically examined by a licensed physician or licensed nurse
2589 practitioner. This examination shall, to the extent possible,
2590 be performed by the resident's preferred physician or nurse
2591 practitioner and shall be paid for by the resident with personal
2592 funds, except as provided in s. 429.18(1)(b) ~~s. 400.418(1)(b)~~.
2593 Following this examination, the examining physician or licensed
2594 nurse practitioner shall complete and sign a medical form
2595 provided by the agency. The completed medical form shall be
2596 submitted to the agency within 30 days after the date the
2597 facility owner or administrator is notified by the agency that
2598 the physical examination is required. After consultation with
2599 the physician or licensed nurse practitioner who performed the
2600 examination, a medical review team designated by the agency
2601 shall then determine whether the resident is appropriately

2602 residing in the facility. The medical review team shall base
2603 its decision on a comprehensive review of the resident's
2604 physical and functional status, including the resident's
2605 preferences, and not on an isolated health-related problem. In
2606 the case of a mental health resident, if the resident appears to
2607 have needs in addition to those identified in the community
2608 living support plan, the agency may require an evaluation by a
2609 mental health professional, as determined by the Department of
2610 Children and Family Services. A facility may not be required to
2611 retain a resident who requires more services or care than the
2612 facility is able to provide in accordance with its policies and
2613 criteria for admission and continued residency. Members of the
2614 medical review team making the final determination may not
2615 include the agency personnel who initially questioned the
2616 appropriateness of a resident's placement. Such determination is
2617 final and binding upon the facility and the resident. Any
2618 resident who is determined by the medical review team to be
2619 inappropriately residing in a facility shall be given 30 days'
2620 written notice to relocate by the owner or administrator, unless
2621 the resident's continued residence in the facility presents an
2622 imminent danger to the health, safety, or welfare of the
2623 resident or a substantial probability exists that death or
2624 serious physical harm would result to the resident if allowed to
2625 remain in the facility.
2626 (10) A terminally ill resident who no longer meets the
2627 criteria for continued residency may remain in the facility if
2628 the arrangement is mutually agreeable to the resident and the
2629 facility; additional care is rendered through a licensed

2630 hospice, and the resident is under the care of a physician who
2631 agrees that the physical needs of the resident are being met.
2632 (11) Facilities licensed to provide extended congregate
2633 care services shall promote aging in place by determining
2634 appropriateness of continued residency based on a comprehensive
2635 review of the resident's physical and functional status; the
2636 ability of the facility, family members, friends, or any other
2637 pertinent individuals or agencies to provide the care and
2638 services required; and documentation that a written service plan
2639 consistent with facility policy has been developed and
2640 implemented to ensure that the resident's needs and preferences
2641 are addressed.
2642 (12) No resident who requires 24-hour nursing supervision,
2643 except for a resident who is an enrolled hospice patient
2644 pursuant to part IV ~~VI~~ of ~~this~~ chapter 400, shall be retained in
2645 a facility licensed under this part.
2646 Section 51. Section 400.427, Florida Statutes, is
2647 renumbered as section 429.27, Florida Statutes, and amended to
2648 read:
2649 429.27 ~~400.427~~ Property and personal affairs of
2650 residents.--
2651 (1)(a) A resident shall be given the option of using his
2652 or her own belongings, as space permits; choosing his or her
2653 roommate; and, whenever possible, unless the resident is
2654 adjudicated incompetent or incapacitated under state law,
2655 managing his or her own affairs.
2656 (b) The admission of a resident to a facility and his or
2657 her presence therein shall not confer on the facility or its

2658 owner, administrator, employees, or representatives any
2659 authority to manage, use, or dispose of any property of the
2660 resident; nor shall such admission or presence confer on any of
2661 such persons any authority or responsibility for the personal
2662 affairs of the resident, except that which may be necessary for
2663 the safe management of the facility or for the safety of the
2664 resident.
2665 (2) A facility, or an owner, administrator, employee, or
2666 representative thereof, may not act as the guardian, trustee, or
2667 conservator for any resident of the assisted living facility or
2668 any of such resident's property. An owner, administrator, or
2669 staff member, or representative thereof, may not act as a
2670 competent resident's payee for social security, veteran's, or
2671 railroad benefits without the consent of the resident. Any
2672 facility whose owner, administrator, or staff, or representative
2673 thereof, serves as representative payee for any resident of the
2674 facility shall file a surety bond with the agency in an amount
2675 equal to twice the average monthly aggregate income or personal
2676 funds due to residents, or expendable for their account, which
2677 are received by a facility. Any facility whose owner,
2678 administrator, or staff, or a representative thereof, is granted
2679 power of attorney for any resident of the facility shall file a
2680 surety bond with the agency for each resident for whom such
2681 power of attorney is granted. The surety bond shall be in an
2682 amount equal to twice the average monthly income of the
2683 resident, plus the value of any resident's property under the
2684 control of the attorney in fact. The bond shall be executed by
2685 the facility as principal and a licensed surety company. The

2686 bond shall be conditioned upon the faithful compliance of the
2687 facility with this section and shall run to the agency for the
2688 benefit of any resident who suffers a financial loss as a result
2689 of the misuse or misappropriation by a facility of funds held
2690 pursuant to this subsection. Any surety company that cancels or
2691 does not renew the bond of any licensee shall notify the agency
2692 in writing not less than 30 days in advance of such action,
2693 giving the reason for the cancellation or nonrenewal. Any
2694 facility owner, administrator, or staff, or representative
2695 thereof, who is granted power of attorney for any resident of
2696 the facility shall, on a monthly basis, be required to provide
2697 the resident a written statement of any transaction made on
2698 behalf of the resident pursuant to this subsection, and a copy
2699 of such statement given to the resident shall be retained in
2700 each resident's file and available for agency inspection.
2701 (3) A facility, upon mutual consent with the resident,
2702 shall provide for the safekeeping in the facility of personal
2703 effects not in excess of $500 and funds of the resident not in
2704 excess of $200 cash, and shall keep complete and accurate
2705 records of all such funds and personal effects received. If a
2706 resident is absent from a facility for 24 hours or more, the
2707 facility may provide for the safekeeping of the resident's
2708 personal effects in excess of $500.
2709 (4) Any funds or other property belonging to or due to a
2710 resident, or expendable for his or her account, which is
2711 received by a facility shall be trust funds which shall be kept
2712 separate from the funds and property of the facility and other
2713 residents or shall be specifically credited to such resident.

2714 Such trust funds shall be used or otherwise expended only for
2715 the account of the resident. At least once every 3 months,
2716 unless upon order of a court of competent jurisdiction, the
2717 facility shall furnish the resident and his or her guardian,
2718 trustee, or conservator, if any, a complete and verified
2719 statement of all funds and other property to which this
2720 subsection applies, detailing the amount and items received,
2721 together with their sources and disposition. In any event, the
2722 facility shall furnish such statement annually and upon the
2723 discharge or transfer of a resident. Any governmental agency or
2724 private charitable agency contributing funds or other property
2725 to the account of a resident shall also be entitled to receive
2726 such statement annually and upon the discharge or transfer of
2727 the resident.
2728 (5) Any personal funds available to facility residents may
2729 be used by residents as they choose to obtain clothing, personal
2730 items, leisure activities, and other supplies and services for
2731 their personal use. A facility may not demand, require, or
2732 contract for payment of all or any part of the personal funds in
2733 satisfaction of the facility rate for supplies and services
2734 beyond that amount agreed to in writing and may not levy an
2735 additional charge to the individual or the account for any
2736 supplies or services that the facility has agreed by contract to
2737 provide as part of the standard monthly rate. Any service or
2738 supplies provided by the facility which are charged separately
2739 to the individual or the account may be provided only with the
2740 specific written consent of the individual, who shall be
2741 furnished in advance of the provision of the services or

2742 supplies with an itemized written statement to be attached to
2743 the contract setting forth the charges for the services or
2744 supplies.
2745 (6)(a) In addition to any damages or civil penalties to
2746 which a person is subject, any person who:
2747 1. Intentionally withholds a resident's personal funds,
2748 personal property, or personal needs allowance, or who demands,
2749 beneficially receives, or contracts for payment of all or any
2750 part of a resident's personal property or personal needs
2751 allowance in satisfaction of the facility rate for supplies and
2752 services; or
2753 2. Borrows from or pledges any personal funds of a
2754 resident, other than the amount agreed to by written contract
2755 under s. 429.24 ~~s. 400.424~~,
2756
2757 commits a misdemeanor of the first degree, punishable as
2758 provided in s. 775.082 or s. 775.083.
2759 (b) Any facility owner, administrator, or staff, or
2760 representative thereof, who is granted power of attorney for any
2761 resident of the facility and who misuses or misappropriates
2762 funds obtained through this power commits a felony of the third
2763 degree, punishable as provided in s. 775.082, s. 775.083, or s.
2764 775.084.
2765 (7) In the event of the death of a resident, a licensee
2766 shall return all refunds, funds, and property held in trust to
2767 the resident's personal representative, if one has been
2768 appointed at the time the facility disburses such funds, and, if
2769 not, to the resident's spouse or adult next of kin named in a

2770 beneficiary designation form provided by the facility to the
2771 resident. If the resident has no spouse or adult next of kin or
2772 such person cannot be located, funds due the resident shall be
2773 placed in an interest-bearing account, and all property held in
2774 trust by the facility shall be safeguarded until such time as
2775 the funds and property are disbursed pursuant to the Florida
2776 Probate Code. Such funds shall be kept separate from the funds
2777 and property of the facility and other residents of the
2778 facility. If the funds of the deceased resident are not
2779 disbursed pursuant to the Florida Probate Code within 2 years
2780 after the resident's death, the funds shall be deposited in the
2781 Health Care Trust Fund administered by the agency.
2782 (8) The department may by rule clarify terms and specify
2783 procedures and documentation necessary to administer the
2784 provisions of this section relating to the proper management of
2785 residents' funds and personal property and the execution of
2786 surety bonds.
2787 Section 52. Section 400.428, Florida Statutes, is
2788 renumbered as section 429.28, Florida Statutes, and amended to
2789 read:
2790 429.28 ~~400.428~~ Resident bill of rights.--
2791 (1) No resident of a facility shall be deprived of any
2792 civil or legal rights, benefits, or privileges guaranteed by
2793 law, the Constitution of the State of Florida, or the
2794 Constitution of the United States as a resident of a facility.
2795 Every resident of a facility shall have the right to:
2796 (a) Live in a safe and decent living environment, free
2797 from abuse and neglect.

2798 (b) Be treated with consideration and respect and with due
2799 recognition of personal dignity, individuality, and the need for
2800 privacy.
2801 (c) Retain and use his or her own clothes and other
2802 personal property in his or her immediate living quarters, so as
2803 to maintain individuality and personal dignity, except when the
2804 facility can demonstrate that such would be unsafe, impractical,
2805 or an infringement upon the rights of other residents.
2806 (d) Unrestricted private communication, including
2807 receiving and sending unopened correspondence, access to a
2808 telephone, and visiting with any person of his or her choice, at
2809 any time between the hours of 9 a.m. and 9 p.m. at a minimum.
2810 Upon request, the facility shall make provisions to extend
2811 visiting hours for caregivers and out-of-town guests, and in
2812 other similar situations.
2813 (e) Freedom to participate in and benefit from community
2814 services and activities and to achieve the highest possible
2815 level of independence, autonomy, and interaction within the
2816 community.
2817 (f) Manage his or her financial affairs unless the
2818 resident or, if applicable, the resident's representative,
2819 designee, surrogate, guardian, or attorney in fact authorizes
2820 the administrator of the facility to provide safekeeping for
2821 funds as provided in s. 429.27 ~~s. 400.427~~.
2822 (g) Share a room with his or her spouse if both are
2823 residents of the facility.

2824 (h) Reasonable opportunity for regular exercise several
2825 times a week and to be outdoors at regular and frequent
2826 intervals except when prevented by inclement weather.
2827 (i) Exercise civil and religious liberties, including the
2828 right to independent personal decisions. No religious beliefs
2829 or practices, nor any attendance at religious services, shall be
2830 imposed upon any resident.
2831 (j) Access to adequate and appropriate health care
2832 consistent with established and recognized standards within the
2833 community.
2834 (k) At least 45 days' notice of relocation or termination
2835 of residency from the facility unless, for medical reasons, the
2836 resident is certified by a physician to require an emergency
2837 relocation to a facility providing a more skilled level of care
2838 or the resident engages in a pattern of conduct that is harmful
2839 or offensive to other residents. In the case of a resident who
2840 has been adjudicated mentally incapacitated, the guardian shall
2841 be given at least 45 days' notice of a nonemergency relocation
2842 or residency termination. Reasons for relocation shall be set
2843 forth in writing. In order for a facility to terminate the
2844 residency of an individual without notice as provided herein,
2845 the facility shall show good cause in a court of competent
2846 jurisdiction.
2847 (l) Present grievances and recommend changes in policies,
2848 procedures, and services to the staff of the facility, governing
2849 officials, or any other person without restraint, interference,
2850 coercion, discrimination, or reprisal. Each facility shall
2851 establish a grievance procedure to facilitate the residents'

2852 exercise of this right. This right includes access to ombudsman
2853 volunteers and advocates and the right to be a member of, to be
2854 active in, and to associate with advocacy or special interest
2855 groups.
2856 (2) The administrator of a facility shall ensure that a
2857 written notice of the rights, obligations, and prohibitions set
2858 forth in this part is posted in a prominent place in each
2859 facility and read or explained to residents who cannot read.
2860 This notice shall include the name, address, and telephone
2861 numbers of the local ombudsman council and central abuse hotline
2862 and, when applicable, the Advocacy Center for Persons with
2863 Disabilities, Inc., and the Florida local advocacy council,
2864 where complaints may be lodged. The facility must ensure a
2865 resident's access to a telephone to call the local ombudsman
2866 council, central abuse hotline, Advocacy Center for Persons with
2867 Disabilities, Inc., and the Florida local advocacy council.
2868 (3)(a) The agency shall conduct a survey to determine
2869 general compliance with facility standards and compliance with
2870 residents' rights as a prerequisite to initial licensure or
2871 licensure renewal.
2872 (b) In order to determine whether the facility is
2873 adequately protecting residents' rights, the biennial survey
2874 shall include private informal conversations with a sample of
2875 residents and consultation with the ombudsman council in the
2876 planning and service area in which the facility is located to
2877 discuss residents' experiences within the facility.
2878 (c) During any calendar year in which no survey is
2879 conducted, the agency shall conduct at least one monitoring

2880 visit of each facility cited in the previous year for a class I
2881 or class II violation, or more than three uncorrected class III
2882 violations.
2883 (d) The agency may conduct periodic followup inspections
2884 as necessary to monitor the compliance of facilities with a
2885 history of any class I, class II, or class III violations that
2886 threaten the health, safety, or security of residents.
2887 (e) The agency may conduct complaint investigations as
2888 warranted to investigate any allegations of noncompliance with
2889 requirements required under this part or rules adopted under
2890 this part.
2891 (4) The facility shall not hamper or prevent residents
2892 from exercising their rights as specified in this section.
2893 (5) No facility or employee of a facility may serve notice
2894 upon a resident to leave the premises or take any other
2895 retaliatory action against any person who:
2896 (a) Exercises any right set forth in this section.
2897 (b) Appears as a witness in any hearing, inside or outside
2898 the facility.
2899 (c) Files a civil action alleging a violation of the
2900 provisions of this part or notifies a state attorney or the
2901 Attorney General of a possible violation of such provisions.
2902 (6) Any facility which terminates the residency of an
2903 individual who participated in activities specified in
2904 subsection (5) shall show good cause in a court of competent
2905 jurisdiction.
2906 (7) Any person who submits or reports a complaint
2907 concerning a suspected violation of the provisions of this part

2908 or concerning services and conditions in facilities, or who
2909 testifies in any administrative or judicial proceeding arising
2910 from such a complaint, shall have immunity from any civil or
2911 criminal liability therefor, unless such person has acted in bad
2912 faith or with malicious purpose or the court finds that there
2913 was a complete absence of a justiciable issue of either law or
2914 fact raised by the losing party.
2915 Section 53. Section 400.429, Florida Statutes, is
2916 renumbered as section 429.29, Florida Statutes, and amended to
2917 read:
2918 429.29 ~~400.429~~ Civil actions to enforce rights.--
2919 (1) Any person or resident whose rights as specified in
2920 this part are violated shall have a cause of action. The action
2921 may be brought by the resident or his or her guardian, or by a
2922 person or organization acting on behalf of a resident with the
2923 consent of the resident or his or her guardian, or by the
2924 personal representative of the estate of a deceased resident
2925 regardless of the cause of death. If the action alleges a claim
2926 for the resident's rights or for negligence that caused the
2927 death of the resident, the claimant shall be required to elect
2928 either survival damages pursuant to s. 46.021 or wrongful death
2929 damages pursuant to s. 768.21. If the action alleges a claim for
2930 the resident's rights or for negligence that did not cause the
2931 death of the resident, the personal representative of the estate
2932 may recover damages for the negligence that caused injury to the
2933 resident. The action may be brought in any court of competent
2934 jurisdiction to enforce such rights and to recover actual
2935 damages, and punitive damages for violation of the rights of a

2936 resident or negligence. Any resident who prevails in seeking
2937 injunctive relief or a claim for an administrative remedy is
2938 entitled to recover the costs of the action and a reasonable
2939 attorney's fee assessed against the defendant not to exceed
2940 $25,000. Fees shall be awarded solely for the injunctive or
2941 administrative relief and not for any claim or action for
2942 damages whether such claim or action is brought together with a
2943 request for an injunction or administrative relief or as a
2944 separate action, except as provided under s. 768.79 or the
2945 Florida Rules of Civil Procedure. Sections 429.29-429.298
2946 ~~400.429-400.4303~~ provide the exclusive remedy for a cause of
2947 action for recovery of damages for the personal injury or death
2948 of a resident arising out of negligence or a violation of rights
2949 specified in s. 429.28 ~~s. 400.428~~. This section does not
2950 preclude theories of recovery not arising out of negligence or
2951 s. 429.28 ~~s. 400.428~~ which are available to a resident or to the
2952 agency. The provisions of chapter 766 do not apply to any cause
2953 of action brought under ss. 429.29-429.298 ~~ss. 400.429-400.4303~~.
2954 (2) In any claim brought pursuant to this part alleging a
2955 violation of resident's rights or negligence causing injury to
2956 or the death of a resident, the claimant shall have the burden
2957 of proving, by a preponderance of the evidence, that:
2958 (a) The defendant owed a duty to the resident;
2959 (b) The defendant breached the duty to the resident;
2960 (c) The breach of the duty is a legal cause of loss,
2961 injury, death, or damage to the resident; and
2962 (d) The resident sustained loss, injury, death, or damage
2963 as a result of the breach.

2964
2965 Nothing in this part shall be interpreted to create strict
2966 liability. A violation of the rights set forth in s. 429.28 ~~s.~~
2967 ~~400.428~~ or in any other standard or guidelines specified in this
2968 part or in any applicable administrative standard or guidelines
2969 of this state or a federal regulatory agency shall be evidence
2970 of negligence but shall not be considered negligence per se.
2971 (3) In any claim brought pursuant to this section, a
2972 licensee, person, or entity shall have a duty to exercise
2973 reasonable care. Reasonable care is that degree of care which a
2974 reasonably careful licensee, person, or entity would use under
2975 like circumstances.
2976 (4) In any claim for resident's rights violation or
2977 negligence by a nurse licensed under part I of chapter 464, such
2978 nurse shall have the duty to exercise care consistent with the
2979 prevailing professional standard of care for a nurse. The
2980 prevailing professional standard of care for a nurse shall be
2981 that level of care, skill, and treatment which, in light of all
2982 relevant surrounding circumstances, is recognized as acceptable
2983 and appropriate by reasonably prudent similar nurses.
2984 (5) Discovery of financial information for the purpose of
2985 determining the value of punitive damages may not be had unless
2986 the plaintiff shows the court by proffer or evidence in the
2987 record that a reasonable basis exists to support a claim for
2988 punitive damages.
2989 (6) In addition to any other standards for punitive
2990 damages, any award of punitive damages must be reasonable in
2991 light of the actual harm suffered by the resident and the

2992 egregiousness of the conduct that caused the actual harm to the
2993 resident.
2994 (7) The resident or the resident's legal representative
2995 shall serve a copy of any complaint alleging in whole or in part
2996 a violation of any rights specified in this part to the Agency
2997 for Health Care Administration at the time of filing the initial
2998 complaint with the clerk of the court for the county in which
2999 the action is pursued. The requirement of providing a copy of
3000 the complaint to the agency does not impair the resident's legal
3001 rights or ability to seek relief for his or her claim.
3002 Section 54. Section 400.4293, Florida Statutes, is
3003 renumbered as section 429.293, Florida Statutes, and amended to
3004 read:
3005 429.293 ~~400.4293~~ Presuit notice; investigation;
3006 notification of violation of residents' rights or alleged
3007 negligence; claims evaluation procedure; informal discovery;
3008 review; settlement offer; mediation.--
3009 (1) As used in this section, the term:
3010 (a) "Claim for residents' rights violation or negligence"
3011 means a negligence claim alleging injury to or the death of a
3012 resident arising out of an asserted violation of the rights of a
3013 resident under s. 429.28 ~~s. 400.428~~ or an asserted deviation
3014 from the applicable standard of care.
3015 (b) "Insurer" means any self-insurer authorized under s.
3016 627.357, liability insurance carrier, joint underwriting
3017 association, or uninsured prospective defendant.
3018 (2) Prior to filing a claim for a violation of a
3019 resident's rights or a claim for negligence, a claimant alleging

3020 injury to or the death of a resident shall notify each
3021 prospective defendant by certified mail, return receipt
3022 requested, of an asserted violation of a resident's rights
3023 provided in s. 429.28 ~~s. 400.428~~ or deviation from the standard
3024 of care. Such notification shall include an identification of
3025 the rights the prospective defendant has violated and the
3026 negligence alleged to have caused the incident or incidents and
3027 a brief description of the injuries sustained by the resident
3028 which are reasonably identifiable at the time of notice. The
3029 notice shall contain a certificate of counsel that counsel's
3030 reasonable investigation gave rise to a good faith belief that
3031 grounds exist for an action against each prospective defendant.
3032 (3)(a) No suit may be filed for a period of 75 days after
3033 notice is mailed to any prospective defendant. During the 75-day
3034 period, the prospective defendants or their insurers shall
3035 conduct an evaluation of the claim to determine the liability of
3036 each defendant and to evaluate the damages of the claimants.
3037 Each defendant or insurer of the defendant shall have a
3038 procedure for the prompt evaluation of claims during the 75-day
3039 period. The procedure shall include one or more of the
3040 following:
3041 1. Internal review by a duly qualified facility risk
3042 manager or claims adjuster;
3043 2. Internal review by counsel for each prospective
3044 defendant;
3045 3. A quality assurance committee authorized under any
3046 applicable state or federal statutes or regulations; or

3047 4. Any other similar procedure that fairly and promptly
3048 evaluates the claims.
3049
3050 Each defendant or insurer of the defendant shall evaluate the
3051 claim in good faith.
3052 (b) At or before the end of the 75 days, the defendant or
3053 insurer of the defendant shall provide the claimant with a
3054 written response:
3055 1. Rejecting the claim; or
3056 2. Making a settlement offer.
3057 (c) The response shall be delivered to the claimant if not
3058 represented by counsel or to the claimant's attorney, by
3059 certified mail, return receipt requested. Failure of the
3060 prospective defendant or insurer of the defendant to reply to
3061 the notice within 75 days after receipt shall be deemed a
3062 rejection of the claim for purposes of this section.
3063 (4) The notification of a violation of a resident's rights
3064 or alleged negligence shall be served within the applicable
3065 statute of limitations period; however, during the 75-day
3066 period, the statute of limitations is tolled as to all
3067 prospective defendants. Upon stipulation by the parties, the 75-
3068 day period may be extended and the statute of limitations is
3069 tolled during any such extension. Upon receiving written notice
3070 by certified mail, return receipt requested, of termination of
3071 negotiations in an extended period, the claimant shall have 60
3072 days or the remainder of the period of the statute of
3073 limitations, whichever is greater, within which to file suit.

3074 (5) No statement, discussion, written document, report, or
3075 other work product generated by presuit claims evaluation
3076 procedures under this section is discoverable or admissible in
3077 any civil action for any purpose by the opposing party. All
3078 participants, including, but not limited to, physicians,
3079 investigators, witnesses, and employees or associates of the
3080 defendant, are immune from civil liability arising from
3081 participation in the presuit claims evaluation procedure. Any
3082 licensed physician or registered nurse may be retained by either
3083 party to provide an opinion regarding the reasonable basis of
3084 the claim. The presuit opinions of the expert are not
3085 discoverable or admissible in any civil action for any purpose
3086 by the opposing party.
3087 (6) Upon receipt by a prospective defendant of a notice of
3088 claim, the parties shall make discoverable information available
3089 without formal discovery as provided in subsection (7).
3090 (7) Informal discovery may be used by a party to obtain
3091 unsworn statements and the production of documents or things, as
3092 follows:
3093 (a) Unsworn statements.--Any party may require other
3094 parties to appear for the taking of an unsworn statement. Such
3095 statements may be used only for the purpose of claims evaluation
3096 and are not discoverable or admissible in any civil action for
3097 any purpose by any party. A party seeking to take the unsworn
3098 statement of any party must give reasonable notice in writing to
3099 all parties. The notice must state the time and place for taking
3100 the statement and the name and address of the party to be
3101 examined. Unless otherwise impractical, the examination of any

3102 party must be done at the same time by all other parties. Any
3103 party may be represented by counsel at the taking of an unsworn
3104 statement. An unsworn statement may be recorded electronically,
3105 stenographically, or on videotape. The taking of unsworn
3106 statements is subject to the provisions of the Florida Rules of
3107 Civil Procedure and may be terminated for abuses.
3108 (b) Documents or things.--Any party may request discovery
3109 of relevant documents or things. The documents or things must be
3110 produced, at the expense of the requesting party, within 20 days
3111 after the date of receipt of the request. A party is required to
3112 produce relevant and discoverable documents or things within
3113 that party's possession or control, if in good faith it can
3114 reasonably be done within the timeframe of the claims evaluation
3115 process.
3116 (8) Each request for and notice concerning informal
3117 discovery pursuant to this section must be in writing, and a
3118 copy thereof must be sent to all parties. Such a request or
3119 notice must bear a certificate of service identifying the name
3120 and address of the person to whom the request or notice is
3121 served, the date of the request or notice, and the manner of
3122 service thereof.
3123 (9) If a prospective defendant makes a written settlement
3124 offer, the claimant shall have 15 days from the date of receipt
3125 to accept the offer. An offer shall be deemed rejected unless
3126 accepted by delivery of a written notice of acceptance.
3127 (10) To the extent not inconsistent with this part, the
3128 provisions of the Florida Mediation Code, Florida Rules of Civil
3129 Procedure, shall be applicable to such proceedings.

3130 (11) Within 30 days after the claimant's receipt of
3131 defendant's response to the claim, the parties or their
3132 designated representatives shall meet in mediation to discuss
3133 the issues of liability and damages in accordance with the
3134 mediation rules of practice and procedures adopted by the
3135 Supreme Court. Upon stipulation of the parties, this 30-day
3136 period may be extended and the statute of limitations is tolled
3137 during the mediation and any such extension. At the conclusion
3138 of mediation, the claimant shall have 60 days or the remainder
3139 of the period of the statute of limitations, whichever is
3140 greater, within which to file suit.
3141 Section 55. Section 400.431, Florida Statutes, is
3142 renumbered as section 429.31, Florida Statutes, and amended to
3143 read:
3144 429.31 ~~400.431~~ Closing of facility; notice; penalty.--
3145 (1) Whenever a facility voluntarily discontinues
3146 operation, it shall inform the agency in writing at least 90
3147 days prior to the discontinuance of operation. The facility
3148 shall also inform each resident or the next of kin, legal
3149 representative, or agency acting on each resident's behalf, of
3150 the fact and the proposed time of such discontinuance, following
3151 the notification requirements provided in s. 429.28(1)(k) ~~s.~~
3152 ~~400.428(1)(k)~~. In the event a resident has no person to
3153 represent him or her, the facility shall be responsible for
3154 referral to an appropriate social service agency for placement.
3155 (2) Immediately upon the notice by the agency of the
3156 voluntary or involuntary termination of such operation, the
3157 agency shall monitor the transfer of residents to other

3158 facilities and ensure that residents' rights are being
3159 protected. The department, in consultation with the Department
3160 of Children and Family Services, shall specify procedures for
3161 ensuring that all residents who receive services are
3162 appropriately relocated.
3163 (3) All charges shall be prorated as of the date on which
3164 the facility discontinues operation, and if any payments have
3165 been made in advance, the payments for services not received
3166 shall be refunded to the resident or the resident's guardian
3167 within 10 working days of voluntary or involuntary closure of
3168 the facility, whether or not such refund is requested by the
3169 resident or guardian.
3170 (4) Immediately upon discontinuance of the operation of a
3171 facility, the owner shall surrender the license therefor to the
3172 agency, and the license shall be canceled.
3173 (5) The agency may levy a fine in an amount no greater
3174 than $5,000 upon each person or business entity that owns any
3175 interest in a facility that terminates operation without
3176 providing notice to the agency and the residents of the facility
3177 at least 30 days before operation ceases. This fine shall not
3178 be levied against any facility involuntarily closed at the
3179 initiation of the agency. The agency shall use the proceeds of
3180 the fines to operate the facility until all residents of the
3181 facility are relocated and shall deposit any balance of the
3182 proceeds into the Health Care Trust Fund established pursuant to
3183 s. 429.18 ~~s. 400.418~~.

3184 Section 56. Section 400.441, Florida Statutes, is
3185 renumbered as section 429.41, Florida Statutes, and amended to
3186 read:
3187 429.41 ~~400.441~~ Rules establishing standards.--
3188 (1) It is the intent of the Legislature that rules
3189 published and enforced pursuant to this section shall include
3190 criteria by which a reasonable and consistent quality of
3191 resident care and quality of life may be ensured and the results
3192 of such resident care may be demonstrated. Such rules shall
3193 also ensure a safe and sanitary environment that is residential
3194 and noninstitutional in design or nature. It is further
3195 intended that reasonable efforts be made to accommodate the
3196 needs and preferences of residents to enhance the quality of
3197 life in a facility. In order to provide safe and sanitary
3198 facilities and the highest quality of resident care
3199 accommodating the needs and preferences of residents, the
3200 department, in consultation with the agency, the Department of
3201 Children and Family Services, and the Department of Health,
3202 shall adopt rules, policies, and procedures to administer this
3203 part, which must include reasonable and fair minimum standards
3204 in relation to:
3205 (a) The requirements for and maintenance of facilities,
3206 not in conflict with the provisions of chapter 553, relating to
3207 plumbing, heating, cooling, lighting, ventilation, living space,
3208 and other housing conditions, which will ensure the health,
3209 safety, and comfort of residents and protection from fire
3210 hazard, including adequate provisions for fire alarm and other
3211 fire protection suitable to the size of the structure. Uniform

3212 firesafety standards shall be established and enforced by the
3213 State Fire Marshal in cooperation with the agency, the
3214 department, and the Department of Health.
3215 1. Evacuation capability determination.--
3216 a. The provisions of the National Fire Protection
3217 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
3218 for determining the ability of the residents, with or without
3219 staff assistance, to relocate from or within a licensed facility
3220 to a point of safety as provided in the fire codes adopted
3221 herein. An evacuation capability evaluation for initial
3222 licensure shall be conducted within 6 months after the date of
3223 licensure. For existing licensed facilities that are not
3224 equipped with an automatic fire sprinkler system, the
3225 administrator shall evaluate the evacuation capability of
3226 residents at least annually. The evacuation capability
3227 evaluation for each facility not equipped with an automatic fire
3228 sprinkler system shall be validated, without liability, by the
3229 State Fire Marshal, by the local fire marshal, or by the local
3230 authority having jurisdiction over firesafety, before the
3231 license renewal date. If the State Fire Marshal, local fire
3232 marshal, or local authority having jurisdiction over firesafety
3233 has reason to believe that the evacuation capability of a
3234 facility as reported by the administrator may have changed, it
3235 may, with assistance from the facility administrator, reevaluate
3236 the evacuation capability through timed exiting drills.
3237 Translation of timed fire exiting drills to evacuation
3238 capability may be determined:
3239 (I) Three minutes or less: prompt.

3240 (II) More than 3 minutes, but not more than 13 minutes:
3241 slow.
3242 (III) More than 13 minutes: impractical.
3243 b. The Office of the State Fire Marshal shall provide or
3244 cause the provision of training and education on the proper
3245 application of Chapter 5, NFPA 101A, 1995 edition, to its
3246 employees, to staff of the Agency for Health Care Administration
3247 who are responsible for regulating facilities under this part,
3248 and to local governmental inspectors. The Office of the State
3249 Fire Marshal shall provide or cause the provision of this
3250 training within its existing budget, but may charge a fee for
3251 this training to offset its costs. The initial training must be
3252 delivered within 6 months after July 1, 1995, and as needed
3253 thereafter.
3254 c. The Office of the State Fire Marshal, in cooperation
3255 with provider associations, shall provide or cause the provision
3256 of a training program designed to inform facility operators on
3257 how to properly review bid documents relating to the
3258 installation of automatic fire sprinklers. The Office of the
3259 State Fire Marshal shall provide or cause the provision of this
3260 training within its existing budget, but may charge a fee for
3261 this training to offset its costs. The initial training must be
3262 delivered within 6 months after July 1, 1995, and as needed
3263 thereafter.
3264 d. The administrator of a licensed facility shall sign an
3265 affidavit verifying the number of residents occupying the
3266 facility at the time of the evacuation capability evaluation.
3267 2. Firesafety requirements.--

3268 a. Except for the special applications provided herein,
3269 effective January 1, 1996, the provisions of the National Fire
3270 Protection Association, Life Safety Code, NFPA 101, 1994
3271 edition, Chapter 22 for new facilities and Chapter 23 for
3272 existing facilities shall be the uniform fire code applied by
3273 the State Fire Marshal for assisted living facilities, pursuant
3274 to s. 633.022.
3275 b. Any new facility, regardless of size, that applies for
3276 a license on or after January 1, 1996, must be equipped with an
3277 automatic fire sprinkler system. The exceptions as provided in
3278 section 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein,
3279 apply to any new facility housing eight or fewer residents. On
3280 July 1, 1995, local governmental entities responsible for the
3281 issuance of permits for construction shall inform, without
3282 liability, any facility whose permit for construction is
3283 obtained prior to January 1, 1996, of this automatic fire
3284 sprinkler requirement. As used in this part, the term "a new
3285 facility" does not mean an existing facility that has undergone
3286 change of ownership.
3287 c. Notwithstanding any provision of s. 633.022 or of the
3288 National Fire Protection Association, NFPA 101A, Chapter 5, 1995
3289 edition, to the contrary, any existing facility housing eight or
3290 fewer residents is not required to install an automatic fire
3291 sprinkler system, nor to comply with any other requirement in
3292 Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety
3293 requirements of NFPA 101, 1988 edition, that applies to this
3294 size facility, unless the facility has been classified as
3295 impractical to evacuate. Any existing facility housing eight or

3296 fewer residents that is classified as impractical to evacuate
3297 must install an automatic fire sprinkler system within the
3298 timeframes granted in this section.
3299 d. Any existing facility that is required to install an
3300 automatic fire sprinkler system under this paragraph need not
3301 meet other firesafety requirements of Chapter 23, NFPA 101, 1994
3302 edition, which exceed the provisions of NFPA 101, 1988 edition.
3303 The mandate contained in this paragraph which requires certain
3304 facilities to install an automatic fire sprinkler system
3305 supersedes any other requirement.
3306 e. This paragraph does not supersede the exceptions
3307 granted in NFPA 101, 1988 edition or 1994 edition.
3308 f. This paragraph does not exempt facilities from other
3309 firesafety provisions adopted under s. 633.022 and local
3310 building code requirements in effect before July 1, 1995.
3311 g. A local government may charge fees only in an amount
3312 not to exceed the actual expenses incurred by local government
3313 relating to the installation and maintenance of an automatic
3314 fire sprinkler system in an existing and properly licensed
3315 assisted living facility structure as of January 1, 1996.
3316 h. If a licensed facility undergoes major reconstruction
3317 or addition to an existing building on or after January 1, 1996,
3318 the entire building must be equipped with an automatic fire
3319 sprinkler system. Major reconstruction of a building means
3320 repair or restoration that costs in excess of 50 percent of the
3321 value of the building as reported on the tax rolls, excluding
3322 land, before reconstruction. Multiple reconstruction projects
3323 within a 5-year period the total costs of which exceed 50

3324 percent of the initial value of the building at the time the
3325 first reconstruction project was permitted are to be considered
3326 as major reconstruction. Application for a permit for an
3327 automatic fire sprinkler system is required upon application for
3328 a permit for a reconstruction project that creates costs that go
3329 over the 50-percent threshold.
3330 i. Any facility licensed before January 1, 1996, that is
3331 required to install an automatic fire sprinkler system shall
3332 ensure that the installation is completed within the following
3333 timeframes based upon evacuation capability of the facility as
3334 determined under subparagraph 1.:
3335 (I) Impractical evacuation capability, 24 months.
3336 (II) Slow evacuation capability, 48 months.
3337 (III) Prompt evacuation capability, 60 months.
3338
3339 The beginning date from which the deadline for the automatic
3340 fire sprinkler installation requirement must be calculated is
3341 upon receipt of written notice from the local fire official that
3342 an automatic fire sprinkler system must be installed. The local
3343 fire official shall send a copy of the document indicating the
3344 requirement of a fire sprinkler system to the Agency for Health
3345 Care Administration.
3346 j. It is recognized that the installation of an automatic
3347 fire sprinkler system may create financial hardship for some
3348 facilities. The appropriate local fire official shall, without
3349 liability, grant two 1-year extensions to the timeframes for
3350 installation established herein, if an automatic fire sprinkler
3351 installation cost estimate and proof of denial from two

3352 financial institutions for a construction loan to install the
3353 automatic fire sprinkler system are submitted. However, for any
3354 facility with a class I or class II, or a history of uncorrected
3355 class III, firesafety deficiencies, an extension must not be
3356 granted. The local fire official shall send a copy of the
3357 document granting the time extension to the Agency for Health
3358 Care Administration.
3359 k. A facility owner whose facility is required to be
3360 equipped with an automatic fire sprinkler system under Chapter
3361 23, NFPA 101, 1994 edition, as adopted herein, must disclose to
3362 any potential buyer of the facility that an installation of an
3363 automatic fire sprinkler requirement exists. The sale of the
3364 facility does not alter the timeframe for the installation of
3365 the automatic fire sprinkler system.
3366 l. Existing facilities required to install an automatic
3367 fire sprinkler system as a result of construction-type
3368 restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted
3369 herein, or evacuation capability requirements shall be notified
3370 by the local fire official in writing of the automatic fire
3371 sprinkler requirement, as well as the appropriate date for final
3372 compliance as provided in this subparagraph. The local fire
3373 official shall send a copy of the document to the Agency for
3374 Health Care Administration.
3375 m. Except in cases of life-threatening fire hazards, if an
3376 existing facility experiences a change in the evacuation
3377 capability, or if the local authority having jurisdiction
3378 identifies a construction-type restriction, such that an

3379 automatic fire sprinkler system is required, it shall be
3380 afforded time for installation as provided in this subparagraph.
3381
3382 Facilities that are fully sprinkled and in compliance with other
3383 firesafety standards are not required to conduct more than one
3384 of the required fire drills between the hours of 11 p.m. and 7
3385 a.m., per year. In lieu of the remaining drills, staff
3386 responsible for residents during such hours may be required to
3387 participate in a mock drill that includes a review of evacuation
3388 procedures. Such standards must be included or referenced in the
3389 rules adopted by the State Fire Marshal. Pursuant to s.
3390 633.022(1)(b), the State Fire Marshal is the final
3391 administrative authority for firesafety standards established
3392 and enforced pursuant to this section. All licensed facilities
3393 must have an annual fire inspection conducted by the local fire
3394 marshal or authority having jurisdiction.
3395 3. Resident elopement requirements.--Facilities are
3396 required to conduct a minimum of two resident elopement
3397 prevention and response drills per year. All administrators and
3398 direct care staff must participate in the drills which shall
3399 include a review of procedures to address resident elopement.
3400 Facilities must document the implementation of the drills and
3401 ensure that the drills are conducted in a manner consistent with
3402 the facility's resident elopement policies and procedures.
3403 (b) The preparation and annual update of a comprehensive
3404 emergency management plan. Such standards must be included in
3405 the rules adopted by the department after consultation with the
3406 Department of Community Affairs. At a minimum, the rules must

3407 provide for plan components that address emergency evacuation
3408 transportation; adequate sheltering arrangements; postdisaster
3409 activities, including provision of emergency power, food, and
3410 water; postdisaster transportation; supplies; staffing;
3411 emergency equipment; individual identification of residents and
3412 transfer of records; communication with families; and responses
3413 to family inquiries. The comprehensive emergency management
3414 plan is subject to review and approval by the local emergency
3415 management agency. During its review, the local emergency
3416 management agency shall ensure that the following agencies, at a
3417 minimum, are given the opportunity to review the plan: the
3418 Department of Elderly Affairs, the Department of Health, the
3419 Agency for Health Care Administration, and the Department of
3420 Community Affairs. Also, appropriate volunteer organizations
3421 must be given the opportunity to review the plan. The local
3422 emergency management agency shall complete its review within 60
3423 days and either approve the plan or advise the facility of
3424 necessary revisions.
3425 (c) The number, training, and qualifications of all
3426 personnel having responsibility for the care of residents. The
3427 rules must require adequate staff to provide for the safety of
3428 all residents. Facilities licensed for 17 or more residents are
3429 required to maintain an alert staff for 24 hours per day.
3430 (d) All sanitary conditions within the facility and its
3431 surroundings which will ensure the health and comfort of
3432 residents. The rules must clearly delineate the
3433 responsibilities of the agency's licensure and survey staff, the
3434 county health departments, and the local authority having

3435 jurisdiction over fire safety and ensure that inspections are
3436 not duplicative. The agency may collect fees for food service
3437 inspections conducted by the county health departments and
3438 transfer such fees to the Department of Health.
3439 (e) License application and license renewal, transfer of
3440 ownership, proper management of resident funds and personal
3441 property, surety bonds, resident contracts, refund policies,
3442 financial ability to operate, and facility and staff records.
3443 (f) Inspections, complaint investigations, moratoriums,
3444 classification of deficiencies, levying and enforcement of
3445 penalties, and use of income from fees and fines.
3446 (g) The enforcement of the resident bill of rights
3447 specified in s. 429.28 ~~s. 400.428~~.
3448 (h) The care and maintenance of residents, which must
3449 include, but is not limited to:
3450 1. The supervision of residents;
3451 2. The provision of personal services;
3452 3. The provision of, or arrangement for, social and
3453 leisure activities;
3454 4. The arrangement for appointments and transportation to
3455 appropriate medical, dental, nursing, or mental health services,
3456 as needed by residents;
3457 5. The management of medication;
3458 6. The nutritional needs of residents;
3459 7. Resident records; and
3460 8. Internal risk management and quality assurance.
3461 (i) Facilities holding a limited nursing, extended
3462 congregate care, or limited mental health license.

3463 (j) The establishment of specific criteria to define
3464 appropriateness of resident admission and continued residency in
3465 a facility holding a standard, limited nursing, extended
3466 congregate care, and limited mental health license.
3467 (k) The use of physical or chemical restraints. The use
3468 of physical restraints is limited to half-bed rails as
3469 prescribed and documented by the resident's physician with the
3470 consent of the resident or, if applicable, the resident's
3471 representative or designee or the resident's surrogate,
3472 guardian, or attorney in fact. The use of chemical restraints
3473 is limited to prescribed dosages of medications authorized by
3474 the resident's physician and must be consistent with the
3475 resident's diagnosis. Residents who are receiving medications
3476 that can serve as chemical restraints must be evaluated by their
3477 physician at least annually to assess:
3478 1. The continued need for the medication.
3479 2. The level of the medication in the resident's blood.
3480 3. The need for adjustments in the prescription.
3481 (l) The establishment of specific policies and procedures
3482 on resident elopement. Facilities shall conduct a minimum of two
3483 resident elopement drills each year. All administrators and
3484 direct care staff shall participate in the drills. Facilities
3485 shall document the drills.
3486 (2) In adopting any rules pursuant to this part, the
3487 department, in conjunction with the agency, shall make distinct
3488 standards for facilities based upon facility size; the types of
3489 care provided; the physical and mental capabilities and needs of
3490 residents; the type, frequency, and amount of services and care

3491 offered; and the staffing characteristics of the facility. Rules
3492 developed pursuant to this section shall not restrict the use of
3493 shared staffing and shared programming in facilities that are
3494 part of retirement communities that provide multiple levels of
3495 care and otherwise meet the requirements of law and rule.
3496 Except for uniform firesafety standards, the department shall
3497 adopt by rule separate and distinct standards for facilities
3498 with 16 or fewer beds and for facilities with 17 or more beds.
3499 The standards for facilities with 16 or fewer beds shall be
3500 appropriate for a noninstitutional residential environment,
3501 provided that the structure is no more than two stories in
3502 height and all persons who cannot exit the facility unassisted
3503 in an emergency reside on the first floor. The department, in
3504 conjunction with the agency, may make other distinctions among
3505 types of facilities as necessary to enforce the provisions of
3506 this part. Where appropriate, the agency shall offer alternate
3507 solutions for complying with established standards, based on
3508 distinctions made by the department and the agency relative to
3509 the physical characteristics of facilities and the types of care
3510 offered therein.
3511 (3) The department shall submit a copy of proposed rules
3512 to the Speaker of the House of Representatives, the President of
3513 the Senate, and appropriate committees of substance for review
3514 and comment prior to the promulgation thereof.
3515 (a) Rules promulgated by the department shall encourage
3516 the development of homelike facilities which promote the
3517 dignity, individuality, personal strengths, and decisionmaking
3518 ability of residents.

3519 (b) The agency, in consultation with the department, may
3520 waive rules promulgated pursuant to this part in order to
3521 demonstrate and evaluate innovative or cost-effective congregate
3522 care alternatives which enable individuals to age in place.
3523 Such waivers may be granted only in instances where there is
3524 reasonable assurance that the health, safety, or welfare of
3525 residents will not be endangered. To apply for a waiver, the
3526 licensee shall submit to the agency a written description of the
3527 concept to be demonstrated, including goals, objectives, and
3528 anticipated benefits; the number and types of residents who will
3529 be affected, if applicable; a brief description of how the
3530 demonstration will be evaluated; and any other information
3531 deemed appropriate by the agency. Any facility granted a waiver
3532 shall submit a report of findings to the agency and the
3533 department within 12 months. At such time, the agency may renew
3534 or revoke the waiver or pursue any regulatory or statutory
3535 changes necessary to allow other facilities to adopt the same
3536 practices. The department may by rule clarify terms and
3537 establish waiver application procedures, criteria for reviewing
3538 waiver proposals, and procedures for reporting findings, as
3539 necessary to implement this subsection.
3540 (4) The agency may use an abbreviated biennial standard
3541 licensure inspection that consists of a review of key quality-
3542 of-care standards in lieu of a full inspection in facilities
3543 which have a good record of past performance. However, a full
3544 inspection shall be conducted in facilities which have had a
3545 history of class I or class II violations, uncorrected class III
3546 violations, confirmed ombudsman council complaints, or confirmed

3547 licensure complaints, within the previous licensure period
3548 immediately preceding the inspection or when a potentially
3549 serious problem is identified during the abbreviated inspection.
3550 The agency, in consultation with the department, shall develop
3551 the key quality-of-care standards with input from the State
3552 Long-Term Care Ombudsman Council and representatives of provider
3553 groups for incorporation into its rules. The department, in
3554 consultation with the agency, shall report annually to the
3555 Legislature concerning its implementation of this subsection.
3556 The report shall include, at a minimum, the key quality-of-care
3557 standards which have been developed; the number of facilities
3558 identified as being eligible for the abbreviated inspection; the
3559 number of facilities which have received the abbreviated
3560 inspection and, of those, the number that were converted to full
3561 inspection; the number and type of subsequent complaints
3562 received by the agency or department on facilities which have
3563 had abbreviated inspections; any recommendations for
3564 modification to this subsection; any plans by the agency to
3565 modify its implementation of this subsection; and any other
3566 information which the department believes should be reported.
3567 (5) A fee shall be charged by the department to any person
3568 requesting a copy of this part or rules promulgated under this
3569 part. Such fees shall not exceed the actual cost of duplication
3570 and postage.
3571 Section 57. Section 400.442, Florida Statutes, is
3572 renumbered as section 429.42, Florida Statutes, and amended to
3573 read:
3574 429.42 ~~400.442~~ Pharmacy and dietary services.--

3575 (1) Any assisted living facility in which the agency has
3576 documented a class I or class II deficiency or uncorrected class
3577 III deficiencies regarding medicinal drugs or over-the-counter
3578 preparations, including their storage, use, delivery, or
3579 administration, or dietary services, or both, during a biennial
3580 survey or a monitoring visit or an investigation in response to
3581 a complaint, shall, in addition to or as an alternative to any
3582 penalties imposed under s. 429.19 ~~s. 400.419~~, be required to
3583 employ the consultant services of a licensed pharmacist, a
3584 licensed registered nurse, or a registered or licensed
3585 dietitian, as applicable. The consultant shall, at a minimum,
3586 provide onsite quarterly consultation until the inspection team
3587 from the agency determines that such consultation services are
3588 no longer required.
3589 (2) A corrective action plan for deficiencies related to
3590 assistance with the self-administration of medication or the
3591 administration of medication must be developed and implemented
3592 by the facility within 48 hours after notification of such
3593 deficiency, or sooner if the deficiency is determined by the
3594 agency to be life-threatening.
3595 (3) The agency shall employ at least two pharmacists
3596 licensed pursuant to chapter 465 among its personnel who
3597 biennially inspect assisted living facilities licensed under
3598 this part, to participate in biennial inspections or consult
3599 with the agency regarding deficiencies relating to medicinal
3600 drugs or over-the-counter preparations.
3601 (4) The department may by rule establish procedures and
3602 specify documentation as necessary to implement this section.

3603 Section 58. Section 400.444, Florida Statutes, is
3604 renumbered as section 429.44, Florida Statutes, and amended to
3605 read:
3606 429.44 ~~400.444~~ Construction and renovation;
3607 requirements.--
3608 (1) The requirements for the construction and renovation
3609 of a facility shall comply with the provisions of chapter 553
3610 which pertain to building construction standards, including
3611 plumbing, electrical code, glass, manufactured buildings,
3612 accessibility for persons with disabilities, and the state
3613 minimum building code and with the provisions of s. 633.022,
3614 which pertain to uniform firesafety standards.
3615 (2) Upon notification by the local authority having
3616 jurisdiction over life-threatening violations which seriously
3617 threaten the health, safety, or welfare of a resident of a
3618 facility, the agency shall take action as specified in s. 429.14
3619 ~~s. 400.414~~.
3620 (3) The department may adopt rules to establish procedures
3621 and specify the documentation necessary to implement this
3622 section.
3623 Section 59. Section 400.447, Florida Statutes, is
3624 renumbered as section 429.47, Florida Statutes, and amended to
3625 read:
3626 429.47 ~~400.447~~ Prohibited acts; penalties for violation.--
3627 (1) It is unlawful for any person or public body to offer
3628 or advertise to the public, in any way by any medium whatever,
3629 personal services as defined in this act, without obtaining a
3630 valid current license. It is unlawful for any holder of a

3631 license issued pursuant to the provisions of this act to
3632 advertise or hold out to the public that it holds a license for
3633 a facility other than that for which it actually holds a
3634 license.
3635 (2) It is unlawful for any holder of a license issued
3636 pursuant to the provisions of this act to withhold from the
3637 agency any evidence of financial instability, including, but not
3638 limited to, bad checks, delinquent accounts, nonpayment of
3639 withholding taxes, unpaid utility expenses, nonpayment for
3640 essential services, or adverse court action concerning the
3641 financial viability of the facility or any other facility
3642 licensed under this part or under part II of chapter 400 ~~or part~~
3643 ~~III of this chapter~~ which is owned by the licensee.
3644 (3) Any person found guilty of violating subsection (1) or
3645 subsection (2) commits a misdemeanor of the second degree,
3646 punishable as provided in s. 775.083. Each day of continuing
3647 violation shall be considered a separate offense.
3648 (4) While a facility is under construction, the owner may
3649 advertise to the public prior to obtaining a license. Facilities
3650 that are certified under chapter 651 shall comply with the
3651 advertising provisions of s. 651.095 rather than those provided
3652 for in this subsection.
3653 (5) A freestanding facility shall not advertise or imply
3654 that any part of it is a nursing home. For the purpose of this
3655 subsection, "freestanding facility" means a facility that is not
3656 operated in conjunction with a nursing home to which residents
3657 of the facility are given priority when nursing care is

3658 required. A person who violates this subsection is subject to
3659 fine as specified in s. 429.19 ~~s. 400.419~~.
3660 (6) Any facility which is affiliated with any religious
3661 organization or which has a name implying religious affiliation
3662 shall include in its advertising whether or not it is affiliated
3663 with any religious organization and, if so, which organization.
3664 (7) A facility licensed under this part which is not part
3665 of a facility authorized under chapter 651 shall include the
3666 facility's license number as given by the agency in all
3667 advertising. A company or person owning more than one facility
3668 shall include at least one license number per advertisement.
3669 All advertising shall include the term "assisted living
3670 facility" before the license number.
3671 Section 60. Section 400.452, Florida Statutes, is
3672 renumbered as section 429.52, Florida Statutes, and amended to
3673 read:
3674 429.52 ~~400.452~~ Staff training and educational programs;
3675 core educational requirement.--
3676 (1) Administrators and other assisted living facility
3677 staff must meet minimum training and education requirements
3678 established by the Department of Elderly Affairs by rule. This
3679 training and education is intended to assist facilities to
3680 appropriately respond to the needs of residents, to maintain
3681 resident care and facility standards, and to meet licensure
3682 requirements.
3683 (2) The department shall establish a competency test and a
3684 minimum required score to indicate successful completion of the
3685 training and educational requirements. The competency test must

3686 be developed by the department in conjunction with the agency
3687 and providers. The required training and education must cover at
3688 least the following topics:
3689 (a) State law and rules relating to assisted living
3690 facilities.
3691 (b) Resident rights and identifying and reporting abuse,
3692 neglect, and exploitation.
3693 (c) Special needs of elderly persons, persons with mental
3694 illness, and persons with developmental disabilities and how to
3695 meet those needs.
3696 (d) Nutrition and food service, including acceptable
3697 sanitation practices for preparing, storing, and serving food.
3698 (e) Medication management, recordkeeping, and proper
3699 techniques for assisting residents with self-administered
3700 medication.
3701 (f) Firesafety requirements, including fire evacuation
3702 drill procedures and other emergency procedures.
3703 (g) Care of persons with Alzheimer's disease and related
3704 disorders.
3705 (3) Effective January 1, 2004, a new facility
3706 administrator must complete the required training and education,
3707 including the competency test, within a reasonable time after
3708 being employed as an administrator, as determined by the
3709 department. Failure to do so is a violation of this part and
3710 subjects the violator to an administrative fine as prescribed in
3711 s. 429.19 ~~s. 400.419~~. Administrators licensed in accordance with
3712 chapter 468, part II, are exempt from this requirement. Other

3713 licensed professionals may be exempted, as determined by the
3714 department by rule.
3715 (4) Administrators are required to participate in
3716 continuing education for a minimum of 12 contact hours every 2
3717 years.
3718 (5) Staff involved with the management of medications and
3719 assisting with the self-administration of medications under s.
3720 429.256 ~~s. 400.4256~~ must complete a minimum of 4 additional
3721 hours of training provided by a registered nurse, licensed
3722 pharmacist, or department staff. The department shall establish
3723 by rule the minimum requirements of this additional training.
3724 (6) Other facility staff shall participate in training
3725 relevant to their job duties as specified by rule of the
3726 department.
3727 (7) If the department or the agency determines that there
3728 are problems in a facility that could be reduced through
3729 specific staff training or education beyond that already
3730 required under this section, the department or the agency may
3731 require, and provide, or cause to be provided, the training or
3732 education of any personal care staff in the facility.
3733 (8) The department shall adopt rules related to these
3734 training requirements, the competency test, necessary
3735 procedures, and competency test fees.
3736 Section 61. Subsections (1), (10), and (18) of section
3737 400.462, Florida Statutes, are amended to read:
3738 400.462 Definitions.--As used in this part, the term:
3739 (1) "Administrator" means a direct employee, as defined in
3740 subsection (9). The administrator must be a licensed physician,

3741 physician assistant, or registered nurse licensed to practice in
3742 this state or an individual having at least 1 year of
3743 supervisory or administrative experience in home health care or
3744 in a facility licensed under chapter 395, ~~or under~~ part II ~~or~~
3745 ~~part III~~ of this chapter, or chapter 429. An administrator may
3746 manage a maximum of five licensed home health agencies located
3747 within one agency service district or within an immediately
3748 contiguous county. If the home health agency is licensed under
3749 this chapter and is part of a retirement community that provides
3750 multiple levels of care, an employee of the retirement community
3751 may administer the home health agency and up to a maximum of
3752 four entities licensed under this chapter or chapter 429 that
3753 are owned, operated, or managed by the same corporate entity. An
3754 administrator shall designate, in writing, for each licensed
3755 entity, a qualified alternate administrator to serve during
3756 absences.
3757 (10) "Director of nursing" means a registered nurse who is
3758 a direct employee, as defined in subsection (9), of the agency
3759 and who is a graduate of an approved school of nursing and is
3760 licensed in this state; who has at least 1 year of supervisory
3761 experience as a registered nurse; and who is responsible for
3762 overseeing the professional nursing and home health aid delivery
3763 of services of the agency. A director of nursing may be the
3764 director of a maximum of five licensed home health agencies
3765 operated by a related business entity and located within one
3766 agency service district or within an immediately contiguous
3767 county. If the home health agency is licensed under this chapter
3768 and is part of a retirement community that provides multiple

3769 levels of care, an employee of the retirement community may
3770 serve as the director of nursing of the home health agency and
3771 of up to four entities licensed under this chapter or chapter
3772 429 which are owned, operated, or managed by the same corporate
3773 entity.
3774 (18) "Nurse registry" means any person that procures,
3775 offers, promises, or attempts to secure health-care-related
3776 contracts for registered nurses, licensed practical nurses,
3777 certified nursing assistants, home health aides, companions, or
3778 homemakers, who are compensated by fees as independent
3779 contractors, including, but not limited to, contracts for the
3780 provision of services to patients and contracts to provide
3781 private duty or staffing services to health care facilities
3782 licensed under chapter 395, ~~or~~ this chapter, or chapter 429 or
3783 other business entities.
3784 Section 62. Paragraphs (h), (i), and (n) of subsection (5)
3785 of section 400.464, Florida Statutes, are amended to read:
3786 400.464 Home health agencies to be licensed; expiration of
3787 license; exemptions; unlawful acts; penalties.--
3788 (5) The following are exempt from the licensure
3789 requirements of this part:
3790 (h) The delivery of assisted living facility services for
3791 which the assisted living facility is licensed under part I ~~III~~
3792 of ~~this~~ chapter 429, to serve its residents in its facility.
3793 (i) The delivery of hospice services for which the hospice
3794 is licensed under part IV ~~VI~~ of this chapter, to serve hospice
3795 patients admitted to its service.

3796 (n) The delivery of adult family care home services for
3797 which the adult family care home is licensed under part II ~~VII~~
3798 of ~~this~~ chapter 429, to serve the residents in its facility.
3799 Section 63. Subsection (2) of section 400.497, Florida
3800 Statutes, is amended to read:
3801 400.497 Rules establishing minimum standards.--The agency
3802 shall adopt, publish, and enforce rules to implement this part,
3803 including, as applicable, ss. 400.506 and 400.509, which must
3804 provide reasonable and fair minimum standards relating to:
3805 (2) Shared staffing. The agency shall allow shared
3806 staffing if the home health agency is part of a retirement
3807 community that provides multiple levels of care, is located on
3808 one campus, is licensed under this chapter or chapter 429, and
3809 otherwise meets the requirements of law and rule.
3810 Section 64. Section 400.552, Florida Statutes, is
3811 renumbered as section 429.903, Florida Statutes, and amended to
3812 read:
3813 429.903 ~~400.552~~ Applicability.--Any facility that comes
3814 within the definition of an adult day care center which is not
3815 exempt under s. 429.905 ~~s. 400.553~~ must be licensed by the
3816 agency as an adult day care center.
3817 Section 65. Section 400.555, Florida Statutes, is
3818 renumbered as section 429.909, Florida Statutes, and amended to
3819 read:
3820 429.909 ~~400.555~~ Application for license.--
3821 (1) An application for a license to operate an adult day
3822 care center must be made to the agency on forms furnished by the
3823 agency and must be accompanied by the appropriate license fee

3824 unless the applicant is exempt from payment of the fee as
3825 provided in s. 429.907(4) ~~s. 400.554(4)~~.
3826 (2) The applicant for licensure must furnish:
3827 (a) A description of the physical and mental capabilities
3828 and needs of the participants to be served and the availability,
3829 frequency, and intensity of basic services and of supportive and
3830 optional services to be provided;
3831 (b) Satisfactory proof of financial ability to operate and
3832 conduct the center in accordance with the requirements of this
3833 part, which must include, in the case of an initial application,
3834 a 1-year operating plan and proof of a 3-month operating reserve
3835 fund; and
3836 (c) Proof of adequate liability insurance coverage.
3837 (d) Proof of compliance with level 2 background screening
3838 as required under s. 429.919 ~~s. 400.5572~~.
3839 (e) A description and explanation of any exclusions,
3840 permanent suspensions, or terminations of the application from
3841 the Medicare or Medicaid programs. Proof of compliance with
3842 disclosure of ownership and control interest requirements of the
3843 Medicare or Medicaid programs shall be accepted in lieu of this
3844 submission.
3845 Section 66. Section 400.556, Florida Statutes, is
3846 renumbered as section 429.911, Florida Statutes, and amended to
3847 read:
3848 429.911 ~~400.556~~ Denial, suspension, revocation of license;
3849 administrative fines; investigations and inspections.--
3850 (1) The agency may deny, revoke, or suspend a license
3851 under this part or may impose an administrative fine against the

3852 owner of an adult day care center or its operator or employee in
3853 the manner provided in chapter 120.
3854 (2) Each of the following actions by the owner of an adult
3855 day care center or by its operator or employee is a ground for
3856 action by the agency against the owner of the center or its
3857 operator or employee:
3858 (a) An intentional or negligent act materially affecting
3859 the health or safety of center participants.
3860 (b) A violation of this part or of any standard or rule
3861 under this part.
3862 (c) A failure of persons subject to level 2 background
3863 screening under s. 429.174(1) ~~s. 400.4174(1)~~ to meet the
3864 screening standards of s. 435.04, or the retention by the center
3865 of an employee subject to level 1 background screening standards
3866 under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet the
3867 screening standards of s. 435.03 and for whom exemptions from
3868 disqualification have not been provided by the agency.
3869 (d) Failure to follow the criteria and procedures provided
3870 under part I of chapter 394 relating to the transportation,
3871 voluntary admission, and involuntary examination of center
3872 participants.
3873 (e) Multiple or repeated violations of this part or of any
3874 standard or rule adopted under this part.
3875 (f) Exclusion, permanent suspension, or termination of the
3876 owner, if an individual, officer, or board member of the adult
3877 day care center, if the owner is a firm, corporation,
3878 partnership, or association, or any person owning 5 percent or
3879 more of the center, from the Medicare or Medicaid program.

3880 (3) The agency is responsible for all investigations and
3881 inspections conducted pursuant to this part.
3882 Section 67. Section 400.557, Florida Statutes, is
3883 renumbered as section 429.915, Florida Statutes, and amended to
3884 read:
3885 429.915 ~~400.557~~ Expiration of license; renewal;
3886 conditional license or permit.--
3887 (1) A license issued for the operation of an adult day
3888 care center, unless sooner suspended or revoked, expires 2 years
3889 after the date of issuance. The agency shall notify a licensee
3890 at least 120 days before the expiration date that license
3891 renewal is required to continue operation. The notification must
3892 be provided electronically or by mail delivery. At least 90 days
3893 prior to the expiration date, an application for renewal must be
3894 submitted to the agency. A license shall be renewed, upon the
3895 filing of an application on forms furnished by the agency, if
3896 the applicant has first met the requirements of this part and of
3897 the rules adopted under this part. The applicant must file with
3898 the application satisfactory proof of financial ability to
3899 operate the center in accordance with the requirements of this
3900 part and in accordance with the needs of the participants to be
3901 served and an affidavit of compliance with the background
3902 screening requirements of s. 429.919 ~~s. 400.5572~~.
3903 (2) A licensee against whom a revocation or suspension
3904 proceeding is pending at the time for license renewal may be
3905 issued a conditional license effective until final disposition
3906 by the agency of the proceeding. If judicial relief is sought
3907 from the final disposition, the court having jurisdiction may

3908 issue a conditional permit effective for the duration of the
3909 judicial proceeding.
3910 (3) The agency may issue a conditional license to an
3911 applicant for license renewal or change of ownership if the
3912 applicant fails to meet all standards and requirements for
3913 licensure. A conditional license issued under this subsection
3914 must be limited to a specific period not exceeding 6 months, as
3915 determined by the agency, and must be accompanied by an approved
3916 plan of correction.
3917 Section 68. Section 400.5572, Florida Statutes, is
3918 renumbered as section 429.919, Florida Statutes, and amended to
3919 read:
3920 429.919 ~~400.5572~~ Background screening.--
3921 (1)(a) Level 2 background screening must be conducted on
3922 each of the following persons, who shall be considered employees
3923 for the purposes of conducting screening under chapter 435:
3924 1. The adult day care center owner if an individual, the
3925 operator, and the financial officer.
3926 2. An officer or board member if the owner of the adult
3927 day care center is a firm, corporation, partnership, or
3928 association, or any person owning 5 percent or more of the
3929 facility, if the agency has probable cause to believe that such
3930 person has been convicted of any offense prohibited by s.
3931 435.04. For each officer, board member, or person owning 5
3932 percent or more who has been convicted of any such offense, the
3933 facility shall submit to the agency a description and
3934 explanation of the conviction at the time of license
3935 application. This subparagraph does not apply to a board member

3936 of a not-for-profit corporation or organization if the board
3937 member serves solely in a voluntary capacity, does not regularly
3938 take part in the day-to-day operational decisions of the
3939 corporation or organization, receives no remuneration for his or
3940 her services, and has no financial interest and has no family
3941 members with a financial interest in the corporation or
3942 organization, provided that the board member and facility submit
3943 a statement affirming that the board member's relationship to
3944 the facility satisfies the requirements of this subparagraph.
3945 (b) Proof of compliance with level 2 screening standards
3946 which has been submitted within the previous 5 years to meet any
3947 facility or professional licensure requirements of the agency or
3948 the Department of Health satisfies the requirements of this
3949 subsection.
3950 (c) The agency may grant a provisional license to an adult
3951 day care center applying for an initial license when each
3952 individual required by this subsection to undergo screening has
3953 completed the Department of Law Enforcement background check,
3954 but has not yet received results from the Federal Bureau of
3955 Investigation, or when a request for an exemption from
3956 disqualification has been submitted to the agency pursuant to s.
3957 435.07, but a response has not been issued.
3958 (2) The owner or administrator of an adult day care center
3959 must conduct level 1 background screening as set forth in
3960 chapter 435 on all employees hired on or after October 1, 1998,
3961 who provide basic services or supportive and optional services
3962 to the participants. Such persons satisfy this requirement if:

3963 (a) Proof of compliance with level 1 screening
3964 requirements obtained to meet any professional license
3965 requirements in this state is provided and accompanied, under
3966 penalty of perjury, by a copy of the person's current
3967 professional license and an affidavit of current compliance with
3968 the background screening requirements.
3969 (b) The person required to be screened has been
3970 continuously employed, without a breach in service that exceeds
3971 180 days, in the same type of occupation for which the person is
3972 seeking employment and provides proof of compliance with the
3973 level 1 screening requirement which is no more than 2 years old.
3974 Proof of compliance must be provided directly from one employer
3975 or contractor to another, and not from the person screened. Upon
3976 request, a copy of screening results shall be provided to the
3977 person screened by the employer retaining documentation of the
3978 screening.
3979 (c) The person required to be screened is employed by a
3980 corporation or business entity or related corporation or
3981 business entity that owns, operates, or manages more than one
3982 facility or agency licensed under this chapter <u>or under chapter</u>
3983 <u>400</u>, and for whom a level 1 screening was conducted by the
3984 corporation or business entity as a condition of initial or
3985 continued employment.
3986 Section 69. Subsection (5) of section 400.601, Florida
3987 Statutes, is amended to read:
3988 400.601 Definitions.--As used in this part, the term:
3989 (5) "Hospice residential unit" means a homelike living
3990 facility, other than a facility licensed under other parts of

3991 this chapter, ~~or~~ under chapter 395, or under chapter 429, that
3992 is operated by a hospice for the benefit of its patients and is
3993 considered by a patient who lives there to be his or her primary
3994 residence.
3995 Section 70. Section 400.618, Florida Statutes, is
3996 renumbered as section 429.65, Florida Statutes, and amended to
3997 read:
3998 429.65 ~~400.618~~ Definitions.--As used in this part, the
3999 term:
4000 (1) "Activities of daily living" means functions and tasks
4001 for self-care, including eating, bathing, grooming, dressing,
4002 ambulating, and other similar tasks.
4003 (2) "Adult family-care home" means a full-time, family-
4004 type living arrangement, in a private home, under which a person
4005 who owns or rents the home provides room, board, and personal
4006 care, on a 24-hour basis, for no more than five disabled adults
4007 or frail elders who are not relatives. The following family-type
4008 living arrangements are not required to be licensed as an adult
4009 family-care home:
4010 (a) An arrangement whereby the person who owns or rents
4011 the home provides room, board, and personal services for not
4012 more than two adults who do not receive optional state
4013 supplementation under s. 409.212. The person who provides the
4014 housing, meals, and personal care must own or rent the home and
4015 reside therein.
4016 (b) An arrangement whereby the person who owns or rents
4017 the home provides room, board, and personal services only to his
4018 or her relatives.

4019 (c) An establishment that is licensed as an assisted
4020 living facility under this chapter ~~part III~~.
4021 (3) "Agency" means the Agency for Health Care
4022 Administration.
4023 (4) "Aging in place" means remaining in a noninstitutional
4024 living environment despite the physical or mental changes that
4025 may occur in a person who is aging. For aging in place to occur,
4026 needed services are added, increased, or adjusted to compensate
4027 for a person's physical or mental changes.
4028 (5) "Appropriate placement" means that the resident's
4029 needs can be met by the adult family-care home or can be met by
4030 services arranged by the adult family-care home or the resident.
4031 (6) "Chemical restraint" means a pharmacologic drug that
4032 physically limits, restricts, or deprives an individual of
4033 movement or mobility, and is used for discipline or convenience
4034 and not required for the treatment of medical symptoms.
4035 (7) "Department" means the Department of Elderly Affairs.
4036 (8) "Disabled adult" means any person between 18 and 59
4037 years of age, inclusive, who is a resident of the state and who
4038 has one or more permanent physical or mental limitations that
4039 restrict the person's ability to perform the normal activities
4040 of daily living.
4041 (9) "Frail elder" means a functionally impaired elderly
4042 person who is 60 years of age or older and who has physical or
4043 mental limitations that restrict the person's ability to perform
4044 the normal activities of daily living and that impede the
4045 person's capacity to live independently.

4046 (10) "Personal services" or "personal care" includes
4047 individual assistance with or supervision of the activities of
4048 daily living and the self-administration of medication, and
4049 other similar services.
4050 (11) "Provider" means a person who is licensed to operate
4051 an adult family-care home.
4052 (12) "Relative" means an individual who is the father,
4053 mother, son, daughter, brother, sister, grandfather,
4054 grandmother, great-grandfather, great-grandmother, uncle, aunt,
4055 first cousin, nephew, niece, husband, wife, father-in-law,
4056 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
4057 sister-in-law, stepfather, stepmother, stepson, stepdaughter,
4058 stepbrother, stepsister, half brother, or half sister of a
4059 provider.
4060 (13) "Relief person" means an adult designated by the
4061 provider to supervise the residents during the provider's
4062 absence.
4063 (14) "Resident" means a person receiving room, board, and
4064 personal care in an adult family-care home.
4065 Section 71. Section 400.6194, Florida Statutes, is
4066 renumbered as section 429.69, Florida Statutes, and amended to
4067 read:
4068 429.69 ~~400.6194~~ Denial, revocation, or suspension of a
4069 license.--The agency may deny, suspend, or revoke a license for
4070 any of the following reasons:
4071 (1) Failure of any of the persons required to undergo
4072 background screening under s. 429.67 ~~s. 400.619~~ to meet the

4073 level 1 screening standards of s. 435.03, unless an exemption
4074 from disqualification has been provided by the agency.
4075 (2) An intentional or negligent act materially affecting
4076 the health, safety, or welfare of the adult family-care home
4077 residents.
4078 (3) Submission of fraudulent information or omission of
4079 any material fact on a license application or any other document
4080 required by the agency.
4081 (4) Failure to pay an administrative fine assessed under
4082 this part.
4083 (5) A violation of this part or adopted rules which
4084 results in conditions or practices that directly threaten the
4085 physical or emotional health, safety, or welfare of residents.
4086 (6) Failure to correct cited fire code violations that
4087 threaten the health, safety, or welfare of residents.
4088 (7) Failure to submit a completed initial license
4089 application or to complete an application for license renewal
4090 within the specified timeframes.
4091 (8) Exclusion, permanent suspension, or termination of the
4092 provider from the Medicare or Medicaid program.
4093 Section 72. Section 400.621, Florida Statutes, is
4094 renumbered as section 429.73, Florida Statutes, and amended to
4095 read:
4096 429.73 ~~400.621~~ Rules and standards relating to adult
4097 family-care homes.--
4098 (1) The department, in consultation with the Department of
4099 Health, the Department of Children and Family Services, and the
4100 agency shall, by rule, establish minimum standards to ensure the

4101 health, safety, and well-being of each resident in the adult
4102 family-care home. The rules must address:
4103 (a) Requirements for the physical site of the facility and
4104 facility maintenance.
4105 (b) Services that must be provided to all residents of an
4106 adult family-care home and standards for such services, which
4107 must include, but need not be limited to:
4108 1. Room and board.
4109 2. Assistance necessary to perform the activities of daily
4110 living.
4111 3. Assistance necessary to administer medication.
4112 4. Supervision of residents.
4113 5. Health monitoring.
4114 6. Social and leisure activities.
4115 (c) Standards and procedures for license application and
4116 annual license renewal, advertising, proper management of each
4117 resident's funds and personal property and personal affairs,
4118 financial ability to operate, medication management,
4119 inspections, complaint investigations, and facility, staff, and
4120 resident records.
4121 (d) Qualifications, training, standards, and
4122 responsibilities for providers and staff.
4123 (e) Compliance with chapter 419, relating to community
4124 residential homes.
4125 (f) Criteria and procedures for determining the
4126 appropriateness of a resident's placement and continued
4127 residency in an adult family-care home. A resident who requires
4128 24-hour nursing supervision may not be retained in an adult

4129 family-care home unless such resident is an enrolled hospice
4130 patient and the resident's continued residency is mutually
4131 agreeable to the resident and the provider.
4132 (g) Procedures for providing notice and assuring the least
4133 possible disruption of residents' lives when residents are
4134 relocated, an adult family-care home is closed, or the ownership
4135 of an adult family-care home is transferred.
4136 (h) Procedures to protect the residents' rights as
4137 provided in s. 429.85 ~~s. 400.628~~.
4138 (i) Procedures to promote the growth of adult family-care
4139 homes as a component of a long-term care system.
4140 (j) Procedures to promote the goal of aging in place for
4141 residents of adult family-care homes.
4142 (2) The department shall by rule provide minimum standards
4143 and procedures for emergencies. Pursuant to s. 633.022, the
4144 State Fire Marshal, in consultation with the department and the
4145 agency, shall adopt uniform firesafety standards for adult
4146 family-care homes.
4147 (3) The department shall adopt rules providing for the
4148 implementation of orders not to resuscitate. The provider may
4149 withhold or withdraw cardiopulmonary resuscitation if presented
4150 with an order not to resuscitate executed pursuant to s. 401.45.
4151 The provider shall not be subject to criminal prosecution or
4152 civil liability, nor be considered to have engaged in negligent
4153 or unprofessional conduct, for withholding or withdrawing
4154 cardiopulmonary resuscitation pursuant to such an order and
4155 rules adopted by the department.

4156 (4) The provider of any adult family-care home that is in
4157 operation at the time any rules are adopted or amended under
4158 this part may be given a reasonable time, not exceeding 6
4159 months, within which to comply with the new or revised rules and
4160 standards.
4161 Section 73. Section 400.628, Florida Statutes, is
4162 renumbered as section 429.85, Florida Statutes, and amended to
4163 read:
4164 429.85 ~~400.628~~ Residents' bill of rights.--
4165 (1) A resident of an adult family-care home may not be
4166 deprived of any civil or legal rights, benefits, or privileges
4167 guaranteed by law, the State Constitution, or the Constitution
4168 of the United States solely by reason of status as a resident of
4169 the home. Each resident has the right to:
4170 (a) Live in a safe and decent living environment, free
4171 from abuse and neglect.
4172 (b) Be treated with consideration and respect and with due
4173 recognition of personal dignity, individuality, and privacy.
4174 (c) Keep and use the resident's own clothes and other
4175 personal property in the resident's immediate living quarters,
4176 so as to maintain individuality and personal dignity, except
4177 when the provider can demonstrate that to do so would be unsafe
4178 or an infringement upon the rights of other residents.
4179 (d) Have unrestricted private communication, including
4180 receiving and sending unopened correspondence, having access to
4181 a telephone, and visiting with any person of his or her choice,
4182 at any time between the hours of 9 a.m. and 9 p.m. at a minimum.

4183 (e) Be free to participate in and benefit from community
4184 services and activities and to achieve the highest possible
4185 level of independence, autonomy, and interaction within the
4186 community.
4187 (f) Manage the resident's own financial affairs unless the
4188 resident or the resident's guardian authorizes the provider to
4189 provide safekeeping for funds in accordance with procedures
4190 equivalent to those provided in s. 429.27 ~~s. 400.427~~.
4191 (g) Share a room with the resident's spouse if both are
4192 residents of the home.
4193 (h) Have reasonable opportunity for regular exercise
4194 several times a week and to be outdoors at regular and frequent
4195 intervals.
4196 (i) Exercise civil and religious liberties, including the
4197 right to independent personal decisions. Religious beliefs or
4198 practices and attendance at religious services may not be
4199 imposed upon a resident.
4200 (j) Have access to adequate and appropriate health care.
4201 (k) Be free from chemical and physical restraints.
4202 (l) Have at least 30 days' notice of relocation or
4203 termination of residency from the home unless, for medical
4204 reasons, the resident is certified by a physician to require an
4205 emergency relocation to a facility providing a more skilled
4206 level of care or the resident engages in a pattern of conduct
4207 that is harmful or offensive to other residents. If a resident
4208 has been adjudicated mentally incompetent, the resident's
4209 guardian must be given at least 30 days' notice, except in an
4210 emergency, of the relocation of a resident or of the termination

4211 of a residency. The reasons for relocating a resident must be
4212 set forth in writing.
4213 (m) Present grievances and recommend changes to the
4214 provider, to staff, or to any other person without restraint,
4215 interference, coercion, discrimination, or reprisal. This right
4216 includes the right to have access to ombudsman volunteers and
4217 advocates and the right to be a member of, to be active in, and
4218 to associate with advocacy or special interest groups.
4219 (2) The provider shall ensure that residents and their
4220 legal representatives are made aware of the rights, obligations,
4221 and prohibitions set forth in this part. Residents must also be
4222 given the names, addresses, and telephone numbers of the local
4223 ombudsman council and the central abuse hotline where they may
4224 lodge complaints.
4225 (3) The adult family-care home may not hamper or prevent
4226 residents from exercising the rights specified in this section.
4227 (4) A provider or staff of an adult family-care home may
4228 not serve notice upon a resident to leave the premises or take
4229 any other retaliatory action against any person who:
4230 (a) Exercises any right set forth in this section.
4231 (b) Appears as a witness in any hearing, in or out of the
4232 adult family-care home.
4233 (c) Files a civil action alleging a violation of this part
4234 or notifies a state attorney or the Attorney General of a
4235 possible violation of this part.
4236 (5) Any adult family-care home that terminates the
4237 residency of an individual who has participated in activities

4238 specified in subsection (4) must show good cause for the
4239 termination in a court of competent jurisdiction.
4240 (6) Any person who reports a complaint concerning a
4241 suspected violation of this part or the services and conditions
4242 in an adult family-care home, or who testifies in any
4243 administrative or judicial proceeding arising from such a
4244 complaint, is immune from any civil or criminal liability
4245 therefor, unless the person acted in bad faith or with malicious
4246 purpose or the court finds that there was a complete absence of
4247 a justiciable issue of either law or fact raised by the losing
4248 party.
4249 Section 74. Paragraphs (c), (d), (e), and (f) of
4250 subsection (5) of section 400.93, Florida Statutes, are amended
4251 to read:
4252 400.93 Licensure required; exemptions; unlawful acts;
4253 penalties.--
4254 (5) The following are exempt from home medical equipment
4255 provider licensure, unless they have a separate company,
4256 corporation, or division that is in the business of providing
4257 home medical equipment and services for sale or rent to
4258 consumers at their regular or temporary place of residence
4259 pursuant to the provisions of this part:
4260 (c) Assisted living facilities licensed under chapter 429
4261 ~~part III~~, when serving their residents.
4262 (d) Home health agencies licensed under part III ~~IV~~.
4263 (e) Hospices licensed under part IV ~~VI~~.

4264 (f) Intermediate care facilities, homes for special
4265 services, and transitional living facilities licensed under part
4266 V ~~VIII~~.
4267 Section 75. Paragraph (c) of subsection (10) of section
4268 400.962, Florida Statutes, is amended to read:
4269 400.962 License required; license application.--
4270 (10)
4271 (c) Proof of compliance with the level 2 background
4272 screening requirements of chapter 435 which has been submitted
4273 within the previous 5 years in compliance with any other
4274 licensure requirements under this chapter or chapter 429
4275 satisfies the requirements of paragraph (a). Proof of compliance
4276 with background screening which has been submitted within the
4277 previous 5 years to fulfill the requirements of the Financial
4278 Services Commission and the Office of Insurance Regulation under
4279 chapter 651 as part of an application for a certificate of
4280 authority to operate a continuing care retirement community
4281 satisfies the requirements for the Department of Law Enforcement
4282 and Federal Bureau of Investigation background checks.
4283 Section 76. Paragraph (b) of subsection (1) of section
4284 400.980, Florida Statutes, is amended to read:
4285 400.980 Health care services pools.--
4286 (1) As used in this section, the term:
4287 (b) "Health care services pool" means any person, firm,
4288 corporation, partnership, or association engaged for hire in the
4289 business of providing temporary employment in health care
4290 facilities, residential facilities, and agencies for licensed,
4291 certified, or trained health care personnel including, without

4292 limitation, nursing assistants, nurses' aides, and orderlies.
4293 However, the term does not include nursing registries, a
4294 facility licensed under this chapter or chapter 429 ~~400~~, a
4295 health care services pool established within a health care
4296 facility to provide services only within the confines of such
4297 facility, or any individual contractor directly providing
4298 temporary services to a health care facility without use or
4299 benefit of a contracting agent.
4300 Section 77. Paragraphs (a), (b), (c), and (d) of
4301 subsection (4) of section 400.9905, Florida Statutes, are
4302 amended to read:
4303 400.9905 Definitions.--
4304 (4) "Clinic" means an entity at which health care services
4305 are provided to individuals and which tenders charges for
4306 reimbursement for such services, including a mobile clinic and a
4307 portable equipment provider. For purposes of this part, the term
4308 does not include and the licensure requirements of this part do
4309 not apply to:
4310 (a) Entities licensed or registered by the state under
4311 chapter 395; or entities licensed or registered by the state and
4312 providing only health care services within the scope of services
4313 authorized under their respective licenses granted under ss.
4314 383.30-383.335, chapter 390, chapter 394, chapter 397, this
4315 chapter except part X ~~XIII~~, chapter 429, chapter 463, chapter
4316 465, chapter 466, chapter 478, part I of chapter 483, chapter
4317 484, or chapter 651; end-stage renal disease providers
4318 authorized under 42 C.F.R. part 405, subpart U; or providers
4319 certified under 42 C.F.R. part 485, subpart B or subpart H; or

4320 any entity that provides neonatal or pediatric hospital-based
4321 health care services by licensed practitioners solely within a
4322 hospital licensed under chapter 395.
4323 (b) Entities that own, directly or indirectly, entities
4324 licensed or registered by the state pursuant to chapter 395; or
4325 entities that own, directly or indirectly, entities licensed or
4326 registered by the state and providing only health care services
4327 within the scope of services authorized pursuant to their
4328 respective licenses granted under ss. 383.30-383.335, chapter
4329 390, chapter 394, chapter 397, this chapter except part X ~~XIII~~,
4330 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
4331 part I of chapter 483, chapter 484, chapter 651; end-stage renal
4332 disease providers authorized under 42 C.F.R. part 405, subpart
4333 U; or providers certified under 42 C.F.R. part 485, subpart B or
4334 subpart H; or any entity that provides neonatal or pediatric
4335 hospital-based health care services by licensed practitioners
4336 solely within a hospital licensed under chapter 395.
4337 (c) Entities that are owned, directly or indirectly, by an
4338 entity licensed or registered by the state pursuant to chapter
4339 395; or entities that are owned, directly or indirectly, by an
4340 entity licensed or registered by the state and providing only
4341 health care services within the scope of services authorized
4342 pursuant to their respective licenses granted under ss. 383.30-
4343 383.335, chapter 390, chapter 394, chapter 397, this chapter
4344 except part X ~~XIII~~, chapter 429, chapter 463, chapter 465,
4345 chapter 466, chapter 478, part I of chapter 483, chapter 484, or
4346 chapter 651; end-stage renal disease providers authorized under
4347 42 C.F.R. part 405, subpart U; or providers certified under 42

4348 C.F.R. part 485, subpart B or subpart H; or any entity that
4349 provides neonatal or pediatric hospital-based health care
4350 services by licensed practitioners solely within a hospital
4351 under chapter 395.
4352 (d) Entities that are under common ownership, directly or
4353 indirectly, with an entity licensed or registered by the state
4354 pursuant to chapter 395; or entities that are under common
4355 ownership, directly or indirectly, with an entity licensed or
4356 registered by the state and providing only health care services
4357 within the scope of services authorized pursuant to their
4358 respective licenses granted under ss. 383.30-383.335, chapter
4359 390, chapter 394, chapter 397, this chapter except part X ~~XIII~~,
4360 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
4361 part I of chapter 483, chapter 484, or chapter 651; end-stage
4362 renal disease providers authorized under 42 C.F.R. part 405,
4363 subpart U; or providers certified under 42 C.F.R. part 485,
4364 subpart B or subpart H; or any entity that provides neonatal or
4365 pediatric hospital-based health care services by licensed
4366 practitioners solely within a hospital licensed under chapter
4367 395.
4368 Section 78. Subsection (12) of section 401.23, Florida
4369 Statutes, is amended to read:
4370 401.23 Definitions.--As used in this part, the term:
4371 (12) "Interfacility transfer" means the transportation by
4372 ambulance of a patient between two facilities licensed under
4373 chapter 393, chapter 395, ~~or~~ chapter 400, or chapter 429,
4374 pursuant to this part.

4375 Section 79. Paragraph (b) of subsection (2) of section
4376 402.164, Florida Statutes, is amended to read:
4377 402.164 Legislative intent; definitions.--
4378 (2) As used in ss. 402.164-402.167, the term:
4379 (b) "Client" means a client as defined in s. 393.063, s.
4380 394.67, s. 397.311, or s. 400.960, a forensic client or client
4381 as defined in s. 916.106, a child or youth as defined in s.
4382 39.01, a child as defined in s. 827.01, a family as defined in
4383 s. 414.0252, a participant as defined in s. 429.901 ~~s. 400.551~~,
4384 a resident as defined in s. 429.02 ~~s. 400.402~~, a Medicaid
4385 recipient or recipient as defined in s. 409.901, a child
4386 receiving child care as defined in s. 402.302, a disabled adult
4387 as defined in s. 410.032 or s. 410.603, or a victim as defined
4388 in s. 39.01 or s. 415.102 as each definition applies within its
4389 respective chapter.
4390 Section 80. Subsection (10) of section 408.032, Florida
4391 Statutes, is amended to read:
4392 408.032 Definitions relating to Health Facility and
4393 Services Development Act.--As used in ss. 408.031-408.045, the
4394 term:
4395 (10) "Hospice" or "hospice program" means a hospice as
4396 defined in part IV ~~VI~~ of chapter 400.
4397 Section 81. Paragraph (b) of subsection (2) of section
4398 408.033, Florida Statutes, is amended to read:
4399 408.033 Local and state health planning.--
4400 (2) FUNDING.--
4401 (b)1. A hospital licensed under chapter 395, a nursing
4402 home licensed under chapter 400, and an assisted living facility

4403 licensed under chapter 429 ~~400~~ shall be assessed an annual fee
4404 based on number of beds.
4405 2. All other facilities and organizations listed in
4406 paragraph (a) shall each be assessed an annual fee of $150.
4407 3. Facilities operated by the Department of Children and
4408 Family Services, the Department of Health, or the Department of
4409 Corrections and any hospital which meets the definition of rural
4410 hospital pursuant to s. 395.602 are exempt from the assessment
4411 required in this subsection.
4412 Section 82. Subsection (2) of section 408.034, Florida
4413 Statutes, is amended to read:
4414 408.034 Duties and responsibilities of agency; rules.--
4415 (2) In the exercise of its authority to issue licenses to
4416 health care facilities and health service providers, as provided
4417 under chapters 393 and~~,~~ 395~~,~~ and parts II and IV ~~VI~~ of chapter
4418 400, the agency may not issue a license to any health care
4419 facility or health service provider that fails to receive a
4420 certificate of need or an exemption for the licensed facility or
4421 service.
4422 Section 83. Subsections (28) and (29) of section 408.07,
4423 Florida Statutes, are amended to read:
4424 408.07 Definitions.--As used in this chapter, with the
4425 exception of ss. 408.031-408.045, the term:
4426 (28) "Home health agency" means an organization licensed
4427 under part III ~~IV~~ of chapter 400.
4428 (29) "Hospice" means an organization licensed under part
4429 IV ~~VI~~ of chapter 400.

4430 Section 84. Subsection (3) of section 408.831, Florida
4431 Statutes, is amended to read:
4432 408.831 Denial, suspension, or revocation of a license,
4433 registration, certificate, or application.--
4434 (3) This section provides standards of enforcement
4435 applicable to all entities licensed or regulated by the Agency
4436 for Health Care Administration. This section controls over any
4437 conflicting provisions of chapters 39, 381, 383, 390, 391, 393,
4438 394, 395, 400, 408, 429, 468, 483, and 641 or rules adopted
4439 pursuant to those chapters.
4440 Section 85. Subsection (2) of section 409.212, Florida
4441 Statutes, is amended to read:
4442 409.212 Optional supplementation.--
4443 (2) The base rate of payment for optional state
4444 supplementation shall be established by the department within
4445 funds appropriated. Additional amounts may be provided for
4446 mental health residents in facilities designed to provide
4447 limited mental health services as provided for in s. 429.075 ~~s.~~
4448 ~~400.4075~~. The base rate of payment does not include the personal
4449 needs allowance.
4450 Section 86. Paragraph (e) of subsection (4) of section
4451 409.221, Florida Statutes, is amended to read:
4452 409.221 Consumer-directed care program.--
4453 (4) CONSUMER-DIRECTED CARE.--
4454 (e) Services.--Consumers shall use the budget allowance
4455 only to pay for home and community-based services that meet the
4456 consumer's long-term care needs and are a cost-efficient use of

4457 funds. Such services may include, but are not limited to, the
4458 following:
4459 1. Personal care.
4460 2. Homemaking and chores, including housework, meals,
4461 shopping, and transportation.
4462 3. Home modifications and assistive devices which may
4463 increase the consumer's independence or make it possible to
4464 avoid institutional placement.
4465 4. Assistance in taking self-administered medication.
4466 5. Day care and respite care services, including those
4467 provided by nursing home facilities pursuant to s. 400.141(6) or
4468 by adult day care facilities licensed pursuant to s. 429.907 ~~s.~~
4469 ~~400.554~~.
4470 6. Personal care and support services provided in an
4471 assisted living facility.
4472 Section 87. Subsection (4) of section 409.905, Florida
4473 Statutes, is amended to read:
4474 409.905 Mandatory Medicaid services.--The agency may make
4475 payments for the following services, which are required of the
4476 state by Title XIX of the Social Security Act, furnished by
4477 Medicaid providers to recipients who are determined to be
4478 eligible on the dates on which the services were provided. Any
4479 service under this section shall be provided only when medically
4480 necessary and in accordance with state and federal law.
4481 Mandatory services rendered by providers in mobile units to
4482 Medicaid recipients may be restricted by the agency. Nothing in
4483 this section shall be construed to prevent or limit the agency
4484 from adjusting fees, reimbursement rates, lengths of stay,

4485 number of visits, number of services, or any other adjustments
4486 necessary to comply with the availability of moneys and any
4487 limitations or directions provided for in the General
4488 Appropriations Act or chapter 216.
4489 (4) HOME HEALTH CARE SERVICES.--The agency shall pay for
4490 nursing and home health aide services, supplies, appliances, and
4491 durable medical equipment, necessary to assist a recipient
4492 living at home. An entity that provides services pursuant to
4493 this subsection shall be licensed under part III ~~IV~~ of chapter
4494 400. These services, equipment, and supplies, or reimbursement
4495 therefor, may be limited as provided in the General
4496 Appropriations Act and do not include services, equipment, or
4497 supplies provided to a person residing in a hospital or nursing
4498 facility.
4499 (a) In providing home health care services, the agency may
4500 require prior authorization of care based on diagnosis.
4501 (b) The agency shall implement a comprehensive utilization
4502 management program that requires prior authorization of all
4503 private duty nursing services, an individualized treatment plan
4504 that includes information about medication and treatment orders,
4505 treatment goals, methods of care to be used, and plans for care
4506 coordination by nurses and other health professionals. The
4507 utilization management program shall also include a process for
4508 periodically reviewing the ongoing use of private duty nursing
4509 services. The assessment of need shall be based on a child's
4510 condition, family support and care supplements, a family's
4511 ability to provide care, and a family's and child's schedule
4512 regarding work, school, sleep, and care for other family

4513 dependents. When implemented, the private duty nursing
4514 utilization management program shall replace the current
4515 authorization program used by the Agency for Health Care
4516 Administration and the Children's Medical Services program of
4517 the Department of Health. The agency may competitively bid on a
4518 contract to select a qualified organization to provide
4519 utilization management of private duty nursing services. The
4520 agency is authorized to seek federal waivers to implement this
4521 initiative.
4522 Section 88. Subsection (14) of section 409.906, Florida
4523 Statutes, is amended to read:
4524 409.906 Optional Medicaid services.--Subject to specific
4525 appropriations, the agency may make payments for services which
4526 are optional to the state under Title XIX of the Social Security
4527 Act and are furnished by Medicaid providers to recipients who
4528 are determined to be eligible on the dates on which the services
4529 were provided. Any optional service that is provided shall be
4530 provided only when medically necessary and in accordance with
4531 state and federal law. Optional services rendered by providers
4532 in mobile units to Medicaid recipients may be restricted or
4533 prohibited by the agency. Nothing in this section shall be
4534 construed to prevent or limit the agency from adjusting fees,
4535 reimbursement rates, lengths of stay, number of visits, or
4536 number of services, or making any other adjustments necessary to
4537 comply with the availability of moneys and any limitations or
4538 directions provided for in the General Appropriations Act or
4539 chapter 216. If necessary to safeguard the state's systems of
4540 providing services to elderly and disabled persons and subject

4541 to the notice and review provisions of s. 216.177, the Governor
4542 may direct the Agency for Health Care Administration to amend
4543 the Medicaid state plan to delete the optional Medicaid service
4544 known as "Intermediate Care Facilities for the Developmentally
4545 Disabled." Optional services may include:
4546 (14) HOSPICE CARE SERVICES.--The agency may pay for all
4547 reasonable and necessary services for the palliation or
4548 management of a recipient's terminal illness, if the services
4549 are provided by a hospice that is licensed under part IV ~~VI~~ of
4550 chapter 400 and meets Medicare certification requirements.
4551 Section 89. Subsection (7) and paragraph (a) of subsection
4552 (8) of section 409.907, Florida Statutes, are amended to read:
4553 409.907 Medicaid provider agreements.--The agency may make
4554 payments for medical assistance and related services rendered to
4555 Medicaid recipients only to an individual or entity who has a
4556 provider agreement in effect with the agency, who is performing
4557 services or supplying goods in accordance with federal, state,
4558 and local law, and who agrees that no person shall, on the
4559 grounds of handicap, race, color, or national origin, or for any
4560 other reason, be subjected to discrimination under any program
4561 or activity for which the provider receives payment from the
4562 agency.
4563 (7) The agency may require, as a condition of
4564 participating in the Medicaid program and before entering into
4565 the provider agreement, that the provider submit information, in
4566 an initial and any required renewal applications, concerning the
4567 professional, business, and personal background of the provider
4568 and permit an onsite inspection of the provider's service

4569 location by agency staff or other personnel designated by the
4570 agency to perform this function. The agency shall perform a
4571 random onsite inspection, within 60 days after receipt of a
4572 fully complete new provider's application, of the provider's
4573 service location prior to making its first payment to the
4574 provider for Medicaid services to determine the applicant's
4575 ability to provide the services that the applicant is proposing
4576 to provide for Medicaid reimbursement. The agency is not
4577 required to perform an onsite inspection of a provider or
4578 program that is licensed by the agency, that provides services
4579 under waiver programs for home and community-based services, or
4580 that is licensed as a medical foster home by the Department of
4581 Children and Family Services. As a continuing condition of
4582 participation in the Medicaid program, a provider shall
4583 immediately notify the agency of any current or pending
4584 bankruptcy filing. Before entering into the provider agreement,
4585 or as a condition of continuing participation in the Medicaid
4586 program, the agency may also require that Medicaid providers
4587 reimbursed on a fee-for-services basis or fee schedule basis
4588 which is not cost-based, post a surety bond not to exceed
4589 $50,000 or the total amount billed by the provider to the
4590 program during the current or most recent calendar year,
4591 whichever is greater. For new providers, the amount of the
4592 surety bond shall be determined by the agency based on the
4593 provider's estimate of its first year's billing. If the
4594 provider's billing during the first year exceeds the bond
4595 amount, the agency may require the provider to acquire an
4596 additional bond equal to the actual billing level of the

4597 provider. A provider's bond shall not exceed $50,000 if a
4598 physician or group of physicians licensed under chapter 458,
4599 chapter 459, or chapter 460 has a 50 percent or greater
4600 ownership interest in the provider or if the provider is an
4601 assisted living facility licensed under ~~part III of~~ chapter 429
4602 ~~400~~. The bonds permitted by this section are in addition to the
4603 bonds referenced in s. 400.179(5)(d). If the provider is a
4604 corporation, partnership, association, or other entity, the
4605 agency may require the provider to submit information concerning
4606 the background of that entity and of any principal of the
4607 entity, including any partner or shareholder having an ownership
4608 interest in the entity equal to 5 percent or greater, and any
4609 treating provider who participates in or intends to participate
4610 in Medicaid through the entity. The information must include:
4611 (a) Proof of holding a valid license or operating
4612 certificate, as applicable, if required by the state or local
4613 jurisdiction in which the provider is located or if required by
4614 the Federal Government.
4615 (b) Information concerning any prior violation, fine,
4616 suspension, termination, or other administrative action taken
4617 under the Medicaid laws, rules, or regulations of this state or
4618 of any other state or the Federal Government; any prior
4619 violation of the laws, rules, or regulations relating to the
4620 Medicare program; any prior violation of the rules or
4621 regulations of any other public or private insurer; and any
4622 prior violation of the laws, rules, or regulations of any
4623 regulatory body of this or any other state.

4624 (c) Full and accurate disclosure of any financial or
4625 ownership interest that the provider, or any principal, partner,
4626 or major shareholder thereof, may hold in any other Medicaid
4627 provider or health care related entity or any other entity that
4628 is licensed by the state to provide health or residential care
4629 and treatment to persons.
4630 (d) If a group provider, identification of all members of
4631 the group and attestation that all members of the group are
4632 enrolled in or have applied to enroll in the Medicaid program.
4633 (8)(a) Each provider, or each principal of the provider if
4634 the provider is a corporation, partnership, association, or
4635 other entity, seeking to participate in the Medicaid program
4636 must submit a complete set of his or her fingerprints to the
4637 agency for the purpose of conducting a criminal history record
4638 check. Principals of the provider include any officer,
4639 director, billing agent, managing employee, or affiliated
4640 person, or any partner or shareholder who has an ownership
4641 interest equal to 5 percent or more in the provider. However, a
4642 director of a not-for-profit corporation or organization is not
4643 a principal for purposes of a background investigation as
4644 required by this section if the director: serves solely in a
4645 voluntary capacity for the corporation or organization, does not
4646 regularly take part in the day-to-day operational decisions of
4647 the corporation or organization, receives no remuneration from
4648 the not-for-profit corporation or organization for his or her
4649 service on the board of directors, has no financial interest in
4650 the not-for-profit corporation or organization, and has no
4651 family members with a financial interest in the not-for-profit

4652 corporation or organization; and if the director submits an
4653 affidavit, under penalty of perjury, to this effect to the
4654 agency and the not-for-profit corporation or organization
4655 submits an affidavit, under penalty of perjury, to this effect
4656 to the agency as part of the corporation's or organization's
4657 Medicaid provider agreement application. Notwithstanding the
4658 above, the agency may require a background check for any person
4659 reasonably suspected by the agency to have been convicted of a
4660 crime. This subsection shall not apply to:
4661 1. A hospital licensed under chapter 395;
4662 2. A nursing home licensed under chapter 400;
4663 3. A hospice licensed under chapter 400;
4664 4. An assisted living facility licensed under chapter 429;
4665 ~~400.~~
4666 5. A unit of local government, except that requirements of
4667 this subsection apply to nongovernmental providers and entities
4668 when contracting with the local government to provide Medicaid
4669 services. The actual cost of the state and national criminal
4670 history record checks must be borne by the nongovernmental
4671 provider or entity; or
4672 6. Any business that derives more than 50 percent of its
4673 revenue from the sale of goods to the final consumer, and the
4674 business or its controlling parent either is required to file a
4675 form 10-K or other similar statement with the Securities and
4676 Exchange Commission or has a net worth of $50 million or more.
4677 Section 90. Paragraph (c) of subsection (5) of section
4678 409.912, Florida Statutes, is amended to read:

4679 409.912 Cost-effective purchasing of health care.--The
4680 agency shall purchase goods and services for Medicaid recipients
4681 in the most cost-effective manner consistent with the delivery
4682 of quality medical care. To ensure that medical services are
4683 effectively utilized, the agency may, in any case, require a
4684 confirmation or second physician's opinion of the correct
4685 diagnosis for purposes of authorizing future services under the
4686 Medicaid program. This section does not restrict access to
4687 emergency services or poststabilization care services as defined
4688 in 42 C.F.R. part 438.114. Such confirmation or second opinion
4689 shall be rendered in a manner approved by the agency. The agency
4690 shall maximize the use of prepaid per capita and prepaid
4691 aggregate fixed-sum basis services when appropriate and other
4692 alternative service delivery and reimbursement methodologies,
4693 including competitive bidding pursuant to s. 287.057, designed
4694 to facilitate the cost-effective purchase of a case-managed
4695 continuum of care. The agency shall also require providers to
4696 minimize the exposure of recipients to the need for acute
4697 inpatient, custodial, and other institutional care and the
4698 inappropriate or unnecessary use of high-cost services. The
4699 agency shall contract with a vendor to monitor and evaluate the
4700 clinical practice patterns of providers in order to identify
4701 trends that are outside the normal practice patterns of a
4702 provider's professional peers or the national guidelines of a
4703 provider's professional association. The vendor must be able to
4704 provide information and counseling to a provider whose practice
4705 patterns are outside the norms, in consultation with the agency,
4706 to improve patient care and reduce inappropriate utilization.

4707 The agency may mandate prior authorization, drug therapy
4708 management, or disease management participation for certain
4709 populations of Medicaid beneficiaries, certain drug classes, or
4710 particular drugs to prevent fraud, abuse, overuse, and possible
4711 dangerous drug interactions. The Pharmaceutical and Therapeutics
4712 Committee shall make recommendations to the agency on drugs for
4713 which prior authorization is required. The agency shall inform
4714 the Pharmaceutical and Therapeutics Committee of its decisions
4715 regarding drugs subject to prior authorization. The agency is
4716 authorized to limit the entities it contracts with or enrolls as
4717 Medicaid providers by developing a provider network through
4718 provider credentialing. The agency may competitively bid single-
4719 source-provider contracts if procurement of goods or services
4720 results in demonstrated cost savings to the state without
4721 limiting access to care. The agency may limit its network based
4722 on the assessment of beneficiary access to care, provider
4723 availability, provider quality standards, time and distance
4724 standards for access to care, the cultural competence of the
4725 provider network, demographic characteristics of Medicaid
4726 beneficiaries, practice and provider-to-beneficiary standards,
4727 appointment wait times, beneficiary use of services, provider
4728 turnover, provider profiling, provider licensure history,
4729 previous program integrity investigations and findings, peer
4730 review, provider Medicaid policy and billing compliance records,
4731 clinical and medical record audits, and other factors. Providers
4732 shall not be entitled to enrollment in the Medicaid provider
4733 network. The agency shall determine instances in which allowing
4734 Medicaid beneficiaries to purchase durable medical equipment and

4735 other goods is less expensive to the Medicaid program than long-
4736 term rental of the equipment or goods. The agency may establish
4737 rules to facilitate purchases in lieu of long-term rentals in
4738 order to protect against fraud and abuse in the Medicaid program
4739 as defined in s. 409.913. The agency may seek federal waivers
4740 necessary to administer these policies.
4741 (5) By December 1, 2005, the Agency for Health Care
4742 Administration, in partnership with the Department of Elderly
4743 Affairs, shall create an integrated, fixed-payment delivery
4744 system for Medicaid recipients who are 60 years of age or older.
4745 The Agency for Health Care Administration shall implement the
4746 integrated system initially on a pilot basis in two areas of the
4747 state. In one of the areas enrollment shall be on a voluntary
4748 basis. The program must transfer all Medicaid services for
4749 eligible elderly individuals who choose to participate into an
4750 integrated-care management model designed to serve Medicaid
4751 recipients in the community. The program must combine all
4752 funding for Medicaid services provided to individuals 60 years
4753 of age or older into the integrated system, including funds for
4754 Medicaid home and community-based waiver services; all Medicaid
4755 services authorized in ss. 409.905 and 409.906, excluding funds
4756 for Medicaid nursing home services unless the agency is able to
4757 demonstrate how the integration of the funds will improve
4758 coordinated care for these services in a less costly manner; and
4759 Medicare coinsurance and deductibles for persons dually eligible
4760 for Medicaid and Medicare as prescribed in s. 409.908(13).
4761 (c) The agency must ensure that the capitation-rate-
4762 setting methodology for the integrated system is actuarially

4763 sound and reflects the intent to provide quality care in the
4764 least restrictive setting. The agency must also require
4765 integrated-system providers to develop a credentialing system
4766 for service providers and to contract with all Gold Seal nursing
4767 homes, where feasible, and exclude, where feasible, chronically
4768 poor-performing facilities and providers as defined by the
4769 agency. The integrated system must provide that if the recipient
4770 resides in a noncontracted residential facility licensed under
4771 chapter 400 or chapter 429 at the time the integrated system is
4772 initiated, the recipient must be permitted to continue to reside
4773 in the noncontracted facility as long as the recipient desires.
4774 The integrated system must also provide that, in the absence of
4775 a contract between the integrated-system provider and the
4776 residential facility licensed under chapter 400 or chapter 429,
4777 current Medicaid rates must prevail. The agency and the
4778 Department of Elderly Affairs must jointly develop procedures to
4779 manage the services provided through the integrated system in
4780 order to ensure quality and recipient choice.
4781 Section 91. Section 410.031, Florida Statutes, is amended
4782 to read:
4783 410.031 Legislative intent.--It is the intent of the
4784 Legislature to encourage the provision of care for disabled
4785 adults in family-type living arrangements in private homes as an
4786 alternative to institutional or nursing home care for such
4787 persons. The provisions of ss. 410.031-410.036 are intended to
4788 be supplemental to the provisions of chapters ~~chapter~~ 400 and
4789 429, relating to the licensing and regulation of nursing homes
4790 and assisted living facilities, and do not exempt any person who

4791 is otherwise subject to regulation under chapter 400 or chapter
4792 429.
4793 Section 92. Section 410.034, Florida Statutes, is amended
4794 to read:
4795 410.034 Department determination of fitness to provide
4796 home care.--In accordance with s. 429.02 ~~s. 400.402~~, a person
4797 caring for an adult who is related to such person by blood or
4798 marriage is not subject to the Assisted Living Facilities Act.
4799 If, however, the person who plans to provide home care under
4800 this act is found by the department to be unable to provide this
4801 care, the department shall notify the person wishing to provide
4802 home care of this determination, and the person shall not be
4803 eligible for subsidy payments under ss. 410.031-410.036.
4804 Section 93. Section 415.1111, Florida Statutes, is amended
4805 to read:
4806 415.1111 Civil actions.--A vulnerable adult who has been
4807 abused, neglected, or exploited as specified in this chapter has
4808 a cause of action against any perpetrator and may recover actual
4809 and punitive damages for such abuse, neglect, or exploitation.
4810 The action may be brought by the vulnerable adult, or that
4811 person's guardian, by a person or organization acting on behalf
4812 of the vulnerable adult with the consent of that person or that
4813 person's guardian, or by the personal representative of the
4814 estate of a deceased victim without regard to whether the cause
4815 of death resulted from the abuse, neglect, or exploitation. The
4816 action may be brought in any court of competent jurisdiction to
4817 enforce such action and to recover actual and punitive damages
4818 for any deprivation of or infringement on the rights of a

4819 vulnerable adult. A party who prevails in any such action may be
4820 entitled to recover reasonable attorney's fees, costs of the
4821 action, and damages. The remedies provided in this section are
4822 in addition to and cumulative with other legal and
4823 administrative remedies available to a vulnerable adult.
4824 Notwithstanding the foregoing, any civil action for damages
4825 against any licensee or entity who establishes, controls,
4826 conducts, manages, or operates a facility licensed under part II
4827 of chapter 400 relating to its operation of the licensed
4828 facility shall be brought pursuant to s. 400.023, or against any
4829 licensee or entity who establishes, controls, conducts, manages,
4830 or operates a facility licensed under part I ~~III~~ of chapter 429
4831 ~~400~~ relating to its operation of the licensed facility shall be
4832 brought pursuant to s. 429.29 ~~s. 400.429~~. Such licensee or
4833 entity shall not be vicariously liable for the acts or omissions
4834 of its employees or agents or any other third party in an action
4835 brought under this section.
4836 Section 94. Paragraph (d) of subsection (1) of section
4837 419.001, Florida Statutes, is amended to read:
4838 419.001 Site selection of community residential homes.--
4839 (1) For the purposes of this section, the following
4840 definitions shall apply:
4841 (d) "Resident" means any of the following: a frail elder
4842 as defined in s. 429.65 ~~s. 400.618~~; a physically disabled or
4843 handicapped person as defined in s. 760.22(7)(a); a
4844 developmentally disabled person as defined in s. 393.063; a
4845 nondangerous mentally ill person as defined in s. 394.455(18);

4846 or a child as defined in s. 39.01(14), s. 984.03(9) or (12), or
4847 s. 985.03(8).
4848 Section 95. Section 430.601, Florida Statutes, is amended
4849 to read:
4850 430.601 Home care for the elderly; legislative intent.--It
4851 is the intent of the Legislature to encourage the provision of
4852 care for the elderly in family-type living arrangements in
4853 private homes as an alternative to institutional or nursing home
4854 care for such persons. The provisions of ss. 430.601-430.606 are
4855 intended to be supplemental to the provisions of chapters
4856 ~~chapter~~ 400 and 429, relating to the licensing and regulation of
4857 nursing homes and assisted living facilities, and do not exempt
4858 any person who is otherwise subject to regulation under those
4859 chapters ~~the provisions of that chapter~~.
4860 Section 96. Subsection (7) of section 430.703, Florida
4861 Statutes, is amended to read:
4862 430.703 Definitions.--As used in this act, the term:
4863 (7) "Other qualified provider" means an entity licensed
4864 under chapter 400 or chapter 429 that demonstrates a long-term
4865 care continuum and meets all requirements pursuant to an
4866 interagency agreement between the agency and the department.
4867 Section 97. Paragraph (a) of subsection (3) of section
4868 435.03, Florida Statutes, is amended to read:
4869 435.03 Level 1 screening standards.--
4870 (3) Standards must also ensure that the person:
4871 (a) For employees and employers licensed or registered
4872 pursuant to chapter 400 or chapter 429, and for employees and
4873 employers of developmental services institutions as defined in

4874 s. 393.063, intermediate care facilities for the developmentally
4875 disabled as defined in s. 393.063, and mental health treatment
4876 facilities as defined in s. 394.455, meets the requirements of
4877 this chapter.
4878 Section 98. Paragraph (a) of subsection (4) of section
4879 435.04, Florida Statutes, is amended to read:
4880 435.04 Level 2 screening standards.--
4881 (4) Standards must also ensure that the person:
4882 (a) For employees or employers licensed or registered
4883 pursuant to chapter 400 or chapter 429, does not have a
4884 confirmed report of abuse, neglect, or exploitation as defined
4885 in s. 415.102(6), which has been uncontested or upheld under s.
4886 415.103.
4887 Section 99. Paragraph (g) of subsection (1) of section
4888 440.13, Florida Statutes, is amended to read:
4889 440.13 Medical services and supplies; penalty for
4890 violations; limitations.--
4891 (1) DEFINITIONS.--As used in this section, the term:
4892 (g) "Health care facility" means any hospital licensed
4893 under chapter 395 and any health care institution licensed under
4894 chapter 400 or chapter 429.
4895 Section 100. Subsection (1) of section 465.0235, Florida
4896 Statutes, is amended to read:
4897 465.0235 Automated pharmacy systems used by long-term care
4898 facilities, hospices, or state correctional institutions.--
4899 (1) A pharmacy may provide pharmacy services to a long-
4900 term care facility or hospice licensed under chapter 400 or
4901 chapter 429 or a state correctional institution operated under

4902 chapter 944 through the use of an automated pharmacy system that
4903 need not be located at the same location as the pharmacy.
4904 Section 101. Subsection (8) of section 468.1685, Florida
4905 Statutes, is amended to read:
4906 468.1685 Powers and duties of board and department.--It is
4907 the function and duty of the board, together with the
4908 department, to:
4909 (8) Set up procedures by rule for advising and acting
4910 together with the Department of Health and other boards of other
4911 health professions in matters affecting procedures and methods
4912 for effectively enforcing the purpose of this part and the
4913 administration of chapters ~~chapter~~ 400 and 429.
4914 Section 102. Paragraph (k) of subsection (1) of section
4915 468.505, Florida Statutes, is amended to read:
4916 468.505 Exemptions; exceptions.--
4917 (1) Nothing in this part may be construed as prohibiting
4918 or restricting the practice, services, or activities of:
4919 (k) A person employed by a hospital licensed under chapter
4920 395, ~~or~~ by a nursing home ~~or assisted living facility~~ licensed
4921 under part II ~~or part III~~ of chapter 400, by an assisted living
4922 facility licensed under chapter 429, or by a continuing care
4923 facility certified under chapter 651, if the person is employed
4924 in compliance with the laws and rules adopted thereunder
4925 regarding the operation of its dietetic department.
4926 Section 103. Subsection (11) of section 477.025, Florida
4927 Statutes, is amended to read:
4928 477.025 Cosmetology salons; specialty salons; requisites;
4929 licensure; inspection; mobile cosmetology salons.--

4930 (11) Facilities licensed under part II ~~or part III~~ of
4931 chapter 400 or part I of chapter 429 are ~~shall be~~ exempt from
4932 ~~the provisions of~~ this section, and a cosmetologist licensed
4933 pursuant to s. 477.019 may provide salon services exclusively
4934 for facility residents.
4935 Section 104. Subsection (5) of section 483.285, Florida
4936 Statutes, is amended to read:
4937 483.285 Application of part; exemptions.--This part
4938 applies to all multiphasic health testing centers within the
4939 state, but does not apply to:
4940 (5) A home health agency licensed under part III ~~IV~~ of
4941 chapter 400.
4942 Section 105. Paragraph (a) of subsection (2) of section
4943 509.032, Florida Statutes, is amended to read:
4944 509.032 Duties.--
4945 (2) INSPECTION OF PREMISES.--
4946 (a) The division has responsibility and jurisdiction for
4947 all inspections required by this chapter. The division has
4948 responsibility for quality assurance. Each licensed
4949 establishment shall be inspected at least biannually, except for
4950 transient and nontransient apartments, which shall be inspected
4951 at least annually, and shall be inspected at such other times as
4952 the division determines is necessary to ensure the public's
4953 health, safety, and welfare. The division shall establish a
4954 system to determine inspection frequency. Public lodging units
4955 classified as resort condominiums or resort dwellings are not
4956 subject to this requirement, but shall be made available to the
4957 division upon request. If, during the inspection of a public

4958 lodging establishment classified for renting to transient or
4959 nontransient tenants, an inspector identifies vulnerable adults
4960 who appear to be victims of neglect, as defined in s. 415.102,
4961 or, in the case of a building that is not equipped with
4962 automatic sprinkler systems, tenants or clients who may be
4963 unable to self-preserve in an emergency, the division shall
4964 convene meetings with the following agencies as appropriate to
4965 the individual situation: the Department of Health, the
4966 Department of Elderly Affairs, the area agency on aging, the
4967 local fire marshal, the landlord and affected tenants and
4968 clients, and other relevant organizations, to develop a plan
4969 which improves the prospects for safety of affected residents
4970 and, if necessary, identifies alternative living arrangements
4971 such as facilities licensed under part II ~~or part III~~ of chapter
4972 400 <u>or under chapter 429</u>.
4973 Section 106. Subsection (1) of section 509.241, Florida
4974 Statutes, is amended to read:
4975 509.241 Licenses required; exceptions.--
4976 (1) LICENSES; ANNUAL RENEWALS.--Each public lodging
4977 establishment and public food service establishment shall obtain
4978 a license from the division. Such license may not be transferred
4979 from one place or individual to another. It shall be a
4980 misdemeanor of the second degree, punishable as provided in s.
4981 775.082 or s. 775.083, for such an establishment to operate
4982 without a license. Local law enforcement shall provide immediate
4983 assistance in pursuing an illegally operating establishment. The
4984 division may refuse a license, or a renewal thereof, to any
4985 establishment that is not constructed and maintained in

4986 accordance with law and with the rules of the division. The
4987 division may refuse to issue a license, or a renewal thereof, to
4988 any establishment an operator of which, within the preceding 5
4989 years, has been adjudicated guilty of, or has forfeited a bond
4990 when charged with, any crime reflecting on professional
4991 character, including soliciting for prostitution, pandering,
4992 letting premises for prostitution, keeping a disorderly place,
4993 or illegally dealing in controlled substances as defined in
4994 chapter 893, whether in this state or in any other jurisdiction
4995 within the United States, or has had a license denied, revoked,
4996 or suspended pursuant to s. 429.14 ~~s. 400.414~~. Licenses shall be
4997 renewed annually, and the division shall adopt a rule
4998 establishing a staggered schedule for license renewals. If any
4999 license expires while administrative charges are pending against
5000 the license, the proceedings against the license shall continue
5001 to conclusion as if the license were still in effect.
5002 Section 107. Subsection (1) of section 627.6617, Florida
5003 Statutes, is amended to read:
5004 627.6617 Coverage for home health care services.--
5005 (1) Any group health insurance policy providing coverage
5006 on an expense-incurred basis shall provide coverage for home
5007 health care by a home health care agency licensed pursuant to
5008 part III ~~IV~~ of chapter 400. Such coverage may be limited to home
5009 health care under a plan of treatment prescribed by a licensed
5010 physician. Services may be performed by a registered graduate
5011 nurse, a licensed practical nurse, a physical therapist, a
5012 speech therapist, an occupational therapist, or a home health
5013 aide. Provisions for utilization review may be imposed, provided

5014 that similar provisions apply to all other types of health care
5015 services.
5016 Section 108. Subsection (1) of section 627.732, Florida
5017 Statutes, is amended to read:
5018 627.732 Definitions.--As used in ss. 627.730-627.7405, the
5019 term:
5020 (1) "Broker" means any person not possessing a license
5021 under chapter 395, chapter 400, chapter 429, chapter 458,
5022 chapter 459, chapter 460, chapter 461, or chapter 641 who
5023 charges or receives compensation for any use of medical
5024 equipment and is not the 100-percent owner or the 100-percent
5025 lessee of such equipment. For purposes of this section, such
5026 owner or lessee may be an individual, a corporation, a
5027 partnership, or any other entity and any of its 100-percent-
5028 owned affiliates and subsidiaries. For purposes of this
5029 subsection, the term "lessee" means a long-term lessee under a
5030 capital or operating lease, but does not include a part-time
5031 lessee. The term "broker" does not include a hospital or
5032 physician management company whose medical equipment is
5033 ancillary to the practices managed, a debt collection agency, or
5034 an entity that has contracted with the insurer to obtain a
5035 discounted rate for such services; nor does the term include a
5036 management company that has contracted to provide general
5037 management services for a licensed physician or health care
5038 facility and whose compensation is not materially affected by
5039 the usage or frequency of usage of medical equipment or an
5040 entity that is 100-percent owned by one or more hospitals or

5041 physicians. The term "broker" does not include a person or
5042 entity that certifies, upon request of an insurer, that:
5043 (a) It is a clinic licensed under ss. 400.990-400.995;
5044 (b) It is a 100-percent owner of medical equipment; and
5045 (c) The owner's only part-time lease of medical equipment
5046 for personal injury protection patients is on a temporary basis
5047 not to exceed 30 days in a 12-month period, and such lease is
5048 solely for the purposes of necessary repair or maintenance of
5049 the 100-percent-owned medical equipment or pending the arrival
5050 and installation of the newly purchased or a replacement for the
5051 100-percent-owned medical equipment, or for patients for whom,
5052 because of physical size or claustrophobia, it is determined by
5053 the medical director or clinical director to be medically
5054 necessary that the test be performed in medical equipment that
5055 is open-style. The leased medical equipment cannot be used by
5056 patients who are not patients of the registered clinic for
5057 medical treatment of services. Any person or entity making a
5058 false certification under this subsection commits insurance
5059 fraud as defined in s. 817.234. However, the 30-day period
5060 provided in this paragraph may be extended for an additional 60
5061 days as applicable to magnetic resonance imaging equipment if
5062 the owner certifies that the extension otherwise complies with
5063 this paragraph.
5064 Section 109. Subsection (2) of section 651.011, Florida
5065 Statutes, is amended to read:
5066 651.011 Definitions.--For the purposes of this chapter,
5067 the term:

5068 (2) "Continuing care" or "care" means furnishing pursuant
5069 to a contract shelter and either nursing care or personal
5070 services as defined in s. 429.02 ~~s. 400.402~~, whether such
5071 nursing care or personal services are provided in the facility
5072 or in another setting designated by the contract for continuing
5073 care, to an individual not related by consanguinity or affinity
5074 to the provider furnishing such care, upon payment of an
5075 entrance fee. Other personal services provided shall be
5076 designated in the continuing care contract. Contracts to provide
5077 continuing care include agreements to provide care for any
5078 duration, including contracts that are terminable by either
5079 party.
5080 Section 110. Paragraph (c) of subsection (2) of section
5081 651.022, Florida Statutes, is amended to read:
5082 651.022 Provisional certificate of authority;
5083 application.--
5084 (2) The application for a provisional certificate of
5085 authority shall be on a form prescribed by the commission and
5086 shall contain the following information:
5087 (c)1. Evidence that the applicant is reputable and of
5088 responsible character. If the applicant is a firm, association,
5089 organization, partnership, business trust, corporation, or
5090 company, the form shall require evidence that the members or
5091 shareholders are reputable and of responsible character, and the
5092 person in charge of providing care under a certificate of
5093 authority shall likewise be required to produce evidence of
5094 being reputable and of responsible character.

5095 2. Evidence satisfactory to the office of the ability of
5096 the applicant to comply with the provisions of this chapter and
5097 with rules adopted by the commission pursuant to this chapter.
5098 3. A statement of whether a person identified in the
5099 application for a provisional certificate of authority or the
5100 administrator or manager of the facility, if such person has
5101 been designated, or any such person living in the same location:
5102 a. Has been convicted of a felony or has pleaded nolo
5103 contendere to a felony charge, or has been held liable or has
5104 been enjoined in a civil action by final judgment, if the felony
5105 or civil action involved fraud, embezzlement, fraudulent
5106 conversion, or misappropriation of property.
5107 b. Is subject to a currently effective injunctive or
5108 restrictive order or federal or state administrative order
5109 relating to business activity or health care as a result of an
5110 action brought by a public agency or department, including,
5111 without limitation, an action affecting a license under chapter
5112 400 <u>or chapter 429</u>.
5113
5114 The statement shall set forth the court or agency, the date of
5115 conviction or judgment, and the penalty imposed or damages
5116 assessed, or the date, nature, and issuer of the order. Before
5117 determining whether a provisional certificate of authority is to
5118 be issued, the office may make an inquiry to determine the
5119 accuracy of the information submitted pursuant to subparagraphs
5120 1. and 2.
5121 Section 111. Subsection (6) of section 651.023, Florida
5122 Statutes, is amended to read:

5123 651.023 Certificate of authority; application.--
5124 (6) The timeframes provided under s. 651.022(5) and (6)
5125 apply to applications submitted under s. 651.021(2). The office
5126 may not issue a certificate of authority under this chapter to
5127 any facility which does not have a component which is to be
5128 licensed pursuant to part II ~~or part III~~ of chapter 400 or part
5129 I of chapter 429 or which will not offer personal services or
5130 nursing services through written contractual agreement. Any
5131 written contractual agreement must be disclosed in the
5132 continuing care contract and is subject to the provisions of s.
5133 651.1151, relating to administrative, vendor, and management
5134 contracts.
5135 Section 112. Subsection (8) of section 651.055, Florida
5136 Statutes, is amended to read:
5137 651.055 Contracts; right to rescind.--
5138 (8) The provisions of this section shall control over any
5139 conflicting provisions contained in part II ~~or part III~~ of
5140 chapter 400 or in part I of chapter 429.
5141 Section 113. Subsection (5) of section 651.095, Florida
5142 Statutes, is amended to read:
5143 651.095 Advertisements; requirements; penalties.--
5144 (5) The provisions of this section shall control over any
5145 conflicting provisions contained in part II ~~or part III~~ of
5146 chapter 400 or in part I of chapter 429.
5147 Section 114. Subsections (1), (4), (6), (7), and (8) of
5148 section 651.118, Florida Statutes, are amended to read:
5149 651.118 Agency for Health Care Administration;
5150 certificates of need; sheltered beds; community beds.--

5151 (1) The provisions of this section shall control in the
5152 case of conflict with the provisions of the Health Facility and
5153 Services Development Act, ss. 408.031-408.045; the provisions of
5154 chapter 395; ~~or~~ the provisions of part II ~~parts II and III~~ of
5155 chapter 400; or the provisions of part I of chapter 429.
5156 (4) The Agency for Health Care Administration shall
5157 approve one sheltered nursing home bed for every four proposed
5158 residential units, including those that are licensed under part
5159 I of chapter 429 ~~part III of chapter 400~~, in the continuing care
5160 facility unless the provider demonstrates the need for a lesser
5161 number of sheltered nursing home beds based on proposed
5162 utilization by prospective residents or demonstrates the need
5163 for additional sheltered nursing home beds based on actual
5164 utilization and demand by current residents.
5165 (6) Unless the provider already has a component that is to
5166 be a part of the continuing care facility and that is licensed
5167 under chapter 395, ~~or~~ part II ~~or part III~~ of chapter 400, or
5168 part I of chapter 429 at the time of construction of the
5169 continuing care facility, the provider must construct the
5170 nonnursing home portion of the facility and the nursing home
5171 portion of the facility at the same time. If a provider
5172 constructs less than the number of residential units approved in
5173 the certificate of authority, the number of licensed sheltered
5174 nursing home beds shall be reduced by a proportionate share.
5175 (7) Notwithstanding the provisions of subsection (2), at
5176 the discretion of the continuing care provider, sheltered
5177 nursing home beds may be used for persons who are not residents
5178 of the continuing care facility and who are not parties to a

5179 continuing care contract for a period of up to 5 years after the
5180 date of issuance of the initial nursing home license. A provider
5181 whose 5-year period has expired or is expiring may request the
5182 Agency for Health Care Administration for an extension, not to
5183 exceed 30 percent of the total sheltered nursing home beds, if
5184 the utilization by residents of the nursing home facility in the
5185 sheltered beds will not generate sufficient income to cover
5186 nursing home facility expenses, as evidenced by one of the
5187 following:
5188 (a) The nursing home facility has a net loss for the most
5189 recent fiscal year as determined under generally accepted
5190 accounting principles, excluding the effects of extraordinary or
5191 unusual items, as demonstrated in the most recently audited
5192 financial statement; or
5193 (b) The nursing home facility would have had a pro forma
5194 loss for the most recent fiscal year, excluding the effects of
5195 extraordinary or unusual items, if revenues were reduced by the
5196 amount of revenues from persons in sheltered beds who were not
5197 residents, as reported on by a certified public accountant.
5198
5199 The agency shall be authorized to grant an extension to the
5200 provider based on the evidence required in this subsection. The
5201 agency may request a continuing care facility to use up to 25
5202 percent of the patient days generated by new admissions of
5203 nonresidents during the extension period to serve Medicaid
5204 recipients for those beds authorized for extended use if there
5205 is a demonstrated need in the respective service area and if
5206 funds are available. A provider who obtains an extension is

5207 prohibited from applying for additional sheltered beds under the
5208 provision of subsection (2), unless additional residential units
5209 are built or the provider can demonstrate need by continuing
5210 care facility residents to the Agency for Health Care
5211 Administration. The 5-year limit does not apply to up to five
5212 sheltered beds designated for inpatient hospice care as part of
5213 a contractual arrangement with a hospice licensed under part IV
5214 ~~VI~~ of chapter 400. A continuing care facility that uses such
5215 beds after the 5-year period shall report such use to the Agency
5216 for Health Care Administration. For purposes of this subsection,
5217 "resident" means a person who, upon admission to the continuing
5218 care facility, initially resides in a part of the continuing
5219 care facility not licensed under part II of chapter 400.
5220 (8) A provider may petition the Agency for Health Care
5221 Administration to use a designated number of sheltered nursing
5222 home beds to provide extended congregate care as defined in s.
5223 429.02 ~~s. 400.402~~ if the beds are in a distinct area of the
5224 nursing home which can be adapted to meet the requirements for
5225 extended congregate care. The provider may subsequently use such
5226 beds as sheltered beds after notifying the agency of the
5227 intended change. Any sheltered beds used to provide extended
5228 congregate care pursuant to this subsection may not qualify for
5229 funding under the Medicaid waiver. Any sheltered beds used to
5230 provide extended congregate care pursuant to this subsection may
5231 share common areas, services, and staff with beds designated for
5232 nursing home care, provided that all of the beds are under
5233 common ownership. For the purposes of this subsection, fire and

5234 life safety codes applicable to nursing home facilities shall
5235 apply.
5236 Section 115. Subsection (2) of section 765.1103, Florida
5237 Statutes, is amended to read:
5238 765.1103 Pain management and palliative care.--
5239 (2) Health care providers and practitioners regulated
5240 under chapter 458, chapter 459, or chapter 464 must, as
5241 appropriate, comply with a request for pain management or
5242 palliative care from a patient under their care or, for an
5243 incapacitated patient under their care, from a surrogate, proxy,
5244 guardian, or other representative permitted to make health care
5245 decisions for the incapacitated patient. Facilities regulated
5246 under chapter 395, ~~or~~ chapter 400, or chapter 429 must comply
5247 with the pain management or palliative care measures ordered by
5248 the patient's physician.
5249 Section 116. Subsection (2) of section 765.205, Florida
5250 Statutes, is amended to read:
5251 765.205 Responsibility of the surrogate.--
5252 (2) The surrogate may authorize the release of information
5253 and medical records to appropriate persons to ensure the
5254 continuity of the principal's health care and may authorize the
5255 admission, discharge, or transfer of the principal to or from a
5256 health care facility or other facility or program licensed under
5257 chapter 400 or chapter 429.
5258 Section 117. Subsection (1) of section 768.735, Florida
5259 Statutes, is amended to read:
5260 768.735 Punitive damages; exceptions; limitation.--

5261 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
5262 apply to any civil action based upon child abuse, abuse of the
5263 elderly under chapter 415, or abuse of the developmentally
5264 disabled. Such actions are governed by applicable statutes and
5265 controlling judicial precedent. This section does not apply to
5266 claims brought pursuant to s. 400.023 or s. 429.29 ~~s. 400.429~~.
5267 Section 118. Paragraph (h) of subsection (1) of section
5268 893.13, Florida Statutes, is amended to read:
5269 893.13 Prohibited acts; penalties.--
5270 (1)
5271 (h) Except as authorized by this chapter, it is unlawful
5272 for any person to sell, manufacture, or deliver, or possess with
5273 intent to sell, manufacture, or deliver, a controlled substance
5274 in, on, or within 1,000 feet of the real property comprising an
5275 assisted living facility, as that term is used in chapter 429
5276 ~~400~~. Any person who violates this paragraph with respect to:
5277 1. A controlled substance named or described in s.
5278 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
5279 commits a felony of the first degree, punishable as provided in
5280 s. 775.082, s. 775.083, or s. 775.084.
5281 2. A controlled substance named or described in s.
5282 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
5283 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
5284 the second degree, punishable as provided in s. 775.082, s.
5285 775.083, or s. 775.084.
5286 Section 119. Paragraph (a) of subsection (4) of section
5287 943.0585, Florida Statutes, is amended to read:

5288 943.0585 Court-ordered expunction of criminal history
5289 records.--The courts of this state have jurisdiction over their
5290 own procedures, including the maintenance, expunction, and
5291 correction of judicial records containing criminal history
5292 information to the extent such procedures are not inconsistent
5293 with the conditions, responsibilities, and duties established by
5294 this section. Any court of competent jurisdiction may order a
5295 criminal justice agency to expunge the criminal history record
5296 of a minor or an adult who complies with the requirements of
5297 this section. The court shall not order a criminal justice
5298 agency to expunge a criminal history record until the person
5299 seeking to expunge a criminal history record has applied for and
5300 received a certificate of eligibility for expunction pursuant to
5301 subsection (2). A criminal history record that relates to a
5302 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
5303 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
5304 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
5305 s. 916.1075, or a violation enumerated in s. 907.041 may not be
5306 expunged, without regard to whether adjudication was withheld,
5307 if the defendant was found guilty of or pled guilty or nolo
5308 contendere to the offense, or if the defendant, as a minor, was
5309 found to have committed, or pled guilty or nolo contendere to
5310 committing, the offense as a delinquent act. The court may only
5311 order expunction of a criminal history record pertaining to one
5312 arrest or one incident of alleged criminal activity, except as
5313 provided in this section. The court may, at its sole discretion,
5314 order the expunction of a criminal history record pertaining to
5315 more than one arrest if the additional arrests directly relate

5316 to the original arrest. If the court intends to order the
5317 expunction of records pertaining to such additional arrests,
5318 such intent must be specified in the order. A criminal justice
5319 agency may not expunge any record pertaining to such additional
5320 arrests if the order to expunge does not articulate the
5321 intention of the court to expunge a record pertaining to more
5322 than one arrest. This section does not prevent the court from
5323 ordering the expunction of only a portion of a criminal history
5324 record pertaining to one arrest or one incident of alleged
5325 criminal activity. Notwithstanding any law to the contrary, a
5326 criminal justice agency may comply with laws, court orders, and
5327 official requests of other jurisdictions relating to expunction,
5328 correction, or confidential handling of criminal history records
5329 or information derived therefrom. This section does not confer
5330 any right to the expunction of any criminal history record, and
5331 any request for expunction of a criminal history record may be
5332 denied at the sole discretion of the court.
5333 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
5334 criminal history record of a minor or an adult which is ordered
5335 expunged by a court of competent jurisdiction pursuant to this
5336 section must be physically destroyed or obliterated by any
5337 criminal justice agency having custody of such record; except
5338 that any criminal history record in the custody of the
5339 department must be retained in all cases. A criminal history
5340 record ordered expunged that is retained by the department is
5341 confidential and exempt from the provisions of s. 119.07(1) and
5342 s. 24(a), Art. I of the State Constitution and not available to
5343 any person or entity except upon order of a court of competent

5344 jurisdiction. A criminal justice agency may retain a notation
5345 indicating compliance with an order to expunge.
5346 (a) The person who is the subject of a criminal history
5347 record that is expunged under this section or under other
5348 provisions of law, including former s. 893.14, former s. 901.33,
5349 and former s. 943.058, may lawfully deny or fail to acknowledge
5350 the arrests covered by the expunged record, except when the
5351 subject of the record:
5352 1. Is a candidate for employment with a criminal justice
5353 agency;
5354 2. Is a defendant in a criminal prosecution;
5355 3. Concurrently or subsequently petitions for relief under
5356 this section or s. 943.059;
5357 4. Is a candidate for admission to The Florida Bar;
5358 5. Is seeking to be employed or licensed by or to contract
5359 with the Department of Children and Family Services or the
5360 Department of Juvenile Justice or to be employed or used by such
5361 contractor or licensee in a sensitive position having direct
5362 contact with children, the developmentally disabled, the aged,
5363 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
5364 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
5365 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.
5366 985.407, ~~or~~ chapter 400<u>, or chapter 429</u>; or
5367 6. Is seeking to be employed or licensed by the Department
5368 of Education, any district school board, any university
5369 laboratory school, any charter school, any private or parochial
5370 school, or any local governmental entity that licenses child
5371 care facilities.

5372 Section 120. Paragraph (a) of subsection (4) of section
5373 943.059, Florida Statutes, is amended to read:
5374 943.059 Court-ordered sealing of criminal history
5375 records.--The courts of this state shall continue to have
5376 jurisdiction over their own procedures, including the
5377 maintenance, sealing, and correction of judicial records
5378 containing criminal history information to the extent such
5379 procedures are not inconsistent with the conditions,
5380 responsibilities, and duties established by this section. Any
5381 court of competent jurisdiction may order a criminal justice
5382 agency to seal the criminal history record of a minor or an
5383 adult who complies with the requirements of this section. The
5384 court shall not order a criminal justice agency to seal a
5385 criminal history record until the person seeking to seal a
5386 criminal history record has applied for and received a
5387 certificate of eligibility for sealing pursuant to subsection
5388 (2). A criminal history record that relates to a violation of s.
5389 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
5390 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
5391 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or
5392 a violation enumerated in s. 907.041 may not be sealed, without
5393 regard to whether adjudication was withheld, if the defendant
5394 was found guilty of or pled guilty or nolo contendere to the
5395 offense, or if the defendant, as a minor, was found to have
5396 committed or pled guilty or nolo contendere to committing the
5397 offense as a delinquent act. The court may only order sealing of
5398 a criminal history record pertaining to one arrest or one
5399 incident of alleged criminal activity, except as provided in

5400 this section. The court may, at its sole discretion, order the
5401 sealing of a criminal history record pertaining to more than one
5402 arrest if the additional arrests directly relate to the original
5403 arrest. If the court intends to order the sealing of records
5404 pertaining to such additional arrests, such intent must be
5405 specified in the order. A criminal justice agency may not seal
5406 any record pertaining to such additional arrests if the order to
5407 seal does not articulate the intention of the court to seal
5408 records pertaining to more than one arrest. This section does
5409 not prevent the court from ordering the sealing of only a
5410 portion of a criminal history record pertaining to one arrest or
5411 one incident of alleged criminal activity. Notwithstanding any
5412 law to the contrary, a criminal justice agency may comply with
5413 laws, court orders, and official requests of other jurisdictions
5414 relating to sealing, correction, or confidential handling of
5415 criminal history records or information derived therefrom. This
5416 section does not confer any right to the sealing of any criminal
5417 history record, and any request for sealing a criminal history
5418 record may be denied at the sole discretion of the court.
5419 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
5420 history record of a minor or an adult which is ordered sealed by
5421 a court of competent jurisdiction pursuant to this section is
5422 confidential and exempt from the provisions of s. 119.07(1) and
5423 s. 24(a), Art. I of the State Constitution and is available only
5424 to the person who is the subject of the record, to the subject's
5425 attorney, to criminal justice agencies for their respective
5426 criminal justice purposes, or to those entities set forth in

5427 subparagraphs (a)1., 4., 5., and 6. for their respective
5428 licensing and employment purposes.
5429 (a) The subject of a criminal history record sealed under
5430 this section or under other provisions of law, including former
5431 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
5432 deny or fail to acknowledge the arrests covered by the sealed
5433 record, except when the subject of the record:
5434 1. Is a candidate for employment with a criminal justice
5435 agency;
5436 2. Is a defendant in a criminal prosecution;
5437 3. Concurrently or subsequently petitions for relief under
5438 this section or s. 943.0585;
5439 4. Is a candidate for admission to The Florida Bar;
5440 5. Is seeking to be employed or licensed by or to contract
5441 with the Department of Children and Family Services or the
5442 Department of Juvenile Justice or to be employed or used by such
5443 contractor or licensee in a sensitive position having direct
5444 contact with children, the developmentally disabled, the aged,
5445 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
5446 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
5447 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and
5448 (13), s. 985.407, ~~or~~ chapter 400, or chapter 429; or
5449 6. Is seeking to be employed or licensed by the Department
5450 of Education, any district school board, any university
5451 laboratory school, any charter school, any private or parochial
5452 school, or any local governmental entity that licenses child
5453 care facilities.

5454 Section 121. The Division of Statutory Revision of the
5455 Office of Legislative Services is requested to prepare a
5456 reviser's bill for introduction at a subsequent session of the
5457 Legislature to conform the Florida Statutes to changes made by
5458 this act.
5459 Section 122. This act shall take effect July 1, 2006.

HB 583 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 583 CS Correctional and Law Enforcement Officer Discipline
SPONSOR(S): Traviesa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1552

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 1 N, w/CS	Cunningham	Kramer
2) Governmental Operations Committee		Mitchell	Williamson
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

This bill creates two new requirements for any person preparing an investigative report or summary resulting from the investigation of a complaint involving a law enforcement officer or correctional officer. First, the preparer must verify that the contents of the report are true and accurate based upon the person's personal knowledge, information, and belief. Second, the report preparer must swear that he or she has not, or allowed another to, deprive the law enforcement officer or correctional officer of certain statutory rights. These requirements must be met prior to any determination as to whether to proceed with disciplinary action or to file disciplinary charges.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to affect any of the House principles.

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 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]

To receive benefits under the FRS, a member must reach his or her "normal retirement date."[11] The normal retirement date depends on the membership class of the member and is based on a minimum number of years of credible service and age (*e.g.*, six or more years and age 62 for a Regular Class member) or specified amount of credible service regardless of age (*e.g.*, 30 years for a Regular Class member).[12]

The amount of benefits a member ultimately receives is based on three key factors: (1) years of service, (2) accrual rate, and (3) average final compensation. "Average final compensation" is the "average of the five highest fiscal years of compensation for credible service."[13]

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < http://www.frs.state.fl.us/>.
[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. § 121.021(29) (2005).
[12] *Id.*
[13] Fla. Stat. § 121.021(24) (2005).

Relevant to the definition of average final compensation is the definition of "compensation": the monthly salary a member is paid by his or her employer for work performed arising from that employment.[14] Compensation also includes overtime payments; accumulated annual leave payments; payments in addition to the base rate of pay of the employee if certain criteria are met; salary supplements made to classroom teachers who are certified by the National Board of Professional Teaching Standards; amounts withheld for tax sheltered annuities, deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code; and payments made in lieu of a permanent increase in the base rate of pay.[15]

Changing the Definition of Compensation

Effective July 1, 2006, the bill amends the definition of compensation to include two types of salary supplements made to firefighters, paramedics, or emergency medical technicians: (1) salary supplements for the "successful completion of employer-approved educational training" and (2) salary supplements for "additional job-related duties and responsibilities."

The bill also provides that employer-reported contributions on these salary supplements shall be compensation for all periods prior to July 1, 2006.

C. SECTION DIRECTORY:

Section 1 amends subsection (22) of section 121.021, Florida Statutes, to revise the definition of compensation.

Section 2 sets forth the legislative declarations and a determination that this act fulfills an important state interest.

Section 3 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   This bill may create, modify, amend, or eliminate state revenue expenditures.[16]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate a revenue source for local governments.

2. Expenditures:

   This bill may create, modify, amend, or eliminate revenue expenditures for local governments.[17]

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[14] Fla. Stat. § 121.021(22) (2005).
[15] *Id.*
[16] *See* Fiscal Comments *infra*.
[17] *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The Department of Management Services provided a fiscal note from the enrolled actuary regarding this bill:

> Allowing nonrecurring payments to be treated as compensation that may be recognized in the calculation of retirement benefits could lead to artificially inflated benefits. If benefit inflation occurs, it would be a source of actuarial losses which could lead to an increase in normal costs and unfunded actuarial liabilities, possibly resulting in higher contribution rates in the future for the FRS Special Risk Class. There would be a fiscal impact resulting from HB 245, but the nature and amount of these payments are not expected to be sufficient to require a specific increase in the Special Risk Class employer contribution rate to fund this proposal. Future actuarial experience studies and valuations of the FRS would reveal the impact, if any, of covering these payments as compensation for retirement purposes and be reflected in the contribution rate recommended by future valuations.[18]

The Department of Management Services also evaluated the fiscal impact of the bill:

> Under current law, the supplemental payments covered by this bill are not reported to the Division of Retirement, so the employer contribution portion of the cost impact cannot be directly determined from our records. Also, the language does not require employers to create new programs for these payments, only to report these payments as compensation for the FRS if they exist on or after July 1, 2006. Each impacted employer would pay an additional 18.53% of such payments to cover the contributions for the FRS benefit and the HIS. We identified approximately 126 employers with at minimum of 10,506 employees who could have additional compensation reported to the FRS under HB 245.[19]

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. Yet, the bill appears to satisfy the requirements of section 18 of article VII of the Florida Constitution[20] because it provides that the act fulfills an important state interest and the expenditures are required by a law which appears to apply to all persons similarly situated, including the state and local governments.

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[18] Fla. Dep't of Mgmt. Serv., HB 245 (2006) Staff Analysis (Nov. 9, 2005) (on file with dep't).

[19] *Id.* Emphasis added.

[20] 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.

CHAMBER ACTION

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 correctional and law enforcement
7 officer discipline; amending s. 112.533, F.S.; requiring
8 certain investigative reports to include a statement
9 relating to compliance with ss. 112.532 and 112.533, F.S.,
10 and to be verified; providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Subsection (1) of section 112.533, Florida
15 Statutes, is amended to read:
16 112.533 Receipt and processing of complaints.--
17 (1) Every law enforcement agency and correctional agency
18 shall establish and put into operation a system for the receipt,
19 investigation, and determination of complaints received by such
20 agency from any person, which shall be the procedure for
21 investigating a complaint against a law enforcement and
22 correctional officer and for determining whether to proceed with
23 disciplinary action or to file disciplinary charges,

24 notwithstanding any other law or ordinance to the contrary. When
25 law enforcement or correctional agency personnel assigned the
26 responsibility of investigating the complaint prepare an
27 investigative report or summary, regardless of form, the person
28 preparing the report shall, at the time the report is completed:
29 (a) Verify pursuant to s. 92.525 that the contents of the
30 report are true and accurate based upon the person's personal
31 knowledge, information, and belief.
32 (b) Include the following statement, sworn and subscribed
33 to pursuant to s. 92.525:
34 "I, the undersigned, do hereby swear, under penalty of
35 perjury, that, to the best of my personal knowledge,
36 information, and belief, I have not knowingly or willfully
37 deprived, or allowed another to deprive, the subject of the
38 investigation of any of the rights contained in ss. 112.532 and
39 112.533, Florida Statutes."
40
41 The requirements of paragraphs (a) and (b) shall be completed
42 prior to the determination as to whether to proceed with
43 disciplinary action or to file disciplinary charges. This
44 subsection does not preclude the Criminal Justice Standards and
45 Training Commission from exercising its authority under chapter
46 943.
47 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 659 Florida Retirement System
SPONSOR(S): Arza and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1064

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

SUMMARY ANALYSIS

This bill continues to expand timeframes of the Deferred Retirement Option Program for educational personnel. The bill increases, from 60 months to 96 months, the period of time that administrative personnel in grades K-12 may participate in Deferred Retirement Option Program of the Florida Retirement System.

The bill makes legislative findings and declares an important state interest.

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

The most significant fiscal impact of this bill is to require K-12 district school boards and the Florida School for the Deaf and Blind to fund the contribution rate of any extended administrative personnel, along with any accompanying contribution rate differential or salary differential. This required contribution rate for extended administrative personnel *appears to satisfy the constitutional requirement to fund benefit increases to public retirement or pension systems.*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases, from 60 to 96 months, the period of time that administrative personnel in grades K-12 may participate in the Deferred Retirement Option Program.

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 both an investment plan and a defined benefit plan which 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 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]

To receive benefits under the FRS, a member must reach his or her "normal retirement date."[11] The normal retirement date depends on the membership class of the member and is based on a minimum number of years of credible service and age (*e.g.*, six or more years and age 62 for a Regular Class member) or specified amount of credible service regardless of age (*e.g.*, 30 years for a Regular Class member).[12]

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < http://www.frs.state.fl.us/>.
[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. § 121.021(29) (2005).
[12] *Id.*

Deferred Retirement Option Program

In 1997, the Florida Legislature created another retirement option for members of the Florida Retirement System: the Deferred Retirement Option Program or "DROP."[13] The DROP allows a member of the Florida Retirement System, who has reached his or her normal retirement date, to defer the receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer.[14] The deferred monthly benefits accrue on behalf of the member, plus interest compounded monthly, for the period of the DROP participation.[15] After completing the DROP period and terminating employment, the member not only receives the total of the DROP benefits, but also the previously determined normal retirement benefits.[16]

Changes in DROP for Educational Personnel

There have been several changes to the DROP which benefit educational personnel, certain "instructional personnel" in particular. Instructional personnel are K-12 staff members who provide direct instructional services to students or direct support in the learning process of students.[17] Classroom teachers,[18] student personnel services,[19] librarians/media specialists,[20] and other instructional staff[21] are specifically included as instructional personnel.[22]

- Instructional personnel may elect to participate in DROP at any time following the date on which the member reaches his or her normal retirement date;[23]
- Instructional personnel who have received authorization by the district superintendent may participate in the DROP up to 96 months,[24] more than the 60 months normally allowed;[25]
- Instructional personnel employed by a developmental research school and authorized by the school's director or principal may participate in the DROP up to 96 months;[26]
- Instructional personnel employed by the Florida School for the Deaf and the Blind and who have received authorization by the Board of Trustees of the Florida School for the Deaf and the Blind may participate in the DROP up to 96 months.[27]

This bill continues to change the DROP for the benefit of educational personnel, in this case to allow administrative personnel in grades K-12 to participate in the DROP beyond 60 months, up to the 96-month maximum participation period. Administrative personnel are generally high-level, responsible

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[13] Ch. 97-180, Laws of Fla, § 8.
[14] Fla. Stat. 121.091(13) (2005) (For most members of the Florida Retirement System, the election to participate in DROP must be made within 12 months immediately following the date on which the member first reaches his or her normal retirement date.).
[15] *Id.*
[16] *Id.*
[17] Fla. Stat. 1012.01(2) (2005).
[18] Fla. Stat. 1012.01(2)(a) (2005) (staff members who are assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers).
[19] Fla. Stat. 1012.01(2)(b) (2005) (staff members, including guidance counselors, social workers, career specialists, and school psychologists, who are responsible for: advising students with regard to their abilities and aptitudes, educational and occupational opportunities, and personal and social adjustments; providing placement services; performing educational evaluations; and similar functions.)
[20] Fla. Stat. 1012.01(2)(c) (2005) (staff members who are responsible for providing school library media services).
[21] Fla. Stat. 1012.01(2)(d) (2005) (other staff members including primary specialists, learning resource specialists, instructional trainers, adjunct educators, and similar positions).
[22] *But see* Fla. Stat. 1012.01(2)(e) (2005) (Education paraprofessionals are also included in the definition of instructional personnel, but educational paraprofessionals have not been provided additional participation in the DROP).
[23] Ch. 2001-47, Laws of Fla., § 2; Fla. Stat. § 121.091(13)(a)6. (2005).
[24] Ch. 2003-260, Laws of Fla., §2; Fla. Stat. § 121.091(13)(a)2. (2005).
[25] Fla. Stat. § 121.091(13)(b)1. (2005).
[26] Ch. 2004-355, Laws of Fla., § 3 (2005).
[27] *See, e.g.*, Fla. Stat. § 121.091(13)(b)1. (2005).

personnel who have been assigned the responsibilities of systemwide or schoolwide functions and who perform management activities such as developing broad policies for the school district and executing those policies through the direction of personnel at all levels within the district.[28] District school superintendents, assistant superintendents, deputy superintendents, school principals, assistant principals, and career center directors are considered administrative personnel[29] in the three broad administrative personnel classifications: district-based instructional administrators,[30] district-based noninstructional administrators,[31] and school administrators.[32]

C. SECTION DIRECTORY:

Section 1: Amends paragraphs (a) and (b) of subsection (13) of section 121.091, Florida Statutes, to increase the period of time that administrative personnel in grades K-12 may participate in DROP.

Section 2: Declares an important state interest.

Section 3: Makes the bill effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Florida Retirement System will receive longer, and likely increased, DROP contributions for administrative personnel in grades K-12.

2. Expenditures:

This bill may have a fiscal impact on state government expenditures if this bill adversely affects future valuations of the Florida Retirement System.[33]

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 will require the K-12 district school boards and the Florida School for the Deaf and Blind to fund the DROP contribution rate for any extended period for administrative personnel.[34] This bill

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[28] Fla. Stat. § 1012.01(3) (2005).
[29] *Id.*
[30] Fla. Stat. § 1012.01(3)(a) (2005) ("This includes persons with district-level administrative or policymaking duties who have broad authority for management policies and general school district operations related to the instructional program.. Such personnel often report directly to the district school superintendent and supervise other administrative employees. This classification includes assistant, associate, or deputy superintendents and directors of major instructional areas, such as curriculum, federal programs such as Title I, specialized instructional program areas such as exceptional student education, career education, and similar areas.").
[31] Fla. Stat. § 1012.01(3)(b) (2005) ("This includes persons with district-level administrative or policymaking duties who have broad authority for management policies and general school district operations related to the noninstructional program. Such personnel often report directly to the district school superintendent and supervise other administrative employees. This classification includes assistant, associate, or deputy superintendents and directors of major noninstructional areas, such as personnel, construction, facilities, transportation, data processing, and finance.").
[32] Fla. Stat. § 1012.01(3)(c) (2005) ("This includes school principals or school directors who are staff members performing the assigned activities as the administrative head of a school and to whom have been delegated responsibility for the coordination and administrative direction of the instructional and noninstructional activities of the school. This classification also includes career center directors. This also includes assistant principals who are staff members assisting the administrative head of the school. This classification also includes assistant principals for curriculum and administration.").
[33] Fla. Dep't of Mgmt. Serv., HB 659 (2006) Substantive Bill Analysis (Feb. 3, 2006) (on file with dep't) at pg. 5.

also may have two additional fiscal impacts: differentials between the DROP contribution rates and the Florida Retirement System contribution rates and salary differentials between the DROP employees and the employees who could replace the DROP employee.[35]

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:

> Expansion of the members eligible for extended DROP participation would have a nominal fiscal impact and depend upon how liberally the district school boards permit this to happen. This impact would be determined in future valuations and incorporated into the rates recommended at that time.[36]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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 provisions for funding the increase in benefits are made on a sound actuarial basis. [37] According to the Department of Management Services, the actuarial impact of extending the DROP is properly funded as long as employers pay the required contribution rate. [38] As such, this bill appears to satisfy this constitutional requirement.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

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[34] *Id.*
[35] *Id.*
[36] *Id.* at pg. 6.
[37] 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.
[38] Fla. Dep't of Mgmt. Serv., HB 659 (2006) Substantive Bill Analysis (Feb. 3, 2006) (on file with dep't) at pg. 5.

"In Grades K-12"

The reference to administrative personnel as defined in section 1012.01(3), Florida Statutes, "in grades K-12" may create ambiguity as it applies to the three broad administrative personnel classifications since it is not clear if the bill applies to all three or only school administrators. The sponsor may wish to revise this reference.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to the Florida Retirement System; amending
3 s. 121.091, F.S.; increasing the period of time in which
4 members of the system who are employed as administrative
5 personnel in grades K-12 may participate in the Deferred
6 Retirement Option Program; providing a declaration of
7 important state interest; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Paragraphs (a) and (b) of subsection (13) of
12 section 121.091, Florida Statutes, are amended to read:
13 121.091 Benefits payable under the system.--Benefits may
14 not be paid under this section unless the member has terminated
15 employment as provided in s. 121.021(39)(a) or begun
16 participation in the Deferred Retirement Option Program as
17 provided in subsection (13), and a proper application has been
18 filed in the manner prescribed by the department. The department
19 may cancel an application for retirement benefits when the
20 member or beneficiary fails to timely provide the information
21 and documents required by this chapter and the department's
22 rules. The department shall adopt rules establishing procedures
23 for application for retirement benefits and for the cancellation
24 of such application when the required information or documents
25 are not received.
26 (13) DEFERRED RETIREMENT OPTION PROGRAM.--In general, and
27 subject to the provisions of this section, the Deferred
28 Retirement Option Program, hereinafter referred to as the DROP,

29 is a program under which an eligible member of the Florida
30 Retirement System may elect to participate, deferring receipt of
31 retirement benefits while continuing employment with his or her
32 Florida Retirement System employer. The deferred monthly
33 benefits shall accrue in the System Trust Fund on behalf of the
34 participant, plus interest compounded monthly, for the specified
35 period of the DROP participation, as provided in paragraph (c).
36 Upon termination of employment, the participant shall receive
37 the total DROP benefits and begin to receive the previously
38 determined normal retirement benefits. Participation in the DROP
39 does not guarantee employment for the specified period of DROP.
40 Participation in the DROP by an eligible member beyond the
41 initial 60-month period as authorized in this subsection shall
42 be on an annual contractual basis for all participants.
43 (a) Eligibility of member to participate in the DROP.--All
44 active Florida Retirement System members in a regularly
45 established position, and all active members of either the
46 Teachers' Retirement System established in chapter 238 or the
47 State and County Officers' and Employees' Retirement System
48 established in chapter 122 which systems are consolidated within
49 the Florida Retirement System under s. 121.011, are eligible to
50 elect participation in the DROP provided that:
51 1. The member is not a renewed member of the Florida
52 Retirement System under s. 121.122, or a member of the State
53 Community College System Optional Retirement Program under s.
54 121.051, the Senior Management Service Optional Annuity Program
55 under s. 121.055, or the optional retirement program for the
56 State University System under s. 121.35.

57 2. Except as provided in subparagraph 6., election to
58 participate is made within 12 months immediately following the
59 date on which the member first reaches normal retirement date,
60 or, for a member who reaches normal retirement date based on
61 service before he or she reaches age 62, or age 55 for Special
62 Risk Class members, election to participate may be deferred to
63 the 12 months immediately following the date the member attains
64 57, or age 52 for Special Risk Class members. For a member who
65 first reached normal retirement date or the deferred eligibility
66 date described above prior to the effective date of this
67 section, election to participate shall be made within 12 months
68 after the effective date of this section. A member who fails to
69 make an election within such 12-month limitation period shall
70 forfeit all rights to participate in the DROP. The member shall
71 advise his or her employer and the division in writing of the
72 date on which the DROP shall begin. Such beginning date may be
73 subsequent to the 12-month election period, but must be within
74 the 60-month or, with respect to members who are instructional
75 personnel employed by the Florida School for the Deaf and the
76 Blind and who have received authorization by the Board of
77 Trustees of the Florida School for the Deaf and the Blind to
78 participate in the DROP beyond 60 months, or who are
79 instructional personnel as defined in s. 1012.01(2)(a)-(d) <u>or</u>
80 <u>administrative personnel as defined in s. 1012.01(3)</u> in grades
81 K-12 and who have received authorization by the district school
82 superintendent to participate in the DROP beyond 60 months, the
83 96-month limitation period as provided in subparagraph (b)1.
84 When establishing eligibility of the member to participate in

85 the DROP for the 60-month or, with respect to members who are
86 instructional personnel employed by the Florida School for the
87 Deaf and the Blind and who have received authorization by the
88 Board of Trustees of the Florida School for the Deaf and the
89 Blind to participate in the DROP beyond 60 months, or who are
90 instructional personnel as defined in s. 1012.01(2)(a)-(d) or
91 administrative personnel as defined in s. 1012.01(3) in grades
92 K-12 and who have received authorization by the district school
93 superintendent to participate in the DROP beyond 60 months, the
94 96-month maximum participation period, the member may elect to
95 include or exclude any optional service credit purchased by the
96 member from the total service used to establish the normal
97 retirement date. A member with dual normal retirement dates
98 shall be eligible to elect to participate in DROP within 12
99 months after attaining normal retirement date in either class.
100 3. The employer of a member electing to participate in the
101 DROP, or employers if dually employed, shall acknowledge in
102 writing to the division the date the member's participation in
103 the DROP begins and the date the member's employment and DROP
104 participation will terminate.
105 4. Simultaneous employment of a participant by additional
106 Florida Retirement System employers subsequent to the
107 commencement of participation in the DROP shall be permissible
108 provided such employers acknowledge in writing a DROP
109 termination date no later than the participant's existing
110 termination date or the 60-month limitation period as provided
111 in subparagraph (b)1.
112 5. A DROP participant may change employers while

113 participating in the DROP, subject to the following:
114 a. A change of employment must take place without a break
115 in service so that the member receives salary for each month of
116 continuous DROP participation. If a member receives no salary
117 during a month, DROP participation shall cease unless the
118 employer verifies a continuation of the employment relationship
119 for such participant pursuant to s. 121.021(39)(b).
120 b. Such participant and new employer shall notify the
121 division on forms required by the division as to the identity of
122 the new employer.
123 c. The new employer shall acknowledge, in writing, the
124 participant's DROP termination date, which may be extended but
125 not beyond the original 60-month or, with respect to members who
126 are instructional personnel employed by the Florida School for
127 the Deaf and the Blind and who have received authorization by
128 the Board of Trustees of the Florida School for the Deaf and the
129 Blind to participate in the DROP beyond 60 months, or who are
130 instructional personnel as defined in s. 1012.01(2)(a)-(d) <u>or</u>
131 <u>administrative personnel as defined in s. 1012.01(3)</u> in grades
132 K-12 and who have received authorization by the district school
133 superintendent to participate in the DROP beyond 60 months, the
134 96-month period provided in subparagraph (b)1., shall
135 acknowledge liability for any additional retirement
136 contributions and interest required if the participant fails to
137 timely terminate employment, and shall be subject to the
138 adjustment required in sub-subparagraph (c)5.d.
139 6. Effective July 1, 2001, for instructional personnel as
140 defined in s. 1012.01(2), election to participate in the DROP

141 shall be made at any time following the date on which the member
142 first reaches normal retirement date. The member shall advise
143 his or her employer and the division in writing of the date on
144 which the Deferred Retirement Option Program shall begin. When
145 establishing eligibility of the member to participate in the
146 DROP for the 60-month or, with respect to members who are
147 instructional personnel employed by the Florida School for the
148 Deaf and the Blind and who have received authorization by the
149 Board of Trustees of the Florida School for the Deaf and the
150 Blind to participate in the DROP beyond 60 months, or who are
151 instructional personnel as defined in s. 1012.01(2)(a)-(d) or
152 administrative personnel as defined in s. 1012.01(3) in grades
153 K-12 and who have received authorization by the district school
154 superintendent to participate in the DROP beyond 60 months, the
155 96-month maximum participation period, as provided in
156 subparagraph (b)1., the member may elect to include or exclude
157 any optional service credit purchased by the member from the
158 total service used to establish the normal retirement date. A
159 member with dual normal retirement dates shall be eligible to
160 elect to participate in either class.
161 (b) Participation in the DROP.--
162 1. An eligible member may elect to participate in the DROP
163 for a period not to exceed a maximum of 60 calendar months or,
164 with respect to members who are instructional personnel employed
165 by the Florida School for the Deaf and the Blind and who have
166 received authorization by the Board of Trustees of the Florida
167 School for the Deaf and the Blind to participate in the DROP
168 beyond 60 months, or who are instructional personnel as defined

169 in s. 1012.01(2)(a)-(d) or administrative personnel as defined
170 in s. 1012.01(3) in grades K-12 and who have received
171 authorization by the district school superintendent to
172 participate in the DROP beyond 60 calendar months, 96 calendar
173 months immediately following the date on which the member first
174 reaches his or her normal retirement date or the date to which
175 he or she is eligible to defer his or her election to
176 participate as provided in subparagraph (a)2. However, a member
177 who has reached normal retirement date prior to the effective
178 date of the DROP shall be eligible to participate in the DROP
179 for a period of time not to exceed 60 calendar months or, with
180 respect to members who are instructional personnel employed by
181 the Florida School for the Deaf and the Blind and who have
182 received authorization by the Board of Trustees of the Florida
183 School for the Deaf and the Blind to participate in the DROP
184 beyond 60 months, or who are instructional personnel as defined
185 in s. 1012.01(2)(a)-(d) or administrative personnel as defined
186 in s. 1012.01(3) in grades K-12 and who have received
187 authorization by the district school superintendent to
188 participate in the DROP beyond 60 calendar months, 96 calendar
189 months immediately following the effective date of the DROP,
190 except a member of the Special Risk Class who has reached normal
191 retirement date prior to the effective date of the DROP and
192 whose total accrued value exceeds 75 percent of average final
193 compensation as of his or her effective date of retirement shall
194 be eligible to participate in the DROP for no more than 36
195 calendar months immediately following the effective date of the
196 DROP.

197 2. Upon deciding to participate in the DROP, the member
198 shall submit, on forms required by the division:
199 a. A written election to participate in the DROP;
200 b. Selection of the DROP participation and termination
201 dates, which satisfy the limitations stated in paragraph (a) and
202 subparagraph 1. Such termination date shall be in a binding
203 letter of resignation with the employer, establishing a deferred
204 termination date. The member may change the termination date
205 within the limitations of subparagraph 1., but only with the
206 written approval of his or her employer;
207 c. A properly completed DROP application for service
208 retirement as provided in this section; and
209 d. Any other information required by the division.
210 3. The DROP participant shall be a retiree under the
211 Florida Retirement System for all purposes, except for paragraph
212 (5)(f) and subsection (9) and ss. 112.3173, 112.363, 121.053,
213 and 121.122. However, participation in the DROP does not alter
214 the participant's employment status and such employee shall not
215 be deemed retired from employment until his or her deferred
216 resignation is effective and termination occurs as provided in
217 s. 121.021(39).
218 4. Elected officers shall be eligible to participate in
219 the DROP subject to the following:
220 a. An elected officer who reaches normal retirement date
221 during a term of office may defer the election to participate in
222 the DROP until the next succeeding term in that office. Such
223 elected officer who exercises this option may participate in the
224 DROP for up to 60 calendar months or a period of no longer than

225 such succeeding term of office, whichever is less.
226 b. An elected or a nonelected participant may run for a
227 term of office while participating in DROP and, if elected,
228 extend the DROP termination date accordingly, except, however,
229 if such additional term of office exceeds the 60-month
230 limitation established in subparagraph 1., and the officer does
231 not resign from office within such 60-month limitation, the
232 retirement and the participant's DROP shall be null and void as
233 provided in sub-subparagraph (c)5.d.
234 c. An elected officer who is dually employed and elects to
235 participate in DROP shall be required to satisfy the definition
236 of termination within the 60-month or, with respect to members
237 who are instructional personnel employed by the Florida School
238 for the Deaf and the Blind and who have received authorization
239 by the Board of Trustees of the Florida School for the Deaf and
240 the Blind to participate in the DROP beyond 60 months, or who
241 are instructional personnel as defined in s. 1012.01(2)(a)-(d)
242 <u>or administrative personnel as defined in s. 1012.01(3)</u> in
243 grades K-12 and who have received authorization by the district
244 school superintendent to participate in the DROP beyond 60
245 months, the 96-month limitation period as provided in
246 subparagraph 1. for the nonelected position and may continue
247 employment as an elected officer as provided in s. 121.053. The
248 elected officer will be enrolled as a renewed member in the
249 Elected Officers' Class or the Regular Class, as provided in ss.
250 121.053 and 121.122, on the first day of the month after
251 termination of employment in the nonelected position and
252 termination of DROP. Distribution of the DROP benefits shall be

253 made as provided in paragraph (c).
254 Section 2. The Legislature finds that a proper and
255 legitimate state purpose is served when employees and retirees
256 of the state and of its political subdivisions, and the
257 dependents, survivors, and beneficiaries of such employees and
258 retirees, are extended the basic protections afforded by
259 governmental retirement systems that provide fair and adequate
260 benefits and that are managed, administered, and funded in an
261 actuarially sound manner as required by s. 14, Art. X of the
262 State Constitution and part VII of chapter 112, Florida
263 Statutes. Therefore, the Legislature determines and declares
264 that the provisions of this act fulfill an important state
265 interest.
266 Section 3. This act shall take effect upon becoming a law.

HB 671

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 671 Florida Retirement System
SPONSOR(S): Davis and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1936

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

SUMMARY ANALYSIS

This bill allows members of the Special Risk Class, or their employers, to upgrade service previously earned in the Regular Class for attendance at a certified training academy or other certified training facility, between July 1, 1978, and June 30, 1984, which was approved by the employer for certification as a law enforcement officer or correctional officer.

This bill increases, from two percent to three percent, the accrual rate at which Special Risk Class members may upgrade certain past service. The bill also expands the qualifying past service to include special risk membership as an emergency medical technician or paramedic whose employer was a licensed Advanced Life Support or Basic Life Support provider.

The bill makes legislative findings and declares an important state interest.

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

This bill does not appear to impact state or local government revenues. The bill, however, is expected to have a fiscal impact on state government over the next three fiscal years ($672,000, $699,000, and $727,000) and on local governments over the next three fiscal years ($1,746,000, $1,816,000, $1,888,000). Although the bill increases the contribution rate for the Special Risk Class by 0.07 percentage points for all employers with employees in the Special Risk Class, this increase does not take effect until after the benefit takes effect. *As such, this bill does not appear to satisfy the constitutional requirement to fund benefit increases for public retirement or pension systems.*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the accrual rate at which Special Risk Class members may upgrade certain past service, expands the qualifying past service. The bill also allows certain members of the Special Risk Class to upgrade specified prior academy or training 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 belong to one of five membership classes:

Regular Class[5]	570,888 members	88.00%
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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]

The Special Risk Class and its Expansion

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] As such, members of the Special Risk Class can retire at age 55 or with 25 years of

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < http://www.frs.state.fl.us/>.
[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.*

creditable service.[13] Members of the Special Risk Class who participate in the defined benefit program also earn a higher normal retirement benefit of three percent of the member's average final compensation.[14] These increased benefits are funded through higher employer contribution rates: 17.37 percent of gross compensation, effective July 1, 2005, and 21.91 percent, effective July 1, 2006.[15]

The only employees originally in the Special Risk Class, under the current statute, were law enforcement officers, correctional officers, and firefighters.[16] Starting in 1999, however, the Legislature started dramatically expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics[17]
2000	Community-Based Correctional Probation Officers[18]
	Twenty-four types of employees of correctional or forensic facilities or institutions[19]
2001	Youth Custody Officers[20]
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline[21]

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.[22] In 2002, the Legislature allowed members whose responsibilities included fire prevention or fire fighting training to purchase credit for upgraded service.[23]

Upgraded Service for Law Enforcement and Correctional Officers

This bill permits Special Risk Class members, or their employers, to upgrade the following creditable service previously earned in the Regular Class to Special Risk Class service:

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[13] Fla. Stat. § 121.021(29) (2005) (defining normal retirement date; this contrasts with members of the Regular Class who can retire at age 62 or with 30 years of credible service).
[14] Fla. Stat. § 121.091(1)(a)2.h. (2005) (compared with 1.60 percent to 1.68 percent for members of the Regular Class).
[15] Fla. Stat. 121.71(3) (2005) (compared with 6.67 percent, effective July 1, 2005, and 9.53 percent, effective July 1, 2006, for members of the Regular Class).
[16] Ch. 78-308, Laws of Fla.; codified as Fla. Stat. § 121.0515.
[17] Ch. 99-392, Laws of Fla., § 23.
[18] Ch. 2000-169, Laws of Fla. § 29.
[19] *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.).
[20] Ch. 2001-125, Laws of Fla., § 43.
[21] 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).
[22] Ch. 2001-235, Laws of Fla., § 6.
[23] Ch. 2002-273, Laws of Fla., § 16.

Attendance at a certified training academy or other certified training facility, between July 1, 1978, and June 30, 1984, which was approved by the employer for certification as a law enforcement officer or correctional officer.

The bill allows this academy/training service to be upgraded to the same percentage of the member's average final compensation as provided for by the normal retirement benefit for Special Risk Class members.[24] The bill requires the contributions for upgrading this academy/training service to be equal to the difference in the contributions paid and the Special Risk Class contribution rate as a percentage of gross salary in effect for the period being claimed, plus interest thereon at the rate of 6.5 percent per year, compounded annually until the date of payment.

Retirement Credit for Past Service

In addition to allowing certain upgraded service, this bill also expands the accrual and qualifying service for past service.

Section 121.0515, Florida Statutes, sets forth the criteria and procedures for designating members of the Special Risk Class. This section also permits special risk members to purchase retirement credit in the Special Risk Class based upon specified past service:

1. This past service was with a city or special district which is part of the Florida Retirement System where the member was employed at the time it began participating in the Florida Retirement System; or with a participating agency to which a member's governmental unit was transferred, merged, or consolidated where the member was employed at the time of the transfer, merger, or consolidation.[25]

2. This past service qualifies for special risk membership as a law enforcement officer, firefighter, or correctional officer.[26]

Special Risk Class members may upgrade the retirement credit for this specified past service, up to two percent of the member's average monthly compensation.[27] The contributions for upgrading this additional special risk credit may be purchased by the member or by the employer on behalf of the member, but must be equal to the difference in the contributions paid and the special risk percentage rate of gross salary in effect at the time of purchase for the period being claimed, plus interest at a rate of 6.5 percent a year until the date of payment.[28] As such, the benefit of being able to purchase this past service is offset because the full retirement benefit must be purchased even thought the retirement benefit received is one percent lower (2 percent) than the normal retirement benefit for the Special Risk Class (3 percent).

This bill *increases*, from two percent to three percent, the accrual rate at which Special Risk Class members may upgrade specified past service. This rate is the same as the normal retirement benefit for members of the Special Risk Class.

The bill also *expands* the qualifying past service which may be purchased to include special risk membership as an emergency medical technician or paramedic whose employer was a licensed Advanced Life Support or Basic Life Support provider.

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[24] Fla. HB 671 (2006) (referencing section 121.091(1)(a)2., Florida Statutes).
[25] Fla. Stat. § 121.0515(5)(a) (2005).
[26] *Id.*
[27] Fla. Stat. § 121.0515 (2005).
[28] Fla. Stat. § 121.0515(5)(b) (2005).

C. SECTION DIRECTORY:

Section 1: Amends section 121.0515, Florida Statutes, to increase the accrual rate for past service, to permit work for certain employers as an emergency medical technician or paramedic to qualify as past service, and to authorize the upgrade of certain prior service.

Section 2: Requires the contribution rate for the Special Risk Class to increase by 0.07 percentage points, effective July 1, 2006.

Section 3: Provides a statement of important state interest.

Section 4: Sets an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Florida Retirement System will receive increased Special Risk Class contributions.

2. Expenditures:

This bill is expected to have the following fiscal impact on state government expenditures:[29]

Fiscal Year 2006-2007	$ 672,000
Fiscal Year 2007-2008	$ 699,000
Fiscal Year 2008-2009	$ 727,000

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 is expected to have the following fiscal impact on state government expenditures:[30]

Fiscal Year 2006-2007	$ 1,746,000
Fiscal Year 2007-2008	$ 1,816,000
Fiscal Year 2008-2009	$ 1,888,000

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:

There are essentially two types of benefits increased by this bill: upgraded service and past service.

As it relates to the upgraded service, the Department of Management Services noted the following:

> The member purchase price for the academy training service credit upgrade to be provided by the bill does not account for the entire cost of this retroactive increase in accrual values. Based

[29] Fla. Dep't of Mgmt. Serv., HB 671 (2006) Substantive Bill Analysis (revised Mar. 7, 2006) (on file with dep't) (Actuarial Special Study 2005-L, performed by Milliman, Inc., April 22, 2005).
[30] *Id.*

on a 2005 actuarial special study dated April 5, 2005, by Milliman Inc., Consulting Actuaries, *the cost was not sufficient to cause a 0.01% increase in the employer contribution rates* and the bill does not provide for the realization of $1.742 million in surplus actuarial assets or appropriate the funds into the FRS Trust Fund needed to offset the cost of this improvement as a one-time payment. Otherwise, the cost of this improvement will be funded through future Special Risk Class rate increases. To the extent that the number of members who actually purchase this service credit upgrade varies from the assumptions of the special study, those changes will be reflected in future valuations that determine the required contribution rate for the Special Risk Class.

The fiscal note from the enrolled actuary provided by the Department of Management Services applies to both benefit increases:

> The cost to be paid by the affected members or employers on behalf of their 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 would result in increased contribution rates for all employers with Special Risk Class members. The additional fiscal impact of this provision is not realized until the eligible members actually upgrade their service credit for training time and could vary depending on how the total members vary from our projection. There is an additional cost beyond the estimate if members delay purchasing their service credit until just before retirement. This bill provides for a 0.07% increase in the Special Risk Class employer contribution rate effective July 1, 2006. Since the benefit improvement could become effective prior to providing the funding for the benefit improvement, this bill does not meet the requirement for concurrent funding of benefit improvements. *The effective date of the bill should be July 1, 2006, to correspond to the funding implementation.*[31]

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 is expected, however, to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Because the bill provides that it fulfills an important state interest and the expenditures required by the bill appear to apply to all persons similarly situated, including the state and local governments, the bill appears to satisfy the requirements of section 18 of article VII of the Florida Constitution.[32]

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[31] *Id.*

[32] 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.

2. Other:

Article X, Section 14

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.[33] According to the Department of Management Services, the benefit improvement taking effect upon becoming law without funding until July 1, 2006, violates this constitutional requirement.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Effective Date

In order to comply with the constitutional requirement to concurrently fund benefit increases when they are enacted, the sponsor may wish to change the effective date to July 1, 2006.

Other Comments: Burden of the Benefit

All employers who participate in the Florida Retirement System and who have Special Risk employees will be funding the benefit increase for qualifying past service, or any future shortfalls from these changes, even if their employees are not eligible for these benefits and even if they or their employees do not take advantage of these benefits.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[33] 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.

1 A bill to be entitled
2 An act relating to the Florida Retirement System; amending
3 s. 121.0515, F.S.; increasing the percentage of the
4 Special Risk Class accrual value at which certain
5 employees may purchase additional retirement credit for
6 past service; authorizing certain employees to purchase
7 additional retirement credit to upgrade prior service to
8 Special Risk Class service; providing for the calculation
9 of contributions for such service upgrade; authorizing the
10 employer to purchase such additional credit for the
11 employee; providing for contribution rate increases to
12 fund benefits provided in s. 121.0515, F.S., as amended;
13 directing the Division of Statutory Revision to adjust
14 contribution rates set forth in s. 121.71, F.S.; providing
15 a statement of important state interest; providing an
16 effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Subsection (5) of section 121.0515, Florida
21 Statutes, is amended, and paragraph (c) is added to subsection
22 (9) of that section, to read:
23 121.0515 Special risk membership.--
24 (5) CREDIT FOR PAST SERVICE.--A special risk member may
25 purchase retirement credit in the Special Risk Class based upon
26 past service, and may upgrade retirement credit for such past
27 service, to the extent of 3 ~~2~~ percent of the member's average
28 monthly compensation as specified in s. 121.091(1)(a) for such

29 service as follows:
30 (a) The member may purchase special risk credit for past
31 service with a city or special district which has elected to
32 join the Florida Retirement System, or with a participating
33 agency to which a member's governmental unit was transferred,
34 merged, or consolidated as provided in s. 121.081(1)(f), if the
35 member was employed with the city or special district at the
36 time it commenced participating in the Florida Retirement System
37 or with the governmental unit at the time of its transfer,
38 merger, or consolidation with the participating agency. The
39 service must satisfy the criteria set forth in subsection (2)
40 for special risk membership as a law enforcement officer,
41 firefighter, or correctional officer <u>or an emergency medical</u>
42 <u>technician or a paramedic whose employer was a licensed Advance</u>
43 <u>Life Support (ALS) or Basic Life Support (BLS) provider</u>;
44 however, no certificate or waiver of certificate of compliance
45 with s. 943.1395 or s. 633.35 shall be required for such
46 service.
47 (b) Contributions for upgrading the additional special
48 risk credit pursuant to this subsection shall be equal to the
49 difference in the contributions paid and the special risk
50 percentage rate of gross salary in effect at the time of
51 purchase for the period being claimed, plus interest thereon at
52 the rate of 4 percent a year compounded annually from the date
53 of such service until July 1, 1975, and 6.5 percent a year
54 thereafter until the date of payment. This past service may be
55 purchased by the member or by the employer on behalf of the
56 member.

57 (9) CREDIT FOR UPGRADED SERVICE.--
58 (c) Any member of the Special Risk Class who has earned
59 creditable service in the Regular Class of the Florida
60 Retirement System between July 1, 1978, and June 30, 1984, while
61 attending a certified training academy or other certified
62 training facility approved by the employer for certification as
63 a law enforcement officer or correctional officer, which service
64 is within the purview of the Special Risk Class, may purchase
65 such service to upgrade to Special Risk Class service, to the
66 extent of the percentages of the member's average final
67 compensation as provided in s. 121.091(1)(a)2. Contributions for
68 upgrading such service to Special Risk Class credit under this
69 paragraph shall be equal to the difference in the contributions
70 paid and the Special Risk Class contribution rate as a
71 percentage of gross salary in effect for the period being
72 claimed, plus interest thereon at the rate of 6.5 percent per
73 year, compounded annually until the date of payment. This
74 service credit may be purchased by the employer on behalf of the
75 member.
76 Section 2. Effective July 1, 2006, in order to fund the
77 benefit improvements provided in s. 121.0515, Florida Statutes,
78 as amended by this act, the contribution rate that applies to
79 the Special Risk Class of the defined benefit program of the
80 Florida Retirement System shall be increased by 0.07 percentage
81 points. This increase shall be in addition to all other changes
82 to such contribution rates which may be enacted into law to take
83 effect on that date. The Division of Statutory Revision is

84 directed to adjust accordingly the contribution rates set forth
85 in s. 121.71, Florida Statutes.
86 Section 3. The Legislature finds that a proper and
87 legitimate state purpose is served when employees and retirees
88 of the state and its political subdivisions, and the dependents,
89 survivors, and beneficiaries of such employees and retirees, are
90 extended the basic protections afforded by governmental
91 retirement systems. These persons must be provided benefits that
92 are fair and adequate and that are managed, administered, and
93 funded in an actuarially sound manner, as required by s. 14,
94 Art. X of the State Constitution, and part VII of chapter 112,
95 Florida Statutes. Therefore, the Legislature determines and
96 declares that this act fulfills an important state interest.
97 Section 4. This act shall take effect upon becoming a law.

HB 693 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 693 CS Florida Springs Protection Act
SPONSOR(S): Stansel
TIED BILLS: **IDEN./SIM. BILLS:** SB 2538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	7 Y, 0 N, w/CS	Perkins	Kliner
2) Governmental Operations Committee		Brown	Williamson
3) Agriculture & Environment Appropriations Committee			
4) State Resources Council			
5)			

SUMMARY ANALYSIS

The bill creates the Florida Springs Protection Act and creates the Florida Springs Commission (Commission) for the purpose of identifying protection, restoration and preservation strategies for Florida's springs. The bill requires the Commission, with assistance from the Department of Environmental Protection (DEP) and water management districts, to perform an assessment of all the first and second magnitude springs through an identification and mapping of all such springs within each water management district. The bill requires the Commission to develop an overall model springs protection plan utilizing its recommended strategies. The model plan must contain components that can be utilized by state agencies, local governments, and citizens for individual spring protection plans.

The Commission expires in 2010.

The overall fiscal impact is indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill may result in additional regulatory requirements and may increase workload for individuals in state government, water management districts, and possibly local governments relating to enhancing spring protection through an expansive mapping requirement.

Safeguard Individual Liberty: The bill may create additional regulatory requirements relating to spring protection. These regulations may have an extensive impact on private landowners within designated springshed areas.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida's Springs

DEP estimates that Florida has more than 700 springs[1] which provide natural, recreational and economic values for Floridians and tourists. A spring is a point from which groundwater steadily discharges from a single large vent or from several small vents. The groundwater that flows from most of Florida's springs originates from the same Floridan Aquifer that is tapped for most municipal supplies and private wells in the state. Springs vary in size from the largest "first magnitude" springs with a flow of 100 cubic feet per second or more (64.6 million gallons per day), to the smallest "eighth magnitude" springs at less than one pint per minute. Florida has 33 first magnitude springs; more than any other state.[2]

Florida's springs are protected by a variety of state regulatory programs, including the state's surface and groundwater standards; the wastewater, stormwater, and other regulatory programs governing discharges to groundwater; acquisition of conservation lands; and a variety of local protection measures.[3] Local governments have the primary responsibility to determine land use activities within their jurisdiction.[4] Therefore, local government's comprehensive plans include goals, objectives, and policies that address land use, natural resource protection, and other common considerations.[5] A local government comprehensive plan that is effectively implemented can aid in the protection and restoration of springs.

Water can carry contaminants from the land surface into springs. Since the 1970's, scientists have documented a decline in water quality in most of Florida's springs, particularly with regards to nutrients, such as nitrogen and phosphorus found in plant fertilizers. Elevated nutrient levels may lead to increase in algae growth that decrease water clarity and change both the aesthetic qualities and the natural ecology of springs. The groundwater that feeds springs is recharged by seepage from the surface and through direct conduits such as sinkholes. The nature and magnitude of the threats to springs varies according to land use practices and geology within each spring recharge basin. Contaminants that reach the groundwater and flow to springs include nutrients from fertilizers, septic tanks, wastewater sprayfields, and farm animal wastes.[6]

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[1] March 22, 2006, DEP e-mail.
[2] Materials regarding state springs gathered from: http://www.dep.state.fl.us/springs/overview.htm.
[3] *2006 Substantive Analysis for HB 693,* Department of Environmental Protection.
[4] See generally Part II of Chapter 163. F.S., and Chapter 380, F.S.
[5] *Id.*
[6] *Florida's Springs Strategies for Protection & Restoration Report*, November 2000, Florida Department of Environmental Protection. Available online here: http://www.dep.state.fl.us/springs/reports/FloridaSpringsReport.pdf.

The Total Maximum Daily Load (TMDL) Program is a federally mandated water quality program administered by DEP under the Florida Watershed Restoration Act.[7] A TMDL is the maximum amount of a pollutant that a water body can assimilate without exceeding water quality standards. Under section 403.067, F.S., TMDLs must be developed for all impaired waters. A fundamental issue associated with determining spring impairment is an appropriate delineation of the relevant springshed and an assessment of the relationship between pollution sources in the springshed, groundwater quality, and the interaction between groundwater and surface water quality. TMDLs are developed, allocated, and implemented through a watershed management approach.[8]

In order to educate the public and further study Florida springs, DEP developed the Florida Springs Initiative.[9] This program investigates the sources of spring-flow, determines the springsheds that affect the water quantity and quality of springs, monitors water quality, assists landowners in implementing springs protection actions, and promotes the value of springs through extensive public education. DEP reports that springshed maps have been generated for most of the state's first magnitude springs discharging from the Floridan aquifer system.[10] The quality of Florida spring water is directly related to discharge rates, residence time of water within the aquifer, and land-use practices within the spring recharge basin.[11]

Commissions

Chapter 20, F.S., authorizes the creation of a number of different entities within the executive branch to assist agencies in performing their duties more efficiently and effectively. One such entity is the "commission," which is defined as "a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor."[12]

Section 20.052, F.S., provides that statutorily created, executive advisory bodies,[13] commissions, boards of trustees, and other collegial bodies are subject to requirements that include the following:

- The entity must be necessary and beneficial to the furtherance of a public purpose.
- The entity must be terminated by the Legislature when no longer essential to the furtherance of a public purpose.
- Members of the entity may not receive compensation, other than per diem and travel expense reimbursement pursuant to s. 112.061, F.S., unless otherwise provided by statute.
- Members of an entity, other than a commission or board of trustees, must be appointed by the Governor, a department head, an executive director, or a Cabinet officer.
- Members of a commission or board of trustees must be appointed by the Governor unless otherwise provided by law, confirmed by the Senate, and are subject to the dual-office-holding prohibition of s. 5(a), Art. II of the State Constitution.
- All meetings and records of the entity are public, unless an exemption is specifically provided by law.

Effect of Proposed Change

Florida Springs Protection Act:

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[7] Codified at s. 403.067, F.S. The federal requirement is contained in section 303(d) of the federal Clean Water Act, codified at 33 U.S.C. s. 1251, *et seq.*

[8] *Water & Natural Resources Briefing Book 2005*, Environmental Regulation Committee, Florida House of Representatives.

[9] Additional detail about the Florida Springs Initiative and its research is available here: http://www.dep.state.fl.us/springs/research/index.htm.

[10] *Id.*

[11] March 22, 2006, DEP e-mail.

[12] Section 20.03(5), F.S.

[13] The term "advisory body" is not defined in s. 20.052, F.S.; however, the term appears to refer to councils, committees, and task forces, as these entities are specifically referred to as advisory bodies in s. 20.03, F.S.

The bill creates Part IV of chapter 369, F.S., relating to springs protection. Section 369.401, F.S., is created and cited as the Florida Springs Protection Act. Legislative intent is addressed in section 369.403, F.S., to include that the Legislature recognizes the following:

- Florida springs whether found in urban or rural settings, public parks, or private lands, are threatened by actual and potential flow reductions and declining water quality. Many of Florida's springs have begun to exhibit signs of distress, including increasing nutrient loading and lowered discharge.
- Springs and groundwater once damaged by overuse can be restored through good stewardship, including effective planning strategies and best management practices to protect and preserve springs. Managing land use types and their allowable densities and intensities of development, followed by specific site planning to further minimize impacts, rank as an important goal.
- Development in Florida will continue to add pressure for growth and development already affecting the surface and ground water resources that contribute to spring flow.
- There is a need to provide for land use decisions that recognize protected property rights and ensure the long-term viability of springs in Florida.
- Cooperative and coordinated efforts, such as the Suwannee River Partnership and the Wekiva River Basin Coordinating Committee, implemented by state and regional agencies, local governments and affected interests can best develop the mechanisms to protect Florida's springs. A Florida Springs Commission should be created for the purpose of identifying protection, restoration and preservation strategies for Florida springs.

Florida Springs Commission

The bill creates the Florida Springs Commission (the Commission), which is comprised of 21 members.[14] The Secretary of DEP will serve as the chair of the Commission. The bill provides that all members of the Commission will serve without compensation; however they will be reimbursed for per diem and travel expenses according to section 112.061, F.S. The bill authorizes state and regional governmental commission members to allow a senior staff person to represent their entity along with granting them full voting authority. The Commission may appoint technical subcommittees as needed to assist in the completion of the work of the Commission. The bill requires all state agencies as directed, and all other agencies and local governments as requested, to assist and cooperate with the Commission.

Duties of the Florida Springs Commission

The bill requires the Commission to perform an assessment of all the first and second magnitude springs. The DEP and the water management districts are required to assist the Commission in identifying and mapping all first and second magnitude springs within each water management district. The DEP and the water management districts will cooperatively perform an assessment and create a uniform geographic information system standard for collecting and reporting springs data. The bill requires spring assessment data to include at a minimum the following information:

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[14] Membership includes the following members: Commissioner of Agriculture; Secretary of the Department of Community Affairs; Secretary of the DEP; Secretary of the Department of Transportation; Secretary of the Department of Health; Executive Director of the Florida Fish and Wildlife Conservation Commission; a representative from a water management district governing board; a representative from a regional planning council; a representative from the Florida Chamber of Commerce; a representative from the Florida Association of Community Developers; a representative from the American Water Works Association; a representative from the Florida Home Builders Association; and nine members to be appointed pursuant to the following:

- Governor:
  - a member from an environmental organization; a property owner interested in spring protection; and a member from the business community.
- Senate President:
  - a legislative member from the Senate; a member from a conservation organization; and a locally elected county or municipal official.
- Speaker of the House of Representatives:
  - a legislative member from the House of Representatives; a member from the agricultural community; and a locally elected county or municipal official.

- Current land owner;
- Latitude and longitude;
- Water quality, water quantity, and water use;
- Wetlands;
- Geology and soils;
- Vegetation;
- Floodplain area;
- Infrastructure;
- Fish and wildlife;
- Cultural resources and archaeology;
- Public access and use;
- Land use;
- Hazardous materials;
- Public Health and safety;
- Aesthetics and scenic resources; and
- Socioeconomics.

Strategies For Protecting Springs
The bill requires the Commission to evaluate and recommend strategies for protecting and ensuring long-term viability of Florida springs according to the following considerations:

- Protection of property rights.
- Effectiveness and application of current land use planning strategies.
- Development and application of innovative land use planning strategies.
- Effectiveness and sufficiency of existing regulations.
- Use of regional partnerships, best management practices, and other incentive-based nonregulatory programs.

The bill recognizes that many springs protection policies and programs have been developed or implemented through ongoing efforts and that an evaluation of these policies and programs can serve as a baseline. The bill instructs the Commission to utilize these existing springs protection policies and programs as an aid in the development of its recommendations along with the use of basin management action plans developed by DEP relating to the implementation of the TMDL program.

Model Springs Protection Plan
The bill requires the Commission to develop an overall model springs protection plan utilizing its recommended strategies. The model plan will contain components that that can be utilized by state agencies, local governments, and citizens for detailed spring protection plans. The bill requires the model plan to provide a five-year strategy for the use and management of the springs based on the information from the assessment. The bill provides component criteria (i.e. analysis of environmental conditions, analysis of present use conditions, management partnerships, etc.) to be included in the model plan. The bill requires the Commission to consider public comment throughout the development of the Commission's recommendations.

The bill provides for the Commission to expire in 2010.

C. SECTION DIRECTORY:

Section 1 creates the Florida Springs Protection Act at sections 369.401 – 369.415, F.S.

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 overall fiscal impact is indeterminate. DEP estimates that in order to meet a portion of the bill requirements relating to the mapping components of all first and second magnitude springs, DEP would need approximately 56 additional staff members and associated resources, at an estimated cost of $25 million per year, to complete a basic mapping of approximately 120 springs. DEP reports current funding of $2.5 million and two staff members for the springs program.[15]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   The cost associated with local government participation with the Commission duties associated with this bill is indeterminate; however, local governments are requested to assist the Commission, not directed to assist.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires the Commission to develop an overall model springs protection plan utilizing its recommended strategies. The model plan shall contain components that that may be utilized by state agencies, local governments, and citizens for individual spring protection plans. Local government adoption of measures that would preclude land use activity surrounding springs may diminish potential development areas within their local jurisdiction.

D. FISCAL COMMENTS:

The bill does not provide additional funding to DEP. DEP staff estimates that at current staffing levels, it would take 60 years to accomplish the bill requirements, well beyond the time allotted to DEP in the bill.[16] While the water management districts are also named in the bill, the financial burden would likely fall heaviest on the DEP.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require cities or counties to spend funds or take actions 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.

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[15] March 9, 2006 DEP e-mail.
[16] March 22, 2005, DEP e-mail.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Commission Creation

The bill appears to violate two provisions of s. 20.052, F.S., regarding the creation and responsibilities of a commission. The bill does not provide for "4-year staggered terms" of the members, either explicitly or by reference.[17] More critically, the bill may violate the dual-office-holding provision of Article II, Section 5(a) of the Constitution of the State of Florida,[18] by the presence of two members of the Florida Legislature on the commission (and possibly by the appointment of four other members, by the President of the Senate and the Speaker of the House of Representatives).

III. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Environmental Regulation Committee favorably adopted a "Strike All" amendment to HB 693. The analysis has been revised to reflect this amendment.

[17] Section 20.052(4)(c), F.S.

[18] This constitutional violation in turn violates s. 20.052(5)(c), F.S.

CHAMBER ACTION

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1 The Environmental Regulation 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 Florida Springs Protection Act;
7 creating pt. IV of ch. 369, F.S.; relating to springs
8 protection; creating s. 369.401, F.S.; providing a short
9 title; creating s. 369.403, F.S.; providing legislative
10 intent; creating s. 369.405, F.S.; creating the Florida
11 Springs Commission; providing for membership and the
12 appointment of certain members by the Governor and the
13 Legislature; authorizing reimbursement for per diem and
14 travel expenses; authorizing appointment of technical
15 subcommittees; directing state agencies and requesting
16 local governments to provide assistance to the commission;
17 requiring the Department of Environmental Protection and
18 water management districts to identify and assess certain
19 springs; providing requirements for such assessments;
20 requiring the commission to perform certain assessments
21 and recommend strategies for protecting and ensuring the
22 long-term viability of the state's springs; providing
23 requirements and procedures therefor; requiring a model

24 springs protection plan; providing a dissolution date for
25 the commission; providing an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28
29 Section 1. Part IV of chapter 369, Florida Statutes,
30 consisting of sections 369.401, 369.403, and 369.405, is created
31 to read:
32 PART IV
33 SPRINGS PROTECTION
34 369.401 Short title.--This part may be cited as the
35 "Florida Springs Protection Act."
36 369.403 Legislative findings and intent.--
37 (1) The Legislature finds that in general Florida springs,
38 whether found in urban or rural settings, public parks, or private
39 lands, are threatened by actual and potential flow reductions and
40 declining water quality. As a result of climate patterns and
41 population changes over the past 30 years, many of Florida's
42 springs have begun to exhibit signs of distress, including
43 increasing nutrient loading and lowered discharge. The groundwater
44 that feeds springs is recharged by seepage from the surface and
45 surface runoff and through direct conduits such as sinkholes.
46 (2) The Legislature further finds that springs and
47 groundwater once damaged by overuse can be restored through good
48 stewardship, including effective planning strategies and best
49 management practices to preserve and protect the springs. Land use
50 planning decisions can protect and improve spring water quality
51 and quantity, as well as upland resources. Managing land use types

52 and their allowable densities and intensities of development,
53 followed by specific site planning to further minimize impacts,
54 rank as an important goal.
55 (3) The Legislature further finds that development in
56 Florida will add to the pressure already affecting the surface and
57 ground water resources within each area that contributes to spring
58 flow.
59 (4) The Legislature further finds there exists a need to
60 provide for land use decisions that recognize protected property
61 rights and ensure the long-term viability of the springs in
62 Florida.
63 (5) The Legislature further finds that cooperative
64 coordinated efforts, such as the Suwannee River Partnership and
65 the Wekiva River Basin Coordinating Committee, implemented by
66 state and regional agencies, local governments, and affected
67 interests can best develop the mechanisms to protect Florida's
68 springs. It is therefore the intent of the Legislature to create
69 the Florida Springs Commission for the purpose of identifying
70 protection, restoration, and preservation strategies for Florida
71 springs.
72 369.405 Florida Springs Commission.--
73 (1)(a) The Florida Springs Commission is hereby created and
74 shall include:
75 1. The Commissioner of Agriculture, the secretaries of the
76 Department of Community Affairs, the Department of Environmental
77 Protection, the Department of Transportation, and the Department
78 of Health, the executive director of the Fish and Wildlife
79 Conservation Commission, a representative from a water management

80 district governing board, a representative from a regional
81 planning council, a representative from the Florida Chamber of
82 Commerce, a representative from the Florida Association of
83 Community Developers, a representative from the American Water
84 Works Association, and a representative from the Florida Home
85 Builders Association.
86 2. Three members appointed by the Governor consisting of:
87 a. A member of an environmental organization.
88 b. A property owner interested in springs protection.
89 c. A member from the business community.
90 3. Three members appointed by the President of the Senate
91 consisting of:
92 a. A member of the Senate.
93 b. A locally elected county or municipal official.
94 c. A member of a conservation organization.
95 4. Three members appointed by the Speaker of the House of
96 Representatives consisting of:
97 a. A member of the House of Representatives.
98 b. A locally elected county or municipal officer.
99 c. A member of the agricultural community.
100 (b) The secretary of the Department of Environmental
101 Protection shall serve as chair of the commission.
102 (c) Members of the commission shall serve without
103 compensation, but shall be reimbursed for per diem and travel
104 expenses in accordance with s. 112.061.
105 (d) The state and regional governmental commission members
106 may designate to represent their entity a senior staff person, who
107 shall have full voting authority.

108 (e) The commission may appoint technical subcommittees as
109 needed to assist in the completion of the work of the commission,
110 and such technical subcommittees may include qualified persons not
111 on the commission.
112 (f) All state agencies are directed, and all other
113 agencies and local governments are requested, to render
114 assistance to and cooperate with the commission.
115 (2) The commission shall perform an assessment of the
116 existing conditions of all first and second magnitude springs.
117 To assist the commission, the Department of Environmental
118 Protection shall work with the water management districts to
119 identify and map all first and second magnitude springs within
120 each district. The department and districts shall cooperatively
121 perform an assessment and create a uniform geographic
122 information system standard for collecting and reporting springs
123 data. The assessment for each spring shall include, at a
124 minimum, the following information:
125 (a) Current land owner.
126 (b) Latitude and longitude.
127 (c) Water quality, water quantity, and water use.
128 (d) Wetlands.
129 (e) Geology and soils.
130 (f) Vegetation.
131 (g) Floodplain area.
132 (h) Infrastructure.
133 (i) Fish and wildlife.
134 (j) Cultural resources and archaeology.
135 (k) Public access and use.

136 (l) Land use.
137 (m) Hazardous materials.
138 (n) Public health and safety.
139 (o) Aesthetics and scenic resources.
140 (p) Socioeconomics.
141 (3) The commission shall evaluate and recommend strategies
142 for protecting and ensuring the long-term viability of the
143 state's springs. In conducting this evaluation and developing
144 its recommendations, the commission shall consider:
145 (a) The protection of property rights.
146 (b) The effectiveness and application of current land use
147 strategies.
148 (c) The development and application of innovative land use
149 planning strategies.
150 (d) The effectiveness and sufficiency of existing
151 regulations.
152 (e) The use of regional partnerships, best management
153 practices, and other incentive-based nonregulatory programs.
154 (4) It is recognized that many springs protection policies
155 and programs have been developed or implemented through ongoing
156 efforts and that an evaluation of these policies and programs can
157 serve as a baseline and will greatly assist the commission in the
158 development of its recommendations. Therefore, in conducting its
159 evaluation and developing recommendations, the commission shall
160 consider relevant studies, springs protection initiatives, and
161 other information currently available for springs protection,
162 including:
163 (a) The Suwannee River Partnership.

164 (b) The Wekiva Basin Area Task Force.
165 (c) The Wekiva River Basin Coordinating Committee.
166 (d) The Florida Springs Initiative in the Department of
167 Environmental Protection.
168 (e) The Florida Springs Task Force.
169 (f) The use of basin management action plans developed by
170 the Department of Environmental Protection pursuant to the
171 implementation of the total maximum daily load program.
172 (5) The commission shall develop an overall model springs
173 protection plan which applies its recommended strategies developed
174 pursuant to subsections (3) and (4). The model plan shall contain
175 components that can be used by state agencies, local governments,
176 and citizens for more detailed individual springs protection
177 plans. Each plan shall provide a 5-year strategy for the use and
178 management of the springs based on information from the
179 assessment. The model plan shall include, at a minimum, the
180 following components:
181 (a) Analysis of environmental conditions.
182 (b) Analysis of present use patterns.
183 (c) Analysis of ability of the spring to support increased
184 public use.
185 (d) Discussion of the economic potential of spring use by
186 the public.
187 (e) Discussion of actions needed to promote increased public
188 use.
189 (f) Discussion of infrastructure requirements.
190 (g) Discussion of personnel requirements.
191 (h) Discussion of security needs.

192 (i) Discussion of limits on spring use to avoid permanent
193 detrimental impacts to the spring.
194 (j) Discussion of strategy for leveraging resources for
195 springs protection.
196 (k) Discussion of a long-term management partnership among
197 the state, regional, and local governments and citizens within the
198 area.
199 (6) The commission may develop and recommend other
200 appropriate measures necessary to achieve springs protection.
201 (7) In developing its recommendations, the commission shall
202 receive and consider public comment and shall otherwise maximize
203 public participation from all affected parties.
204 (8) The commission shall expire July 1, 2010.
205 Section 2. This act shall take effect July 1, 2006.

HB 731

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 731 Florida Retirement System
SPONSOR(S): Rice
TIED BILLS: **IDEN./SIM. BILLS:** SB 1378

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

SUMMARY ANALYSIS

The bill expands the Special Risk Class of the Florida Retirement System to include any member employed as a nurse whose duties involve contact with inmates in a county correctional facility. The number of nurses potentially affected by this bill is unknown. A number of county sheriff's offices, however, contract with private companies for nurses and these employees would not be affected.

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

The primary fiscal impact is a higher required contribution rate paid by the employer. Any fiscal impact resulting from a change in class demographics or experience would be reflected in future valuations of the Florida Retirement System.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government – This bill expands the Special Risk Class to include nurses in county correctional facilities.

B. EFFECT OF PROPOSED CHANGES:

Background on the FRS

The Florida Retirement System (FRS) is the fourth largest public retirement system in the United States, covering 648,379 active employees, 237,730 retirees and their surviving beneficiaries, and 31,457 participants of the Deferred Retirement Option Program (DROP).[1] The active membership is divided into five membership classes: Regular Class, Special Risk Class, Special Risk Administrative Support Class, Elected Officers' Class, and Senior Management Service Class. Each class is separately funded based upon the costs attributable to the members of that class.

As stated in s. 121.0515(1), F.S., in creating the Special Risk Class of membership within the FRS, the Legislature recognized that persons employed in certain categories of law enforcement, firefighting, criminal detention, and emergency medical care positions must, as an essential function of their positions, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. The Legislature further found that as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public, and their coworkers. In response, the Legislature established a special class to permit these employees to retire at an earlier age and with less service without suffering economic deprivation compared to other members with normal retirement after 30 years of service or age 62 and vested.

Special Risk Class membership differs from Regular Class membership in the following ways:

- A Special Risk Class member earns retirement credit at the rate of 3 percent of average final compensation (AFC) for each year of service, as opposed to the 1.6 percent -1.68 percent credit per year of service earned by a Regular Class member.

- A Special Risk Class member qualifies for normal retirement at an earlier age (age 55 versus age 62) or with fewer years of service (25 years versus 30 years) than a Regular Class member.

- A Special Risk Class member who is totally and permanently disabled in the line of duty qualifies for a 65 percent minimum option 1 benefit payment compared to a Regular Class member similarly disabled who qualifies for a 42 percent minimum option 1 benefit payment.[2] Option 1 benefit payment provides a continuing monthly benefit to the retiring member for his or her lifetime.

The benefit improvements gained by Special Risk Class members are funded by higher employer contributions. Currently, the Special Risk Class makes up nearly 11percent of the active FRS membership. For the 2005-06 plan year, the employer contribution rate for the Special Risk Class is 17.37 percent--slightly over 2.5 times higher than the 6.67 percent for the Regular Class. Under the

[1] Department of Management Services 2006 Substantive Bill Analysis, HB 731, February 23, 2006, pg 3.
[2] *Id.* pg 4.

FRS Investment Plan, the amount contributed to an individual member account increases from 9.25 percent to 21.33 percent when the member moves from the Regular Class to the Special Risk Class.[3]

Status of State Nurses

Currently, nurses employed by the state who operate under specific class codes and who spend at least 75 percent of his or her time performing duties which involve contact with patients or inmates in a correctional or forensic facility or institution qualify for membership in the Special Risk Class. Such nurses gained Special Risk status in 1999.

County Nurses

There are approximately 28 counties that employ nurses at county correctional facilities with an estimated 300 Licensed Nurse Practitioners (L.P.N.'s). The remaining counties opt to follow one of two options: either contract out their nursing services, which roughly 27 counties do, or have no nursing services. Counties with no nursing services call Emergency Medical Technicians to the facility or have certified clerks on staff.

Effect of the Bill

The bills expands the membership of the Special Risk Class on or after October 1, 2006, to a person employed as a nurse whose duties involve contact with inmates in a county correctional facility.

Section 121.0515(2)(f), F.S., provides the criteria for a nurse employed by the state to gain Special Risk Class status. The bill extends that umbrella to those nurses employed to a correctional facility at the county level.

The bill provides a declaration of important state interest.

C. SECTION DIRECTORY:

Section 1 creates s. 121.021(15)(f), F.S., to add nurses, whose duties involve contact with inmates in a county correctional facility, to the definition of a "special risk member."

Section 2 creates s. 121.0515(2)(i), F.S., to include nurses in the Special Risk Class whose duties involve contact with inmates in a county correctional facility.

Section 3 provides a declaration of important state interest.

Section 4 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The FRS will experience increased revenue from FRS employers who pay an increase in the retirement contribution rate for their FRS employees who are affected by this bill by paying the rate for the Special Risk Class instead of the Regular Class Rate.[4]

2. Expenditures:

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

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[3] *Id.*, pg 2.
[4] *Id.*, pg 1.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

FRS employers would pay an increased retirement contribution rate for their FRS employees who are affected by this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not have a direct economic impact on persons in the private sector.

D. FISCAL COMMENTS:

Membership in the Special Risk Class has grown by more than 25 percent in the last six years. There were 54,683 active Special Risk Class members as of June 1999. As of June 2005, there were 71,383 members filling Special Risk Class positions: 68,466 active members and 2,917 Deferred Retirement Option Program participants.[5]

This bill would add an unknown number of additional positions to the Special Risk Class. The fiscal impact to the FRS is primarily funded through the required employer contributions for members of the Special Risk Class. Any fiscal impact resulting from a change in class demographics or experience would be reflected in future valuations of the FRS.[6]

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. Yet, the bill appears to satisfy the requirements of section 18 of article VII of the Florida Constitution[7] because it provides that the act fulfills an important state interest and the expenditures are required by a law which appears to apply to all persons similarly situated, including the state and local governments.

2. Other:

Article X, s. 14, Florida Constitution

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[5] *Id.*, pg 2.
[6] *Id.*, pg 7.
[7] 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.

Since 1976 the Florida Constitution has required that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

> SECTION 14. State requirement systems benefit changes.—A governmental unit responsible for any retirement or pension system supported in whole or in party 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 to the increase in benefits on a sound actuarial basis.

The bill appears to comply with the requirements of s. 14, Art. X of the State Constitution.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Definition of "county correctional facility"

There is no definition of "county correctional facility" in the Florida Statutes. However, s. 951.23(1)(a), F.S., defines a "county detention facility" as: "a county jail, a county stockade, a county work camp, a county residential probation center[8], and any other place except a municipal detention facility[9] used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor." The sponsor may wish to substitute "county correctional facility" with "county detention facility."

Municipal Jails

The Department of Management Services' bill analysis raised the concern that this bill does not include nurses whose duties involve contact with inmates in municipal detention facilities. It appears that Ft. Lauderdale has the last municipal jail, and only fingerprinting and photographing are conducted at this facility. The rest of the municipal detention facilities were closed or merged into county facilities when cities lost their municipal court powers in 1971.[10]

Definition of "nurses"

The bill does not define "nurses," nor does it establish any professional level that must be attained to qualify for the improved benefit. In contrast, under current law,[11] nursing positions eligible for special risk membership at the state level are specified by title and class codes, have primary duty descriptions, and reference that their duties require inmate contact more than 75 percent of the time. The sponsor may wish to amend the bill to provide a definition of "nurses."

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[8] "County residential probation center" is defined in s. 951.23(1)(b), F.S., as: "a county-operated facility housing offenders serving misdemeanor sentences or first-time felony sentences."

[9] "Municipal detention facility" is defined in s. 951.23(1)(d), F.S., as: "a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal offender for the detention of persons charged with or convicted of violation of municipal laws or ordinances."

[10] Fla Const. Article V, s. 20(d)(4), F.S., "Municipal courts shall continue with their same jurisdiction until amended or terminated in a manner prescribed by special or general law or ordinances, or until January 3, 1977, whichever occurs first. On that date all municipal courts not previously abolished shall cease to exist."

[11] See s. 121.0515(2)(f), F.S.

Level of Contact

The bill states the nurses' duties must "involve contact with inmates in a county correctional facility." This language may be interpreted to mean any kind of contact, however non-medical, insignificant, or temporary in nature it might be. The sponsor may wish to amend the bill to provide more detail to achieve professional equity with covered nurses in state facilities by including the job duties that are primary and compromise more than a certain percentage of their time.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to the Florida Retirement System; amending
3 ss. 121.021 and 121.0515, F.S.; providing membership in
4 the Special Risk Class for persons employed as nurses in
5 county correctional facilities; providing a declaration of
6 important state interest; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (15) of section 121.021, Florida
11 Statutes, is amended to read:
12 121.021 Definitions.--The following words and phrases as
13 used in this chapter have the respective meanings set forth
14 unless a different meaning is plainly required by the context:
15 (15)(a) Until October 1, 1978, "special risk member" means
16 any officer or employee whose application is approved by the
17 administrator and who receives salary payments for work
18 performed as a peace officer; law enforcement officer; police
19 officer; highway patrol officer; custodial employee at a
20 correctional or detention facility; correctional agency employee
21 whose duties and responsibilities involve direct contact with
22 inmates, but excluding secretarial and clerical employees;
23 firefighter; or an employee in any other job in the field of law
24 enforcement or fire protection if the duties of such person are
25 certified as hazardous by his or her employer.
26 (b) Effective October 1, 1978, "special risk member" means
27 a member of the Florida Retirement System who is designated as a
28 special risk member by the division in accordance with s.

29 121.0515. Such member must be employed as a law enforcement
30 officer, a firefighter, or a correctional officer and must meet
31 certain other special criteria as set forth in s. 121.0515.
32 (c) Effective October 1, 1999, "special risk member" means
33 a member of the Florida Retirement System who is designated as a
34 special risk member by the division in accordance with s.
35 121.0515. Such member must be employed as a law enforcement
36 officer, a firefighter, a correctional officer, an emergency
37 medical technician, or a paramedic and must meet certain other
38 special criteria as set forth in s. 121.0515.
39 (d)1. Effective January 1, 2001, "special risk member"
40 includes any member who is employed as a community-based
41 correctional probation officer and meets the special criteria
42 set forth in s. 121.0515(2)(e).
43 2. Effective January 1, 2001, "special risk member"
44 includes any professional health care bargaining unit or non-
45 unit member who is employed by the Department of Corrections or
46 the Department of Children and Family Services and meets the
47 special criteria set forth in s. 121.0515(2)(f).
48 (e) Effective July 1, 2001, the term "special risk member"
49 includes any member who is employed as a youth custody officer
50 by the Department of Juvenile Justice and meets the special
51 criteria set forth in s. 121.0515(2)(g).
52 <u>(f) Effective October 1, 2006, the term "special risk</u>
53 <u>member" includes a person employed as a nurse whose duties</u>
54 <u>involve contact with inmates in a county correctional facility.</u>
55 Section 2. Subsection (2) of section 121.0515, Florida
56 Statutes, is amended to read:

57 121.0515 Special risk membership.--
58 (2) CRITERIA.--A member, to be designated as a special
59 risk member, must meet the following criteria:
60 (a) The member must be employed as a law enforcement
61 officer and be certified, or required to be certified, in
62 compliance with s. 943.1395; however, sheriffs and elected
63 police chiefs shall be excluded from meeting the certification
64 requirements of this paragraph. In addition, the member's duties
65 and responsibilities must include the pursuit, apprehension, and
66 arrest of law violators or suspected law violators; or the
67 member must be an active member of a bomb disposal unit whose
68 primary responsibility is the location, handling, and disposal
69 of explosive devices; or the member must be the supervisor or
70 command officer of a member or members who have such
71 responsibilities; provided, however, administrative support
72 personnel, including, but not limited to, those whose primary
73 duties and responsibilities are in accounting, purchasing,
74 legal, and personnel, shall not be included;
75 (b) The member must be employed as a firefighter and be
76 certified, or required to be certified, in compliance with s.
77 633.35 and be employed solely within the fire department of a
78 local government employer or an agency of state government with
79 firefighting responsibilities. In addition, the member's duties
80 and responsibilities must include on-the-scene fighting of
81 fires, fire prevention, or firefighter training; direct
82 supervision of firefighting units, fire prevention, or
83 firefighter training; or aerial firefighting surveillance
84 performed by fixed-wing aircraft pilots employed by the Division

85 of Forestry of the Department of Agriculture and Consumer
86 Services; or the member must be the supervisor or command
87 officer of a member or members who have such responsibilities;
88 provided, however, administrative support personnel, including,
89 but not limited to, those whose primary duties and
90 responsibilities are in accounting, purchasing, legal, and
91 personnel, shall not be included and further provided that all
92 periods of creditable service in fire prevention or firefighter
93 training, or as the supervisor or command officer of a member or
94 members who have such responsibilities, and for which the
95 employer paid the special risk contribution rate, shall be
96 included;
97 (c) The member must be employed as a correctional officer
98 and be certified, or required to be certified, in compliance
99 with s. 943.1395. In addition, the member's primary duties and
100 responsibilities must be the custody, and physical restraint
101 when necessary, of prisoners or inmates within a prison, jail,
102 or other criminal detention facility, or while on work detail
103 outside the facility, or while being transported; or the member
104 must be the supervisor or command officer of a member or members
105 who have such responsibilities; provided, however,
106 administrative support personnel, including, but not limited to,
107 those whose primary duties and responsibilities are in
108 accounting, purchasing, legal, and personnel, shall not be
109 included; however, wardens and assistant wardens, as defined by
110 rule, shall participate in the Special Risk Class;
111 (d) The member must be employed by a licensed Advance Life
112 Support (ALS) or Basic Life Support (BLS) employer as an

113 emergency medical technician or a paramedic and be certified in
114 compliance with s. 401.27. In addition, the member's primary
115 duties and responsibilities must include on-the-scene emergency
116 medical care or direct supervision of emergency medical
117 technicians or paramedics, or the member must be the supervisor
118 or command officer of one or more members who have such
119 responsibility. However, administrative support personnel,
120 including, but not limited to, those whose primary
121 responsibilities are in accounting, purchasing, legal, and
122 personnel, shall not be included;
123 (e) The member must be employed as a community-based
124 correctional probation officer and be certified, or required to
125 be certified, in compliance with s. 943.1395. In addition, the
126 member's primary duties and responsibilities must be the
127 supervised custody, surveillance, control, investigation, and
128 counseling of assigned inmates, probationers, parolees, or
129 community controllees within the community; or the member must
130 be the supervisor of a member or members who have such
131 responsibilities. Administrative support personnel, including,
132 but not limited to, those whose primary duties and
133 responsibilities are in accounting, purchasing, legal services,
134 and personnel management, shall not be included; however,
135 probation and parole circuit and deputy circuit administrators
136 shall participate in the Special Risk Class;
137 (f) The member must be employed in one of the following
138 classes and must spend at least 75 percent of his or her time
139 performing duties which involve contact with patients or inmates
140 in a correctional or forensic facility or institution:

141 1. Dietitian (class codes 5203 and 5204);
142 2. Public health nutrition consultant (class code 5224);
143 3. Psychological specialist (class codes 5230 and 5231);
144 4. Psychologist (class code 5234);
145 5. Senior psychologist (class codes 5237 and 5238);
146 6. Regional mental health consultant (class code 5240);
147 7. Psychological Services Director--DCF (class code 5242);
148 8. Pharmacist (class codes 5245 and 5246);
149 9. Senior pharmacist (class codes 5248 and 5249);
150 10. Dentist (class code 5266);
151 11. Senior dentist (class code 5269);
152 12. Registered nurse (class codes 5290 and 5291);
153 13. Senior registered nurse (class codes 5292 and 5293);
154 14. Registered nurse specialist (class codes 5294 and
155 5295);
156 15. Clinical associate (class codes 5298 and 5299);
157 16. Advanced registered nurse practitioner (class codes
158 5297 and 5300);
159 17. Advanced registered nurse practitioner specialist
160 (class codes 5304 and 5305);
161 18. Registered nurse supervisor (class codes 5306 and
162 5307);
163 19. Senior registered nurse supervisor (class codes 5308
164 and 5309);
165 20. Registered nursing consultant (class codes 5312 and
166 5313);
167 21. Quality management program supervisor (class code
168 5314);

169 22. Executive nursing director (class codes 5320 and
170 5321);
171 23. Speech and hearing therapist (class code 5406); or
172 24. Pharmacy manager (class code 5251);
173 (g) The member must be employed as a youth custody officer
174 and be certified, or required to be certified, in compliance
175 with s. 943.1395. In addition, the member's primary duties and
176 responsibilities must be the supervised custody, surveillance,
177 control, investigation, apprehension, arrest, and counseling of
178 assigned juveniles within the community; ~~or~~
179 (h) The member must be employed by a law enforcement
180 agency or medical examiner's office in a forensic discipline
181 recognized by the International Association for Identification
182 and must qualify for active membership in the International
183 Association for Identification. The member's primary duties and
184 responsibilities must include the collection, examination,
185 preservation, documentation, preparation, or analysis of
186 physical evidence or testimony, or both, or the member must be
187 the direct supervisor, quality management supervisor, or command
188 officer of one or more individuals with such responsibility.
189 Administrative support personnel, including, but not limited to,
190 those whose primary responsibilities are clerical or in
191 accounting, purchasing, legal, and personnel, shall not be
192 included; or~~.~~
193 (i) The member must be employed as a nurse whose duties
194 involve contact with inmates in a county correctional facility.
195 Section 3. The Legislature finds that a proper and
196 legitimate state purpose is served when employees and retirees

197 of the state and its political subdivisions and the dependents,
198 survivors, and beneficiaries of such employees and retirees are
199 extended the basic protections afforded by governmental
200 retirement systems. These persons must be provided benefits that
201 are fair and adequate and that are managed, administered, and
202 funded in a sound actuarial manner, as required by section 14,
203 Article X of the State Constitution and part VII of chapter 112,
204 Florida Statutes. Therefore, the Legislature hereby determines
205 and declares that this act fulfills an important state interest.
206 Section 4. This act shall take effect October 1, 2006.

HB 755

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 755 Department of the Lottery
SPONSOR(S): Clarke
TIED BILLS: **IDEN./SIM. BILLS:** SB 1942

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

SUMMARY ANALYSIS

The bill modifies the standard of review for competitive procurement protests arising from the Department of the Lottery. The bill bars administrative law judges from performing *de novo* review of agency actions leading up to the protest, and requires that the judge consider only whether the agency's final action was "illegal, arbitrary, dishonest, or fraudulent."

The Department of the Lottery suggests that the bill will have an indeterminate but positive fiscal impact, due to savings in legal fees incurred.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill reduces the scope of an administrative law judge's ability to review Department of Lottery actions with regard to bid protests.

Safeguard individual liberty – The bill modifies the legal rights of private parties interacting with the Department of the Lottery.

B. EFFECT OF PROPOSED CHANGES:

Agency Procurement and Protests Generally

Chapter 287, F.S., governs agency[1] procurement of commodities and contractual services. The statute requires fair and open competition among vendors, as indicated in the legislative intent language contained in s. 287.001, F.S. In that section, the Legislature states that a fair and open process is necessary in order to "reduce the appearance and opportunity for favoritism and inspire... public confidence that contracts are awarded equitably and economically."

The Department of Management Services (DMS) is statutorily designated as the central procurement authority for executive agencies. Its responsibilities include: overseeing agency implementation of procurement processes;[2] creating uniform agency procurement rules;[3] implementing the online procurement program;[4] and establishing state term contracts.[5] The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through the DMS.[6]

Unless otherwise authorized by law, the Department of the Lottery (Lottery) must award contracts for the purchase of commodities or contractual services in excess of $25,000 by competitive sealed bidding,[7] with some exceptions as provided in s. 287.057(5), F.S.

Bid protests are conducted in accordance with chapter 120, F.S., the Administrative Procedure Act. Specifically, s. 120.57(3), F.S., provides detailed provisions relating to bid protests. The section requires that the public be notified of agency actions regarding protests[8] and that a 72-hour window of opportunity be provided for affected entities to file a notice of intent to protest.[9] Upon receipt of such notice, the agency is typically required to stop the procurement process until the protest is resolved.[10] If the protest is not resolved informally, it must be referred to the Division of Administrative Hearings

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[1] For purposes of Chapter 287, F.S., "agency" means "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."
[2] Sections 287.032 and 287.042, F.S.
[3] Sections 287.032(2) and 287.042(3), (4), and (12), F.S.
[4] Section 287.057(23), F.S.
[5] Sections 287.042(2), 287.056, and 287.1345, F.S.
[6] Section 287.056, F.S.
[7] Section 287.057(1)(a), F.S.
[8] Section 120.57(3)(a), F.S.
[9] Section 120.57(3)(b), F.S.
[10] Section 120.57(3)(c), F.S.

(DOAH) if there are disputed issues of material fact,[11] or an agency hearing officer if there are no disputes over material facts.[12]

When there are material facts in dispute and the case is referred to DOAH, the administrative law judge serves as the trier of fact.[13] That is, the DOAH judge receives evidence from all parties and makes a determination of the facts. This process is detailed in s. 120.57(1), F.S., entitled "Additional Procedures Applicable to Hearings Involving Disputed Issues of Material Fact." Sections 120.57(1)(j) - (k), F.S., excerpted below, contain detailed requirements regarding the DOAH judge's obligations to determine facts:

> (j) Findings of fact shall be based upon a preponderance of the evidence... and shall be based exclusively on *the evidence of record* and on matters officially recognized.
>
> (k) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. *All proceedings conducted pursuant to this subsection shall be de novo.* The agency shall allow each party 15 days in which to submit written exceptions to the recommended order....

(Emphasis added.) These sections indicate that, in determining disputed issues of fact, it is necessary to receive evidence and review the evidence in a *de novo* proceeding. *De novo* means "Anew; afresh; a second time."[14] A "*de novo* trial" means "trying a matter anew; as if it had not been heard before and as if no decision had been previously rendered."[15] In an administrative law context, a *de novo* review of disputed facts requires the judge to receive and review evidence from both parties and evaluate that evidence, ignoring the agency's previous internal rulings on the disputed fact(s).

As a result of this *de novo* review, the judge must determine whether the agency's action was "clearly erroneous, contrary to competition, arbitrary, or capricious."[16] If the agency's action was to dismiss all bids received (in effect, canceling the bid and awarding no contract), the standard of review is raised to "illegal, arbitrary, dishonest, or fraudulent."

Department of Lottery Procurement

The Lottery is unique among agencies in that it is granted authority to create its own procurement code if it so desires. Section 24.105(13), F.S., grants the Lottery authority to:

> perform any of the functions of the Department of Management Services under chapter...287, or any rules adopted [thereunder]. If the Department finds, by rule, that compliance... would impair or impede the effective or efficient operation of the lottery, the Department may adopt rules providing alternative procurement procedures.

Section 24.109, F.S., requires Lottery to follow the Administrative Procedure Act, as other agencies are required, but again Lottery is granted certain exceptions. The Lottery may proceed with a bid, solicitation, or contract award process notwithstanding the filing of a notice of intent to protest.[17] This

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[11] Section 120.57(3)(d)3., F.S.
[12] Section 120.57(3)(d)2., F.S.
[13] Section 120.57(1)(b), F.S.
[14] *Black's Law Dictionary, 6th ed.* (West Publishing, 1990).
[15] *Id.*
[16] Section 120.57(3)(f), F.S.
[17] See s. 120.57(3)(c), F.S.

'over-ride' is permitted when the Secretary of the Lottery sets forth in writing "particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process" in order to avoid a "substantial loss of funding to the state or to avoid substantial disruption of the timetable for any scheduled lottery game."[18]

Proposed Changes

The bill makes the following addition to the Lottery's procurement statute:[19] "In a competitive procurement protest... the administrative law judge shall *not* conduct a de novo proceeding but instead shall review the intended agency action to determine if the agency action is illegal, arbitrary, dishonest, or fraudulent." (Emphasis added.)

The bill denies an administrative law judge the opportunity to review evidence *de novo* and raises the standard of review for protests of procurements undertaken by the Lottery from the higher standard applicable to all agencies ("clearly erroneous, contrary to competition, arbitrary, or capricious"), to the lower standard currently applicable in reviews of agency rejection of all bids ("illegal, arbitrary, dishonest, or fraudulent").

C. SECTION DIRECTORY:

Section 1 amends 24.109, F.S., changing the standard of review for Department of Lottery bid protests.

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 higher standard of review applicable to procurement protests may reduce legal costs for the Department of the Lottery. According to *OPPAGA Report No. 02-11, Justification Review: Sale of Lottery Products Program, Department of the Lottery*, the Lottery estimates that small procurement protests typically cost $6,000, medium $23,000, and large procurement protests may cost over $100,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

[18] Section 24.109(2)(b), F.S.
[19] Section 24.109, F.S.

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:

In the event that a future Lottery bid protest involves a disputed issue of material fact, this bill appears to prevent the administrative law judge from making any findings contradicting the agency. Without the ability to conduct a de novo review of the evidence, the judge is constrained to accept the findings of the previous trier of fact – in this case, the previous trier of fact is the agency against whom a protest has been lodged. In effect, the change asserts that the Lottery's determination of disputed facts is always correct. A protesting party may not be able to have contrary evidence reviewed, as a result, a protesting party may claim that the proposed statute is unconstitutional and denies the party due process.

The matter of de novo reviews and bid protests has recently been discussed in case law:

> Because administrative law judges are the triers of fact charged with resolving disputed issues of material fact based upon the evidence presented at hearing, and because bid protests are fundamentally de novo proceedings, the undersigned is not required to defer to the letting authority in regard to any findings of objective historical fact that might have been made in the run-up to preliminary agency action. It is exclusively the administrative law judge's responsibility, as the trier of fact, to ascertain from the competent, substantial evidence in the record what actually happened in the past or what reality presently exists, as if no findings previously had been made.[20]

The issue is further confused by the fact that the proposed legislation relies on the introductory phrase contained in the current s. 24.109(2), F.S.: "The provisions of s. 120.57(3) apply to the [Lottery's] contracting process, except...." In the bill, the new exception is the denial of a *de novo* review. However, the denial of a *de novo* review may reach beyond just s. 120.57(3), F.S., and also affect s. 120.57(1), F.S., which states that "[a]ll proceedings conducted pursuant to this subsection shall be de novo." If an administrative law judge cannot determine how to review evidence of disputed issues of fact, he or she may determine that the *de novo* review permitted (indeed, *required*) by s. 120.57(1), F.S., cannot be overridden by a Lottery statute limited in application to overriding s. 120.57(3), F.S.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[20] *Supply Chain Concepts v. Miami-Dade County School Board and School Food Service Systems, Inc.,* Case No. 05-4571BID, 2006 WL 352220, (Fla. Div. Admin. Hrgs. Feb. 13, 2006).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to the Department of the Lottery; amending
3 s. 24.109, F.S.; requiring the administrative law judge to
4 conduct certain reviews in a competitive procurement
5 protest; providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Paragraph (b) of subsection (2) of section
10 24.109, Florida Statutes, is redesignated as paragraph (c), and
11 a new paragraph (b) is added to that subsection to read:
12 24.109 Administrative procedure.--
13 (2) The provisions of s. 120.57(3) apply to the
14 department's contracting process, except that:
15 (b) In a competitive procurement protest, including the
16 rejection of all bids, proposals, or replies, the administrative
17 law judge shall not conduct a de novo proceeding but instead
18 shall review the intended agency action to determine if the
19 agency action is illegal, arbitrary, dishonest, or fraudulent.
20 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 897 Florida Retirement System
SPONSOR(S): Davis and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1822

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 continues the expansion of the Special Risk Class of the Florida Retirement System by including any person employed as a Federal Aviation Administration-licensed pilot whose duties include piloting aircraft for the purposes of mosquito control.

The bill makes legislative findings and declares an important state interest.

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

This bill does not appear to impact state or local government revenues. The bill, however, requires the public employers of these mosquito control pilots to pay an additional contribution rate of 10.70 percent of employees salaries and is estimated to have a statewide cost of $225,823. This increase in the required contribution rate *appears to satisfy the constitutional requirement to fund benefit increases to public retirement or pension systems.*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government – This bill expands the Special Risk Class to include pilots flying aircraft that provide mosquito control services.

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 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]

The Special Risk Class and its Expansion

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] As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.[13] Members of the Special Risk Class also earn a higher normal retirement benefit of

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < http://www.frs.state.fl.us/>.
[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.*
[13] Fla. Stat. § 121.021(29) (2005) (defining normal retirement date; this contrasts with members of the Regular Class who can retire at age 62 or with 30 years of credible service).

three percent of the member's average final compensation.[14] These increased benefits are funded through higher employer contribution rates: 17.37 percent of gross compensation, effective July 1, 2005, and 21.91 percent, effective July 1, 2006.[15]

The only employees originally in the Special Risk Class under the current statute were law enforcement officers, correctional officers, and firefighters.[16] Starting in 1999, however, the Legislature started dramatically expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics[17]
2000	Community-Based Correctional Probation Officers[18]
	Twenty-four types of employees of correctional or forensic facilities or institutions[19]
2001	Youth Custody Officers[20]
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline[21]

This bill continues the expansion of the Special Risk Class by including any person employed[22] as a Federal Aviation Administration-licensed pilot whose "duties include piloting [aircraft] for the purposes of mosquito control [treatment]" in the definition of "special risk member" and the criteria for special risk membership to include.

Mosquito Control in Florida

Chapter 388, Florida Statutes, provides for the creation and operation of mosquito control districts. Cities, towns, counties, or any portion thereof are authorized to create special taxing districts for the control of arthropods,[23] to include mosquitoes.[24] The authority provided in section 125.01, Florida Statutes, which sets forth the statutory powers of counties, is the preferred method for creating these mosquito control districts; yet, districts which were established under the former petition process may

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[14] Fla. Stat. § 121.091(1)(a)2.h. (2005) (compared with 1.60 percent to 1.68 percent for members of the Regular Class).
[15] Fla. Stat. 121.71(3) (2005) (compared with 6.67 percent, effective July 1, 2005, and 9.53 percent, effective July 1, 2006, for members of the Regular Class).
[16] Ch. 78-308, Laws of Fla.; codified as Fla. Stat. § 121.0515.
[17] Ch. 99-392, Laws of Fla., § 23.
[18] Ch. 2000-169, Laws of Fla. § 29.
[19] *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.).
[20] Ch. 2001-125, Laws of Fla., § 43.
[21] 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).
[22] Fla. HB 897 (2005) (The employment must be with a municipality, county, special district, or state agency that is authorized to provide mosquito control services. The municipality or special district must be participating in the Florida Retirement System for this provision to be applicable.).
[23] Fla. Stat. § 388.011 (2005) (defining "arthropod" as those insects of public health or nuisance importance, including all mosquitoes, midges, sand flies, dog flies, yellow flies, and house flies).
[24] Fla. Stat. § 388.021(1) (2005).

continue to operate.[25] Some mosquito control districts have been established by special act of the Legislature.[26]

According to the Bureau of Entomology and Pest Control within the Department of Agriculture and Consumer Services and the Department of Management Services, there are currently 57 mosquito control districts:

- 35 districts are operated by boards of county commissioners;
- 7 districts are operated by dependent districts of the county; and
- 15 districts are independent special districts.[27]

All of the employees of the mosquito control districts which are operated by the county or under the county participate in the Florida Retirement System. Thirteen of the independent special districts participate in the Florida Retirement System.[28]

Twenty-one of these mosquito control districts utilize aircraft for mosquito control – although four of these counties contract for these pilot services.[29] The Department of Management Services estimates there are 35 pilots employed in full-time positions by the various mosquito control districts.[30]

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 provisions for funding the increase in benefits are made on a sound actuarial basis.[31] Because employers will pay an additional 10.70 percent of salary for these mosquito control pilots, the bill appears to satisfy this constitutional requirement.[32]

C. SECTION DIRECTORY:

Section 1: Creates paragraph (f) within subsection (15) of section 121.021, Florida Statutes, to expand the definition of special risk member to include mosquito control pilots.

Section 2: Amends subsection (2) of section 121.0515, to include mosquito control pilots.

Section 3: Declares a statement of important state interest.

Section 4: Provides an effective date of October 1, 2006.

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[25] Fla. Stat. § 388.021(2) (2005).
[26] *See, e.g.,* ch. 99-449, Laws of Fla. (Anastasia Mosquito Control District; St. Johns Co.).
[27] Fla. Dep't of Agric. and Consumer Serv., Div. of Agric. Env't Serv., Bureau of Entomology and Pest Control, *Mosquito Control Directory*, available at http://www.flaes.org/aes-ent/mosquito/mosqcontroldirectory.html (last visited Mar. 29, 2006); Dep't of Mgmt. Serv., HB 897 (2006) Substantive Bill Analysis (Mar. 14, 2006) (on file with dep't) at p. 7) [hereinafter "DMS Analysis"].
[28] DMS Analysis at p. 7.
[29] *Id.*
[30] *Id.* at p. 8.
[31] 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.
[32] DMS Analysis at pp. 9-10.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Florida Retirement System will receive increased contributions for any pilots flying aircraft for mosquito control treatment who are employed by public employers participating in the Florida Retirement System.

2. Expenditures:

   This bill may have a fiscal impact on state government revenues if there are any pilots flying aircraft for mosquito control treatment employed by state government.

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 will have a fiscal impact on local government revenues as these employers will be required to pay the Special Risk Class contribution rate for the affected employees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There does not appear to be a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services noted the following fiscal impact for the bill:

> Based on current salary information available for mosquito control pilots who are members of the Florida Retirement System, it appears that the annual salary for such pilots ranges from about $36,900 to around $85,000 (averaging about $60,300). While the actual cost to Florida public employers is unknown, if in fact there were just 35 such pilots working fulltime who earn an average annual salary of $60,300, the statewide cost to affected employers in increased retirement contributions for FY 2005/06 would be $225,823.[33]

The Department of Management Services provided the following fiscal note from the enrolled actuary regarding this bill:

> For Special Risk membership, the employers of the new special risk members will pay an additional 10.70% of pay (the difference between the Regular and Special Risk Class rates, for the period from July 1, 2005 – June 30, 2006) for each affected member, and the bill therefore complies with the requirements of article X, section 14 of the Florida Constitution and of chapter 112, part VII, Florida Statutes. Any changes to the demographics and actuarial experience of the Special Risk Class resulting from this bill that result in additional fiscal impact will be reflected in future valuations and experience studies of the Florida Retirement System.[34]

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[33] *Id.* at p. 8.
[34] *Id.* at pp. 9-10.

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 counties or municipalities have to raise revenue.

This bill is expected, however, to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Because the bill provides that it fulfills an important state interest and the expenditures required by the bill appear to apply to all persons similarly situated, including the state and local governments, the bill appears to satisfy the requirements of section 18 of article VII of the Florida Constitution.[35]

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. The Department of Management Services concludes that the bill complies with this constitutional requirement.[36]

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Requirements and Time

The Department of Management Services notes that this bill provides neither requirements for pilots flying aircraft for the purpose of mosquito control treatment or a minimum amount of time which the pilot must be piloting for these purposes.[37]

- *Requirements.* While fixed-wing aircraft pilots employed by the Division of Forestry of the Department of Agriculture and Consumer Services are part of the Special Risk Class, these pilots must also be firefighters.[38] Similarly, other pilots who are included in the Special Risk Class have met some other requirement for membership.[39] The Department of Management Services suggests more specific requirements for these pilots, such as those contained in rule 5E-13.040(9), Florida Administrative Code.[40] Otherwise, the lack of requirements in this bill could be read to undermine requirements elsewhere in the Florida Statutes.

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[35] 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.
[36] DMS Analysis at pp. 9-10.
[37] *Id.* at p. 2.
[38] *Id.*
[39] *Id.*
[40] *Id.*

- *Minimum Amount of Time.* Under the bill, pilots whose primary duties are unrelated to mosquito control could seek membership in the Special Risk Class for occasionally providing mosquito control services.[41] The Department of Management Services suggests specifying the duties and responsibilities required to be considered the primary duties and that such primary duties comprise more than 50 percent of the pilot's time.[42]

Other Comments: Continued Expansion of Special Risk

The Department of Management Services notes that this bill may encourage other groups to seek membership in the Special Risk Class or create inequities between different positions.[43]

- *Encouraging Other Groups.* Other pilots, for example, may seek to become part of the Special Risk Class "based solely on their jobs as aviators, rather than on their performing work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, such that after age 55 (or 25 years of service) the member may no longer be able to perform the required work without risking the health and safety of the member, the public, or the member's co-workers."[44]

- *Creating inequities.* Consider similarly situated employees who are not eligible for the Special Risk Class while the pilots are part of the Special Risk Class: a person who mixes and dispenses the pesticides while flying with the pilot, or drivers and pesticide applicators who dispense pesticides from ground transport vehicles.[45]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*

1 A bill to be entitled
2 An act relating to the Florida Retirement System; amending
3 ss. 121.021 and 121.0515, F.S.; including in the Special
4 Risk Class certain members employed as Federal Aviation
5 Administration-licensed pilots authorized to provide
6 mosquito control services; providing a definition;
7 providing a declaration of important state interest;
8 providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Paragraph (f) is added to subsection (15) of
13 section 121.021, Florida Statutes, to read:
14 121.021 Definitions.--The following words and phrases as
15 used in this chapter have the respective meanings set forth
16 unless a different meaning is plainly required by the context:
17 (15)
18 (f) Effective October 1, 2006, the term "special risk
19 member" includes any member employed as a Federal Aviation
20 Administration-licensed pilot by a municipality, county, special
21 district, or state agency authorized to provide mosquito control
22 services whose duties include piloting for the purposes of
23 mosquito control as set forth in s. 121.0515(2)(i).
24 Section 2. Subsection (2) of section 121.0515, Florida
25 Statutes, is amended to read:
26 121.0515 Special risk membership.--
27 (2) CRITERIA.--A member, to be designated as a special
28 risk member, must meet the following criteria:

29 (a) The member must be employed as a law enforcement
30 officer and be certified, or required to be certified, in
31 compliance with s. 943.1395; however, sheriffs and elected
32 police chiefs shall be excluded from meeting the certification
33 requirements of this paragraph. In addition, the member's duties
34 and responsibilities must include the pursuit, apprehension, and
35 arrest of law violators or suspected law violators; or the
36 member must be an active member of a bomb disposal unit whose
37 primary responsibility is the location, handling, and disposal
38 of explosive devices; or the member must be the supervisor or
39 command officer of a member or members who have such
40 responsibilities; provided, however, administrative support
41 personnel, including, but not limited to, those whose primary
42 duties and responsibilities are in accounting, purchasing,
43 legal, and personnel, shall not be included;
44 (b) The member must be employed as a firefighter and be
45 certified, or required to be certified, in compliance with s.
46 633.35 and be employed solely within the fire department of a
47 local government employer or an agency of state government with
48 firefighting responsibilities. In addition, the member's duties
49 and responsibilities must include on-the-scene fighting of
50 fires, fire prevention, or firefighter training; direct
51 supervision of firefighting units, fire prevention, or
52 firefighter training; or aerial firefighting surveillance
53 performed by fixed-wing aircraft pilots employed by the Division
54 of Forestry of the Department of Agriculture and Consumer
55 Services; or the member must be the supervisor or command
56 officer of a member or members who have such responsibilities;

57 provided, however, administrative support personnel, including,
58 but not limited to, those whose primary duties and
59 responsibilities are in accounting, purchasing, legal, and
60 personnel, shall not be included and further provided that all
61 periods of creditable service in fire prevention or firefighter
62 training, or as the supervisor or command officer of a member or
63 members who have such responsibilities, and for which the
64 employer paid the special risk contribution rate, shall be
65 included;
66 (c) The member must be employed as a correctional officer
67 and be certified, or required to be certified, in compliance
68 with s. 943.1395. In addition, the member's primary duties and
69 responsibilities must be the custody, and physical restraint
70 when necessary, of prisoners or inmates within a prison, jail,
71 or other criminal detention facility, or while on work detail
72 outside the facility, or while being transported; or the member
73 must be the supervisor or command officer of a member or members
74 who have such responsibilities; provided, however,
75 administrative support personnel, including, but not limited to,
76 those whose primary duties and responsibilities are in
77 accounting, purchasing, legal, and personnel, shall not be
78 included; however, wardens and assistant wardens, as defined by
79 rule, shall participate in the Special Risk Class;
80 (d) The member must be employed by a licensed Advance Life
81 Support (ALS) or Basic Life Support (BLS) employer as an
82 emergency medical technician or a paramedic and be certified in
83 compliance with s. 401.27. In addition, the member's primary
84 duties and responsibilities must include on-the-scene emergency

85 medical care or direct supervision of emergency medical
86 technicians or paramedics, or the member must be the supervisor
87 or command officer of one or more members who have such
88 responsibility. However, administrative support personnel,
89 including, but not limited to, those whose primary
90 responsibilities are in accounting, purchasing, legal, and
91 personnel, shall not be included;
92 (e) The member must be employed as a community-based
93 correctional probation officer and be certified, or required to
94 be certified, in compliance with s. 943.1395. In addition, the
95 member's primary duties and responsibilities must be the
96 supervised custody, surveillance, control, investigation, and
97 counseling of assigned inmates, probationers, parolees, or
98 community controllees within the community; or the member must
99 be the supervisor of a member or members who have such
100 responsibilities. Administrative support personnel, including,
101 but not limited to, those whose primary duties and
102 responsibilities are in accounting, purchasing, legal services,
103 and personnel management, shall not be included; however,
104 probation and parole circuit and deputy circuit administrators
105 shall participate in the Special Risk Class;
106 (f) The member must be employed in one of the following
107 classes and must spend at least 75 percent of his or her time
108 performing duties which involve contact with patients or inmates
109 in a correctional or forensic facility or institution:
110 1. Dietitian (class codes 5203 and 5204);
111 2. Public health nutrition consultant (class code 5224);
112 3. Psychological specialist (class codes 5230 and 5231);

113 4. Psychologist (class code 5234);
114 5. Senior psychologist (class codes 5237 and 5238);
115 6. Regional mental health consultant (class code 5240);
116 7. Psychological Services Director--DCF (class code 5242);
117 8. Pharmacist (class codes 5245 and 5246);
118 9. Senior pharmacist (class codes 5248 and 5249);
119 10. Dentist (class code 5266);
120 11. Senior dentist (class code 5269);
121 12. Registered nurse (class codes 5290 and 5291);
122 13. Senior registered nurse (class codes 5292 and 5293);
123 14. Registered nurse specialist (class codes 5294 and
124 5295);
125 15. Clinical associate (class codes 5298 and 5299);
126 16. Advanced registered nurse practitioner (class codes
127 5297 and 5300);
128 17. Advanced registered nurse practitioner specialist
129 (class codes 5304 and 5305);
130 18. Registered nurse supervisor (class codes 5306 and
131 5307);
132 19. Senior registered nurse supervisor (class codes 5308
133 and 5309);
134 20. Registered nursing consultant (class codes 5312 and
135 5313);
136 21. Quality management program supervisor (class code
137 5314);
138 22. Executive nursing director (class codes 5320 and
139 5321);
140 23. Speech and hearing therapist (class code 5406); or

141 24. Pharmacy manager (class code 5251);
142 (g) The member must be employed as a youth custody officer
143 and be certified, or required to be certified, in compliance
144 with s. 943.1395. In addition, the member's primary duties and
145 responsibilities must be the supervised custody, surveillance,
146 control, investigation, apprehension, arrest, and counseling of
147 assigned juveniles within the community; ~~or~~
148 (h) The member must be employed by a law enforcement
149 agency or medical examiner's office in a forensic discipline
150 recognized by the International Association for Identification
151 and must qualify for active membership in the International
152 Association for Identification. The member's primary duties and
153 responsibilities must include the collection, examination,
154 preservation, documentation, preparation, or analysis of
155 physical evidence or testimony, or both, or the member must be
156 the direct supervisor, quality management supervisor, or command
157 officer of one or more individuals with such responsibility.
158 Administrative support personnel, including, but not limited to,
159 those whose primary responsibilities are clerical or in
160 accounting, purchasing, legal, and personnel, shall not be
161 included; or~~.~~
162 (i) The member must be employed as a Federal Aviation
163 Administration-licensed pilot by a municipality, county, special
164 district, or state agency authorized to provide mosquito control
165 services. The member's duties must include piloting aircraft for
166 the purpose of mosquito control treatment. However,
167 administrative support personnel, including, but not limited to,

168 those whose primary responsibilities are in accounting,
169 purchasing, legal, and personnel, shall not be included.
170 Section 3. The Legislature finds that a proper and
171 legitimate state purpose is served when employees and retirees
172 of the state and its political subdivisions, and the dependents,
173 survivors, and beneficiaries of such employees and retirees, are
174 extended the basic protections afforded by governmental
175 retirement systems. These persons must be provided benefits that
176 are fair and adequate and that are managed, administered, and
177 funded in a sound actuarial manner, as required by Section 14,
178 Article X of the State Constitution and part VII of chapter 112,
179 Florida Statutes. Therefore, the Legislature hereby determines
180 and declares that this act fulfills an important state interest.
181 Section 4. This act shall take effect October 1, 2006.

HB 901

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 901 Florida Retirement System
SPONSOR(S): Sobel and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1396

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 continues the expansion of the Special Risk Class of the Florida Retirement System by including certain ocean water rescue lifeguards.

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

This bill does not appear to impact state or local government revenues. The bill, however, requires the public employers of these ocean water rescue lifeguards to pay an additional contribution rate of 10.70 percent of the employees' salaries. Although the estimated cost is unknown, the increase in the required contribution rate *appears to satisfy the constitutional requirement to fund benefit increases to public retirement or pension systems.*

The bill does not provide that it fulfills an important state interest and *does not appear to satisfy the constitutional requirements for local government mandates.*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government – This bill expands the Special Risk Class to include certain ocean water rescue lifeguards.

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 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]

The Special Risk Class and its Expansion

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] As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.[13] Members of the Special Risk Class also earn a higher normal retirement benefit of

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < http://www.frs.state.fl.us/>.
[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.*
[13] Fla. Stat. § 121.021(29) (2005) (defining normal retirement date; this contrasts with members of the Regular Class who can retire at age 62 or with 30 years of credible service).

three percent of the member's average final compensation.[14] These increased benefits are funded through higher employer contribution rates: 17.37 percent of gross compensation, effective July 1, 2005, and 21.91 percent, effective July 1, 2006.[15]

The only employees originally in the Special Risk Class under the current statute were law enforcement officers, correctional officers, and firefighters.[16] Starting in 1999, however, the Legislature started dramatically expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics[17]
2000	Community-Based Correctional Probation Officers[18]
	Twenty-four types of employees of correctional or forensic facilities or institutions[19]
2001	Youth Custody Officers[20]
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline[21]

This bill continues the growth of the Special Risk Class by expanding the definition and criteria for the Special Risk Class: any person who works full time as an ocean water rescue lifeguard and who works directly under the supervision of a fire rescue department, is supervised by a medical director, and is certified as an emergency medical technician or paramedic.

Ocean Water Rescue Lifeguards

The number of ocean water rescue lifeguards employed by participating employers of the Florida Retirement System is unknown. Several counties contacted by the Division of Retirement within the Department of Management Services did not respond, were otherwise included in the Special Risk Class, or were not impacted by this bill. Other data suggests there could be as many as 220 regular class ocean water rescue lifeguards.[22]

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

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[14] Fla. Stat. § 121.091(1)(a)2.h. (2005) (compared with 1.60 percent to 1.68 percent for members of the Regular Class).
[15] Fla. Stat. 121.71(3) (2005) (compared with 6.67 percent, effective July 1, 2005, and 9.53 percent, effective July 1, 2006, for members of the Regular Class).
[16] Ch. 78-308, Laws of Fla.; codified as Fla. Stat. § 121.0515.
[17] Ch. 99-392, Laws of Fla., § 23.
[18] Ch. 2000-169, Laws of Fla. § 29.
[19] *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.).
[20] Ch. 2001-125, Laws of Fla., § 43.
[21] 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).
[22] Chart of Agency Lifeguards - Special Risk and Regular Class, provided by the Communications Workers of Am., Council of Fla. (Feb. 2006).

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.[23] Because employers will pay an additional 10.70 percent of salary for these ocean water rescue lifeguards, the bill appears to satisfy this constitutional requirement.

C. SECTION DIRECTORY:

Section 1: Creates paragraph (f) within subsection (15) of section 121.021, Florida Statutes, to expand the definition of "special risk member."

Section 2: Amends subsection (2) of section 121.0515, Florida Statutes, to include ocean water rescue lifeguards in the criteria for the Special Risk Class.

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 Florida Retirement System will receive increased contributions for any ocean water rescue lifeguards employed by public employers participating in the Florida Retirement System.

2. Expenditures:

   This bill may have a fiscal impact on state government expenditures if there are any "ocean water rescue lifeguards" employed by state government or if the continued expansion of the Special Risk Class ultimately requires increased contribution rates for all state employers with Special Risk Class members.

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 will have a fiscal impact on local government expenditures for any "ocean water rescue lifeguards" employed by local governments or if the continued expansion of the Special Risk Class ultimately requires increased contribution rates for all state employers with Special Risk Class members.

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:

[23] 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.

HB 901 would add an unknown number of additional positions to the Special Risk Class. The fiscal impact is primarily funded through the required employer contributions for members of the Special Risk Class. Any fiscal impact resulting from a change in class demographics or experience would be reflected in the employer contribution rates recommended by future valuations of the FRS. [24]

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 provide that it fulfills an important state interest. *As such, it does not appear to satisfy the requirements of section 18 of article VII of the Florida Constitution.*[25]

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. The Department of Management Services concurs that the bill complies with this constitutional requirement.[26]

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Important State Interest

To satisfy the requirements of section 18 of article VII of the Florida Constitution, the sponsor may wish to add a declaration of important state interest to the bill.

Drafting Issue: Reference Primary Job Duties

The sponsor may wish to describe the primary job duties for ocean water lifeguards as is the case with other criteria for the Special Risk Class.[27]

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[24] Fla. Dep't of Mgmt. Serv., HB 901 (2006) Substantive Bill Analysis (Feb. 22, 2006) (on file with dep't) [hereinafter DMS Analysis] at p. 7.

[25] 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.

[26] DMS Analysis at p. 6.

Drafting Issue: Full-Time Requirement

The Department of Management Services notes that part-time employees can be members of the Florida Retirement System, but are excluded from this bill.[28] Generally, designation as part of the Special Risk Class is not based on whether the work is full or part-time, but the nature of the work and the percent of time that the particular position is required to perform the work which constitutes a special risk.[29] The sponsor may wish to consider revising these provisions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[27] See, e.g., Fla. Stat. § 121.0515(2)(a) (2005) ("In addition, the member's duties and responsibilities must include the pursuit, apprehension, and arrest of law violators or suspected law violators.").
[28] DMS Analysis at p. 2.
[29] *Id.*

1 A bill to be entitled
2 An act relating to the Florida Retirement System; amending
3 ss. 121.021 and 121.0515, F.S.; providing membership in
4 the Special Risk Class of the system for persons employed
5 full time as ocean water rescue lifeguards who meet other
6 specified qualifications; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Paragraph (f) is added to subsection (15) of
11 section 121.021, Florida Statutes, to read:
12 121.021 Definitions.--The following words and phrases as
13 used in this chapter have the respective meanings set forth
14 unless a different meaning is plainly required by the context:
15 (15)
16 (f) Effective October 1, 2006, the term "special risk
17 member" includes any person who works full time as an ocean
18 water rescue lifeguard and who works directly under the
19 supervision of a fire rescue department, is supervised by a
20 medical director, and is certified in compliance with s. 401.27
21 as an emergency medical technician or paramedic.
22 Section 2. Subsection (2) of section 121.0515, Florida
23 Statutes, is amended to read:
24 121.0515 Special risk membership.--
25 (2) CRITERIA.--A member, to be designated as a special
26 risk member, must meet the following criteria:
27 (a) The member must be employed as a law enforcement
28 officer and be certified, or required to be certified, in

29 compliance with s. 943.1395; however, sheriffs and elected
30 police chiefs shall be excluded from meeting the certification
31 requirements of this paragraph. In addition, the member's duties
32 and responsibilities must include the pursuit, apprehension, and
33 arrest of law violators or suspected law violators; or the
34 member must be an active member of a bomb disposal unit whose
35 primary responsibility is the location, handling, and disposal
36 of explosive devices; or the member must be the supervisor or
37 command officer of a member or members who have such
38 responsibilities; provided, however, administrative support
39 personnel, including, but not limited to, those whose primary
40 duties and responsibilities are in accounting, purchasing,
41 legal, and personnel, shall not be included;
42 (b) The member must be employed as a firefighter and be
43 certified, or required to be certified, in compliance with s.
44 633.35 and be employed solely within the fire department of a
45 local government employer or an agency of state government with
46 firefighting responsibilities. In addition, the member's duties
47 and responsibilities must include on-the-scene fighting of
48 fires, fire prevention, or firefighter training; direct
49 supervision of firefighting units, fire prevention, or
50 firefighter training; or aerial firefighting surveillance
51 performed by fixed-wing aircraft pilots employed by the Division
52 of Forestry of the Department of Agriculture and Consumer
53 Services; or the member must be the supervisor or command
54 officer of a member or members who have such responsibilities;
55 provided, however, administrative support personnel, including,
56 but not limited to, those whose primary duties and

57 responsibilities are in accounting, purchasing, legal, and
58 personnel, shall not be included and further provided that all
59 periods of creditable service in fire prevention or firefighter
60 training, or as the supervisor or command officer of a member or
61 members who have such responsibilities, and for which the
62 employer paid the special risk contribution rate, shall be
63 included;
64 (c) The member must be employed as a correctional officer
65 and be certified, or required to be certified, in compliance
66 with s. 943.1395. In addition, the member's primary duties and
67 responsibilities must be the custody, and physical restraint
68 when necessary, of prisoners or inmates within a prison, jail,
69 or other criminal detention facility, or while on work detail
70 outside the facility, or while being transported; or the member
71 must be the supervisor or command officer of a member or members
72 who have such responsibilities; provided, however,
73 administrative support personnel, including, but not limited to,
74 those whose primary duties and responsibilities are in
75 accounting, purchasing, legal, and personnel, shall not be
76 included; however, wardens and assistant wardens, as defined by
77 rule, shall participate in the Special Risk Class;
78 (d)1.a. The member must be employed by a licensed Advance
79 Life Support (ALS) or Basic Life Support (BLS) employer as an
80 emergency medical technician or a paramedic and be certified in
81 compliance with s. 401.27. In addition, the member's primary
82 duties and responsibilities must include on-the-scene emergency
83 medical care or direct supervision of emergency medical
84 technicians or paramedics, or the member must be the supervisor

85 or command officer of one or more members who have such
86 responsibility.
87 b. The member must work directly under the supervision of
88 a fire rescue department, be supervised by a medical director,
89 be certified in compliance with s. 401.27 as an emergency
90 medical technician or paramedic, and work full time as an ocean
91 water rescue lifeguard.
92 2. However, administrative support personnel, including,
93 but not limited to, those whose primary responsibilities are in
94 accounting, purchasing, legal, and personnel, shall not be
95 included;
96 (e) The member must be employed as a community-based
97 correctional probation officer and be certified, or required to
98 be certified, in compliance with s. 943.1395. In addition, the
99 member's primary duties and responsibilities must be the
100 supervised custody, surveillance, control, investigation, and
101 counseling of assigned inmates, probationers, parolees, or
102 community controllees within the community; or the member must
103 be the supervisor of a member or members who have such
104 responsibilities. Administrative support personnel, including,
105 but not limited to, those whose primary duties and
106 responsibilities are in accounting, purchasing, legal services,
107 and personnel management, shall not be included; however,
108 probation and parole circuit and deputy circuit administrators
109 shall participate in the Special Risk Class;
110 (f) The member must be employed in one of the following
111 classes and must spend at least 75 percent of his or her time
112 performing duties which involve contact with patients or inmates

113 in a correctional or forensic facility or institution:
114 1. Dietitian (class codes 5203 and 5204);
115 2. Public health nutrition consultant (class code 5224);
116 3. Psychological specialist (class codes 5230 and 5231);
117 4. Psychologist (class code 5234);
118 5. Senior psychologist (class codes 5237 and 5238);
119 6. Regional mental health consultant (class code 5240);
120 7. Psychological Services Director--DCF (class code 5242);
121 8. Pharmacist (class codes 5245 and 5246);
122 9. Senior pharmacist (class codes 5248 and 5249);
123 10. Dentist (class code 5266);
124 11. Senior dentist (class code 5269);
125 12. Registered nurse (class codes 5290 and 5291);
126 13. Senior registered nurse (class codes 5292 and 5293);
127 14. Registered nurse specialist (class codes 5294 and
128 5295);
129 15. Clinical associate (class codes 5298 and 5299);
130 16. Advanced registered nurse practitioner (class codes
131 5297 and 5300);
132 17. Advanced registered nurse practitioner specialist
133 (class codes 5304 and 5305);
134 18. Registered nurse supervisor (class codes 5306 and
135 5307);
136 19. Senior registered nurse supervisor (class codes 5308
137 and 5309);
138 20. Registered nursing consultant (class codes 5312 and
139 5313);
140 21. Quality management program supervisor (class code

141 5314);
142 22. Executive nursing director (class codes 5320 and
143 5321);
144 23. Speech and hearing therapist (class code 5406); or
145 24. Pharmacy manager (class code 5251);
146 (g) The member must be employed as a youth custody officer
147 and be certified, or required to be certified, in compliance
148 with s. 943.1395. In addition, the member's primary duties and
149 responsibilities must be the supervised custody, surveillance,
150 control, investigation, apprehension, arrest, and counseling of
151 assigned juveniles within the community; or
152 (h) The member must be employed by a law enforcement
153 agency or medical examiner's office in a forensic discipline
154 recognized by the International Association for Identification
155 and must qualify for active membership in the International
156 Association for Identification. The member's primary duties and
157 responsibilities must include the collection, examination,
158 preservation, documentation, preparation, or analysis of
159 physical evidence or testimony, or both, or the member must be
160 the direct supervisor, quality management supervisor, or command
161 officer of one or more individuals with such responsibility.
162 Administrative support personnel, including, but not limited to,
163 those whose primary responsibilities are clerical or in
164 accounting, purchasing, legal, and personnel, shall not be
165 included.
166 Section 3. This act shall take effect October 1, 2006.

HB 977

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 977 Special Risk Class of the Florida Retirement System
SPONSOR(S): Bogdanoff and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2328

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 increases, from two percent to three percent, the accrual rate at which Special Risk Class members may upgrade certain past service. The bill also expands the qualifying past service to include special risk membership as an emergency medical technician or paramedic whose employer was a licensed Advanced Life Support or Basic Life Support provider.

The bill increases the contribution rate for the Special Risk Class by 0.07 percentage points for all employers with employees in the Special Risk Class. *This increase appears to satisfy the constitutional requirement to fund benefit increases for public retirement or pension systems.*

The bill makes legislative findings and declares an important state interest.

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

This bill does not appear to impact state or local government revenues. The bill, however, is expected to have a fiscal impact on state government over the next three fiscal years ($672,000, $699,000, and $727,000) and on local governments over the next three fiscal years ($1,746,000, $1,816,000, $1,888,000).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the accrual rate at which Special Risk Class members may upgrade certain past service and expands the qualifying past 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 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]

The Special Risk Class and its Expansion

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] As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.[13] Members of the Special Risk Class who participate in the defined benefit program

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < http://www.frs.state.fl.us/>.
[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.*
[13] Fla. Stat. § 121.021(29) (2005) (defining normal retirement date; this contrasts with members of the Regular Class who can retire at age 62 or with 30 years of credible service).

also earn a higher normal retirement benefit of three percent of the member's average final compensation.[14] These increased benefits are funded through higher employer contribution rates: 17.37 percent of gross compensation, effective July 1, 2005, and 21.91 percent, effective July 1, 2006.[15]

The only employees originally in the Special Risk Class, under the current statute, were law enforcement officers, correctional officers, and firefighters.[16] Starting in 1999, however, the Legislature started dramatically expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics[17]
2000	Community-Based Correctional Probation Officers[18]
	Twenty-four types of employees of correctional or forensic facilities or institutions[19]
2001	Youth Custody Officers[20]
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline[21]

Retirement Credit for Past Service

Section 121.0515, Florida Statutes, sets forth the criteria and procedures for designating members of the Special Risk Class. This section also permits special risk members to purchase retirement credit in the Special Risk Class based upon specified past service:

1. This past service was with a city or special district which is part of the Florida Retirement System where the member was employed at the time it began participating in the Florida Retirement System; or with a participating agency to which a member's governmental unit was transferred, merged, or consolidated where the member was employed at the time of the transfer, merger, or consolidation.[22]

2. This past service qualifies for special risk membership as a law enforcement officer, firefighter, or correctional officer.[23]

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[14] Fla. Stat. § 121.091(1)(a)2.h. (2005) (compared with 1.60 percent to 1.68 percent for members of the Regular Class).
[15] Fla. Stat. 121.71(3) (2005) (compared with 6.67 percent, effective July 1, 2005, and 9.53 percent, effective July 1, 2006, for members of the Regular Class).
[16] Ch. 78-308, Laws of Fla.; codified as Fla. Stat. § 121.0515.
[17] Ch. 99-392, Laws of Fla., § 23.
[18] Ch. 2000-169, Laws of Fla. § 29.
[19] *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.).
[20] Ch. 2001-125, Laws of Fla., § 43.
[21] 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).
[22] Fla. Stat. § 121.0515(5)(a) (2005).
[23] *Id.*

Special Risk Class members may upgrade the retirement credit for this specified past service, up to two percent of the member's average monthly compensation.[24] The contributions for upgrading this additional special risk credit may be purchased by the member or by the employer on behalf of the member, but must be equal to the difference in the contributions paid and the special risk percentage rate of gross salary in effect at the time of purchase for the period being claimed, plus interest at a rate of 6.5 percent a year until the date of payment.[25] As such, the benefit of being able to purchase this past service is offset because the full retirement benefit must be purchased even thought the retirement benefit received is one percent lower (2 percent) than the normal retirement benefit for the Special Risk Class (3 percent).

This bill *increases*, from two percent to three percent, the accrual rate at which Special Risk Class members may upgrade specified past service. This rate is the same as the normal retirement benefit for members of the Special Risk Class.

The bill also *expands* the qualifying past service which may be purchased to include special risk membership as an emergency medical technician or paramedic whose employer was a licensed Advanced Life Support or Basic Life Support provider.

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 provisions for funding the increase in benefits are made on a sound actuarial basis.[26] According to the Department of Management Services, the actuarial study determined the fiscal impact to the Florida Retirement System was a 0.07 percent increase in the Special Risk Class contribution rate to fund this benefit.[27] Because the bill requires the contribution rate that applies to the Special Risk Class to be increased by 0.07 percentage points, it appears to satisfy this constitutional requirement.

C. SECTION DIRECTORY:

Section 1: Amends section 121.0515, Florida Statutes, to increase the accrual rate for past service and to permit work for certain employers as an emergency medical technician or paramedic to qualify as past service.

Section 2: Requires the contribution rate for the Special Risk Class to increase by 0.07 percentage points, effective July 1, 2006.

Section 3: Provides a statement of important state interest.

Section 4: Sets an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[24] Fla. Stat. § 121.0515 (2005).
[25] Fla. Stat. § 121.0515(5)(b) (2005).
[26] 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.
[27] Fla. Dep't of Mgmt. Serv., HB 977 (2006) Substantive Bill Analysis (Feb. 20, 2006) (on file with dep't) (Actuarial Special Study 2005-L, performed by Milliman, Inc., April 22, 2005).

The Florida Retirement System will receive increased Special Risk Class contributions.

2. Expenditures:

This bill is expected to have a fiscal impact on state government expenditures:[28]

Fiscal Year 2006-2007	$ 672,000
Fiscal Year 2007-2008	$ 699,000
Fiscal Year 2008-2009	$ 727,000

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 is expected to have a fiscal impact on local government expenditures:[29]

Fiscal Year 2006-2007	$ 1,746,000
Fiscal Year 2007-2008	$ 1,816,000
Fiscal Year 2008-2009	$ 1,888,000

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 to be paid by the affected members or employers on behalf of their 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 would result in increased contribution rates for all employers with Special Risk Class members. There is an additional cost beyond the estimate if members delay purchasing their service credit until just before retirement. HB 977 provides for a 0.07% increase in the Special Risk Class employer contribution rate effective July 1, 2006.[30]

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 is expected, however, to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Because the bill provides that it fulfills an important state interest and the expenditures required by the bill appear to apply to all persons similarly situated,

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[28] *Id.*
[29] *Id.*
[30] *Id.*

including the state and local governments, the bill appears to satisfy the requirements of section 18 of article VII of the Florida Constitution.[31]

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. The Department of Management Services concludes that the bill complies with this constitutional requirement.[32]

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

Not applicable.

[31] 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.

[32] *Id.* (although the explanation provided indicates that the member purchase "price" does not cover the total actuarial impact of the benefit improvement to the Florida Retirement System).

1 A bill to be entitled
2 An act relating to the Special Risk Class of the Florida
3 Retirement System; amending s. 121.0515, F.S.; authorizing
4 certain employees to purchase additional retirement credit
5 for past service at a 3-percent Special Risk Class accrual
6 value; providing for contribution rate increases to fund
7 certain benefits; directing the Division of Statutory
8 Revision to adjust certain contribution rates; providing a
9 statement of important state interest; providing an
10 effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Subsection (5) of section 121.0515, Florida
15 Statutes, is amended to read:
16 121.0515 Special risk membership.--
17 (5) CREDIT FOR PAST SERVICE.--A special risk member may
18 purchase retirement credit in the Special Risk Class based upon
19 past service, and may upgrade retirement credit for such past
20 service, to the extent of 3 ~~2~~ percent of the member's average
21 monthly compensation as specified in s. 121.091(1)(a) for such
22 service as follows:
23 (a) The member may purchase special risk credit for past
24 service with a city or special district which has elected to
25 join the Florida Retirement System, or with a participating
26 agency to which a member's governmental unit was transferred,
27 merged, or consolidated as provided in s. 121.081(1)(f), if the
28 member was employed with the city or special district at the

29 time it commenced participating in the Florida Retirement System
30 or with the governmental unit at the time of its transfer,
31 merger, or consolidation with the participating agency. The
32 service must satisfy the criteria set forth in subsection (2)
33 for special risk membership as a law enforcement officer, a
34 firefighter, ~~or~~ a correctional officer, ~~;~~ or an emergency medical
35 technician or a paramedic whose employer was a licensed Advance
36 Life Support (ALS) or Basic Life Support (BLS) provider;
37 however, no certificate or waiver of certificate of compliance
38 with s. 943.1395 or s. 633.35 shall be required for such
39 service.
40 (b) Contributions for upgrading the additional special
41 risk credit pursuant to this subsection shall be equal to the
42 difference in the contributions paid and the special risk
43 percentage rate of gross salary in effect at the time of
44 purchase for the period being claimed, plus interest thereon at
45 the rate of 4 percent a year compounded annually from the date
46 of such service until July 1, 1975, and 6.5 percent a year
47 thereafter until the date of payment. This past service may be
48 purchased by the member or by the employer on behalf of the
49 member.
50 Section 2. Effective July 1, 2006, in order to fund the
51 benefit improvements provided in s. 121.0515, Florida Statutes,
52 as amended by this act, the contribution rate that applies to
53 the Special Risk Class of the defined benefit program of the
54 Florida Retirement System shall be increased by 0.07 percentage
55 points. This increase shall be in addition to all other changes
56 to such contribution rates which may be enacted into law to take

57 effect on that date. The Division of Statutory Revision is
58 directed to adjust accordingly the contribution rates set forth
59 in s. 121.71, Florida Statutes.
60 Section 3. The Legislature finds that a proper and
61 legitimate state purpose is served when employees and retirees
62 of the state and its political subdivisions, and the dependents,
63 survivors, and beneficiaries of such employees and retirees, are
64 extended the basic protections afforded by governmental
65 retirement systems. These persons must be provided benefits that
66 are fair and adequate and that are managed, administered, and
67 funded in an actuarially sound manner, as required by s. 14,
68 Art. X of the State Constitution and part VII of chapter 112,
69 Florida Statutes. Therefore, the Legislature determines and
70 declares that this act fulfills an important state interest.
71 Section 4. This act shall take effect July 1, 2006.

HB 1097

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1097 Public Records
SPONSOR(S): Vana
TIED BILLS: **IDEN./SIM. BILLS:** SB 2714

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

SUMMARY ANALYSIS

The bill amends the Public Records Act to provide that a person who has custody of a public record or an agency head may designate another officer or employee of the agency to permit inspection and copying of public records. The bill requires such person to disclose to the public the identity of the designee assigned to respond to public records requests.

The bill also expressly states that custodians of public records and their designees must respond to requests to inspect and copy records promptly and in good faith. It states that a good faith response includes making reasonable efforts to determine from other officers or employees whether such a record exists and, if so, the location at which the record can be accessed.

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:

Background

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.[1] The Florida Supreme Court has noted that chapter 119, F.S., the Public Records Act, was enacted ". . . to promote public awareness and knowledge of government actions in order to ensure that governmental officials and agencies remain accountable to the people."[2]

In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[3] Article I, s. 24 of the State Constitution, provides that:

> (a) Every person[4] has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. . . .

Unless specifically exempted, all agency[5] records are available for public inspection. The term "public record" is broadly defined to mean:

> All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[6]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate or formalize knowledge.[7] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[8]

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[1] Sections 1390, 1391, F.S. (Rev. 1892).
[2] *Forsberg v. Housing Authority of the City of Miami Beach*, 455 So.2d 373, 378 (Fla. 1984).
[3] Article I, s. 24 of the State Constitution.
[4] Section 1.01(3), F.S., defines "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
[5] The word "agency" is defined in s. 119.011(2), F.S., to mean "... any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] Section 119.011(11), F.S.
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[8] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

The Public Records Act[9] specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1) (a), F.S., states:

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

If a record has been made exempt, the agency must redact the exempt portions of the record prior to releasing the remainder of the record.[10] The records custodian must state the basis for the exemption, in writing if requested.[11] Section 119.011(5), F.S., defines "custodian of public records" to mean ". . . the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining public records, or his or her designee."

Effect of Bill

The bill amends the Public Records Act to provide that a person who has custody of a public record or an agency head may designate another officer or employee of the agency to permit inspection and copying of public records. The bill requires such person to disclose to the public the identity of the designee assigned to respond to public records requests.

The bill also expressly states that custodians of public records and their designees must respond to requests to inspect and copy records promptly and in good faith. The bill does not define "promptly." The bill states that a good faith response includes making reasonable efforts to determine from other officers or employees whether such a record exists and, if so, the location at which the record can be accessed.

C. SECTION DIRECTORY:

Section 1 amends s. 119.07, F.S., relating to inspection and copying of public records.

Section 2 amends s. 497.140, F.S., conforming a cross-reference.

Section 3 amends s. 627.311, F.S., conforming a cross-reference.

Section 4 amends s. 627.351, F.S., conforming a cross-reference.

Section 5 provides a July 1, 2006, 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:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[9] Chapter 119, F.S.
[10] Section 119.07(1)(b), F.S.
[11] Section 119.07(1)(c) and (d), F.S.

1. Revenues:

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

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There could be a fiscal impact on agencies due to the requirement that agencies respond "promptly" instead of in a "reasonable time" as "promptly" appears to be a shorter time frame than "a reasonable time."

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:

<u>Other Comments: Designation of the Custodian</u>

Section 119.011(5), F.S., defines "custodian of public records" to mean ". . . the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining public records, or his or her designee."

While the Public Records Act specifically identifies a "custodian of public records," the courts have concluded that the statutory reference to the custodian does not alter the "duty of disclosure" imposed upon every person who has custody of a public record.[12] For purposes of the act, "custodian" refers to all agency personnel who have it within their power to release or communicate public records.[13] Mere temporary possession of a document does not necessarily mean that the person has custody, however. In order to have custody, one must have supervision and control over the document or have legal responsibility for its care, keeping or guardianship.[14] Nevertheless, it has been held that only a custodian, not an employee, may assert an applicable statutory exemption.[15]

Currently, the Public Records Act permits the defined "custodian of public records" to delegate custodial responsibilities to a designee. No such delegation is provided to other agency employees with custody.

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[12] *Puls v. City of Port St. Lucie*, 678 So.2d 514 (Fla. 4th DCA 1996).
[13] *Mintus v. City of West Palm Beach*, 711 So.2d 1359 (Fla. 5th DCA 1991).
[14] *Ibid.*
[15] *Alterra Healthcare Corporation v. Estate of Shelley*, 827 So.2d 936, 940 (Fla. 2002).

This bill would appear to permit such a delegation by those employees with custody of a public record. It is not clear that multiple designations by various persons with custody would provide more clarity for the public regarding who should respond to their request to inspect or copy a public record.

Other Comments: Response to a Public Records Request

The Public Records Act does not contain a specific period in which an agency must respond to a request to inspect or copy a record. The Florida Supreme Court has established that the only permissible delay is the "limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt."[16] Unreasonable or excessive delays in producing public records can constitute an unlawful refusal to provide access.[17] The bill requires agencies to respond to requests "promptly and in good faith." The bill does not define "promptly," thus, the common meaning of the term would apply. The American Heritage Dictionary[18] defines "promptly" to mean "1. On time; punctual. 2. Done without delay." As such, the standard provided in the bill appears to reduce the amount of time an agency has to respond to a public records request.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[16] *Tribune Company v. Cannella*, 458 So.2d 1075, 1078 (Fla. 1984), appeal dismissed sub nom., *DePerte v. Tribune Company*, 105 S.Ct 2315 (1985).
[17] *Town of Manalapan v. Rechler*, 674 So.2d 789, 790 (Fla. 4th DCA 1996), review denied, 684 So.2d 1353 (Fla. 1996).
[18] Second College Edition, Houghton Mifflin Company (1982, 1985).

1 A bill to be entitled
2 An act relating to public records; amending s. 119.07,
3 F.S.; providing that a custodian of a public record or an
4 agency head may designate another officer or employee of
5 the agency to permit the inspection and copying of public
6 records; providing that the identity of the designee must
7 be disclosed to the public; requiring custodians of public
8 records and their designees to respond to requests to
9 inspect and copy public records promptly and in good
10 faith; amending ss. 497.140, 627.311, and 627.351, F.S.;
11 correcting cross-references; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Subsection (1) of section 119.07, Florida
16 Statutes, is amended to read:
17 119.07 Inspection and copying of records; photographing
18 public records; fees; exemptions.--
19 (1)(a) Every person who has custody of a public record
20 shall permit the record to be inspected and copied by any person
21 desiring to do so, at any reasonable time, under reasonable
22 conditions, and under supervision by the custodian of the public
23 records.
24 (b) A person who has custody of a public record or an
25 agency head may designate another officer or employee of the
26 agency to permit the inspection and copying of public records
27 but must disclose to the public the identity of the designee who
28 has been assigned to respond to public records requests.

29 (c) Custodians of public records and their designees must
30 respond to requests to inspect and copy records promptly and in
31 good faith. A good faith response includes making reasonable
32 efforts to determine from other officers or employees whether
33 such a record exists and, if so, the location at which the
34 record can be accessed.
35 (d) ~~(b)~~ A person who has custody of a public record who
36 asserts that an exemption applies to a part of such record shall
37 redact that portion of the record to which an exemption has been
38 asserted and validly applies, and such person shall produce the
39 remainder of such record for inspection and copying.
40 (e) ~~(c)~~ If the person who has custody of a public record
41 contends that all or part of the record is exempt from
42 inspection and copying, he or she shall state the basis of the
43 exemption that he or she contends is applicable to the record,
44 including the statutory citation to an exemption created or
45 afforded by statute.
46 (f) ~~(d)~~ If requested by the person seeking to inspect or
47 copy the record, the custodian of public records shall state in
48 writing and with particularity the reasons for the conclusion
49 that the record is exempt or confidential.
50 (g) ~~(e)~~ In any civil action in which an exemption to this
51 section is asserted, if the exemption is alleged to exist under
52 or by virtue of s. 119.071(1)(d) or (f), (2)(d),(e), or (f), or
53 (4)(c), the public record or part thereof in question shall be
54 submitted to the court for an inspection in camera. If an
55 exemption is alleged to exist under or by virtue of s.
56 119.071(2)(c), an inspection in camera is discretionary with the

57 court. If the court finds that the asserted exemption is not
58 applicable, it shall order the public record or part thereof in
59 question to be immediately produced for inspection or copying as
60 requested by the person seeking such access.
61 (h) ~~(f)~~ Even if an assertion is made by the custodian of
62 public records that a requested record is not a public record
63 subject to public inspection or copying under this subsection,
64 the requested record shall, nevertheless, not be disposed of for
65 a period of 30 days after the date on which a written request to
66 inspect or copy the record was served on or otherwise made to
67 the custodian of public records by the person seeking access to
68 the record. If a civil action is instituted within the 30-day
69 period to enforce the provisions of this section with respect to
70 the requested record, the custodian of public records may not
71 dispose of the record except by order of a court of competent
72 jurisdiction after notice to all affected parties.
73 (i) ~~(g)~~ The absence of a civil action instituted for the
74 purpose stated in paragraph (g) ~~(e)~~ does not relieve the
75 custodian of public records of the duty to maintain the record
76 as a public record if the record is in fact a public record
77 subject to public inspection and copying under this subsection
78 and does not otherwise excuse or exonerate the custodian of
79 public records from any unauthorized or unlawful disposition of
80 such record.
81 Section 2. Subsection (5) of section 497.140, Florida
82 Statutes, is amended to read:
83 497.140 Fees.--

84 (5) The department shall charge a fee not to exceed $25
85 for the certification of a public record. The fee shall be
86 determined by rule of the department. The department shall
87 assess a fee for duplication of a public record as provided in
88 s. 119.07(1)(a) and (d) ~~(b)~~.
89 Section 3. Paragraph (b) of subsection (4) of section
90 627.311, Florida Statutes, is amended to read:
91 627.311 Joint underwriters and joint reinsurers; public
92 records and public meetings exemptions.--
93 (4) The Florida Automobile Joint Underwriting Association:
94 (b) Shall keep portions of association meetings during
95 which confidential and exempt underwriting files or confidential
96 and exempt claims files are discussed exempt from the provisions
97 of s. 286.011 and s. 24(b), Art. I of the State Constitution.
98 All closed portions of association meetings shall be recorded by
99 a court reporter. The court reporter shall record the times of
100 commencement and termination of the meeting, all discussion and
101 proceedings, the names of all persons present at any time, and
102 the names of all persons speaking. No portion of any closed
103 meeting shall be off the record. Subject to the provisions of
104 this paragraph and s. 119.07(1)(d)-(f) ~~(b)-(d)~~, the court
105 reporter's notes of any closed meeting shall be retained by the
106 association for a minimum of 5 years. A copy of the transcript,
107 less any confidential and exempt information, of any closed
108 meeting during which confidential and exempt claims files are
109 discussed shall become public as to individual claims files
110 after settlement of that claim.

111 Section 4. Paragraph (n) of subsection (6) of section
112 627.351, Florida Statutes, is amended to read:
113 627.351 Insurance risk apportionment plans.--
114 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--
115 (n)1. The following records of the corporation are
116 confidential and exempt from the provisions of s. 119.07(1) and
117 s. 24(a), Art. I of the State Constitution:
118 a. Underwriting files, except that a policyholder or an
119 applicant shall have access to his or her own underwriting
120 files.
121 b. Claims files, until termination of all litigation and
122 settlement of all claims arising out of the same incident,
123 although portions of the claims files may remain exempt, as
124 otherwise provided by law. Confidential and exempt claims file
125 records may be released to other governmental agencies upon
126 written request and demonstration of need; such records held by
127 the receiving agency remain confidential and exempt as provided
128 for herein.
129 c. Records obtained or generated by an internal auditor
130 pursuant to a routine audit, until the audit is completed, or if
131 the audit is conducted as part of an investigation, until the
132 investigation is closed or ceases to be active. An investigation
133 is considered "active" while the investigation is being
134 conducted with a reasonable, good faith belief that it could
135 lead to the filing of administrative, civil, or criminal
136 proceedings.
137 d. Matters reasonably encompassed in privileged attorney-
138 client communications.

139 e. Proprietary information licensed to the corporation
140 under contract and the contract provides for the confidentiality
141 of such proprietary information.
142 f. All information relating to the medical condition or
143 medical status of a corporation employee which is not relevant
144 to the employee's capacity to perform his or her duties, except
145 as otherwise provided in this paragraph. Information which is
146 exempt shall include, but is not limited to, information
147 relating to workers' compensation, insurance benefits, and
148 retirement or disability benefits.
149 g. Upon an employee's entrance into the employee
150 assistance program, a program to assist any employee who has a
151 behavioral or medical disorder, substance abuse problem, or
152 emotional difficulty which affects the employee's job
153 performance, all records relative to that participation shall be
154 confidential and exempt from the provisions of s. 119.07(1) and
155 s. 24(a), Art. I of the State Constitution, except as otherwise
156 provided in s. 112.0455(11).
157 h. Information relating to negotiations for financing,
158 reinsurance, depopulation, or contractual services, until the
159 conclusion of the negotiations.
160 i. Minutes of closed meetings regarding underwriting
161 files, and minutes of closed meetings regarding an open claims
162 file until termination of all litigation and settlement of all
163 claims with regard to that claim, except that information
164 otherwise confidential or exempt by law will be redacted.
165

166 When an authorized insurer is considering underwriting a risk
167 insured by the corporation, relevant underwriting files and
168 confidential claims files may be released to the insurer
169 provided the insurer agrees in writing, notarized and under
170 oath, to maintain the confidentiality of such files. When a file
171 is transferred to an insurer that file is no longer a public
172 record because it is not held by an agency subject to the
173 provisions of the public records law. Underwriting files and
174 confidential claims files may also be released to staff of and
175 the board of governors of the market assistance plan established
176 pursuant to s. 627.3515, who must retain the confidentiality of
177 such files, except such files may be released to authorized
178 insurers that are considering assuming the risks to which the
179 files apply, provided the insurer agrees in writing, notarized
180 and under oath, to maintain the confidentiality of such files.
181 Finally, the corporation or the board or staff of the market
182 assistance plan may make the following information obtained from
183 underwriting files and confidential claims files available to
184 licensed general lines insurance agents: name, address, and
185 telephone number of the residential property owner or insured;
186 location of the risk; rating information; loss history; and
187 policy type. The receiving licensed general lines insurance
188 agent must retain the confidentiality of the information
189 received.
190 2. Portions of meetings of the corporation are exempt from
191 the provisions of s. 286.011 and s. 24(b), Art. I of the State
192 Constitution wherein confidential underwriting files or
193 confidential open claims files are discussed. All portions of

194 corporation meetings which are closed to the public shall be
195 recorded by a court reporter. The court reporter shall record
196 the times of commencement and termination of the meeting, all
197 discussion and proceedings, the names of all persons present at
198 any time, and the names of all persons speaking. No portion of
199 any closed meeting shall be off the record. Subject to the
200 provisions hereof and s. 119.07(1)(d)-(f) ~~(b)-(d)~~, the court
201 reporter's notes of any closed meeting shall be retained by the
202 corporation for a minimum of 5 years. A copy of the transcript,
203 less any exempt matters, of any closed meeting wherein claims
204 are discussed shall become public as to individual claims after
205 settlement of the claim.
206 Section 5. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1435 Division of Emergency Management of the Department of Community Affairs
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1888

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

SUMMARY ANALYSIS

This bill provides for a codified direct operational relationship between the Governor and the Division of Emergency Management in carrying out the responsibilities of Chapter 252, F.S. The bill provides the division with autonomy for matters involving personnel, purchasing, and budget.

The Department of Community Affairs reports that the bill will have no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires the Division of Emergency Management to enter into a service agreement with the Department of Community Affairs.

B. EFFECT OF PROPOSED CHANGES:

Structure of Executive Branch

Article IV, Section 1 of the Florida Constitution vests the Governor with supreme executive power. Section 20.18, F.S., creates the Department of Community Affairs (DCA) and establishes the Division of Emergency Management (DEM) as one of the department's units.[1] The State Emergency Management Act[2] also serves as an establishing clause for the DEM. Chapter 252, F.S. tasks the DEM with coordinating emergency management efforts to ensure effective preparation and use of the state workforce, state resources, and facilities of the state and nation in dealing with any emergency that may occur.[3]

Statutorily, the operational and administrative chain of command typically flows from the Governor through the Secretary of the Department of Community Affairs to the Director of the Division of Emergency Management. However, under Chapter 252, F.S., the Governor is responsible for meeting the dangers presented to this state and its people by emergencies.[4] In the event of an emergency beyond the capabilities of local authorities, the Governor may assume direct operational control over all or any part of the emergency management functions within this state. The Governor is authorized to delegate such powers as she or he may deem prudent.[5]

Chapter 252, F.S., assigns responsibility to the Division of Emergency Management for maintaining a comprehensive statewide program of emergency management. This program includes:

- Preparation of a comprehensive statewide emergency management plan;
- Adopting standards and requirements for county emergency management plans;
- Ascertaining the requirements for equipment and supplies for use in an emergency;
- Coordinating federal, state, and local emergency management activities in advance of an emergency; and
- Using and employing the property, services, and resources within the state in accordance with the Florida Emergency Management Act.[6]

In an emergency that is beyond the capability of local authorities, the Governor determines the need to declare a state of emergency. This declaration takes the form of an Executive Order that describes the emergency condition, issues orders, assigns missions, and may delegate certain authority.[7]

For example, Executive Order 05-219[8] declared a state of emergency for Hurricane Wilma. As part of the Executive Order, the Governor designated the Director of the DEM as the State Coordinating Officer for the duration of the emergency. The Director was authorized to act as the Governor's

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[1] Section 20.18(2)(a), F.S.
[2] Chapter 252, F.S.
[3] Section 252.32(2), F.S.
[4] See generally s. 252.36, F.S.
[5] Section 252.36(1)(a), F.S.
[6] Section 252.35, F.S.
[7] Section 252.36, F.S.
[8] Available online here: http://sun6.dms.state.fl.us/eog_new/eog/orders/2005/October/05-219-wilma.pdf.

authorized representative and instructed to confer with the Governor to the fullest extent possible. The Director was specifically authorized to:

- Activate the Comprehensive Emergency Management Plan;
- Invoke and administer the Statewide Mutual Aid Agreement;
- Invoke and administer the Emergency Management Assistance Compact;
- Seek direct assistance from any and all agencies of the United States Government as may be needed to meet the emergency;
- Distribute any and all supplies stockpiled to meet the emergency;
- Direct all state, regional and local government agencies, including law enforcement agencies, to identify needed personnel and place them under the direct command of the State Coordinating Officer to meet the emergency; and
- Perform other duties relating to the management of the emergency.

As a result of this and other executive orders, the Governor and the Director of DEM (acting as the State Coordinating Officer) have a direct operational link when operating under an executive order declaring an emergency.

Proposed Changes

The bill requires the Director of the DEM to be appointed by and serve under the direct oversight of the Governor in carrying out the responsibilities of chapter 252, F.S. The bill makes the DEM a budget entity separate from the DCA, with complete autonomy in matters involving personnel, purchasing, and budget while remaining an established unit of the DCA.

The bill requires the DEM to enter into a service agreement with the DCA for "professional, technological, and administrative support services." The bill also requires the DEM to collaborate and coordinate with the department on non-emergency response matters such as recovery programs, grant programs, mitigation programs, and emergency matters relating to comprehensive plans.

C. SECTION DIRECTORY:

Section 1 amends s. 20.18, F.S., to operationally segregate the DEM from the DCA except for administrative purposes.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The DCA reports that the bill will have no fiscal impact, as the changes "codify the existing relationship."[9]

Section 252.371, F.S., establishes the Emergency Management, Preparedness, and Assistance Trust Fund administered by the Department of Community Affairs. The DEM currently performs administration of this trust fund within the DCA. This bill does not appear to conflict with section 252.371, F.S., since the DEM will remain statutorily a unit of the DCA. Further, the bill specifies that the DEM will collaborate and coordinate with the DCA on such matters as grant programs. Emergency management grants and aids to local governments and non-state entities as well as other related programs are funded through this trust fund.

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 bill introduces a fundamental structural change that does not generally fit within the executive branch structure required by s. 20.14, F.S. That section provides that departments are the "principle administrative unit[s] of the executive branch."[10] Divisions are subsequently defined as "principle unit[s] of the department." Given the Department's statement that the changes have no substantive effect and merely "codify the existing relationship,"[11] if the existing relationship does not violate any state or federal statute, it is unclear why this deviation from chapter 20, F.S., is necessary.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

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[9] *2006 Bill Policy Analysis, HB-1435*, Florida Department of Community Affairs.
[10] Section 20.14(1), F.S.
[11] *2006 Bill Policy Analysis, HB-1435*, Florida Department of Community Affairs.

1 A bill to be entitled
2 An act relating to the Division of Emergency Management of
3 the Department of Community Affairs; amending s. 20.18,
4 F.S.; providing that the director of the Division of
5 Emergency Management shall be appointed by and serve under
6 the oversight of the Governor; providing that the division
7 shall be a separate budget entity and not subject to the
8 control, supervision, or direction of the Department of
9 Community Affairs in matters involving personnel,
10 purchasing, and the budget of the division; authorizing
11 the division to enter into a service agreement with the
12 department for professional, technological, and
13 administrative support services; requiring the division to
14 collaborate and coordinate with the department on all
15 nonemergency response matters; providing an effective
16 date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Paragraph (a) of subsection (2) of section
21 20.18, Florida Statutes, is amended to read:
22 20.18 Department of Community Affairs.--There is created a
23 Department of Community Affairs.
24 (2) The following units of the Department of Community
25 Affairs are established:
26 (a) Division of Emergency Management. <u>The director of the</u>
27 <u>Division of Emergency Management shall be appointed by and shall</u>
28 <u>serve under the oversight of the Governor in carrying out the</u>

29 responsibilities of chapter 252. The division shall be a
30 separate budget entity and not subject to the control,
31 supervision, or direction of the department in matters involving
32 personnel, purchasing, and the budget of the division. The
33 division shall enter into a service agreement with the
34 department for professional, technological, and administrative
35 support services. The division shall collaborate and coordinate
36 with the department on all nonemergency response matters,
37 including, but not limited to, disaster recovery programs, grant
38 programs, mitigation programs, and emergency matters related to
39 comprehensive plans.
40 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1447 Licensing
SPONSOR(S): Reagan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1112

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

SUMMARY ANALYSIS

This bill creates a new requirement for the written notice that agencies are required to give applicants when the agency intends to grant or deny, or has granted or denied, an application for licensure: the notice must also include a citation to the applicable rule.

The bill creates certain licensing notification requirements for counties and municipalities: each applicant who applies to a county or municipality for a license must be given written notice either personally or by mail that the county or municipality intends to grant or deny the application. The bill also requires this notice to state with particularity the grounds or basis, including a citation to the applicable ordinance, for the issuance or denial of the license.

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

There does not appear to be a fiscal impact on state or local government revenues. State agencies, counties, and municipalities may need to update their applicable rules, ordinances, or processes to comply with this bill. These costs are indeterminate, but not expected to be significant.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the information provided to applicants when granted or denied a license by the state, counties, and municipalities.

B. EFFECT OF PROPOSED CHANGES:

"Licensing" by the State of Florida

Chapter 120, Florida Statutes, is the Administrative Procedure Act (APA). The APA applies to "agencies" which include the Governor,[1] state officers, state departments, departmental units,[2] authorities, regional water supply authorities, boards, commissions,[3] regional planning agencies, educational units, and other specified[4] entities.[5]

The APA defines the term "license" to include: a franchise, permit, certification, registration, charter, or similar form of authorization required by law.[6] This definition, however, excludes any license that is issued primarily for revenue purposes when issuance of the license is merely a ministerial act.[7] The APA has provisions which specifically relate to licensing and place certain requirements on agencies:

- Examine any application for a license upon receipt, notify the applicant of any apparent errors or omissions within 30 days, and request any additional information the agency required by law;[8]
- Consider an application complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired;[9]
- Approve or deny every application for a license within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law;[10]
- Notify any applicant seeking a license for an activity that is exempt from licensure and return any application fee within 30 days after receipt of the original application; and[11]

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[1] Fla. Stat. § 120.52(1)(a) (2005) (while the Governor is exercising all executive powers other than those derived from the Florida Constitution).
[2] Fla. Stat. § 120.52(1)(b)1. (2005) (as described in section 20.04, Florida Statutes).
[3] Fla. Stat. § 120.52(1)(b)4. (2005) (including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature).
[4] Fla. Stat. § 120.52(1)(b)8. (2005) (This includes entities described in chapters 163 [Intergovernmental Programs], 373 [Water Resources], 380 [Land and Water Management], and 582 [Soil and Water Conservation Districts], Florida Statutes, and section 186.504 [Regional Planning Councils], Florida Statutes.
[5] Fla. Stat. § 120.52(1) (2005) (Agency does not include legal entities created pursuant to part II of chapter 361 [Joint Electric Power Supply Projects], metropolitan planning organizations, separate legal or administrative entities which include metropolitan planning organizations, expressway authorities, legal or administrative entities created pursuant to an interlocal agreement unless a party is otherwise subject to the APA.).
[6] Fla. Stat. § 120.52(9) (2005).
[7] *Id.*
[8] Fla. Stat. § 120.60(1) (2005) (An agency is prohibited from denying a license for failure to correct an error or omission to supply additional information if the agency does not notify the applicant of any errors or omissions and request additional information.).
[9] *Id.*
[10] *Id.* (Any application for a license that is not approved or denied within the 90-day or other shorter time period required by law, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license.).
[11] Fla. Stat. § 120.60(2) (2005).

- Provide written notice, either personally or by mail, that the agency intends to grant or deny an application for license and state with particularity the grounds or basis for the issuance or denial of the license.[12]

The licensing provisions of the APA also apply to licenses which do not automatically expire by statute;[13] the revocation, suspension, annulment, or withdrawal of licenses; and emergency suspensions, restrictions, or limitations of a license.

Licensing by Counties and Municipalities

The APA applies to certain local government entities such as multicounty special districts with a majority of its governing board comprised of nonelected persons.[14] The APA also applies to counties and municipalities to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.[15] Most licensing decisions of counties and municipalities have not, however, been made subject to the APA. As such, licensing by counties and municipalities is controlled by ordinances and not the licensing requirements of the APA.

Additional Licensing Requirements for APA Agencies

This bill creates a new requirement for the written notice that agencies are required to give applicants when the agency intends to grant or deny, or has granted or denied, an application for licensure: the notice which states with particularity the grounds or basis for the issuance or denial of a license must also include a citation to the applicable rule.

Additional Licensing Requirements for Counties and Municipalities

The bill creates certain licensing notification requirements for counties and municipalities: each applicant who applies to a county or municipality for a license must be given written notice either personally or by mail that the county or municipality intends to grant or deny the application. Similar to the APA licensing requirements, the bill requires this notice to state with particularity the grounds or basis, including a citation to the applicable ordinance, for the issuance or denial of the license.[16]

C. SECTION DIRECTORY:

Section 1: Amends subsection (3) of section 120.60, Florida Statutes, to require a citation to the applicable rule when giving notice of its decision to deny or issue a license.

Section 2: Creating section 125.022, Florida Statutes, to require a county to give written notice of its intent to issue or deny a license.

Section 3: Creating section 166.033, Florida Statutes, to require a municipality to give written notice of its intent to issue or deny a license.

Section 4: Providing for the bill to take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[12] Fla. Stat. § 120.60(2) (2005) (This notice must further inform the applicant of the basis for the agency decision, of any administrative hearing or judicial review which may be available, of the procedure which must be followed, and of any applicable time limits.).
[13] Fla. Stat. § 120.60(3) (2005).
[14] Fla. Stat. § 120.52(1) (2005).
[15] Fla. Stat. § 120.52(1)(c) (2005).
[16] Fla. HB 1447, §§ 2 and 3 (2005) (License has the same meaning as in section 120.52, Florida Statutes.).

1. Revenues:

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

2. Expenditures:

   State agencies may need to update their rules and processes to comply with this bill. These costs are indeterminate, but are not expected to be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   Counties and municipalities may need to update their ordinances and processes to comply with this bill. These costs are indeterminate, but are not expected to be significant.

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 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. Although this bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds, these expenditures do not appear to be significant enough to trigger the constitutional provisions related to the mandated expenditure of funds.[17]

2. Other:

   There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority. Yet, the bill will likely require agencies to revise their current rules.

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[17] 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.

1 A bill to be entitled
2 An act relating to licensing; amending s. 120.60, F.S.;
3 requiring that a state agency include a citation to the
4 applicable rule when giving notice of its decision to
5 issue or deny a license; creating s. 125.022, F.S.;
6 requiring a county to give written notice of its decision
7 to issue or deny a license; requiring that the notice
8 include a citation to the applicable ordinance; creating
9 s. 166.033, F.S.; requiring a municipality to give written
10 notice of its decision to issue or deny a license;
11 requiring that the notice include a citation to the
12 applicable ordinance; providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Subsection (3) of section 120.60, Florida
17 Statutes, is amended to read:
18 120.60 Licensing.--
19 (3) Each applicant shall be given written notice either
20 personally or by mail that the agency intends to grant or deny,
21 or has granted or denied, the application for license. The
22 notice must state with particularity the grounds or basis,
23 including a citation to the applicable rule, for the issuance or
24 denial of the license, except when issuance is a ministerial
25 act. Unless waived, a copy of the notice shall be delivered or
26 mailed to each party's attorney of record and to each person who
27 has requested notice of agency action. Each notice shall inform
28 the recipient of the basis for the agency decision, shall inform

29 the recipient of any administrative hearing pursuant to ss.
30 120.569 and 120.57 or judicial review pursuant to s. 120.68
31 which may be available, shall indicate the procedure which must
32 be followed, and shall state the applicable time limits. The
33 issuing agency shall certify the date the notice was mailed or
34 delivered, and the notice and the certification shall be filed
35 with the agency clerk.
36 Section 2. Section 125.022, Florida Statutes, is created
37 to read:
38 125.022 Licensing.--Each applicant who applies to a county
39 for a license shall be given written notice either personally or
40 by mail that the county intends to grant or deny the
41 application. The notice must state with particularity the
42 grounds or basis, including a citation to the applicable
43 ordinance, for the issuance or denial of the license. For
44 purposes of this section, the term "license" has the same
45 meaning as in s. 120.52.
46 Section 3. Section 166.033, Florida Statutes, is created
47 to read:
48 166.033 Licensing.--Each applicant who applies to a
49 municipality for a license shall be given written notice either
50 personally or by mail that the municipality intends to grant or
51 deny the application. The notice must state with particularity
52 the grounds or basis, including a citation to the applicable
53 ordinance, for the issuance or denial of the license. For
54 purposes of this section, the term "license" has the same
55 meaning as in s. 120.52.
56 Section 4. This act shall take effect upon becoming a law.

HB 1507

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1507 Public Records
SPONSOR(S): Mealor
TIED BILLS: HB 1379, HB 1505 **IDEN./SIM. BILLS:** SB 1800

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

SUMMARY ANALYSIS

This bill is linked to HB 1505, which requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence. This bill creates a public records exemption for personal identifying information contained in records documenting an act of domestic violence and submitted to an agency by an agency employee in order to obtain leave. The bill also creates a public records exemption for written requests for leave submitted by an agency employee who is a victim of domestic violence and any agency time sheet that reflects such requests.

This bill provides for future review and repeal of the exemption and provides a statement of public necessity.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

House Bill 1505

HB 1505, requires employers with 50 or more employees to allow employees who have been employed for at least 12 months to request or take up to three working days of leave with or without pay within a 12-month period if the employee is the victim of domestic violence and the leave is sought to:

- seek an injunction for protection against domestic violence;
- obtain medical care or mental health counseling;
- obtain services from a victim-services organization;
- make the employee's home secure or to seek new housing; or
- to seek legal assistance to address issues arising from the act of domestic violence and to attend and prepare for court-related proceedings arising from the act of domestic violence.

The bill authorizes employers to require documentation of the act of domestic violence, requires employers to keep all information relating to the employee's leave confidential, and prohibits employers from taking any disciplinary action against the employee for exercising rights under the bill.

Public Records

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892. The Florida Supreme Court has noted that ch. 119, F.S., the Public Records Act, was enacted "to promote public awareness and knowledge of government actions in order to ensure that governmental officials and agencies remain accountable to the people."[1]

In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24 of the State Constitution, provides that:

> (a) Every person[3] has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution...

Unless specifically exempted, all agency[4] records are available for public inspection. The term "public record" is broadly defined to mean:

> All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the

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[1] *Forsberg v. Housing Authority of the City of Miami Beach*, 455 So.2d 373, 378 (Fla. 1984).

[2] Article I, s. 24 of the State Constitution.

[3] Section 1.01(3), F.S., defines "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

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

> physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11] A bill creating an exemption must be passed by a two-thirds vote of both houses.[12]

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt.[13] If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[14] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[15]

The Open Government Sunset Review Act

The Open Government Sunset Review Act[16] provides for the systematic review of an exemption five years after its enactment. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Employment Records of Public Employees

The employment records of public employees, unless specifically exempted, are public records. These records include requests for leave and time sheets.

Effect of the Bill

This bill is linked to HB 1505, which requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence.

This bill creates a public records exemption for personal identifying information contained in records documenting an act of domestic violence, which are submitted to a public agency by an agency employee as required by the provisions of HB 1505. The bill also creates a public records exemption

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[5] s. 119.011(11), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[8] Article I, s. 24(c) of the State Constitution.
[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical* Center v. News-Journal Corporation, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c) of the State Constitution.
[12] *Id.*
[13] *WFTV, Inc., v. The School Bd of Seminole,* 874 So.2d 48 (5th DCA), rev. denied 892 So.2d 1015 (Fla. 2004).
[14] *Id.* at 53; *see also*, Attorney General Opinion 85-62.
[15] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[16] s. 119.15, F.S.

for written requests for leave submitted by an agency employee who is a victim of domestic violence and any agency time sheet that reflects such requests. The exemption for the written request and the timesheet expires one year after the leave has been taken.

The bill provides a statement of public necessity. It also provides for future review and repeal of the exemptions pursuant to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. (provides that these exemptions will stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature).

C. SECTION DIRECTORY:

Section 1. Amends s. 741.313, F.S., creating a public records exemption for certain records relating to domestic violence.

Section 2. Provides a statement of public necessity.

Section 3. Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this 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:

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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to public records; amending s. 741.313,
3 F.S.; providing an exemption from public records
4 requirements for personal identifying information
5 contained in records documenting an act of domestic
6 violence and submitted to an agency by an agency employee
7 in order to obtain leave; providing an exemption from
8 public records requirements for a written request for
9 leave submitted by an agency employee who is a victim of
10 domestic violence and any agency time sheet that reflects
11 such a request; providing for limited duration of the
12 exemption; providing for review and repeal; providing a
13 statement of public necessity; providing a contingent
14 effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Subsection (7) is added to section 741.313,
19 Florida Statutes, as created by HB 1505, 2006 Regular Session,
20 to read:
21 741.313 Unlawful action against employees seeking
22 protection.--
23 (7)(a) Personal identifying information contained in
24 records documenting an act of domestic violence and submitted to
25 an agency, as defined in chapter 119, by an agency employee
26 pursuant to the requirements of this section is confidential and
27 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
28 Constitution.

29 (b) A written request for leave which is submitted by an
30 agency employee pursuant to the requirements of this section and
31 any agency time sheet that reflects such a request are
32 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
33 of the State Constitution for a period of 1 year after the leave
34 has been taken.
35 (c) This subsection is subject to the Open Government
36 Sunset Review Act in accordance with s. 119.15 and shall stand
37 repealed on October 2, 2011, unless reviewed and saved from
38 repeal through reenactment by the Legislature.
39 Section 2. The Legislature finds that it is a public
40 necessity to make confidential and exempt from s. 119.07(1),
41 Florida Statutes, and s. 24(a), Art. I of the State Constitution
42 personal identifying information contained in records submitted
43 to a state agency by an agency employee which documents an act
44 of domestic violence and which is submitted in order to obtain
45 leave pursuant to s. 741.313, Florida Statutes. Such
46 information, if publicly available, could expose the victim of
47 domestic violence to public humiliation and shame and could
48 inhibit the victim from availing himself or herself of the
49 relief provided under s. 741.313, Florida Statutes. In addition,
50 the Legislature finds that it is a public necessity to make
51 confidential and exempt from s. 119.07(1), Florida Statutes, and
52 s. 24(a), Art. I of the State Constitution an agency employee's
53 request for leave until 1 year after the leave has been taken.
54 If such information were publicly available, it could be used by
55 the partner or former partner of the victim of domestic violence
56 to determine the schedule and location of the employee who is

57 the victim of domestic violence. The employee's request for
58 leave is exempt from disclosure only temporarily and such record
59 is available 1 year after the leave has been taken, thereby
60 providing continued public oversight of public funds.
61 Section 3. This act shall take effect on the same date
62 that House Bill 1505 or similar legislation takes effect, if
63 such legislation is adopted in the same legislative session, or
64 an extension thereof, and becomes law.