Governmental Operations Committee

Revised

Wednesday, February 22, 2006
2:00 – 4:00 PM
Morris Hall

Allan Bense
Speaker

David Rivera
Chairman

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Governmental Operations Committee

Start Date and Time:	Wednesday, February 22, 2006 02:00 pm
End Date and Time:	Wednesday, February 22, 2006 04:00 pm
Location:	Morris Hall (17 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 117 Travel Expenses by Coley
HB 477 Per Diem and Travel Expenses by Ausley
HB 527 CS Suicide Prevention by Gibson, H.
HB 687 Public Records by Adams

Consideration of the following proposed committee bill(s):

PCB GO 06-22 -- OGSR Interference with Custody
PCB GO 06-23 -- OGSR Public Records Exemption for Interference with Custody
PCB GO 06-25 -- Administrative Procedures

Consideration of the following proposed House combined bill(s):

PHCB GO 06-01 -- Per Diem and Travel Expenses

NOTE:
PHCB GO 06-01 Per Diem and Travel Expenses (Combines HB's 117 and 477)

NOTICE FINALIZED on 02/10/2006 14:34 by TUCK.SHIRLEY

HB 117

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 117 Travel Expenses
SPONSOR(S): Coley
TIED BILLS: **IDEN./SIM. BILLS:** SB 90

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

SUMMARY ANALYSIS

HB 117 authorizes state correctional probation officers traveling by privately owned vehicle while engaged in a law enforcement or correctional duty to receive the Internal Revenue Service business standard mileage rate rather than the current 29 cents per mile allowed to state travelers.

If correctional probation officers travel the same number of miles in FY 2006-2007 as traveled in FY 2004-2005, and if the business standard mileage rate for the use of an automobile stays at 44.5 cents, this bill will require state government to expend an additional $1,911,679 every year.

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

Pursuant to House Rule 7.9(c), the Governmental Operations Committee will consider the introduction of a House combined bill, the substance of which will be drawn from HB 117 and HB 477.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the mileage allowance for state correctional probation officers.

B. EFFECT OF PROPOSED CHANGES:

Present Situation – Per Diem

Section 112.061, Florida Statutes, governs the per diem and travel expenses of agencies' public officers, employees, and authorized persons. Currently, travelers using privately-owned vehicles are entitled to a mileage allowance of 29 cents per mile or the common carrier fare for the travel, as determined by the agency head.

Present Situation – Correctional Probation Officers

Section 943.10(3), Florida Statutes, defines a correctional probation officer:

> "A person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level."

The Department of Corrections indicates that there are approximately 2,357 correctional probation officers supervising various offenders.[1] The Department of Corrections estimates that these officers drive 436 miles per month, on average.[2]

Proposed Changes

The bill authorizes correctional probation officers traveling by privately owned vehicle while engaged in a law enforcement or correctional duty to receive the Internal Revenue Service business standard mileage rate.

Beginning January 1, 2006, the business standard mileage rate for the use of a car is 44.5 cents per mile.[3] This new rate for business miles compares to a rate of 40.5 cents per mile for the first eight months of 2005.[4] In September 2005, the IRS made a special one-time adjustment for the last four months of 2005, raising the rate for business miles to 48.5 cents per mile in response to a sharp increase in gas prices.[5]

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[1] Fla. Dep't of Correct., HB 117 (2006) Staff Analysis (furnished Jan. 12, 2006) (on file with dep't).
[2] *Id.*
[3] Internal Revenue Service, *IRS Announces 2006 Standard Mileage Rates*, at http://www.irs.gov/newsroom/article/0,,id=151226,00.html (last visited Jan. 12, 2006).
[4] *Id.*
[5] *Id.*

C. SECTION DIRECTORY:

Section 1 amends section 112.061, Florida Statutes, to provide for an increased mileage allowance for correctional probation officers.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   According to the Department of Corrections, correctional probation officers utilized their privately owned vehicles for state business for a total 12,333,411 miles from July 1, 2004, through June 30, 2005.[6] Reimbursement at 29 cents per mile totaled $3,576,689.

   If correctional probation officers travel the same number of miles in FY 2006-2007, and if the business standard mileage rate for the use of a car stays at 44.5 cents, this bill will require state government to expend an additional $1,911,679 every year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   There do not appear to be any other constitutional issues.

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[6] Fla. Dep't of Correct., *supra* note 1.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments – House Combined Bill

Pursuant to House Rule 7.9(c), the Governmental Operations Committee will consider the introduction of a House combined bill, the substance of which will be drawn from HB 117 and HB 477.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to travel expenses; amending s. 112.061,
3 F.S.; establishing mileage rates for travel expenses for
4 certain correctional probation officers; providing an
5 effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Paragraph (d) of subsection (7) of section
10 112.061, Florida Statutes, is amended to read:
11 112.061 Per diem and travel expenses of public officers,
12 employees, and authorized persons.--
13 (7) TRANSPORTATION.--
14 (d)1. The use of privately owned vehicles for official
15 travel in lieu of publicly owned vehicles or common carriers may
16 be authorized by the agency head or his or her designee.
17 Whenever travel is by privately owned vehicle, the traveler
18 shall be entitled to a mileage allowance at a fixed rate of 25
19 cents per mile for state fiscal year 1994-1995 and 29 cents per
20 mile thereafter or the common carrier fare for such travel, as
21 determined by the agency head. Reimbursement for expenditures
22 related to the operation, maintenance, and ownership of a
23 vehicle shall not be allowed when privately owned vehicles are
24 used on public business and reimbursement is made pursuant to
25 this paragraph, except as provided in subsection (8).
26 <u>Notwithstanding any other provisions of this subparagraph, when</u>
27 <u>travel is by privately owned vehicle and the traveler is a</u>
28 <u>correctional probation officer, as defined in s. 943.10(3), who</u>

29 is engaged in a law enforcement or correctional duty, the
30 officer shall be entitled to the mileage allowance equal to the
31 business standard mileage rate as set by the Internal Revenue
32 Service for the calendar year in which the official travel
33 occurs.
34 2. All mileage shall be shown from point of origin to
35 point of destination and, when possible, shall be computed on
36 the basis of the current map of the Department of
37 Transportation. Vicinity mileage necessary for the conduct of
38 official business is allowable but must be shown as a separate
39 item on the expense voucher.
40 Section 2. This act shall take effect July 1, 2006.

HB 477

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 477 Per Diem and Travel Expenses
SPONSOR(S): Ausley and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 428

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

SUMMARY ANALYSIS

HB 477 makes a number of changes relating to the per diem and travel expenses of public officers, employees, and authorized persons:

- Revises the legislative intent;
- Changes the rate of per diem from the 1981 rate of $50 to $90;
- Increases the subsistence reimbursement for meals from the 1981 rates: $3 to $5 for breakfast, $6 to $11 for lunch, and $12 to $23 for dinner;
- Raises the mileage allowance for use of a privately owned vehicle from 29 cents per mile, which was established in 1994, to the rate of 38 cents per mile; and
- Removes duplicative or incorrect language and makes minor grammatical changes.

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

This bill appears to have a fiscal impact on state government expenses, but the extent of this impact is unknown.

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

HB 477 may meet the criteria for a mandate under the provisions of section 18 (a), article VII, of the State Constitution. The bill *does not* appear to meet the requirements for effectively binding affected counties and municipalities by containing the required statement that the bill fulfills an important state interest and applies to all persons similarly situated.

Pursuant to House Rule 7.9(c), the Governmental Operations Committee will consider the introduction of a House combined bill, the substance of which will be drawn from HB 117 and HB 477.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the standard per diem, subsistence, and mileage rates for public officers, public employees, or authorized persons performing authorized travel.

B. EFFECT OF PROPOSED CHANGES:

Section 112.061, Florida Statutes (2005), sets forth the per diem and travel expenses of public officers,[1] employees,[2] and authorized persons[3] when performing authorized travel.[4]

A version of this section was first enacted by the Legislature in 1945.[5] Much of the current form of this section, however, dates back to 1963.[6]

This bill changes five aspects of section 112.061, Florida Statutes: (1) legislative intent, (2) authority to incur travel expenses, (3) rates of per diem and subsistence allowance, (4) transportation reimbursement, and (5) travel authorization and voucher forms.

Legislative Intent

Subsection (1) of section 112.061, Florida Statutes sets forth the legislative intent. It recognizes the existence of "inequities, conflicts, inconsistencies, and lapses in the numerous laws regulating or attempting to regulate travel expenses of public officers, employees, and authorized persons in the state." The expressed intent of the Legislature is to remedy these inequities, conflicts, inconsistencies, and lapses by establishing uniform maximum rates applicable to all public officers, employees, and authorized persons whose travel expenses are paid by a public agency, along with limitations and exceptions.[7]

This subsection also sets forth the legislative intent to preserve standardization and uniformity by prevailing over any conflicting provisions in special law, local law, or general law – unless the general law contains a specific exemption.[8]

This bill changes the legislative intent to note the existence of travel reimbursement rates for state agencies, maximum travel reimbursement rates for counties, county constitutional officers, district school boards, independent special districts (which are referred to as "nonstate public agencies"), and the limitations on all public agencies. The bill also utilizes the definition of traveler, modified by the word authorized, in lieu of "public officers, employees, and authorized persons."

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[1] Fla. Stat. § 112.061(2)(c) (2005) ("An individual who in the performance of his or her official duties is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the Governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.")

[2] Fla. Stat. § 112.061(2)(d) (2005) ("An individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head.")

[3] Fla. Stat. § 112.061(2)(e) (2005) ("A person other than a public officer or employee as defined herein, whether elected or commissioned or not, who is authorized by an agency head to incur travel expenses in the performance of official duties; a person who is called upon by an agency to contribute time and services as consultant or adviser; or a person who is a candidate for an executive or professional position.")

[4] Fla. Stat. § 112.061(2)(f) (2005) ("Traveler--A public officer, public employee, or authorized person, when performing authorized travel.")

[5] Ch. 22830, Laws of Fla.

[6] Ch. 63-400, Laws of Fla.

[7] Fla. Stat. §112.061(1) (2005).

[8] *Id.*

Authority to Incur Travel Expenses

Subsection (3) relates to the authority to incur travel expenses. The only changes the bill makes to this subsection are to remove an unnecessary reference to "authorized persons" in the paragraph on costs of per diem of travelers[9] for foreign travel and to make a conforming change to the word "maximum" (to "rate") in the paragraph related to the Department of Health.

Rates of Per Diem and Subsistence Allowance

Subsection (6) relates to rates of per diem and subsistence allowance. When traveling as Class A travel (24 hours or more) or Class B travel (less than 24 hours, but overnight) to a convention or conference or within or outside the state on state business, travelers are currently allowed to choose one of two types of "subsistence" reimbursements: (1) a $50 per diem; or (2) actual expenses for lodging at a single-occupancy rate and a set reimbursement for meals, if actual expenses exceed $50.[10] The meal reimbursement rate is the same as that set for Class C (short or day trips): $3 for breakfast, $6 for lunch, and $12 for dinner.[11] These meal and per diem rates were established in 1981.[12]

This bill increases the per diem rate to $90 and increases the subsistence reimbursement rate for meals: $5 for breakfast, $11 for lunch, and $23 for dinner.

Transportation Reimbursement

Subsection (7) relates to transportation. It authorizes the use of privately owned vehicles for official travel instead of publicly owned vehicles or common carriers.[13] Travel using a privately owned vehicle is reimbursed at a fixed rate of 29 cents per mile or the common carrier fare for such travel, as determined by the agency head. The current mileage reimbursement rate was established in 1994.[14]

This bill increases the mileage allowance for travel using a privately owned vehicle to 38 cents per mile and makes it an economical determination by the agency head to pay the common carrier fare instead.

Travel Authorization and Voucher Forms

Subsection (11) relates to travel authorization and voucher forms. This bill makes minor grammatical changes to this subsection.

C. SECTION DIRECTORY:

Section 1: Amends section 112.061, Florida Statutes, related to the per diem and travel expenses of public officers, employees, and authorized persons.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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[9] The definition of "traveler" includes "authorized person," *supra* note 4.
[10] Fla. Stat. § 112.061(6)(a) (2005).
[11] Fla. Stat. § 112.061(6)(b) (2005).
[12] Ch. 81-207, Laws of Fla.
[13] Fla. Stat. § 112.061(7)(d)1. (2005) (Authorized by the agency head or her or his designee).
[14] Ch. 94-139, Laws of Fla.

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

2. Expenditures:

With the increases to the per diem, subsistence, and mileage reimbursement rates, this bill will create, modify, and amend an expenditure of state government, but the extent of this expenditure is not known at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Because counties, constitutional officers, and independent special districts are bound by the increases to the per diem, subsistence, and mileage reimbursement rates, this bill will create, modify, and amend an expenditure of local governments, but the extent of this expenditure is not known at this time.

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 municipalities have to raise revenue.

This bill may, however, require counties to spend funds or to take an action requiring the expenditure of funds.[15] The bill does not appear to satisfy the requirements of section 18 of article VII of the Florida Constitution[16] because it does not provide 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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[15] Fla. Stat. § 112.061(14) (2005) (This subsection was added in 2003 and allows the counties, county constitutional officers, district school boards, and independent special districts to establish rates that *exceed* the maximum travel reimbursement rates. Depending on how section 112.061, Florida Statutes, and opinions of the Attorney General (related to municipalities) are interpreted, counties and county constitutional officers may have to reimburse at the rates prescribed by this bill.)

[16] 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:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments – House Combined Bill

Pursuant to House Rule 7.9(c), the Governmental Operations Committee will consider the introduction of a House combined bill, the substance of which will be drawn from HB 117 and HB 477.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to per diem and travel expenses; amending
3 s. 112.061, F.S.; revising per diem, subsistence, and
4 mileage rates for purposes of reimbursement of travel
5 expenses of public officers, employees, and authorized
6 persons; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
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10 Section 1. Paragraph (a) of subsection (1), paragraphs (e)
11 and (g) of subsection (3), subsection (6), paragraph (d) of
12 subsection (7), and subsection (11) of section 112.061, Florida
13 Statutes, are amended to read:
14 112.061 Per diem and travel expenses of public officers,
15 employees, and authorized persons.--
16 (1) LEGISLATIVE INTENT.--There are inequities, conflicts,
17 inconsistencies, and lapses in the numerous laws regulating or
18 attempting to regulate travel expenses of public officers,
19 employees, and authorized persons in the state. It is the intent
20 of the Legislature:
21 (a) To remedy same and to establish uniform travel
22 reimbursement rates for state agencies, maximum travel
23 reimbursement rates for nonstate public agencies, and
24 limitations for all public agencies, with certain justifiable
25 exceptions, applicable to all authorized travelers ~~public~~
26 ~~officers, employees, and authorized persons~~ whose travel
27 expenses are paid by a public agency.
28 (3) AUTHORITY TO INCUR TRAVEL EXPENSES.--

29 (e) The agency head, or a designated representative, may
30 pay by advancement or reimbursement, or a combination thereof,
31 the costs of per diem of travelers ~~and authorized persons~~ for
32 foreign travel at the current rates as specified in the federal
33 publication "Standardized Regulations (Government Civilians,
34 Foreign Areas)" and incidental expenses as provided in this
35 section.
36 (g) The secretary of the Department of Health or a
37 designee may authorize travel expenses incidental to the
38 rendering of medical services for and on behalf of clients of
39 the Department of Health. The Department of Health may establish
40 rates lower than the rate ~~maximum~~ provided in this section for
41 these travel expenses.
42 (6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.--For
43 purposes of reimbursement rates and methods of calculation, per
44 diem and subsistence allowances are provided as follows ~~divided~~
45 ~~into the following groups and rates~~:
46 (a) All travelers shall be allowed for subsistence when
47 traveling to a convention or conference or when traveling within
48 or outside the state in order to conduct bona fide state
49 business, which convention, conference, or business serves a
50 direct and lawful public purpose with relation to the public
51 agency served by the person attending such meeting or conducting
52 such business, either of the following for each day of such
53 travel at the option of the traveler:
54 1. Ninety ~~Fifty~~ dollars per diem; or
55 2. If actual expenses exceed $90 ~~$50~~, the amounts
56 permitted in paragraph (b) for subsistence ~~meals~~, plus actual

57 expenses for lodging at a single-occupancy rate to be
58 substantiated by paid bills therefor.
59
60 When lodging or meals are provided at a state institution, the
61 traveler shall be reimbursed only for the actual expenses of
62 such lodging or meals, not to exceed the maximum provided for in
63 this subsection.
64 (b) All travelers shall be allowed the following amounts
65 for subsistence while on Class C travel on official business as
66 provided in paragraph (5)(b):
67 1. Breakfast....$5 ~~$3~~
68 2. Lunch....$11 ~~$6~~
69 3. Dinner....$23 ~~$12~~
70 (c) No one, whether traveling out of state or in state,
71 shall be reimbursed for any meal or lodging included in a
72 convention or conference registration fee paid by the state.
73 (d) For the 2005-2006 fiscal year only and notwithstanding
74 the other provisions of this subsection, for Class C travel, a
75 state traveler shall not be reimbursed on a per diem basis nor
76 shall a traveler receive subsistence allowance. This paragraph
77 expires July 1, 2006.
78 (7) TRANSPORTATION.--
79 (d)1. The use of privately owned vehicles for official
80 travel in lieu of publicly owned vehicles or common carriers may
81 be authorized by the agency head or his or her designee.
82 Whenever travel is by privately owned vehicle:
83 a. A state~~, the~~ traveler shall be entitled to a mileage
84 allowance at a ~~fixed~~ rate of 38 ~~25~~ cents per mile;

85 b. A nonstate traveler shall be entitled to a mileage
86 allowance of 38 ~~for state fiscal year 1994-1995 and 29~~ cents per
87 mile; or
88 c. The traveler shall be entitled to ~~thereafter or~~ the
89 common carrier fare for such travel, if ~~as~~ determined by the
90 agency head to be more economical.
91 2. Reimbursement for expenditures related to the
92 operation, maintenance, and ownership of a vehicle shall not be
93 allowed when privately owned vehicles are used on public
94 business and reimbursement is made pursuant to this paragraph,
95 except as provided in subsection (8).
96 3.~~2.~~ All mileage shall be shown from point of origin to
97 point of destination and, when possible, shall be computed on
98 the basis of the current map of the Department of
99 Transportation. Vicinity mileage necessary for the conduct of
100 official business is allowable but must be shown as a separate
101 item on the expense voucher.
102 (11) TRAVEL AUTHORIZATION AND VOUCHER FORMS.--
103 (a) Authorization forms.--The Department of Financial
104 Services shall furnish a uniform travel authorization request
105 form which shall be used by all state officers, ~~and~~ employees,
106 and authorized persons when requesting approval for the
107 performance of travel to a convention or conference. The form
108 shall include, but not be limited to, provision for the name of
109 each traveler, purpose of travel, period of travel, estimated
110 cost to the state, and a statement of benefits accruing to the
111 state by virtue of such travel. A copy of the program or agenda
112 of the convention or conference, itemizing registration fees and

113 any meals or lodging included in the registration fee, shall be
114 attached to, and filed with, the copy of the travel
115 authorization request form on file with the agency. The form
116 shall be signed by the traveler and by the traveler's supervisor
117 stating that the travel is to be incurred in connection with
118 official business of the state. The head of the agency or his or
119 her designated representative shall not authorize or approve
120 such request in the absence of the appropriate signatures. A
121 copy of the travel authorization form shall be attached to, and
122 become a part of, the support of the agency's copy of the travel
123 voucher.
124 (b) Voucher forms.--
125 1. The Department of Financial Services shall furnish a
126 uniform travel voucher form which shall be used by all state
127 officers, ~~and~~ employees, and authorized persons when submitting
128 travel expense statements for approval and payment. No travel
129 expense statement shall be approved for payment by the Chief
130 Financial Officer unless made on the form prescribed and
131 furnished by the department. The travel voucher form shall
132 provide for, among other things, the purpose of the official
133 travel and a certification or affirmation, to be signed by the
134 traveler, indicating the truth and correctness of the claim in
135 every material matter, that the travel expenses were actually
136 incurred by the traveler as necessary in the performance of
137 official duties, that per diem claimed has been appropriately
138 reduced for any meals or lodging included in the convention or
139 conference registration fees claimed by the traveler, and that
140 the voucher conforms in every respect with the requirements of

141 this section. The original copy of the executed uniform travel
142 authorization request form shall be attached to the uniform
143 travel voucher on file with the respective agency.
144 2. Statements for travel expenses incidental to the
145 rendering of medical services for and on behalf of clients of
146 the Department of Health shall be on forms approved by the
147 Department of Financial Services.
148 Section 2. This act shall take effect July 1, 2006.

HB 527 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 527 CS Suicide Prevention
SPONSOR(S): Gibson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee	7 Y, 0 N, w/CS	Preston	Collins
2) Governmental Operations Committee		Brown	Williamson
3) Transportation & Economic Development Appropriations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

The bill creates the Statewide Office for Suicide Prevention in the Office of Drug Control within the Executive Office of the Governor.

Subject to a specific appropriation, the bill requires the director of the Office of Drug Control to employ a coordinator for the Statewide Office for Suicide Prevention and specifies the education, experience, and skills to consider when hiring such coordinator. Duties of the coordinator include facilitating an interagency workgroup, reviewing suicide prevention programs to identify innovative models, developing and maintaining an Internet website related to suicide prevention, and assisting in the development of public awareness and media campaigns.

The bill also creates a Suicide Prevention Coordinating Council of 26 members in the Office of Drug Control. The coordinating council must create a statewide plan for suicide prevention and create a state interagency workgroup in order to incorporate state agency plans for suicide prevention into the statewide plan.

The bill specifies the membership, terms of office, and the duties of both the council and the workgroup. The coordinating council must make findings and recommendations regarding suicide prevention programs and activities, and must report annually to the Governor and the Legislature.

The bill authorizes one FTE and appropriates $100,000 from the General Revenue Fund to the Office of Drug Control to implement the provisions of the bill for fiscal year 2006-2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill provides for one additional FTE: a coordinator for the Statewide Office for Suicide Prevention, and a $100,000 budget to implement the provisions of the bill for fiscal year 2006-2007. The bill provides no additional staff or administrative support for the required work of the Statewide Office, the Coordinating Council, or the interagency workgroup. If existing staff within the Office of Drug Control assume those duties, it will increase the work responsibilities of those individuals.

The bill creates a new coordinating council with 26 members. The bill requires state employees to serve on both the coordinating council and the interagency workgroup, which adds to their work-related responsibilities. The coordinating council and the coordinator must report annually on their activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

B. EFFECT OF PROPOSED CHANGES:

Background – Suicide

Florida currently ranks 15th in the nation for the number of suicides. There were 2,294 suicides in the state during 2003, making it the ninth leading cause of death for the overall population. Suicide has been identified as the third leading cause of death for 15-24 year olds, the second leading cause of death for 25-34 year olds, and the fifth leading cause of death for 35-44 year olds.[1]

While suicide is often characterized as a response to a single event or set of circumstances, suicide is, in fact, an outcome of complex interactions among neurobiological, genetic, psychological, social, cultural, and environmental risk and protective factors. The factors that contribute to any particular suicide are diverse; therefore, it is generally believed that efforts related to prevention must incorporate multiple approaches.[2]

The Florida Youth Emotional Development and Suicide Prevention Act, passed by the Legislature in 1984, declared the prevention of suicide by youths to be a priority of the state. The Act was considered landmark legislation, which resulted in Florida being recognized nationally as one of a handful of states passing legislation to establish a statewide program to promote positive development of youths and prevent suicide through coordinated educational efforts at the state and local levels. As a result of the legislation, the Department of Education, Department of Law Enforcement, and Department of Health and Rehabilitative Services (now the Department of Children and Family Services) worked together to develop ways to inform people about the problem of youth suicide and actions that should be taken to prevent suicides.[3]

In 2000, the Governor directed the Office of Drug Control[4] to assist in decreasing the incidence of suicide in Florida. The director of the Office of Drug Control convened a workgroup to establish an infrastructure for a state suicide prevention task force, now called the Florida Task Force on Suicide

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[1] Florida Vital Statistics, Annual Report. 2003.

[2] U.S. Department of Health and Human Services. National Strategy for Suicide Prevention: Goals and Objectives for Action. 2001.

[3] All of the activities of these state agencies, and of the district and state task forces, including the development of a training guide, were accomplished by using existing resources and with the help of volunteers, including parent survivors of youth suicide. *See* Florida Youth Suicide Prevention Study, Report to the Florida State Legislature. Louis de la Parte Florida Mental Health Institute, University of South Florida. 1999.

[4] The Florida Office of Drug Control was created in 1999 within the Executive Office of the Governor (Chapter 99-187, Laws of Florida) to coordinate Florida's efforts related to the reduction of drug abuse and its consequences to the state. See section 397.332, Florida Statutes.

Prevention. In August 2002, the task force released a Statewide Suicide Prevention Strategy paper to provide policy direction to state and community leaders in order to decrease the incidence of youth suicide in Florida. The paper contained three stated goals:

- To decrease the incidence of suicide in Florida by one third (from approximately 14.1 per 100,000 in 2001 to approximately 9.4 per 100,000 by the end of 2010);
- To decrease the incidence of teen suicide in Florida by one third (from approximately 9.5 per 100,000 in 2001 to approximately 6.3 per 100,000 by the end of 2010); and
- To decrease the incidence of elder suicide in Florida by one third (from approximately 20 per 100,000 in 2001 to approximately 13.3 per 100,000 by the end of 2010).[5]

Background – Organizational Structure

Chapter 14, F.S., describes the organizational structure of the Executive Office of the Governor (EOG).[6] Section 397.332, F.S. creates the Office of Drug Control inside the EOG. Chapter 20, F.S., defines several types of advisory bodies:

Name	Duration	Additional Comment
"Council" or "Advisory Council"	"[O]n a continuing basis…"	Created by specific statutory enactment and intended to focus on a specific function or program area. Provides recommendations and policy alternatives.
"Committee" or "Task Force"	1 year (without specific statutory enactment); 3 years (with specific statutory enactment)	Appointed to study a particular problem and recommend a solution. Existence terminates upon completion of assignment.
"Coordinating Council"	Not explicitly stated.	An interdepartmental advisory body – one department has primary responsibility but other agencies have an interest.
"Commission"	Not explicitly stated.	Exercises quasi-legislative or quasi-judicial power, and its members must generally be confirmed by the Legislature.

Pursuant to s. 20.052, F.S., the creation of any new advisory body requires the following findings or requirements:

- It must be necessary and beneficial to the furtherance of a public purpose.
- It must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of a public purpose.
- The Legislature and the public must be kept informed of its activities and expenses,
- It meets a statutorily defined purpose.
- Its powers and responsibilities conform to the definitions for governmental units in s. 20.03, F.S. (outlined in the table above).
- Its members, unless expressly provided otherwise in the State Constitution, are appointed for 4-year staggered terms.

[5] Florida Suicide Prevention Strategy. Office of Drug Control, Executive Office of the Governor. January 2005. Available online at: http://www.myflorida.com/myflorida/government/governorinitiatives/drugcontrol/pdfs/suicide_prevent.pdf

[6] Chapter 20, F.S., governs the organizational structure of the Executive Branch. Section 20.04, F.S., governs the creation of additional entities while the creation of advisory bodies is governed by s. 20.03, F.S., which provides substantive definitions for several types of advisory bodies and by s. 20.052, F.S., which sets forth requirements for all advisory bodies.

- Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.

In addition, the agency head or the Governor appoints private citizen members of a committee or council. Private citizen members of a commission or board of trustees are appointed by the Governor and confirmed by the Legislature, and are subject to the dual-office-holding prohibition of s. 5(a), Art. II of the State Constitution. All meetings of any entity are public, and minutes must be kept. Public records are maintained by the agency under which the entity is created.[7]

The Bill

The bill creates the Statewide Office for Suicide Prevention in the Office of Drug Control (office) within the Executive Office of the Governor and specifies duties for the office including:

- Developing a network of community-based programs to improve suicide prevention initiatives;
- Implementing the statewide plan prepared by the Suicide Prevention Coordinating Council;
- Increasing public awareness concerning topics relating to suicide prevention;
- Coordinating education and training curricula in suicide prevention efforts for professionals who may have contact with persons at risk of committing suicide; and
- Directing an interagency workgroup within the Suicide Prevention Coordinating Council.

Subject to a specific appropriation, the bill requires the director of the office to employ a coordinator of the Statewide Office for Suicide Prevention and specifies the education, experience, and skills to consider when hiring such coordinator. Duties of the coordinator include:

- Facilitating an interagency workgroup;
- Reviewing suicide prevention programs to identify innovative models;
- Developing and maintaining an Internet website related to suicide prevention; and
- Assisting in the development of public awareness and media campaigns.

The bill also creates a Suicide Prevention Coordinating Council (coordinating council) of 26 members in the office. The coordinating council is required, among other things, to create a statewide plan for suicide prevention and create a state interagency workgroup in order to incorporate state agency plans for suicide prevention into such statewide plan. The bill specifies the membership, terms of office, and the duties of both the coordinating council and the workgroup. The coordinating council must make findings and recommendations regarding suicide prevention programs and activities, and must report annually to the Governor and the Legislature.

C. SECTION DIRECTORY:

Section 1. Creates section 397.3335, Florida Statutes, to create the Statewide Office for Suicide Prevention.

Section 2. Creates section 397.3336, Florida Statutes, to create the Suicide Prevention Coordinating Council.

Section 3. Authorizes one FTE and appropriates $100,000 from the General Revenue Fund to the Office of Drug Control to implement the provisions of the bill for fiscal year 2006-2007.

Section 4. Provides for an effective date of July 1, 2006.

[7] Section 20.052(1) – (5), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill authorizes the coordinator to seek grants and other methods of funding from the federal government and nongovernmental organizations. If such activities were successful, the Office of Suicide Prevention would receive additional revenue to further its stated activities.

2. Expenditures:

   The bill authorizes one FTE and appropriates $100,000 from the General Revenue Fund to the Office of Drug Control to implement the provisions of the bill for fiscal year 2006-2007.

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:

In a report of the Committee on Pathophysiology and Prevention of the Adolescent and Adult Suicide Board on Neuroscience and Behavioral Health, it was stated that the emotional cost of suicide is great and that for family and friends of suicide victims, the personal loss is most important. Nonetheless, an additional economic cost that society incurs with suicides consists of four factors:

- Medical expenses of emergency intervention and non-emergency treatment. These costs are not borne by the health care industry alone, but by all of society through higher health care costs that are ultimately passed on to workers and taxpayers;
- The lost and/or reduced productivity of people suffering from a suicide attempt;
- The lost productivity of the loved ones grieving a suicide; and
- Lost wages of those who commit suicide.[8]

Estimates of the economic costs of suicide vary, but a reduction in the number of suicide attempts and completed suicides would result in a reduction in costs related to medical treatment and hospitalizations, costs related to disability, and lost earnings.

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.

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[8] S. Goldsmith, T. Pellmar, et al. Reducing Suicide: A National Imperative. The National Academies Press. 2002.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Chapter 20, F.S., provides for the organizational structure of the executive branch of state government and provides a uniform nomenclature for entities within that branch. The Legislature is not bound by the definitions contained in that chapter and may create executive branch entities that do not conform to the standard; however, consistency with that uniform nomenclature provides for greater consistency across state government entities. Section 20.04, F.S., does not currently contain a general definition for "office," although there are a few departments that are explicitly created with offices.[9] Typically, such "offices" do not formally contain other "offices," but "units" or "sections." This bill creates an "office" (Statewide Office for Suicide Prevention) within an "office" (Office of Drug Control) within an "office" (the Executive Office of the Governor).

The bill provides multiple reporting requirements to the Governor and the Legislature, from both the coordinator and the coordinating council. It is difficult to determine whether these multiple reports are conflicting or duplicative. Specifically, the proposed s. 397.3336(1)(a), F.S., directs the coordinating council to "advise the Statewide Office... regarding the development of the plan," then details the requirements of the plan. Subsection (d) reiterates the general directive to "advise the Statewide Office." Details of the plan may be better placed in proposed s. 397.3335, F.S.

Among the requirements in section 20.052, F.S., is the staggering of 4-year terms, when creating any advisory body. The bill does not meet this statutory requirement.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 25, 2006, the Future of Florida's Families Committee adopted four amendments to the bill which:

- Increases the number of members of the Suicide Prevention Coordinating Council (council) from 25 to 26 members by adding a representative from the Florida Counseling Association to the council membership. This increases the number of appointees to be appointed by the director of the Office of Drug Control from 11 to 12; and
- Authorizes one FTE and appropriates $100,000 from the General Revenue Fund to the Office of Drug Control to implement the provisions of the bill for fiscal year 2006-2007.

The bill was reported favorably with committee substitute.

[9] See, for example, s. 20.04(4)(5) and (6), Florida Statutes, where the Departments of Children and Family Services, Corrections and Transportation are specifically created to be outside of the uniform structure provided by chapter 20, Florida Statutes.

CHAMBER ACTION

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1 The Future of Florida's Families Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to suicide prevention; creating s.
8 397.3335, F.S.; creating the Statewide Office for Suicide
9 Prevention in the Office of Drug Control; providing the
10 goals and objectives of the office; creating the position
11 of statewide coordinator for the statewide office,
12 contingent upon a specific appropriation; specifying the
13 education and experience requirements for the position of
14 coordinator; detailing the duties and responsibilities of
15 the coordinator; authorizing the Statewide Office for
16 Suicide Prevention to seek and accept grants or funds from
17 any source to support its operation; creating s. 397.3336,
18 F.S.; creating the Suicide Prevention Coordinating Council
19 within the Office of Drug Control; providing the scope of
20 activities for the coordinating council; creating an
21 interagency workgroup for state agencies within the
22 coordinating council in order to coordinate state agency
23 plans for suicide prevention; authorizing the coordinating

24 council to assemble an ad hoc committee to advise the
25 coordinating council; requiring a report to the Governor
26 and Legislature; providing for membership on and meetings
27 of the coordinating council; providing per diem and travel
28 expenses for coordinating council members; providing an
29 appropriation and authorizing a position; providing an
30 effective date.
31
32 Be It Enacted by the Legislature of the State of Florida:
33
34 Section 1. Section 397.3335, Florida Statutes, is created
35 to read:
36 397.3335 Statewide Office for Suicide Prevention.--
37 (1)(a) The Statewide Office for Suicide Prevention is
38 created in the Office of Drug Control within the Executive
39 Office of the Governor.
40 (b) The statewide office shall develop a network of
41 community-based programs to improve suicide prevention
42 initiatives. The network shall identify and work to eliminate
43 barriers that impede providing suicide prevention services to
44 individuals who are at risk of suicide.
45 (c) The network of community-based programs shall consist
46 of stakeholders advocating suicide prevention, including, but
47 not limited to, not-for-profit suicide prevention organizations,
48 faith-based suicide prevention organizations, law enforcement
49 agencies, first responders to emergency calls, suicide
50 prevention community coalitions, schools and universities,

51 mental health agencies, substance abuse agencies, health care
52 providers, and school personnel.
53 (2) The statewide office shall, within available
54 resources:
55 (a) Implement the statewide plan prepared by the Suicide
56 Prevention Coordinating Council.
57 (b) Build a network of community-based programs to
58 integrate suicide prevention initiatives into program
59 activities.
60 (c) Increase public awareness concerning topics relating
61 to suicide prevention.
62 (d) Coordinate education and training curricula in suicide
63 prevention efforts for law enforcement personnel, first
64 responders to emergency calls, health care providers, school
65 employees, and other persons who may have contact with persons
66 at risk of suicide.
67 (e) Direct an interagency workgroup within the Suicide
68 Prevention Coordinating Council to prepare a suicide prevention
69 communication plan among state agencies. The communication plan
70 must be incorporated into the council's statewide plan.
71 (3) Contingent upon a specific appropriation, the director
72 of the Office of Drug Control shall employ a coordinator for the
73 Statewide Office for Suicide Prevention. In selecting the
74 coordinator, the director of the Office of Drug Control should
75 consider whether a candidate has:
76 (a) The following education and employment experience:
77 1. A bachelor's degree in social work, psychology,
78 sociology, counseling, public health, or a closely related field

79 and 5 or more years of work experience in behavioral health care
80 or a closely related field.
81 2. A master's or a doctoral degree in social work,
82 psychology, sociology, counseling, public health, or a closely
83 related field and 2 or more years of work experience in
84 behavioral health or a closely related field.
85 (b) The following skills:
86 1. Significant professional experience in social services,
87 mental health, or a closely related field.
88 2. Knowledge of group behavior and dynamics, methods of
89 facilitation, community development, behavioral health treatment
90 and prevention programs, and community-based behavioral health
91 problems.
92 3. Experience in working with community groups and
93 constituents that are diverse and representative of the gender,
94 ethnic, and racial populations in this state.
95 4. Experience in writing grant proposals and technical
96 reports.
97 (4) The coordinator shall work under the direction of the
98 director of the Office of Drug Control to achieve the goals and
99 objectives set forth in this section. The coordinator shall:
100 (a) Facilitate an interagency workgroup within the Suicide
101 Prevention Coordinating Council to integrate state agency
102 programs for suicide prevention into a unified statewide plan.
103 (b) Review local, state, and national suicide prevention
104 programs for examples of innovative suicide prevention models.
105 If innovative models are discovered, the coordinator shall
106 prepare a report to describe the feasibility of implementing

107 some or all of the innovative models in this state. The report
108 must be filed with the President of the Senate, the Speaker of
109 the House of Representatives, and the Suicide Prevention
110 Coordinating Council after review and approval of the report by
111 the director of the Office of Drug Control. The innovative
112 models, and the feasibility of their implementation in this
113 state, shall be evaluated by the Suicide Prevention Coordinating
114 Council, which shall file a report with the President of the
115 Senate, the Speaker of the House of Representatives, and the
116 Governor if the council determines that legislation is necessary
117 to implement an innovative model.
118 (c) Develop and maintain an Internet website with links to
119 appropriate suicide prevention resource documents, suicide
120 hotlines, state and community mental health agencies, and
121 appropriate national suicide prevention organizations.
122 (d) Identify and disseminate information regarding crisis
123 services for suicide prevention.
124 (e) Join with stakeholders in suicide prevention to
125 develop public awareness and media campaigns in each county
126 directed towards persons who are at risk of suicide.
127 (f) Provide technical assistance to educational activities
128 for residents of this state relating to suicide prevention.
129 (g) Cooperate with school districts to develop training
130 and counseling programs for school-based suicide prevention
131 activities. The coordinator and school districts must also
132 develop a method by which to evaluate each prevention training
133 and counseling program.

134 (h) Join with stakeholders in suicide prevention to
135 develop education and training programs for suicide prevention.
136 The education and training programs must be directed first to
137 persons who have face-to-face contact with individuals who may
138 be at risk of suicide. The training must assist persons to
139 recognize when an individual is at risk of suicide and how to
140 properly refer those individuals to treatment or support
141 services.
142 (i) Review current research data and findings to identify
143 at-risk populations, factors relating to suicide, and suicide
144 prevention activities and disseminate this research to the
145 Suicide Prevention Coordinating Council to develop strategies
146 for preventing suicide.
147 (j) Develop and submit proposals to agencies of the state,
148 the Federal Government, and nongovernmental organizations for
149 funding suicide prevention activities.
150 (5) The Statewide Office for Suicide Prevention may seek
151 and accept grants or funds from any federal, state, or local
152 source to support its operation and defray the expenses incurred
153 in its operation and implementation.
154 Section 2. Section 397.3336, Florida Statutes, is created
155 to read:
156 397.3336 Suicide Prevention Coordinating Council;
157 creation; membership; duties.--There is created within the
158 Office of Drug Control a Suicide Prevention Coordinating
159 Council. The council shall develop strategies for preventing
160 suicide.

161 (1) SCOPE OF ACTIVITY.--The Suicide Prevention
162 Coordinating Council is a coordinating council as defined in s.
163 20.03(9) and shall:
164 (a) Advise the Statewide Office for Suicide Prevention
165 regarding the development of a statewide plan for suicide
166 prevention, with the guiding principle being that suicide is a
167 preventable problem. The statewide plan must:
168 1. Align and provide direction for statewide suicide
169 prevention initiatives.
170 2. Establish partnerships with state and private agencies
171 to promote public awareness of suicide prevention.
172 3. Address specific populations in this state who are at
173 risk for suicide.
174 4. Improve access to help individuals in acute situations.
175 5. Identify resources to support the implementation of the
176 statewide plan.
177 (b) Create an interagency workgroup within the council in
178 order to incorporate state agency plans for suicide prevention
179 into the statewide plan. The interagency workgroup must include,
180 but need not be limited to:
181 1. The Secretary of Elderly Affairs, or his or her
182 designee.
183 2. The Secretary of Health, or his or her designee.
184 3. The Commissioner of Education, or his or her designee.
185 4. The Secretary of Health Care Administration, or his or
186 her designee.
187 5. The Secretary of Juvenile Justice, or his or her
188 designee.

189 6. The executive director of the Department of Law
190 Enforcement, or his or her designee.
191 7. The Secretary of Children and Family Services, or his
192 or her designee.
193 8. The Secretary of Corrections, or his or her designee.
194 9. The executive director of the Department of Veterans'
195 Affairs, or his or her designee.
196 10. The director of the Agency for Workforce Innovation,
197 or his or her designee.
198 (c) Assemble an ad hoc advisory committee with membership
199 from outside the council when necessary in order for the council
200 to receive advice and assistance in carrying out its
201 responsibilities.
202 (d) Advise the Statewide Office for Suicide Prevention.
203 (e) Make findings and recommendations regarding suicide
204 prevention programs and activities. The council shall prepare an
205 annual report and present it to the Governor, the President of
206 the Senate, and the Speaker of the House of Representatives by
207 January 1, 2007, and each year thereafter. The annual report
208 must describe the status of existing and planned initiatives
209 identified in the statewide plan for suicide prevention and any
210 recommendations arising therefrom.
211 (2) MEMBERSHIP.--The Suicide Prevention Coordinating
212 Council shall consist of 26 members.
213 (a) Twelve members shall be appointed by the director of
214 the Office of Drug Control and shall represent the following
215 organizations:

216 1. The Substance Abuse and Mental Health Corporation,
217 Inc., described in s. 394.655.
218 2. The Florida Association of School Psychologists.
219 3. The Florida Sheriffs Association.
220 4. The Suicide Prevention Action Network USA.
221 5. The Florida Initiative for Suicide Prevention.
222 6. The Florida Suicide Prevention Coalition.
223 7. The Alzheimer's Association.
224 8. The Florida School Board Association.
225 9. Volunteer Florida, Inc.
226 10. Florida AARP.
227 11. The Florida Alcohol and Drug Abuse Association.
228 12. The Florida Counseling Association.
229 (b) The following state officials shall be appointed to
230 the coordinating council:
231 1. The Secretary of Elderly Affairs, or his or her
232 designee.
233 2. The Secretary of Health, or his or her designee.
234 3. The Commissioner of Education, or his or her designee.
235 4. The Secretary of Health Care Administration, or his or
236 her designee.
237 5. The Secretary of Juvenile Justice, or his or her
238 designee.
239 6. The Secretary of Corrections, or his or her designee.
240 7. The executive director of the Department of Law
241 Enforcement, or his or her designee.
242 8. The executive director of the Department of Veterans'
243 Affairs, or his or her designee.

244 9. The Secretary of Children and Family Services, or his
245 or her designee.
246 10. The director of the Agency for Workforce Innovation,
247 or his or her designee.
248 (c) The Governor shall appoint four additional members to
249 the coordinating council. The appointees must have expertise
250 critical to the prevention of suicide or represent an
251 organization that is not already represented on the coordinating
252 council.
253 (d) Council members shall be appointed to terms of 4 years
254 each. Any vacancy on the coordinating council shall be filled in
255 the same manner as the original appointment, and any member
256 appointed to fill a vacancy occurring because of death,
257 resignation, or ineligibility for membership shall serve only
258 for the unexpired term of the member's predecessor. A member is
259 eligible for reappointment.
260 (e) Members of the coordinating council shall serve
261 without compensation. Any member of the coordinating council who
262 is a public employee is entitled to reimbursement for per diem
263 and travel expenses as provided in s. 112.061.
264 (3) MEETINGS.--
265 (a) The director of the Office of Drug Control shall be a
266 nonvoting, ex officio member of the coordinating council and
267 shall act as chair.
268 (b) The coordinating council shall meet at least quarterly
269 or upon the call of the chair. The council meetings may be held
270 via teleconference or other electronic means.

271 (c) Public organizations shall participate and cooperate
272 with the coordinating council.
273 Section 3. One full-time equivalent position is authorized
274 and the sum of $100,000 is appropriated from the General Revenue
275 Fund to the Office of Drug Control for the purpose of
276 implementing this act during the 2006-2007 fiscal year.
277 Section 4. This act shall take effect July 1, 2006.

HB 687

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 687 Public Records
SPONSOR(S): Adams
TIED BILLS: **IDEN./SIM. BILLS:** SB 1162

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

SUMMARY ANALYSIS

In late 2005, an Orlando television station published on its website personal information regarding holders of a concealed weapon license. The television station along with members of the Florida Legislature received numerous complaints concerning the Internet publication of such information.

The bill creates a public records exemption for personal identifying information, names, addresses, birth dates, social security numbers, phone numbers, and license numbers of individuals who have applied for or received a license to carry a concealed weapon or firearm. It authorizes the release of the information under certain circumstances. The bill provides for future review and repeal of the exemption and provides a statement of public necessity.

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

The bill could have a minimal fiscal impact on state government. It does not appear to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Background

Current law authorizes the Department of Agriculture and Consumer Services (department) to issue licenses to carry concealed weapons or concealed firearms[1] to qualified persons.[2] The license is valid in Florida for five years from the date of issuance. The license must include a color photograph of the licensee. The licensee must carry the license and valid identification at all times when in possession of the concealed weapon or firearm.[3]

An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit attesting to the applicant's completion of a firearms course, and a full frontal view color photograph[4] of the applicant.[5] The application must include:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with licensure requirements;
- A statement that the applicant has been furnished with a copy of chapter 790, F.S., relating to weapons and firearms;
- A warning that the application is executed under oath; and
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.[6]

From 2005 to 2006, the department received 30,267 new applications and 34,182 renewal applications. Of those, the department issued 29,235 new licenses and 34,093 renewal licenses.[7]

Information submitted as part of the application process is a public record. In late 2005, an Orlando television station published on its website application information regarding holders of a concealed weapon license. The television station along with members of the Florida Legislature received numerous complaints concerning the Internet publication of such information.

Effect of Bill

The bill creates a public records exemption for personal identifying information, names, addresses, birth dates, social security numbers, phone numbers, and license numbers of individuals who have applied for or received a license to carry a concealed weapon or firearm. The exemption appears redundant as information such as the name, address, and social security number is, essentially, personal identifying information.

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[1] Concealed weapon or concealed firearm means a handgun, electronic weapon or device, tear gas gun, knife, or billie. It does not include a machine gun. Section 790.06(1), F.S.
[2] *Id.*
[3] Violation of s. 790.06(1), F.S., constitutes a noncriminal violation with a penalty of $25. *Id.*
[4] The photograph must be taken within the preceding 30 days. The head, including hair, must measure 7/8 of an inch wide and 1 1/8 inches high. Section 790.06(5)(e), F.S.
[5] Section 790.06(5), F.S.
[6] Section 790.06(4), F.S.
[7] "Concealed Weapon / Firearm Summary Report," viewed February 15, 2006, http://licgweb.doacs.state.fl.us/stats/cw_monthly.html.

The Division of Licensing of the department must release the information:

- With the written consent of the applicant or licensee or his or her legally authorized representative.
- By court order upon a showing of good cause.
- Upon request by law enforcement in the performance of their lawful duties.

The bill provides for future review and repeal of the exemption on October 2, 2010. It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 amends s. 119.0712, F.S., to create a public records exemption for certain information concerning an applicant for or holder of a concealed weapon or firearm license.

Section 2 provides a public necessity statement.

Section 3 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:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Overly Broad

Article I, s. 24(c) of the State Constitution, requires that an exemption be no broader than necessary to accomplish its stated purpose. The public necessity statement provides the purpose for the public records exemption. The stated purpose for this exemption is to protect applicants and licensees from profiling, harassment, theft, harm, and abuse "based solely on their choice to own firearms." Based on the public necessity statement, it is unclear why the license number is protected from public disclosure. If personal identifying information is protected then protection of the license number does not appear necessary. As such, the exemption could be considered overly broad.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill places the public records exemption in chapter 119, F.S., which typically houses exemptions applicable to all agencies. It appears that placement of the exemption in chapter 790, F.S., is more appropriate as that chapter specifically concerns weapons and firearms. The records custodian for the department might be more apt to look for the public records exemption in the latter chapter.

Further, the bill makes the application information exempt from public records requirements; however, the bill later refers to the information as confidential and exempt. There is a difference between records that are exempt from public records requirements and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute.[8] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[9] As such, an amendment to address the language inconsistencies is needed.

Public Records Law

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

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[8] *See* Attorney General Opinion 85-62.

[9] *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[10] provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[10] Section 119.15, F.S.

1 A bill to be entitled
2 An act relating to public records; amending s. 119.0712,
3 F.S.; providing an exemption from public records
4 requirements for personal identifying information, names,
5 addresses, birth dates, social security numbers, phone
6 numbers, and license numbers contained in records
7 maintained by the Division of Licensing of the Department
8 of Agriculture and Consumer Services of individuals who
9 have applied for or received a license to carry a
10 concealed weapon or firearm; providing for disclosure of
11 such information under specified conditions; providing for
12 review and repeal; providing a statement of public
13 necessity; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Subsection (3) is added to section 119.0712,
18 Florida Statutes, to read:
19 119.0712 Executive branch agency-specific exemptions from
20 inspection or copying of public records.--
21 (3) DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.--All
22 personal identifying information, names, addresses, birth dates,
23 social security numbers, phone numbers, and license numbers
24 contained in records maintained by the Division of Licensing of
25 the Department of Agriculture and Consumer Services of
26 individuals who have applied for or received a license to carry
27 a concealed weapon or firearm pursuant to s. 790.06 are exempt
28 from s. 119.07(1) and s. 24(a), Art. I of the State

29 Constitution, except as otherwise provided in this subsection.
30 Information made confidential and exempt by this subsection
31 shall be disclosed:
32 (a) With the express written consent of the individual
33 applicant, licensee, or the individual's legally authorized
34 representative.
35 (b) By court order upon a showing of good cause.
36 (c) Upon request by law enforcement in the performance of
37 their lawful duties.
38
39 This subsection is subject to the Open Government Sunset Review
40 Act in accordance with s. 119.15 and shall stand repealed on
41 October 2, 2011, unless reviewed and saved from repeal through
42 reenactment by the Legislature.
43 Section 2. The Legislature finds that the exemption from
44 public records requirements provided by this act for all
45 personal identifying information and license numbers contained
46 in records maintained by the Division of Licensing of the
47 Department of Agriculture and Consumer Services of individuals
48 who have applied for or received a license to carry a concealed
49 weapon or firearm pursuant to chapter 790, Florida Statutes, is
50 a public necessity because this information can be used and has
51 been used to identify individuals who have obtained a license to
52 carry a concealed weapon or firearm for the purpose of then
53 making the identity of such applicants and licenseholders
54 publicly available via traditional media and on the Internet.
55 The carrying of a concealed weapon in the state by members of
56 the general public requires an individual to obtain a license

57 from the Department of Agriculture and Consumer Services. The
58 applicant for a license to carry a concealed weapon or firearm
59 must state that he or she desires a legal means to carry a
60 concealed weapon or firearm for lawful self-defense. The
61 knowledge that someone has a license to carry a concealed weapon
62 or firearm can very easily lead to the conclusion that the
63 licenseholder has in fact armed himself or herself. As the
64 Legislature has found in prior legislative sessions and has
65 expressed in s. 790.335(1)(a)2., Florida Statutes, "a list,
66 record, or registry of legally owned firearms or law-abiding
67 firearm owners is not a law enforcement tool and can become an
68 instrument for profiling, harassing, or abusing law-abiding
69 citizens based on their choice to own a firearm and exercise
70 their Second Amendment right to keep and bear arms as guaranteed
71 under the United States Constitution. Further, such a list,
72 record, or registry has the potential to fall into the wrong
73 hands and become a shopping list for thieves." The Legislature
74 also finds in s. 790.335(1)(a)3., Florida Statutes, that "a
75 list, record, or registry of legally owned firearms or law-
76 abiding firearm owners is not a tool for fighting terrorism, but
77 rather is an instrument that can be used as a means to profile
78 innocent citizens and to harass and abuse American citizens
79 based solely on their choice to own firearms and exercise their
80 Second Amendment right to keep and bear arms as guaranteed under
81 the United States Constitution." The Legislature has in the past
82 stated that it is the intent of the Legislature to protect the
83 privacy rights of law-abiding firearm owners as well as to
84 protect the right of individuals to keep and bear arms as

85 guaranteed under both the Second Amendment to the United States
86 Constitution and s. 8, Art. I of the State Constitution. Because
87 no compilation of this information exists outside the Division
88 of Licensing of the Department of Agriculture and Consumer
89 Services, such a compilation would be of significant value to a
90 person who might desire to profile, harass, steal from, harm, or
91 abuse those who have a license to carry a concealed weapon or
92 firearm. Consequently, the Legislature finds that personal
93 identifying information and license numbers contained in records
94 maintained by the Division of Licensing of the Department of
95 Agriculture and Consumer Services of individuals who have
96 applied for or received a license to carry a concealed weapon or
97 firearm pursuant to chapter 790, Florida Statutes, must be held
98 confidential and exempt from public records requirements.
99 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-22 OGSR Interference with Custody
SPONSOR(S): Governmental Operations Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 708

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

SUMMARY ANALYSIS

During the 2005 Regular Session, the Legislature reenacted and saved from repeal the public records exemption that accompanies the interference with custody statute. Because the statute contained substantive language inconsistencies, the repeal date was extended from October 2, 2005, to October 2, 2006, in order to trigger an additional review of the substantive language.

The bill revises the interference with custody statute. It broadens an existing exception to the statute making the exception available to any person having a legal right to custody of a minor, rather than simply to a spouse. The exception is applicable not only to the taking of a child but also to the taking of an incompetent person.

The bill also revises an existing defense under the statute. In order to utilize a defense based on being a victim of domestic violence, a defendant must establish that he or she reasonably believed the action of taking the minor or incompetent person was necessary in order to escape from the violence or preserve the minor or incompetent person from exposure to the violence. It revises a second defense, to require that, in order to utilize the defense that the child or incompetent person instigated his or her own taking, a defendant must establish that it was reasonable to rely on the instigating actions of the minor or incompetent person.

The bill clarifies existing language to specify that the exception to prosecution applies to the specific offenses of interference with custody.

The interference with custody statute will repeal on October 2, 2006, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill broadens the exception to the interference with custody statute making it available to *any person* having a legal right to custody of a minor, rather than simply to spouses. The exception is applicable not only to the taking of a child but also to the taking of an incompetent person.

Empower Families – The bill broadens the exception to the interference with custody statute making it available to *any person* having a legal right to custody of a minor, rather than simply to spouses. The exception also applies to the taking of an incompetent person.

B. EFFECT OF PROPOSED CHANGES:

Background

Interference with Custody

In 1974, the Legislature created the offense of interference with custody. At present, there are two variations to the offense:

- It is a third-degree felony for any person, without legal authority, to knowingly or recklessly take a child 17 years of age or under or any incompetent person from the custody of his or her parent, guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian.[1]
- It is a third-degree felony, in the absence of a court order determining custody or visitation rights, for a parent, stepparent, guardian, or relative who has custody of a child or incompetent person to take or conceal the child or incompetent person with a malicious intent to deprive another person of his or her right to custody.[2]

There are three statutory defenses to the offense of interference with custody:

- The defendant reasonably believes that his or her action was necessary to protect the child or incompetent person from danger to his or her welfare.
- The defendant was the victim of an act of domestic violence or had reasonable cause to believe that his or her action was necessary to protect himself or herself from an act of domestic violence.
- The child or incompetent person was taken at his or her own instigation without enticement and without purpose to commit a criminal offense with or against the child or incompetent person.[3]

The statute does not apply if a spouse flees with a child or incompetent person because he or she:

- Is the victim of domestic violence or reasonably believes that he or she is about to become a victim of such violence; or
- Believes the welfare of the child or incompetent person is in danger.[4]

This exception to the statute does not apply to a person fleeing with an incompetent person for the aforementioned reasons.

In order to avail himself or herself of the exception for spouses, a person who takes a child must file a report with the sheriff's office or the state attorney's office of the county where the child resided at the

[1] Section 787.03(1), F.S.
[2] Section 787.03(2), F.S.
[3] Section 787.03(4)(a)-(c), F.S.
[4] Section 787.03(6)(a), F.S.

time he or she was taken. Within 10 days of taking the child, the report must be filed and must contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.[5] Within a reasonable time, the person also must commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act or the Uniform Child Custody Jurisdiction and Enforcement Act.[6]

Public Records Exemption

The name of the person taking the child and the current address and telephone number of that person and the child, which are contained in the report made to the sheriff or state attorney, are confidential and exempt from public records requirements.[7] The public records exemption was scheduled for repeal on October 2, 2005, because of the Open Government Sunset Review Act. During the 2005 Regular Session, the Legislature reenacted the public records exemption and saved it from repeal. Because the interference with custody statute contained substantive language inconsistencies, the repeal date was extended from October 2, 2005, to October 2, 2006, in order to trigger an additional review of the substantive language.[8]

Effect of Bill

The bill revises the interference with custody statute to broaden an existing exception for a spouse who takes a minor during the course of fleeing domestic violence or protecting the welfare of the minor and reports their whereabouts to the sheriff or state attorney. The bill broadens the exception by making it available to *any person* having a legal right to custody of a minor, rather than simply to a spouse. The exception is applicable not only to the taking of a minor but also to the taking of an incompetent person.

The bill revises an existing defense under the statute. In order to utilize a defense based on being a victim of domestic violence, a defendant must establish that he or she reasonably believed the action of taking the minor or incompetent person was necessary in order to escape from the violence or preserve the minor or incompetent person from exposure to the violence. It revises a second defense, to require that, in order to utilize the defense that the minor or incompetent person instigated his or her own taking, a defendant must establish that it was reasonable to rely on the instigating actions of the minor or incompetent person.

The bill makes the offense of interference with custody applicable to the taking of a minor, replacing the term "child 17 years of age of under" with the term "minor," in order to avoid ambiguity over whether the law covers the taking of a child in the months between his or her 17th and 18th birthdays.

The bill clarifies existing language in s. 787.03(6)(a), F.S., to specify that the exception to prosecution provided in the statute applies to the specific offenses of interference with custody. As currently worded, the statute provides that "this section does not apply" in certain circumstances, which creates ambiguity about the effect of this provision on the application of related provisions in s. 787.03, F.S., such as the public records exemption.

C. SECTION DIRECTORY:

Section 1 amends s. 787.03, F.S., regarding the interference with custody.

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

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[5] The sheriff or state attorney must be informed of any change of address or telephone number. Section 787.03(6)(b)3., F.S.
[6] Section 787.03(6)(b), F.S.
[7] Section 787.03(6)(c), F.S.
[8] House of Representatives Staff Analysis of HB 1699, March 11, 2005, at 3.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

PCB GO 06-23 addresses the public records exemption that accompanies the interference with custody statute.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding the offense of interference
4 with custody; amending s. 787.03, F.S.; specifying that
5 the offense of interference with custody applies to the
6 taking of a minor; revising a defense for a person who is
7 a victim of domestic violence to require that interference
8 with custody is necessary to escape the violence or to
9 preserve the minor or incompetent person from exposure to
10 the violence; revising a defense when a minor or
11 incompetent person instigates his or her taking to require
12 a showing that it was reasonable for the defendant to rely
13 upon the instigating acts; broadening an exception from
14 the statute beyond a spouse to include certain other
15 persons who take a minor or incompetent person and follow
16 prescribed procedures; including the taking of an
17 incompetent person within those procedures required under
18 the statutory exception; providing an effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Subsections (1), (2), (3), (4), and (5), and
23 paragraphs (a) and (b) of subsection (6) of section 787.03,
24 Florida Statutes, are amended to read:
25 787.03 Interference with custody.--
26 (1) Whoever, without lawful authority, knowingly or
27 recklessly takes or entices, or aids, abets, hires, or otherwise
28 procures another to take or entice, any minor ~~child 17 years of~~
29 ~~age or under~~ or any incompetent person from the custody of the

30 minor's ~~child~~ or incompetent person's parent, his or her
31 guardian, a public agency having the lawful charge of the minor
32 ~~child~~ or incompetent person, or any other lawful custodian
33 commits the offense of interference with custody and commits a
34 felony of the third degree, punishable as provided in s. 775.082,
35 s. 775.083, or s. 775.084.
36 (2) In the absence of a court order determining rights to
37 custody or visitation with any minor ~~child 17 years of age or~~
38 ~~under~~ or with any incompetent person, any parent of the minor
39 ~~child~~ or incompetent person, whether natural or adoptive,
40 stepparent, legal guardian, or relative of the minor ~~such child~~
41 or incompetent person who has custody thereof and who takes,
42 detains, conceals, or entices away that minor ~~child~~ or
43 incompetent person within or without the state~~,~~ with malicious
44 intent to deprive another person of his or her right to custody
45 of the minor ~~child~~ or incompetent person~~,~~ commits a felony of the
46 third degree, punishable as provided in s. 775.082, s. 775.083,
47 or s. 775.084.
48 (3) A subsequently obtained court order for custody or
49 visitation does not affect application of this section.
50 (4) It is a defense that:
51 (a) The defendant had reasonable cause to believe
52 ~~reasonably believes~~ that his or her action was necessary to
53 preserve the minor ~~child~~ or the incompetent person from danger to
54 his or her welfare.
55 (b) The defendant was the victim of an act of domestic
56 violence or had reasonable cause to believe that he or she was
57 about to become the victim of ~~his or her action was necessary to~~
58 ~~protect himself or herself from~~ an act of domestic violence as

59 defined in s. 741.28, and the defendant had reasonable cause to
60 believe that the action was necessary in order for the defendant
61 to escape from, or protect himself or herself from, the domestic
62 violence or to preserve the minor or incompetent person from
63 exposure to the domestic violence.
64 (c) The minor ~~child~~ or incompetent person was taken away
65 at his or her own instigation without enticement and without
66 purpose to commit a criminal offense with or against the minor
67 ~~child~~ or incompetent person, and the defendant establishes that
68 it was reasonable to rely on the instigating acts of the minor or
69 incompetent person.
70 (5) Proof that a person has not attained the age of 18
71 years ~~child was 17 years of age or under~~ creates the presumption
72 that the defendant knew the minor's ~~child's~~ age or acted in
73 reckless disregard thereof.
74 (6)(a) The offenses prescribed in subsections (1) and
75 (2) do ~~This section does~~ not apply in cases in which ~~where~~ a
76 person having a legal right to custody of a minor or incompetent
77 person ~~spouse who~~ is the victim of any act of domestic violence,
78 ~~or who~~ has reasonable cause to believe he or she is about to
79 become the victim of any act of domestic violence, as defined in
80 s. 741.28, or believes that his or her action was necessary to
81 preserve the minor ~~child~~ or the incompetent person from danger to
82 his or her welfare and seeks shelter from such acts or possible
83 acts and takes with him or her the minor or incompetent person
84 ~~any child 17 years of age or younger~~.
85 (b) In order to gain the exception ~~exemption~~ conferred by
86 paragraph (a), a person who takes a minor or incompetent person
87 under ~~child pursuant to~~ this subsection must:

88 1. Within 10 days after taking the minor or incompetent
89 person ~~child~~, make a report to the sheriff's office or state
90 attorney's office for the county in which the minor or
91 incompetent person ~~child~~ resided at the time he or she was taken,
92 which report must include the name of the person taking the minor
93 or incompetent person ~~child~~, the current address and telephone
94 number of the person and minor or incompetent person ~~child~~, and
95 the reasons the minor or incompetent person ~~child~~ was taken.
96 2. Within a reasonable time after taking a minor ~~the~~
97 ~~child~~, commence a custody proceeding that is consistent with the
98 federal Parental Kidnapping Prevention Act, 28 U.S.C. s. 1738A,
99 or the Uniform Child Custody Jurisdiction and Enforcement Act,
100 ss. 61.501-61.542.
101 3. Inform the sheriff's office or state attorney's office
102 for the county in which the minor or incompetent person ~~child~~
103 resided at the time he or she was taken of any change of address
104 or telephone number of the person and the minor or incompetent
105 person ~~child~~.
106 Section 2. This act shall take effect October 1, 2006.

PCB GO 06-23

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GO 06-23 OGSR Public Records Exemption for Interference with Custody
SPONSOR(S): Governmental Operations Committee
TIED BILLS: PCB GO 06-22 **IDEN./SIM. BILLS:** SB 710

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

SUMMARY ANALYSIS

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

Current law provides a third-degree felony for the offense of "interference with custody"; however, a spouse who flees with a child because he or she is the victim of domestic violence or believes the welfare of the child is in danger does not commit a felony of the third degree. The fleeing spouse must file a report with the sheriff's office or the state attorney's office of the county where the child resided at the time he or she was taken. The report must contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.

In order to conform to changes proposed in PCB GO 06-22, this bill reenacts and expands the public records exemption for the current address and telephone number of the person fleeing with a child and of the child. The bill expands the exemption to include the current address and telephone number of the person fleeing with an incompetent person and of the incompetent person.

The bill provides for future review and repeal of the exemption. It also provides a statement of public necessity as required by the State Constitution, and provides a contingent effective date.

The bill may have a minimal non-recurring fiscal impact on state and local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands the public records exemption that accompanies the interference with custody statute thereby decreasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

Interference with Custody

In 1974, the Legislature created the offense of interference with custody. At present, there are two variations to the offense:

- It is a third-degree felony for any person, without legal authority, to knowingly or recklessly take a child 17 years of age or under or any incompetent person from the custody of his or her parent, guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian.[1]
- It is a third-degree felony, in the absence of a court order determining custody or visitation rights, for a parent, stepparent, guardian, or relative who has custody of a child or incompetent person to take or conceal the child or incompetent person with a malicious intent to deprive another person of his or her right to custody.[2]

The statute does not apply if a spouse flees with a child or incompetent person because he or she:

- Is the victim of domestic violence or reasonably believes that he or she is about to become a victim of such violence; or
- Believes the welfare of the child or incompetent person is in danger.[3]

This exception to the statute does not apply to a person fleeing with an incompetent person for the aforementioned reasons.

In order to avail himself or herself of the exception for spouses, a person who takes a child must file a report with the sheriff's office or the state attorney's office of the county where the child resided at the time he or she was taken. Within 10 days of taking the child, the report must be filed and must contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.[4] Within a reasonable time, the person also must commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act or the Uniform Child Custody Jurisdiction and Enforcement Act.[5]

Public Records Exemption

The current address and telephone number of the person taking the child and of the child, which are contained in the report made to the sheriff or state attorney, are confidential and exempt[6] from public

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[1] Section 787.03(1), F.S.
[2] Section 787.03(2), F.S.
[3] Section 787.03(6)(a), F.S.
[4] The sheriff or state attorney must be informed of any change of address or telephone number. Section 787.03(6)(b)3., F.S.
[5] Section 787.03(6)(b), F.S.
[6] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure

records requirements.[7] The public records exemption was scheduled for repeal on October 2, 2005, because of the Open Government Sunset Review Act.[8] During the 2005 Regular Session, the Legislature reenacted the public records exemption and saved it from repeal. Because the interference with custody statute contained substantive language inconsistencies, the repeal date was extended from October 2, 2005, to October 2, 2006, in order to trigger an additional review of the substantive language.[9] As a result, the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

PCB GO 06-22

PCB GO 06-22 revises the interference with custody statute to broaden an existing exception for a spouse who takes a minor during the course of fleeing domestic violence or protecting the welfare of the minor, and reports their whereabouts to the sheriff or state attorney. It provides that the exception is applicable not only to the taking of a minor but also to the taking of an incompetent person. As such, it is recommended that the public records exemption be amended to reflect this change.

Effect of Bill

The bill reenacts and expands the public records exemption to conform to the recommended changes to the interference with custody statute made in PCB GO 06-22. The bill expands the exemption to include the current address and telephone number of the person fleeing with an incompetent person and of the incompetent person. The sheriff or state attorney may allow an agency, as defined in the Public Records Act, to inspect and copy such records in the furtherance of that agency's duties and responsibilities.

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

C. SECTION DIRECTORY:

Section 1 amends s. 787.03, F.S., to reenact and expand the public records exemption regarding the interference with custody.

Section 2 provides a public necessity statement.

Section 3 provides an October 1, 2006, effective date contingent upon the passage of additional legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   See FISCAL COMMENTS.

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requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

[7] Section 787.03(6)(c), F.S.

[8] Section 119.15, F.S.

[9] House of Representatives Staff Analysis of HB 1699, March 11, 2005, at 3.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill requires a two-thirds vote for passage.

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

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

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding the public records exemption
4 for the interference with custody statute; amending s.
5 787.03, F.S.; expanding the public records exemption to
6 include the address and telephone number of incompetent
7 persons; providing an exception to the exemption;
8 providing for future legislative review and repeal of the
9 exemption; providing a statement of public necessity;
10 providing a contingent effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Paragraph (c) of subsection (6) and subsection
15 (7) of section 787.03, Florida Statutes, are amended to read:
16 787.03 Interference with custody.--
17 (6)
18 (c)1. ~~The name of the person taking the child and~~ The
19 current address and telephone number of the person and the minor
20 or incompetent person which are ~~child that are~~ contained in the
21 report made to a sheriff or state attorney under paragraph (b)
22 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
23 I of the State Constitution.
24 2. A sheriff or state attorney may allow an agency, as
25 defined in s. 119.011, to inspect and copy records made
26 confidential and exempt under this paragraph in the furtherance
27 of that agency's duties and responsibilities.
28 3. This paragraph ~~(7)(a) This section~~ is subject to the
29 Open Government Sunset Review Act ~~of 1995~~ in accordance with s.

30 119.15 and is repealed on October 2, 2011 ~~2006~~, unless reviewed
31 and saved from repeal through reenactment by the Legislature.
32 ~~(b) Pursuant to s. 119.15, the Division of Statutory~~
33 ~~Revision is directed to certify this section, in its entirety, in~~
34 ~~the list of Open Government Sunset Review exemptions to be~~
35 ~~certified by June 1, 2005.~~
36 Section 2. The Legislature finds that it is a public
37 necessity to expand the public records exemption for certain
38 information contained in a report to a sheriff or state attorney
39 made by a person who takes a minor in order to escape domestic
40 violence, avoid domestic violence, or preserve the welfare of the
41 minor. If the alleged perpetrator of domestic violence were able
42 to obtain the address and telephone information contained in a
43 report to the sheriff or state attorney, he or she could locate
44 or contact the person who takes a minor and the minor, thus
45 exposing them to potential additional harm. Keeping the address
46 and telephone number of that person and the minor confidential
47 and exempt protects their safety. For the same reasons, the
48 Legislature finds that it is a public necessity to expand this
49 public records exemption to include the taking of an incompetent
50 person within the coverage of the exemption. The underlying
51 offense of interference with custody applies to the taking of an
52 incompetent person as well as to the taking of a person younger
53 than 18 years of age. In addition, the safety of an incompetent
54 person and the person seeking shelter with an incompetent person
55 is as vital as the safety of a minor and a person seeking shelter
56 with a minor. The underlying offense of interference with custody
57 envisions that an incompetent person is as vulnerable as a minor.
58 Therefore, the Legislature finds that the public records

59 exemption should apply to the address and telephone number of the
60 person who takes an incompetent person and the incompetent person
61 which are contained in a report submitted to a sheriff or state
62 attorney as prescribed in the interference with custody statute.
63 If persons seeking shelter with minors or incompetent persons
64 knew that their addresses or telephone numbers could be obtained
65 through the reports to the sheriff or state attorney, they would
66 fear for their safety and would unlikely make the required
67 reports, thereby thwarting the public policy of encouraging the
68 resolution of allegations of interference with custody while also
69 protecting individuals from harm. The public records exemption,
70 therefore, principally protects the safety of individuals, but
71 also promotes the effective and efficient administration of the
72 interference with custody statute.
73 Section 3. This act shall take effect October 1, 2006, if
74 House Bill ___, or similar legislation amending section 787.03,
75 Florida Statutes, is adopted in the same legislative session, or
76 an extension thereof, and becomes law.

PCB GO 06-25

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

Concerning the Administrative Procedure Act, the bill makes a number of clarifications, modifications, and amendments to the obligations of the Joint Administrative Procedures Committee (JAPC) and petitioners. Specific examples include aggregating various timeframes in one section; clarifying the definition of, and extending the time for applying for, an 'administrative determination' relating to the challenge of a proposed rule; providing that a proposed rule or provision of a proposed rule declared invalid by an administrative law judge will not be adopted unless reversed on appeal; and providing that the time for filing a petition or request for hearing is extended under certain circumstances ('equitable tolling').

The bill also increases the Department of State's administrative responsibilities regarding the Florida Administrative Code and Florida Administrative Weekly website, requiring that the site enable users to:

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

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

The Department of State has estimated its costs of implementing the website provisions at $450,000 over a three-year period.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

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

B. EFFECT OF PROPOSED CHANGES:

Administrative Procedures Act

Background

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

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

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

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

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

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

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

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

Effect of Bill

Duties of JAPC

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

Agency Forms

The bill locates all important rulemaking timeframes and deadlines in one section of the APA for improved accessibility.

Appeal of Administrative Determinations

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

Petitions for Administrative Hearing

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

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

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

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

Equitable Tolling

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

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

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

Bid Protest Bonds

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

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

Report of Agency Review of Rules

The bill requires each agency to file its report of the agency's formal rule review to JAPC in addition to the President of the Senate and the Speaker of the House of Representatives.

Florida Administrative Weekly and Florida Administrative Code

Background

Current law requires the Department of State (DOS) to publish rulemaking and public meetings notices, and various other materials filed by the state's administrative agencies, in the *Florida Administrative Weekly* (FAW).[11] DOS contracts with LexisNexis Matthew Bender for publication of the FAW in a printed format.[12] The FAW is published on Fridays and distributed for free to administrative agencies, courts, libraries, law schools, and legislative offices. The FAW has approximately 369 paid subscribers.[13] In addition to the paper version, DOS also posts copies of the FAW on its Internet website accessible to the public free of charge.

DOS is required to publish the Florida Administrative Code (FAC), which contains all rules adopted by agencies, together with references to rulemaking authority and history notes. The FAC must be

[11] According to DOS, approximately 600 entities publish notices in the FAW. These entities include state agencies, other units of state and local governments, and nongovernmental entities. Email from Dep't. of State, Feb. 9, 2006.

[12] *Report on Internet Noticing of the Florida Administrative Weekly*, Florida Joint Administrative Procedures Committee, October 2003, pp. 2-3.

[13] Telephone conversation with Department of State, Administrative Code and Weekly Unit, February 10, 2006. DOS indicated information was based on a recent report from FAW publisher.

supplemented at least monthly.[14] DOS also contracts with LexisNexis Matthew Bender for the printing of the FAC.

Current law creates the Publication Revolving Trust Fund, and specifies that all fees and moneys collected by DOS under the Administrative Procedure Act (APA) be deposited in the fund for the purpose of paying for the publication of the FAC and FAW, and for associated costs incurred by DOS in administering APA requirements. Unencumbered balances at the beginning of each fiscal year, which exceed $300,000, are transferred to the General Revenue Fund.[15]

DOS is authorized to: (a) make subscriptions of the FAW available for a price computed as a pro rata share of 50 percent of the costs related to the publication of the FAW; and (b) charge agencies using the FAW a space rate (line charge) computed to cover a pro rata share of 50 percent of the costs related to publication of the FAW.[16] Subscription fees charged to FAW subscribers are retained by the publisher as compensation for printing the FAW. DOS does not receive royalties from FAW subscriptions.

Internet Publication Pilot Project

In 2001, the Legislature authorized the Department of Environmental Protection (DEP) and the State Technology Office (STO) to establish an Internet publication pilot project for the purpose of determining the cost-effectiveness of publishing administrative notices on the Internet, rather than in the FAW, and to submit a report containing findings regarding the cost-effectiveness of Internet publication.[17] The report indicated that DEP paid $44,179 for FAW line charges during calendar year 2001 and would have paid approximately $32,100 for FAW line charges during calendar year 2002 if Internet publication had not been permitted. Nonrecurring costs to establish Internet publication were $10,200 to develop the computer software application, and $20,000 to program the e-mail registration service enhancement. The report indicated that the computer software application may be shared with other agencies at no cost and recommended that the Legislature permit all agencies to elect Internet publication in lieu of publication in the paper version of the FAW, given the potential for substantial agency savings.[18]

2003 Interim Study on FAW Internet Noticing

During the 2003 Legislative Interim, the Joint Administrative Procedures Committee studied the feasibility of Internet noticing for all state agencies and other entities that advertise in the FAW.[19] In October 2003, the results were published in the "Report on Internet Noticing of the Florida Administrative Weekly." The report recommended that the FAW be published on a centralized website managed by DOS. Further, it was recommended that the space rate charge continue to be collected by DOS to fund its functions related to publication of the FAW and FAC.

Effect of Bill

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

- Search for notices by type, publication date, rule number, word, subject, or agency.
- Search a database that makes available all notices published on the website for a period of at least five years.

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[14] Sec. 120.55(1)(a), F.S.
[15] Sec. 120.55(5), F.S.
[16] Sec. 120.55(1), F.S.
[17] Ch. 2001-278, L.O.F.; s. 120.551, F.S.
[18] *Joint Report and Recommendations of the Department of Environmental Protection, The State Technology Office, and The Department of State on the Internet Publication Pilot Project under Sec. 120.551, F.S.*, Jan. 31, 2003.
[19] This study included conducting surveys and consulting with DOS, DEP, STO, and an independent technology expert to determine specific technology requirements and estimates of potential costs.

- Subscribe to an automated e-mail notification of selected notices.
- View agency forms incorporated by reference in proposed rules.

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

The bill:

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

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

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

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

C. SECTION DIRECTORY:

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

Section 2 amends s. 120.54, F.S., relating to rulemaking and rule adoption procedures.

Section 3 amends s. 120.55, F.S., requiring Internet publication of the FAW.

Section 4 amends s. 120.551, F.S., postponing the repeal of the section.

Section 5 amends s. 120.56, F.S., revising provisions relating to withdrawal of challenged rules.

Section 6 amends s. 120.569, F.S., prescribing circumstances under which the time for filing a petition for hearing must be extended.

Section 7 amends s. 120.57, F.S., requiring that additional information be included in notices relating to protests of contract solicitations or awards.

Section 8 amends s. 120.74, F.S., requiring agency reports to be filed with the Joint Administrative Procedures Committee, in addition to the President and Speaker.

Section 9 requires DOS to provide certain assistance to agencies in their transition to publishing on the FAW Internet website.

Section 10 provides an effective date of July 1, 2006, unless otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

It is estimated that the FAW Internet website will require a non-recurring cost over three years of $450,000 for DOS to comply with the proposed implementation timeline.[20] Per DOS, the Records Management Trust Fund cash balance and anticipated revenue is sufficient to support this project.[21]

DOS indicates that it will continue to charge 99 cents per line to agencies using the FAW from now through the second year that the FAW Internet website is operational. DOS also states that these revenues will be used to fund all costs associated with the Law, Code, and Administrative Weekly section within the Division of Library and Information Services.[22]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Per DOS, local governments' advertising on the FAW Internet website would pay the current space rate charge of 99 cents per line until implementation of the new services is complete.[23]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Pursuant to Art. VII, s. 18 of the Florida Constitution, the Legislature may not pass a law requiring a county or municipality to spend funds unless an appropriation of sufficient funding is provided. Any requirement to pay associated with this bill, however, is anticipated to have an insignificant fiscal impact (less than $1.7 million). Thus, the bill appears to be exempt from the constitutional mandate funding requirements.

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[20] Telephone conversation with Department of State, Administrative Code and Weekly Unit, February 10, 2006.
[21] *Id.*
[22] *Id.*
[23] *Id.*

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the Administration Commission for the purpose of prescribing the form and substantive provisions of a protest bond. The bond form currently exists in rule;[24] however, there has been an outstanding objection from the Joint Administrative Procedures Committee since its promulgation.[25] The rulemaking authority granted by the bill specifically addresses the JAPC objection.

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[24] Ch. 28-110.005, *Fla. Admin. Code.*

[25] See *Fla. Admin. Weekly Vol. 24, No. 20, May 15, 1998.*

1 A bill to be entitled
2 An act relating to administrative procedures; amending s.
3 11.60, F.S.; revising duties of the Administrative
4 Procedures Committee with respect to its review of
5 statutes; amending s. 120.54, F.S.; revising times for
6 filing rules for adoption; providing for the form and
7 provisions of bonds; revising applicability of certain
8 uniform rules; amending s. 120.55, F.S.; requiring that
9 certain information be included in forms incorporated by
10 reference in rules; requiring information to be published
11 electronically on an Internet website; providing that such
12 publication does not preclude other publications;
13 providing additional duties of the Department of State
14 with respect to publications; providing requirements for
15 the Internet website; amending s. 120.551, F.S.;
16 postponing the repeal of this section, relating to
17 Internet publication; amending s. 120.56, F.S.; revising
18 provisions relating to withdrawal of challenged rules;
19 amending s. 120.569, F.S.; prescribing circumstances under
20 which the time for filing a petition for hearing must be
21 extended; amending s. 120.57, F.S.; requiring that
22 additional information be included in notices relating to
23 protests of contract solicitations or awards; amending s.
24 120.74, F.S.; requiring agency reports to be filed with
25 the Administrative Procedures Committee; requiring the
26 Department of State to provide certain assistance to
27 agencies in their transition to publishing on the Florida
28 Administrative Weekly Internet website; providing an
29 effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:
32
33 Section 1. Subsection (4) of section 11.60, Florida
34 Statutes, is amended to read:
35 11.60 Administrative Procedures Committee; creation;
36 membership; powers; duties.--
37 (4) The committee shall ~~undertake and~~ maintain a ~~systematic~~
38 ~~and~~ continuous review of statutes that authorize agencies to
39 adopt rules and shall make recommendations to the appropriate
40 standing committees of the Senate and the House of
41 Representatives as to the advisability of considering changes to
42 the delegated legislative authority to adopt rules in specific
43 circumstances. The annual report submitted pursuant to paragraph
44 (2)(f) shall include ~~a schedule for the required systematic~~
45 ~~review of existing statutes, a summary of the status of this~~
46 ~~review, and~~ any recommendations provided to the standing
47 committees during the preceding year.
48 Section 2. Paragraph (e) of subsection (3) and paragraph
49 (b) of subsection (5) of section 120.54, Florida Statutes, are
50 amended to read:
51 120.54 Rulemaking.--
52 (3) ADOPTION PROCEDURES.--
53 (e) Filing for final adoption; effective date.--
54 1. If the adopting agency is required to publish its rules
55 in the Florida Administrative Code, it shall file with the
56 Department of State three certified copies of the rule it
57 proposes to adopt, a summary of the rule, a summary of any
58 hearings held on the rule, and a detailed written statement of

59 the facts and circumstances justifying the rule. Agencies not
60 required to publish their rules in the Florida Administrative
61 Code shall file one certified copy of the proposed rule, and the
62 other material required by this subparagraph, in the office of
63 the agency head, and such rules shall be open to the public.
64 2. A rule may not be filed for adoption less than 28 days
65 or more than 90 days after the notice required by paragraph (a),
66 until 21 days after the notice required by paragraph (d), until
67 14 days after the final public hearing, until 21 days after
68 preparation of a statement of estimated regulatory costs required
69 under s. 120.541, or until the administrative law judge has
70 rendered a decision under s. 120.56(2), whichever applies.
71 ~~Filings shall be made no less than 28 days nor more than 90 days~~
72 ~~after the notice required by paragraph (a).~~ When a required
73 notice of change is published prior to the expiration of the time
74 to file the rule for adoption, the period during which a rule
75 must be filed for adoption is extended to 45 days after the date
76 of publication. If notice of a public hearing is published prior
77 to the expiration of the time to file the rule for adoption, the
78 period during which a rule must be filed for adoption is extended
79 to 45 days after adjournment of the final hearing on the rule, 21
80 days after receipt of all material authorized to be submitted at
81 the hearing, or 21 days after receipt of the transcript, if one
82 is made, whichever is latest. The term "public hearing" includes
83 any public meeting held by any agency at which the rule is
84 considered. The filing of a petition for an administrative
85 determination under the provisions of s. 120.56(2) shall toll the
86 90-day period during which a rule must be filed for adoption
87 until 30 days after rendition of the final order or until

88 judicial review of the final order is complete ~~the administrative~~
89 ~~law judge has filed the final order with the clerk~~.
90 3. At the time a rule is filed, the agency shall certify
91 that the time limitations prescribed by this paragraph have been
92 complied with, that all statutory rulemaking requirements have
93 been met, and that there is no administrative determination
94 pending on the rule. For the purposes of this paragraph, the
95 term "administrative determination" does not include subsequent
96 judicial review.
97 4. At the time a rule is filed, the committee shall certify
98 whether the agency has responded in writing to all material and
99 timely written comments or written inquiries made on behalf of
100 the committee. The department shall reject any rule not filed
101 within the prescribed time limits; that does not satisfy all
102 statutory rulemaking requirements; upon which an agency has not
103 responded in writing to all material and timely written inquiries
104 or written comments; upon which an administrative determination
105 is pending; or which does not include a statement of estimated
106 regulatory costs, if required.
107 5. If a rule has not been adopted within the time limits
108 imposed by this paragraph or has not been adopted in compliance
109 with all statutory rulemaking requirements, the agency proposing
110 the rule shall withdraw the rule and give notice of its action in
111 the next available issue of the Florida Administrative Weekly.
112 6. The proposed rule shall be adopted on being filed with
113 the Department of State and become effective 20 days after being
114 filed, on a later date specified in the rule, or on a date
115 required by statute. Rules not required to be filed with the
116 Department of State shall become effective when adopted by the

117 agency head or on a later date specified by rule or statute. If
118 the committee notifies an agency that an objection to a rule is
119 being considered, the agency may postpone the adoption of the
120 rule to accommodate review of the rule by the committee. When an
121 agency postpones adoption of a rule to accommodate review by the
122 committee, the 90-day period for filing the rule is tolled until
123 the committee notifies the agency that it has completed its
124 review of the rule.
125 (5) UNIFORM RULES.--
126 (b) The uniform rules of procedure adopted by the
127 commission pursuant to this subsection shall include, but are not
128 limited to:
129 1. Uniform rules for the scheduling of public meetings,
130 hearings, and workshops.
131 2. Uniform rules for use by each state agency that provide
132 procedures for conducting public meetings, hearings, and
133 workshops, and for taking evidence, testimony, and argument at
134 such public meetings, hearings, and workshops, in person and by
135 means of communications media technology. The rules shall provide
136 that all evidence, testimony, and argument presented shall be
137 afforded equal consideration, regardless of the method of
138 communication. If a public meeting, hearing, or workshop is to
139 be conducted by means of communications media technology, or if
140 attendance may be provided by such means, the notice shall so
141 state. The notice for public meetings, hearings, and workshops
142 utilizing communications media technology shall state how persons
143 interested in attending may do so and shall name locations, if
144 any, where communications media technology facilities will be
145 available. Nothing in this paragraph shall be construed to

146 diminish the right to inspect public records under chapter 119.
147 Limiting points of access to public meetings, hearings, and
148 workshops subject to the provisions of s. 286.011 to places not
149 normally open to the public shall be presumed to violate the
150 right of access of the public, and any official action taken
151 under such circumstances is void and of no effect. Other laws
152 relating to public meetings, hearings, and workshops, including
153 penal and remedial provisions, shall apply to public meetings,
154 hearings, and workshops conducted by means of communications
155 media technology, and shall be liberally construed in their
156 application to such public meetings, hearings, and workshops. As
157 used in this subparagraph, "communications media technology"
158 means the electronic transmission of printed matter, audio, full-
159 motion video, freeze-frame video, compressed video, and digital
160 video by any method available.
161 3. Uniform rules of procedure for the filing of notice of
162 protests and formal written protests. The Administration
163 Commission may prescribe the form and substantive provisions of a
164 required bond.
165 4. Uniform rules of procedure for the filing of petitions
166 for administrative hearings pursuant to s. 120.569 or s. 120.57.
167 For all actions other than agency enforcement and disciplinary
168 actions against a licensee or other person, such rules shall
169 require the petition to include:
170 a. The identification of the petitioner.
171 b. A statement of when and how the petitioner received
172 notice of the agency's action or proposed action.

173 c. An explanation of how the petitioner's substantial
174 interests are or will be affected by the action or proposed
175 action.
176 d. A statement of all material facts disputed by the
177 petitioner or a statement that there are no disputed facts.
178 e. A statement of the ultimate facts alleged, including a
179 statement of the specific facts the petitioner contends warrant
180 reversal or modification of the agency's proposed action.
181 f. A statement of the specific rules or statutes that the
182 petitioner contends require reversal or modification of the
183 agency's proposed action, including an explanation of how the
184 alleged facts relate to the specific rules or statutes.
185 g. A statement of the relief sought by the petitioner,
186 stating precisely the action petitioner wishes the agency to take
187 with respect to the proposed action.
188 5. Uniform rules for the filing of request for
189 administrative hearing by a respondent in agency enforcement and
190 disciplinary actions. Such rules shall require a request to
191 include:
192 a. The name, address and telephone number of the party
193 making the request and the name, address and telephone number of
194 the party's counsel or qualified representative upon whom service
195 of pleadings and other papers shall be made;
196 b. A statement that the respondent is requesting an
197 administrative hearing and disputes the material facts alleged by
198 the petitioner, in which case the respondent shall identify those
199 material facts that are in dispute; or that the respondent is
200 requesting an administrative hearing and does not dispute the
201 material facts alleged by the petitioner; and

202 c. A reference by file number to the administrative
203 complaint that the party has received from the agency, and the
204 date on which the agency pleading was received.
205
206 The agency may provide an election of rights form for the
207 respondent's use in requesting a hearing, so long as any form
208 provided by the agency calls for the information in 5.a. through
209 c. above, and does not impose any additional requirements on a
210 respondent in order to request a hearing, unless such
211 requirements are specifically authorized by law.
212 6. Uniform rules of procedure for the filing and prompt
213 disposition of petitions for declaratory statements.
214 7.~~6.~~ Provision of a method by which each agency head shall
215 provide a description of the agency's organization and general
216 course of its operations.
217 8.~~7.~~ Uniform rules establishing procedures for granting or
218 denying petitions for variances and waivers pursuant to s.
219 120.542.
220 Section 3. Effective December 31, 2007, section 120.55,
221 Florida Statutes, is amended to read:
222 120.55 Publication.--
223 (1) The Department of State shall:
224 (a)1. Through a continuous revision system, compile and
225 publish the "Florida Administrative Code." The Florida
226 Administrative Code shall contain all rules adopted by each
227 agency, citing the specific rulemaking authority pursuant to
228 which each rule was adopted, all history notes as authorized in
229 s. 120.545(9), and complete indexes to all rules contained in the
230 code. Supplementation shall be made as often as practicable, but

231 at least monthly. The department may contract with a publishing
232 firm for the publication, in a timely and useful form, of the
233 Florida Administrative Code; however, the department shall retain
234 responsibility for the code as provided in this section. This
235 publication shall be the official compilation of the
236 administrative rules of this state. The Department of State shall
237 retain the copyright over the Florida Administrative Code.
238 2. Rules general in form but applicable to only one school
239 district, community college district, or county, or a part
240 thereof, or state university rules relating to internal personnel
241 or business and finance shall not be published in the Florida
242 Administrative Code. Exclusion from publication in the Florida
243 Administrative Code shall not affect the validity or
244 effectiveness of such rules.
245 3. At the beginning of the section of the code dealing with
246 an agency that files copies of its rules with the department, the
247 department shall publish the address and telephone number of the
248 executive offices of each agency, the manner by which the agency
249 indexes its rules, a listing of all rules of that agency excluded
250 from publication in the code, and a statement as to where those
251 rules may be inspected.
252 4. Forms shall not be published in the Florida
253 Administrative Code; but any form which an agency uses in its
254 dealings with the public, along with any accompanying
255 instructions, shall be filed with the committee before it is
256 used. Any form or instruction which meets the definition of
257 "rule" provided in s. 120.52 shall be incorporated by reference
258 into the appropriate rule. The reference shall specifically state
259 that the form is being incorporated by reference and shall

260 include the number, title, and effective date of the form and an
261 explanation of how the form may be obtained. Each form created
262 by an agency that is incorporated by reference in a rule notice
263 of which is given under s. 120.54(3)(a) after December 31, 2007,
264 must clearly display the number, title, and effective date of the
265 form and the number of the rule in which the form is
266 incorporated.
267 (b) Electronically publish on an Internet website managed
268 by the department a weekly publication entitled the "Florida
269 Administrative Weekly," which shall serve as the official
270 Internet website for such publication and must contain:
271 1. Notice of adoption of, and an index to, all rules filed
272 during the preceding week.
273 2. All notices required by s. 120.54(3)(a), showing the
274 text of all rules proposed for consideration ~~or a reference to~~
275 ~~the location in the Florida Administrative Weekly where the text~~
276 ~~of the proposed rules is published~~.
277 3. All notices of public meetings, hearings, and workshops
278 conducted in accordance with the provisions of s. 120.525,
279 including a statement of the manner in which a copy of the agenda
280 may be obtained.
281 4. A notice of each request for authorization to amend or
282 repeal an existing uniform rule or for the adoption of new
283 uniform rules.
284 5. Notice of petitions for declaratory statements or
285 administrative determinations.
286 6. A summary of each objection to any rule filed by the
287 Administrative Procedures Committee during the preceding week.

288 7. A cumulative list of all rules that have been proposed
289 but not filed for adoption.
290 8.~~7.~~ Any other material required or authorized by law or
291 deemed useful by the department.
292
293 The department may contract with a publishing firm for printed
294 publication of the Florida Administrative Weekly and make copies
295 available on an annual-subscription basis. All costs related to
296 the printed publication of the Florida Administrative Weekly
297 shall be funded solely by annual subscription revenue.
298 (c) Review notices for compliance with format and numbering
299 requirements before publishing them on the Florida Administrative
300 Weekly Internet website.
301 (d)~~(c)~~ Prescribe by rule the style and form required for
302 rules submitted for filing and establish the form for their
303 certification.
304 (e)~~(d)~~ Correct grammatical, typographical, and like errors
305 not affecting the construction or meaning of the rules, after
306 having obtained the advice and consent of the appropriate agency,
307 and insert history notes.
308 ~~(e) Make copies of the Florida Administrative Weekly~~
309 ~~available on an annual subscription basis computed to cover a pro~~
310 ~~rata share of 50 percent of the costs related to the publication~~
311 ~~of the Florida Administrative Weekly.~~
312 (f) Charge each agency using the Florida Administrative
313 Weekly a space rate ~~computed~~ to cover ~~a pro rata share of 50~~
314 ~~percent of~~ the costs related to the Florida Administrative Weekly
315 and the Florida Administrative Code.

316 (g) Maintain a permanent record of all notices published in
317 the Florida Administrative Weekly.
318 (2) The Florida Administrative Weekly Internet website must
319 allow users to:
320 (a) Search for notices by type, publication date, rule
321 number, word, subject, and agency;
322 (b) Search a database that makes available all notices
323 published on the website for a period of at least 5 years;
324 (c) Subscribe to an automated e-mail notification of
325 selected notices; and
326 (d) View agency forms incorporated by reference in proposed
327 rules.
328 (3) Publication of material required by paragraph (1)(b) on
329 the Florida Administrative Weekly Internet website does not
330 preclude publication of such material on an agency's website or
331 by other means.
332 (4) ~~(2)~~ Each agency shall provide copies of its rules upon
333 request, with citations to the grant of rulemaking authority and
334 the specific law implemented for each rule ~~print or distribute~~
335 ~~copies of its rules, citing the specific rulemaking authority~~
336 ~~pursuant to which each rule was adopted~~.
337 (5) ~~(3)~~ Any publication of a proposed rule promulgated by an
338 agency, whether published in the Florida Administrative Code or
339 elsewhere, shall include, along with the rule, the name of the
340 person or persons originating such rule, the name of the
341 supervisor or person who approved the rule, and the date upon
342 which the rule was approved.

343 (6) Access to the Florida Administrative Weekly Internet
344 website and its contents, including the e-mail notification
345 service, shall be free for the public.
346 (7) ~~(4)(a)~~ If the Florida Administrative Weekly is made
347 available by the Department of State as a printed publication,
348 the department shall furnish:
349 (a) Copies of ~~Each year the Department of State shall~~
350 ~~furnish~~ the Florida Administrative Weekly, without charge and
351 upon request, as follows:
352 1. One subscription to each federal and state court having
353 jurisdiction over the residents of the state; the Legislative
354 Library; each state university library; the State Library; each
355 depository library designated pursuant to s. 257.05; and each
356 standing committee of the Senate and House of Representatives and
357 each state legislator.
358 2. Two subscriptions to each state department.
359 3. Three subscriptions to the library of the Supreme Court
360 of Florida, the library of each state district court of appeal,
361 the division, the library of the Attorney General, each law
362 school library in Florida, the Secretary of the Senate, and the
363 Clerk of the House of Representatives.
364 4. Ten subscriptions to the committee.
365 (b) ~~The Department of State shall furnish~~ One copy of the
366 Florida Administrative Weekly, at no cost, to each clerk of the
367 circuit court and each state department, for posting for public
368 inspection.
369 (8) ~~(5)~~(a) All fees and moneys collected by the Department
370 of State under this chapter shall be deposited in the Records
371 Management Trust Fund for the purpose of paying for ~~the~~

372 ~~publication and distribution of the Florida Administrative Code~~
373 ~~and the Florida Administrative Weekly and for associated~~ costs
374 incurred by the department in carrying out this chapter.
375 (b) The unencumbered balance in the Records Management
376 Trust Fund for fees collected pursuant to this chapter may ~~shall~~
377 not exceed $300,000 at the beginning of each fiscal year, and any
378 excess shall be transferred to the General Revenue Fund.
379 ~~(c) It is the intent of the Legislature that the Florida~~
380 ~~Administrative Weekly be supported entirely from funds collected~~
381 ~~for subscriptions to and advertisements in the Florida~~
382 ~~Administrative Weekly~~.
383 Section 4. Subsection (3) of section 120.551, Florida
384 Statutes, is amended to read:
385 120.551 Internet publication.--
386 (3) This section is repealed effective December 31, 2007
387 ~~July 1, 2006, unless reviewed and reenacted by the Legislature~~
388 ~~before that date~~.
389 Section 5. Paragraph (b) of subsection (2) of section
390 120.56, Florida Statutes, is amended to read:
391 120.56 Challenges to rules.--
392 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.--
393 (b) The administrative law judge may declare the proposed
394 rule wholly or partly invalid. Unless the decision of the
395 administrative law judge is reversed on appeal, the proposed rule
396 or provision of a proposed rule declared invalid shall ~~be~~
397 ~~withdrawn by the adopting agency and shall~~ not be adopted. ~~No~~
398 ~~rule shall be filed for adoption until 28 days after the notice~~
399 ~~required by s. 120.54(3)(a), until 21 days after the notice~~
400 ~~required by s. 120.54(3)(d), until 14 days after the public~~

401 ~~hearing, until 21 days after preparation of a statement of~~
402 ~~estimated regulatory costs required pursuant to s. 120.541, or~~
403 ~~until the administrative law judge has rendered a decision,~~
404 ~~whichever applies.~~ However, the agency may proceed with all other
405 steps in the rulemaking process, including the holding of a
406 factfinding hearing. In the event part of a proposed rule is
407 declared invalid, the adopting agency may, in its sole
408 discretion, withdraw the proposed rule in its entirety. The
409 agency whose proposed rule has been declared invalid in whole or
410 part shall give notice of the decision in the first available
411 issue of the Florida Administrative Weekly.
412 Section 6. Paragraph (c) of subsection (2) of section
413 120.569, Florida Statutes, is amended to read:
414 120.569 Decisions which affect substantial interests.--
415 (2)
416 (c) Unless otherwise provided by law, a petition or request
417 for hearing shall include those items required by the uniform
418 rules adopted pursuant to s. 120.54(5)(b)4. Upon the receipt of a
419 petition or request for hearing, the agency shall carefully
420 review the petition to determine if it contains all of the
421 required information. A petition shall be dismissed if it is not
422 in substantial compliance with these requirements or it has been
423 untimely filed. Dismissal of a petition shall, at least once, be
424 without prejudice to petitioner's filing a timely amended
425 petition curing the defect, unless it conclusively appears from
426 the face of the petition that the defect cannot be cured. The
427 agency shall promptly give written notice to all parties of the
428 action taken on the petition, shall state with particularity its
429 reasons if the petition is not granted, and shall state the

430 deadline for filing an amended petition if applicable. The time
431 for filing a petition shall be extended if the petitioner has
432 been misled or lulled into inaction, has in some extraordinary
433 way been prevented from asserting his or her rights, or has
434 timely asserted his or her rights mistakenly in the wrong forum.
435 Section 7. Paragraph (a) of subsection (3) of section
436 120.57, Florida Statutes, is amended to read:
437 120.57 Additional procedures for particular cases.--
438 (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO
439 CONTRACT SOLICITATION OR AWARD.--Agencies subject to this chapter
440 shall use the uniform rules of procedure, which provide
441 procedures for the resolution of protests arising from the
442 contract solicitation or award process. Such rules shall at least
443 provide that:
444 (a) The agency shall provide notice of a decision or
445 intended decision concerning a solicitation, contract award, or
446 exceptional purchase by electronic posting. This notice shall
447 contain the following statement: "Failure to file a protest
448 within the time prescribed in section 120.57(3), Florida
449 Statutes, or failure to post the bond or other security required
450 by law within the time allowed for filing a bond shall constitute
451 a waiver of proceedings under chapter 120, Florida Statutes."
452 Section 8. Subsection (2) of section 120.74, Florida
453 Statutes, is amended to read:
454 120.74 Agency review, revision, and report.--
455 (2) Beginning October 1, 1997, and by October 1 of every
456 other year thereafter, the head of each agency shall file a
457 report with the President of the Senate, ~~and~~ the Speaker of the
458 House of Representatives, and the committee, with a copy to each

459 appropriate standing committee of the Legislature, which
460 certifies that the agency has complied with the requirements of
461 this subsection. The report must specify any changes made to its
462 rules as a result of the review and, when appropriate, recommend
463 statutory changes that will promote efficiency, reduce paperwork,
464 or decrease costs to government and the private sector.
465 Section 9. The Department of State shall, before December
466 31, 2006, make available, to all agencies required on the
467 effective date of this act to publish materials in the Florida
468 Administrative Weekly, training courses for the purpose of
469 assisting the agencies with their transition to publishing on the
470 Florida Administrative Weekly Internet website. The training
471 courses may be provided in the form of workshops or software
472 packages that allow self-training by agency personnel.
473 Section 10. Except as otherwise expressly provided in this
474 act, this act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PHCB GO 06-01 Per Diem and Travel Expenses
SPONSOR(S): Governmental Operations Committee, Coley, and Ausley
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 428

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

SUMMARY ANALYSIS

This proposed House combined bill is being considered by the Governmental Operations Committee pursuant to House Rule 7.9(c). The substance of the bill is drawn from HB 117 by Representative Coley and HB 477 by Representative Ausley.

This bill makes a number of changes relating to the per diem and travel expenses of public officers, employees, and authorized persons:

- Revises the legislative intent;
- Changes the rate of per diem from the 1981 rate of $50 to $XX;
- Increases the subsistence reimbursement for meals from the 1981 rates: $3 to $X for breakfast, $6 to $X for lunch, and $12 to $XX for dinner;
- Raises the mileage allowance for use of a privately owned vehicle from 29 cents per mile, which was established in 1994, to XX cents per mile;
- Authorizes counties, county officers, district school boards, and special districts to establish per diem and subsistence rates as long as those rates are not less than the rates currently in effect; and
- Removes duplicative or incorrect language and makes minor grammatical changes.

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

This bill appears to have a fiscal impact on state government expenses, but the extent of this impact is unknown. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the standard per diem, subsistence, and mileage rates for public officers, public employees, or authorized persons performing authorized travel.

B. EFFECT OF PROPOSED CHANGES:

Section 112.061, Florida Statutes (2005), sets forth the per diem and travel expenses of public officers,[1] employees,[2] and authorized persons[3] when performing authorized travel.[4]

A version of this section was first enacted by the Legislature in 1945.[5] Much of the current form of this section, however, dates back to 1963.[6]

This bill changes seven aspects of section 112.061, Florida Statutes: (1) legislative intent, (2) authority to incur travel expenses, (3) Class C travel reimbursement, (4) rates of per diem and subsistence allowance, (5) transportation reimbursement, (6) travel authorization and voucher forms, and (7) applicability to certain local government entities.

Legislative Intent

Subsection (1) of section 112.061, Florida Statutes sets forth the legislative intent. It recognizes the existence of "inequities, conflicts, inconsistencies, and lapses in the numerous laws regulating or attempting to regulate travel expenses of public officers, employees, and authorized persons in the state." The expressed intent of the Legislature is to remedy these inequities, conflicts, inconsistencies, and lapses by establishing uniform maximum rates applicable to all public officers, employees, and authorized persons whose travel expenses are paid by a public agency, along with limitations and exceptions.[7]

This subsection also sets forth the legislative intent to preserve standardization and uniformity by prevailing over any conflicting provisions in special law, local law, or general law – unless the general law contains a specific exemption.[8]

This bill changes the legislative intent to provide that the purpose is to *prevent* the inequities, conflicts, inconsistencies, and lapses. The bill replaces the term "uniform maximum rates" with the term

---

[1] Fla. Stat. § 112.061(2)(c) (2005) ("An individual who in the performance of his or her official duties is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the Governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.")
[2] Fla. Stat. § 112.061(2)(d) (2005) ("An individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head.")
[3] Fla. Stat. § 112.061(2)(e) (2005) ("A person other than a public officer or employee as defined herein, whether elected or commissioned or not, who is authorized by an agency head to incur travel expenses in the performance of official duties; a person who is called upon by an agency to contribute time and services as consultant or adviser; or a person who is a candidate for an executive or professional position.")
[4] Fla. Stat. § 112.061(2)(f) (2005) ("Traveler--A public officer, public employee, or authorized person, when performing authorized travel.")
[5] Ch. 22830, Laws of Fla.
[6] Ch. 63-400, Laws of Fla.
[7] Fla. Stat. §112.061(1) (2005).
[8] *Id.*

"standard travel reimbursement rates."[9] The bill also recognizes the procedures and exemptions provided by section 112.061, Florida Statutes.

Authority to Incur Travel Expenses

Subsection (3) relates to the authority to incur travel expenses. The only changes the bill makes to this subsection are to remove an unnecessary reference to "authorized persons" in the paragraph on costs of per diem of travelers[10] for foreign travel and to make a conforming change to the word "maximum" (to "rate") in the paragraph related to the Department of Health.

Class C Travel Reimbursements

Section 112.061, Florida Statutes, recognizes three types of travel:

- Class A travel is continuous travel of 24 hours or more away from official headquarters.[11]
- Class B travel is continuous travel of less than 24 hours which involves overnight absence from official headquarters.[12]
- Class C travel is travel for short or day trips where the traveler is not away from his or her official headquarters overnight.[13]

Yet, since 2001, the Legislature has eliminated reimbursement for Class C (short or day trips) travel for "state travelers" through the implementing bill for the General Appropriations Act[14]:

> For the 2005-2006 fiscal year only and notwithstanding the other provisions of this subsection, for Class C travel, a state traveler shall not be reimbursed on a per diem basis nor shall a traveler receive subsistence allowance. This paragraph expires July 1, 2006.[15]

This bill removes the two expiring references, which currently eliminate Class C travel (short or day trips) reimbursement for state travelers.

Rates of Per Diem and Subsistence Allowance

Subsection (6) relates to rates of per diem and subsistence allowance. When traveling as Class A travel (24 hours or more) or Class B travel (less than 24 hours, but overnight) to a convention or conference or within or outside the state on state business, travelers are currently allowed to choose one of two types of "subsistence" reimbursements: (1) a $50 per diem; or (2) actual expenses for lodging at a single-occupancy rate and a set reimbursement for meals, if actual expenses exceed $50.[16] The meal reimbursement rate is the same as that set for Class C (short or day trips): $3 for breakfast, $6 for lunch, and $12 for dinner.[17] These meal and per diem rates were established in 1981.[18]

---

[9] As discussed in the section on Applicability to Certain Local Governments, section 112.061, Florida Statutes, no longer governs the per diem and travel expenses of municipalities. Counties, certain county constitutional officers, district school boards, and special districts will also have considerably more latitude in setting their own per diem and subsistence reimbursement rates under the provisions of this bill. As such, section 112.061, Florida Statutes, does not establish a "uniform maximum rate" as much as it establishes state "standard travel reimbursement rates."
[10] The definition of "traveler" includes "authorized person," *supra* note 4.
[11] Fla. Stat. §112.061(2)(k) (2005).
[12] Fla. Stat. §112.061(2)(l) (2005).
[13] Fla. Stat. §112.061(2)(m) (2005).
[14] Ch. 2001-254, Laws of Fla., § 48; ch. 2002-402, Laws of Fla., § 46; ch. 2003-399, Laws of Fla., § 49; ch. 2004-269, Laws of Fla., § 32; ch. 2005-71, Laws of Fla., § 23.
[15] Fla. Stat. § 112.061(5)(c) and (6)(d) (2005).
[16] Fla. Stat. § 112.061(6)(a) (2005).
[17] Fla. Stat. § 112.061(6)(b) (2005).
[18] Ch. 81-207, Laws of Fla.

This bill increases the per diem rate to $XX and increases the subsistence reimbursement rate for meals: $X for breakfast, $X for lunch, and $XX for dinner.

Transportation Reimbursement

Subsection (7) relates to transportation and permits the use of privately owned vehicles for official travel instead of publicly owned vehicles or common carriers.[19] Travel using a privately owned vehicle is reimbursed at a fixed rate of 29 cents per mile or the common carrier fare for such travel.[20] The current mileage reimbursement rate was established in 1994.[21]

This bill increases the mileage allowance for travel using a privately owned vehicle to XX cents per mile[22] and makes it an economical determination by the agency head to pay the common carrier fare instead.

Travel Authorization and Voucher Forms

Subsection (11) relates to travel authorization and voucher forms. This bill makes minor grammatical changes to this subsection.

Applicability to Certain Local Government Entities

Subsection (14) was added to section 112.061, Florida Statutes, in 2003.[23] This subsection allows the counties, county constitutional officers, district school boards, and independent special districts to establish rates that *exceed* the maximum travel reimbursement rates. By contrast, section 166.021, Florida Statutes, which was also created in 2003, authorizes municipalities to establish a per diem and travel expense policy and exempts those municipalities who do establish such a policy from the provisions of section 112.061, Florida Statutes.[24]

This bill allows counties, county constitutional officers, district school boards, and independent special districts to establish per diem and subsistence rates which vary from section 112.061, Florida Statutes, as long as those rates are not less than the rates in effect for the 2005-2006 fiscal year: $50 for per diem, $3 for breakfast, $6 for lunch, and $12 for dinner.

C. SECTION DIRECTORY:

Section 1: Amends section 112.061, Florida Statutes, related to the per diem and travel expenses of public officers, employees, and authorized persons.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[19] Fla. Stat. § 112.061(7)(d)1. (2005) (Authorized by the agency head or her or his designee).
[20] *Id.* (As determined by the agency head).
[21] Ch. 94-139, Laws of Fla.
[22] Beginning January 1, 2006, the business standard mileage rate for the use of a vehicle is 44.5 cents per mile. This new rate for business miles compares to a rate of 40.5 cents per mile for the first eight months of 2005. In September 2005, the IRS made a special one-time adjustment for the last four months of 2005, raising the rate for business miles to 48.5 cents per mile in response to a sharp increase in gas prices. Internal Revenue Service, IRS Announces 2006 Standard Mileage Rates, at http://www.irs.gov/newsroom/article/0,,id=151226,00.html (last visited Jan. 12, 2006).
[23] Ch. 2003-125, Laws of Fla.
[24] *Id.* The "whereas" clauses several factors in the adoption of this exemption: the authority granted by the Municipal Home Rule Powers Act, the manner in which local governments relied on Attorney General Opinion 74-18, and the potential impact of Attorney General Opinion 2003-01.

1. Revenues:

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

2. Expenditures:

   With the increases to the per diem, subsistence, and mileage reimbursement rates, this bill will create, modify, and amend an expenditure of state government, but the extent of this expenditure is not known at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.[25] This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments – House Combined Bill

This is a House combined bill being considered by the Governmental Operations Committee pursuant to House Rule 7.9(c). The substance of the bill has been drawn from HB 117 by Representative Coley and HB 477 by Representative Ausley.

[25] Counties or county constitutional officers are not required to pay the higher per diem and subsistence rates provided by this bill. Rather, counties and county constitutional officers may establish varying rates as long as those rates are not less than the current statutory rates.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to per diem and travel expenses; amending
3 s. 112.061, F.S.; revising per diem, subsistence, and
4 mileage rates for purposes of reimbursement of travel
5 expenses of public officers, employees, and authorized
6 persons; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Paragraph (a) of subsection (1), paragraphs (e)
11 and (g) of subsection (3), paragraph (c) of subsection (5),
12 subsection (6), paragraph (d) of subsection (7), subsection
13 (11), and subsection (14) of section 112.061, Florida Statutes,
14 are amended to read:
15 112.061 Per diem and travel expenses of public officers,
16 employees, and authorized persons.--
17 (1) LEGISLATIVE INTENT.--To prevent ~~There are~~ inequities,
18 conflicts, inconsistencies, and lapses in the numerous laws
19 regulating or attempting to regulate travel expenses of public
20 officers, employees, and authorized persons in the state, ~~.~~ it is
21 the intent of the Legislature:
22 (a) To ~~remedy same and to~~ establish standard ~~uniform~~
23 ~~maximum~~ travel reimbursement rates, procedures, and limitations,
24 with certain justifiable exceptions and exemptions, applicable
25 to all public officers, employees, and authorized persons whose
26 travel is ~~expenses are~~ authorized and paid by a public agency.
27 (b) To preserve the standardization ~~and uniformity~~
28 established by this law:
29 1. The provisions of this section shall prevail over any

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

30 conflicting provisions in a general law, present or future, to
31 the extent of the conflict; but if any such general law contains
32 a specific exemption from this section, including a specific
33 reference to this section, such general law shall prevail, but
34 only to the extent of the exemption.
35 2. The provisions of any special or local law, present or
36 future, shall prevail over any conflicting provisions in this
37 section, but only to the extent of the conflict.
38 (3) AUTHORITY TO INCUR TRAVEL EXPENSES.--
39 (e) The agency head, or a designated representative, may
40 pay by advancement or reimbursement, or a combination thereof,
41 the costs of per diem of travelers ~~and authorized persons~~ for
42 foreign travel at the current rates as specified in the federal
43 publication "Standardized Regulations (Government Civilians,
44 Foreign Areas)" and incidental expenses as provided in this
45 section.
46 (g) The secretary of the Department of Health or a
47 designee may authorize travel expenses incidental to the
48 rendering of medical services for and on behalf of clients of
49 the Department of Health. The Department of Health may establish
50 rates lower than the <u>rate</u> ~~maximum~~ provided in this section for
51 these travel expenses.
52 (5) COMPUTATION OF TRAVEL TIME FOR REIMBURSEMENT.--For
53 purposes of reimbursement and methods of calculating fractional
54 days of travel, the following principles are prescribed:
55 ~~(c) For the 2005-2006 fiscal year only and Notwithstanding~~
56 ~~the other provisions of this subsection, for Class C travel, a~~
57 ~~state traveler shall not be reimbursed on a per diem basis nor~~
58 ~~shall a traveler receive subsistence allowance. This paragraph~~

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59 ~~expires July 1, 2006.~~
60 (6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.--For
61 purposes of reimbursement rates and methods of calculation, per
62 diem and subsistence allowances are provided as follows ~~divided~~
63 ~~into the following groups and rates~~:
64 (a) All travelers shall be allowed for subsistence when
65 traveling to a convention or conference or when traveling within
66 or outside the state in order to conduct bona fide state
67 business, which convention, conference, or business serves a
68 direct and lawful public purpose with relation to the public
69 agency served by the person attending such meeting or conducting
70 such business, either of the following for each day of such
71 travel at the option of the traveler:
72 1. XX ~~Fifty~~ dollars per diem; or
73 2. If actual expenses exceed $XX ~~$50~~, the amounts
74 permitted in paragraph (b) for subsistence ~~meals~~, plus actual
75 expenses for lodging at a single-occupancy rate to be
76 substantiated by paid bills therefor.
77
78 When lodging or meals are provided at a state institution, the
79 traveler shall be reimbursed only for the actual expenses of
80 such lodging or meals, not to exceed the maximum provided for in
81 this subsection.
82 (b) All travelers shall be allowed the following amounts
83 for subsistence while on Class C travel on official business as
84 provided in paragraph (5)(b):
85 1. Breakfast....$X ~~$3~~
86 2. Lunch....$X ~~$6~~
87 3. Dinner....$XX ~~$12~~

88 (c) No one, whether traveling out of state or in state,
89 shall be reimbursed for any meal or lodging included in a
90 convention or conference registration fee paid by the state.
91 ~~(d) For the 2005-2006 fiscal year only and Notwithstanding~~
92 ~~the other provisions of this subsection, for Class C travel, a~~
93 ~~state traveler shall not be reimbursed on a per diem basis nor~~
94 ~~shall a traveler receive subsistence allowance. This paragraph~~
95 ~~expires July 1, 2006.~~
96 (7) TRANSPORTATION.--
97 (d)1. The use of privately owned vehicles for official
98 travel in lieu of publicly owned vehicles or common carriers may
99 be authorized by the agency head or his or her designee.
100 Whenever travel is by privately owned vehicle:~~,~~
101 a. The traveler shall be entitled to a mileage allowance
102 at a fixed rate of XX ~~25~~ cents per mile ~~for state fiscal year~~
103 ~~1994-1995 and 29 cents per mile thereafter~~; or
104 b. The traveler shall be entitled to the common carrier
105 fare for such travel, if ~~as~~ determined by the agency head to be
106 more economical.
107 2. Reimbursement for expenditures related to the
108 operation, maintenance, and ownership of a vehicle shall not be
109 allowed when privately owned vehicles are used on public
110 business and reimbursement is made pursuant to this paragraph,
111 except as provided in subsection (8).
112 3.~~2.~~ All mileage shall be shown from point of origin to
113 point of destination and, when possible, shall be computed on
114 the basis of the current map of the Department of
115 Transportation. Vicinity mileage necessary for the conduct of
116 official business is allowable but must be shown as a separate

117 item on the expense voucher.
118 (11) TRAVEL AUTHORIZATION AND VOUCHER FORMS.--
119 (a) Authorization forms.--The Department of Financial
120 Services shall furnish a uniform travel authorization request
121 form which shall be used by all state officers, ~~and~~ employees,
122 and authorized persons when requesting approval for the
123 performance of travel to a convention or conference. The form
124 shall include, but not be limited to, provision for the name of
125 each traveler, purpose of travel, period of travel, estimated
126 cost to the state, and a statement of benefits accruing to the
127 state by virtue of such travel. A copy of the program or agenda
128 of the convention or conference, itemizing registration fees and
129 any meals or lodging included in the registration fee, shall be
130 attached to, and filed with, the copy of the travel
131 authorization request form on file with the agency. The form
132 shall be signed by the traveler and by the traveler's supervisor
133 stating that the travel is to be incurred in connection with
134 official business of the state. The head of the agency or his or
135 her designated representative shall not authorize or approve
136 such request in the absence of the appropriate signatures. A
137 copy of the travel authorization form shall be attached to, and
138 become a part of, the support of the agency's copy of the travel
139 voucher.
140 (b) Voucher forms.--
141 1. The Department of Financial Services shall furnish a
142 uniform travel voucher form which shall be used by all state
143 officers, ~~and~~ employees, and authorized persons when submitting
144 travel expense statements for approval and payment. No travel
145 expense statement shall be approved for payment by the Chief

146 Financial Officer unless made on the form prescribed and
147 furnished by the department. The travel voucher form shall
148 provide for, among other things, the purpose of the official
149 travel and a certification or affirmation, to be signed by the
150 traveler, indicating the truth and correctness of the claim in
151 every material matter, that the travel expenses were actually
152 incurred by the traveler as necessary in the performance of
153 official duties, that per diem claimed has been appropriately
154 reduced for any meals or lodging included in the convention or
155 conference registration fees claimed by the traveler, and that
156 the voucher conforms in every respect with the requirements of
157 this section. The original copy of the executed uniform travel
158 authorization request form shall be attached to the uniform
159 travel voucher on file with the respective agency.
160 2. Statements for travel expenses incidental to the
161 rendering of medical services for and on behalf of clients of
162 the Department of Health shall be on forms approved by the
163 Department of Financial Services.
164 (14) APPLICABILITY TO COUNTIES, COUNTY OFFICERS, DISTRICT
165 SCHOOL BOARDS, AND SPECIAL DISTRICTS.--
166 (a) The following entities may establish rates that vary
167 from the per diem rate provided in paragraph (6)(a), the
168 subsistence rates provided in paragraph (6)(b), or the mileage
169 rate provided in paragraph (7)(d), if those rates are not less
170 than the statutorily established rates that are in effect for
171 the 2005-2006 fiscal year ~~Rates that exceed the maximum travel~~
172 ~~reimbursement rates for nonstate travelers specified in~~
173 ~~paragraph (6)(a) for per diem, in paragraph (6)(b) for~~
174 ~~subsistence, and in subparagraph (7)(d)1. for mileage may be~~

175 ~~established by~~:
176 1. The governing body of a county by the enactment of an
177 ordinance or resolution;
178 2. A county constitutional officer, pursuant to s. 1(d),
179 Art. VIII of the State Constitution, by the establishment of
180 written policy;
181 3. The governing body of a district school board by the
182 adoption of rules; or
183 4. The governing body of a special district, as defined in
184 s. 189.403(1), except those special districts that are subject
185 to s. 166.021(10), by the enactment of a resolution.
186 (b) Rates established pursuant to paragraph (a) must apply
187 uniformly to all travel by the county, county constitutional
188 officer and entity governed by that officer, district school
189 board, or special district.
190 (c) Except as otherwise provided in this subsection,
191 counties, county constitutional officers and entities governed
192 by those officers, district school boards, and special
193 districts, other than those subject to s. 166.021(10), remain
194 subject to the requirements of this section.
195 Section 2. This act shall take effect July 1, 2006.
196
197
198
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200
201
202
203 S:\Governmental Operations\2006 Session\Bills\PHCB GO 06-01\PHCB GO 06-01 --
204 Bill with Only Class C Expiring Removed.doc

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Governmental Operations Committee

Wednesday, February 22, 2006
2:00 – 4:00 PM
Morris Hall

Amendment Packet

Allan Bense
Speaker

David Rivera
Chairman

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0527 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Governmental Operations
2 Representative(s) Gibson offered the following:
3
4 **Amendment**
5 On line 213 remove the word "Twelve" and insert:
6
7 Thirteen

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0527 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Governmental Operations
2 Representative(s) Gibson offered the following:
3
4 **Amendment**
5 Between lines 228 and 229 insert:
6
7 13. The Florida Council for Community Mental Health.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0527 CS**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Governmental Operations
2 Representative(s) Gibson offered the following:
3
4
5 **Amendment**
6 Remove line(s) 253-254 and insert:
7
8 (d) Council members shall be appointed to staggered terms
9 of 4 years each in accordance with s. 20.052. Any vacancy on
10 the coordinating council shall be filled in

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Governmental Operations
2 Representative Adams offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6
7 Section 1. Section 790.0601, Florida Statutes, is created
8 to read:
9 790.0601 Public records exemption for concealed weapons.--
10 (1) Personal identifying information of an individual who
11 has applied for or received a license to carry a concealed
12 weapon or firearm pursuant to s. 790.06 held by the Division of
13 Licensing of the Department of Agriculture and Consumer Services
14 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
15 I of the State Constitution. This exemption applies to such
16 information held by the division before, on, or after the
17 effective date of this section.
18 (2) Information made confidential and exempt by this
19 section shall be disclosed:
20 (a) With the express written consent of the applicant or
21 licensee or his or her legally authorized representative.
22 (b) By court order upon a showing of good cause.

23 (c) Upon written request by law enforcement in connection
24 with an active criminal investigation.
25 (3) This section is subject to the Open Government Sunset
26 Review Act in accordance with s. 119.15 and shall stand repealed
27 on October 2, 2011, unless reviewed and saved from repeal
28 through reenactment by the Legislature.
29 Section 2. The Legislature finds that it is a public
30 necessity that the personal identifying information of an
31 individual who has applied for or received a license to carry a
32 concealed weapon or firearm held by the Division of Licensing of
33 the Department of Agriculture and Consumer Services be made
34 confidential and exempt from public records requirements, with
35 certain exceptions. The carrying of a concealed weapon in the
36 state by members of the general public requires an individual to
37 obtain a license from the Department of Agriculture and Consumer
38 Services. The applicant for a license to carry a concealed
39 weapon or firearm must state that he or she seeks a concealed
40 weapon or firearms license as a means of lawful self-defense.
41 The knowledge that someone has applied for or received a license
42 to carry a concealed weapon or firearm can very easily lead to
43 the conclusion that the applicant or licensee has in fact armed
44 himself or herself. This knowledge defeats the purpose behind
45 the authorization to carry a concealed weapon or firearm. If the
46 applicant or licensee had intended for the general public to
47 know he or she was carrying a weapon or firearm then he or she
48 only would have applied for a regular weapon or firearms permit.
49 The Legislature has found in prior legislative sessions and has
50 expressed in s. 790.335(1)(a)3., Florida Statutes, that "a . . .
51 record . . . of legally owned firearms or law-abiding firearm
52 owners is . . . an instrument that can be used as a means to
53 profile innocent citizens and to harass and abuse American

54 citizens based solely on their choice to own firearms and
55 exercise their Second Amendment right to keep and bear arms as
56 guaranteed under the United States Constitution." Release of
57 personal identifying information of an individual who has
58 applied for or received a license to carry a concealed weapon or
59 firearm could be used to harass an innocent person based solely
60 on that person's exercised right to carry a concealed weapon or
61 firearm. Furthermore, such information could be used and has
62 been used to identify individuals who have obtained a license to
63 carry a concealed weapon or firearm for the purpose of making
64 the identity of the applicant or licensee publicly available via
65 traditional media and the Internet. Once again, such release
66 contradicts the purpose of carrying a concealed weapon or
67 firearm. As such, the Legislature finds that the personal
68 identifying information of an individual who has applied for or
69 received a license to carry a concealed weapon or firearm
70 pursuant to chapter 790, Florida Statutes, must be held
71 confidential and exempt from public records requirements.
72 ========== T I T L E A M E N D M E N T ==========
73 Remove the entire title and insert:
74 A bill to be entitled
75 An act relating to public records; creating s. 790.0601,
76 F.S.; creating an exemption from public records
77 requirements for certain personal identifying information
78 held by the Division of Licensing of the Department of
79 Agriculture and Consumer Services; providing for
80 retroactive application of the exemption; providing for
81 disclosure of such information under specified conditions;
82 providing for review and repeal; providing a statement of
83 public necessity; providing an effective date.
84

Bill No. **PCB GO 06-25**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Governmental Operations
2 Representative(s) Benson offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6
7 Section 1. Subsection (4) of section 11.60, Florida
8 Statutes, is amended to read:
9 11.60 Administrative Procedures Committee; creation;
10 membership; powers; duties.--
11 (4) The committee shall ~~undertake and~~ maintain a
12 ~~systematic and~~ continuous review of statutes that authorize
13 agencies to adopt rules and shall make recommendations to the
14 appropriate standing committees of the Senate and the House of
15 Representatives as to the advisability of considering changes to
16 the delegated legislative authority to adopt rules in specific
17 circumstances. The annual report submitted pursuant to paragraph
18 (2)(f) shall include ~~a schedule for the required systematic~~
19 ~~review of existing statutes, a summary of the status of this~~
20 ~~review, and~~ any recommendations provided to the standing
21 committees during the preceding year.

22 Section 2. Paragraph (d) of subsection (3) of section
23 57.111, Florida Statutes, is amended to read:
24 57.111 Civil actions and administrative proceedings
25 initiated by state agencies; attorneys' fees and costs.--
26 (3) As used in this section:
27 (d) The term "small business party" means:
28 1.a. A sole proprietor of an unincorporated business,
29 including a professional practice, whose principal office is in
30 this state, who is domiciled in this state, and whose business
31 or professional practice has, at the time the action is
32 initiated by a state agency, not more than 25 full-time
33 employees or a net worth of not more than $2 million, including
34 both personal and business investments; ~~or~~
35 b. A partnership or corporation, including a professional
36 practice, which has its principal office in this state and has
37 at the time the action is initiated by a state agency not more
38 than 25 full-time employees or a net worth of not more than $2
39 million; or
40 c. An individual whose net worth did not exceed $2 million
41 at the time the action is initiated by a state agency when the
42 action is brought against that individual's license to engage in
43 the practice or operation of a business, profession, or trade;
44 or
45 2. Any ~~Either~~ small business party as defined in
46 subparagraph 1., without regard to the number of its employees
47 or its net worth, in any action under s. 72.011 or in any
48 administrative proceeding under that section to contest the
49 legality of any assessment of tax imposed for the sale or use of
50 services as provided in chapter 212, or interest thereon, or
51 penalty therefor.

52 Section 3. Paragraphs (d) and (e) of subsection (3) and
53 paragraph (b) of subsection (5) of section 120.54, Florida
54 Statutes, are amended to read:
55 120.54 Rulemaking.--
56 (3) ADOPTION PROCEDURES.--
57 (d) Modification or withdrawal of proposed rules.--
58 1. After the final public hearing on the proposed rule, or
59 after the time for requesting a hearing has expired, if the rule
60 has not been changed from the rule as previously filed with the
61 committee, or contains only technical changes, the adopting
62 agency shall file a notice to that effect with the committee at
63 least 7 days prior to filing the rule for adoption. Any change,
64 other than a technical change that does not affect the substance
65 of the rule, must be supported by the record of public hearings
66 held on the rule, must be in response to written material
67 received on or before the date of the final public hearing, or
68 must be in response to a proposed objection by the committee. In
69 addition, when any change is made in a proposed rule, other than
70 a technical change, the adopting agency shall provide a copy of
71 a notice of change by certified mail or actual delivery to any
72 person who requests it in writing no later than 21 days after
73 the notice required in paragraph (a). The agency shall file the
74 notice <u>of change</u> with the committee, along with the reasons for
75 <u>the</u> ~~such~~ change, and provide the notice <u>of change</u> to persons
76 requesting it, at least 21 days prior to filing the rule for
77 adoption. The notice <u>of change</u> shall be published in the Florida
78 Administrative Weekly at least 21 days prior to filing the rule
79 for adoption. This subparagraph does not apply to emergency
80 rules adopted pursuant to subsection (4).
81 2. After the notice required by paragraph (a) and prior to
82 adoption, the agency may withdraw the rule in whole or in part.

83 3. After adoption and before the effective date, a rule
84 may be modified or withdrawn only in response to an objection by
85 the committee or may be modified to extend the effective date by
86 not more than 60 days when the committee has notified the agency
87 that an objection to the rule is being considered.
88 4. The agency shall give notice of its decision to
89 withdraw or modify a rule in the first available issue of the
90 publication in which the original notice of rulemaking was
91 published, shall notify those persons described in subparagraph
92 (a)3. in accordance with the requirements of that subparagraph,
93 and shall notify the Department of State if the rule is required
94 to be filed with the Department of State.
95 5. After a rule has become effective, it may be repealed
96 or amended only through the rulemaking procedures specified in
97 this chapter.
98 (e) Filing for final adoption; effective date.--
99 1. If the adopting agency is required to publish its rules
100 in the Florida Administrative Code, it shall file with the
101 Department of State three certified copies of the rule it
102 proposes to adopt, a summary of the rule, a summary of any
103 hearings held on the rule, and a detailed written statement of
104 the facts and circumstances justifying the rule. Agencies not
105 required to publish their rules in the Florida Administrative
106 Code shall file one certified copy of the proposed rule, and the
107 other material required by this subparagraph, in the office of
108 the agency head, and such rules shall be open to the public.
109 2. <u>A rule may not be filed for adoption less than 28 days</u>
110 <u>or more than 90 days after the notice required by paragraph (a),</u>
111 <u>until 21 days after the notice of change required by paragraph</u>
112 <u>(d), until 14 days after the final public hearing, until 21 days</u>
113 <u>after preparation of a statement of estimated regulatory costs</u>

114 required under s. 120.541, or until the administrative law judge
115 has rendered a decision under s. 120.56(2), whichever applies.
116 ~~Filings shall be made no less than 28 days nor more than 90 days~~
117 ~~after the notice required by paragraph (a).~~ When a required
118 notice of change is published prior to the expiration of the
119 time to file the rule for adoption, the period during which a
120 rule must be filed for adoption is extended to 45 days after the
121 date of publication. If notice of a public hearing is published
122 prior to the expiration of the time to file the rule for
123 adoption, the period during which a rule must be filed for
124 adoption is extended to 45 days after adjournment of the final
125 hearing on the rule, 21 days after receipt of all material
126 authorized to be submitted at the hearing, or 21 days after
127 receipt of the transcript, if one is made, whichever is latest.
128 The term "public hearing" includes any public meeting held by
129 any agency at which the rule is considered. If a petition for an
130 administrative determination under s. 120.56(2) is filed, the
131 period during which a rule must be filed for adoption is
132 extended to 60 days after the administrative law judge files the
133 final order with the clerk or until 60 days after subsequent
134 judicial review is complete. ~~The filing of a petition for an~~
135 ~~administrative determination under the provisions of s.~~
136 ~~120.56(2) shall toll the 90-day period during which a rule must~~
137 ~~be filed for adoption until the administrative law judge has~~
138 ~~filed the final order with the clerk.~~
139 3. At the time a rule is filed, the agency shall certify
140 that the time limitations prescribed by this paragraph have been
141 complied with, that all statutory rulemaking requirements have
142 been met, and that there is no administrative determination
143 pending on the rule.

144 4. At the time a rule is filed, the committee shall
145 certify whether the agency has responded in writing to all
146 material and timely written comments or written inquiries made
147 on behalf of the committee. The department shall reject any rule
148 not filed within the prescribed time limits; that does not
149 satisfy all statutory rulemaking requirements; upon which an
150 agency has not responded in writing to all material and timely
151 written inquiries or written comments; upon which an
152 administrative determination is pending; or which does not
153 include a statement of estimated regulatory costs, if required.
154 5. If a rule has not been adopted within the time limits
155 imposed by this paragraph or has not been adopted in compliance
156 with all statutory rulemaking requirements, the agency proposing
157 the rule shall withdraw the rule and give notice of its action
158 in the next available issue of the Florida Administrative
159 Weekly.
160 6. The proposed rule shall be adopted on being filed with
161 the Department of State and become effective 20 days after being
162 filed, on a later date specified in the rule, or on a date
163 required by statute. Rules not required to be filed with the
164 Department of State shall become effective when adopted by the
165 agency head or on a later date specified by rule or statute. If
166 the committee notifies an agency that an objection to a rule is
167 being considered, the agency may postpone the adoption of the
168 rule to accommodate review of the rule by the committee. When
169 an agency postpones adoption of a rule to accommodate review by
170 the committee, the 90-day period for filing the rule is tolled
171 until the committee notifies the agency that it has completed
172 its review of the rule.
173

174 For the purposes of this paragraph, the term "administrative
175 determination" does not include subsequent judicial review.
176 (5) UNIFORM RULES.--
177 (b) The uniform rules of procedure adopted by the
178 commission pursuant to this subsection shall include, but are
179 not limited to:
180 1. Uniform rules for the scheduling of public meetings,
181 hearings, and workshops.
182 2. Uniform rules for use by each state agency that provide
183 procedures for conducting public meetings, hearings, and
184 workshops, and for taking evidence, testimony, and argument at
185 such public meetings, hearings, and workshops, in person and by
186 means of communications media technology. The rules shall
187 provide that all evidence, testimony, and argument presented
188 shall be afforded equal consideration, regardless of the method
189 of communication. If a public meeting, hearing, or workshop is
190 to be conducted by means of communications media technology, or
191 if attendance may be provided by such means, the notice shall so
192 state. The notice for public meetings, hearings, and workshops
193 utilizing communications media technology shall state how
194 persons interested in attending may do so and shall name
195 locations, if any, where communications media technology
196 facilities will be available. Nothing in this paragraph shall be
197 construed to diminish the right to inspect public records under
198 chapter 119. Limiting points of access to public meetings,
199 hearings, and workshops subject to the provisions of s. 286.011
200 to places not normally open to the public shall be presumed to
201 violate the right of access of the public, and any official
202 action taken under such circumstances is void and of no effect.
203 Other laws relating to public meetings, hearings, and workshops,
204 including penal and remedial provisions, shall apply to public

205 meetings, hearings, and workshops conducted by means of
206 communications media technology, and shall be liberally
207 construed in their application to such public meetings,
208 hearings, and workshops. As used in this subparagraph,
209 "communications media technology" means the electronic
210 transmission of printed matter, audio, full-motion video,
211 freeze-frame video, compressed video, and digital video by any
212 method available.
213 3. Uniform rules of procedure for the filing of notice of
214 protests and formal written protests. The Administration
215 Commission may prescribe the form and substantive provisions of
216 a required bond.
217 4. Uniform rules of procedure for the filing of petitions
218 for administrative hearings pursuant to s. 120.569 or s. 120.57.
219 Such rules shall require the petition to include:
220 a. The identification of the petitioner.
221 b. A statement of when and how the petitioner received
222 notice of the agency's action or proposed action.
223 c. An explanation of how the petitioner's substantial
224 interests are or will be affected by the action or proposed
225 action.
226 d. A statement of all material facts disputed by the
227 petitioner or a statement that there are no disputed facts.
228 e. A statement of the ultimate facts alleged, including a
229 statement of the specific facts the petitioner contends warrant
230 reversal or modification of the agency's proposed action.
231 f. A statement of the specific rules or statutes that the
232 petitioner contends require reversal or modification of the
233 agency's proposed action, including an explanation of how the
234 alleged facts relate to the specific rules or statutes.

235 g. A statement of the relief sought by the petitioner,
236 stating precisely the action petitioner wishes the agency to
237 take with respect to the proposed action.
238 5. Uniform rules for the filing of request for
239 administrative hearing by a respondent in agency enforcement and
240 disciplinary actions. Such rules shall require a request to
241 include:
242 a. The name, address, and telephone number of the party
243 making the request and the name, address, and telephone number
244 of the party's counsel or qualified representative upon whom
245 service of pleadings and other papers shall be made;
246 b. A statement that the respondent is requesting an
247 administrative hearing and disputes the material facts alleged
248 by the petitioner, in which case the respondent shall identify
249 those material facts that are in dispute, or that the respondent
250 is requesting an administrative hearing and does not dispute the
251 material facts alleged by the petitioner; and
252 c. A reference by file number to the administrative
253 complaint that the party has received from the agency and the
254 date on which the agency pleading was received.
255
256 The agency may provide an election-of-rights form for the
257 respondent's use in requesting a hearing, so long as any form
258 provided by the agency calls for the information in sub-
259 subparagraphs a. through c. and does not impose any additional
260 requirements on a respondent in order to request a hearing,
261 unless such requirements are specifically authorized by law.
262 6.~~5.~~ Uniform rules of procedure for the filing and prompt
263 disposition of petitions for declaratory statements. The rules
264 shall also describe the contents of the notices that must be
265 published in the Florida Administrative Weekly under s. 120.565,

266 including any applicable time limit for the filing of petitions
267 to intervene or petitions for administrative hearing by persons
268 whose substantial interests may be affected.
269 7.~~6.~~ Provision of a method by which each agency head shall
270 provide a description of the agency's organization and general
271 course of its operations.
272 8.~~7.~~ Uniform rules establishing procedures for granting or
273 denying petitions for variances and waivers pursuant to s.
274 120.542.
275 Section 4. Effective December 31, 2007, section 120.55,
276 Florida Statutes, is amended to read:
277 120.55 Publication.--
278 (1) The Department of State shall:
279 (a)1. Through a continuous revision system, compile and
280 publish the "Florida Administrative Code." The Florida
281 Administrative Code shall contain all rules adopted by each
282 agency, citing the specific rulemaking authority pursuant to
283 which each rule was adopted, all history notes as authorized in
284 s. 120.545(9), and complete indexes to all rules contained in
285 the code. Supplementation shall be made as often as practicable,
286 but at least monthly. The department may contract with a
287 publishing firm for the publication, in a timely and useful
288 form, of the Florida Administrative Code; however, the
289 department shall retain responsibility for the code as provided
290 in this section. This publication shall be the official
291 compilation of the administrative rules of this state. The
292 Department of State shall retain the copyright over the Florida
293 Administrative Code.
294 2. Rules general in form but applicable to only one school
295 district, community college district, or county, or a part
296 thereof, or state university rules relating to internal

297 personnel or business and finance shall not be published in the
298 Florida Administrative Code. Exclusion from publication in the
299 Florida Administrative Code shall not affect the validity or
300 effectiveness of such rules.
301 3. At the beginning of the section of the code dealing
302 with an agency that files copies of its rules with the
303 department, the department shall publish the address and
304 telephone number of the executive offices of each agency, the
305 manner by which the agency indexes its rules, a listing of all
306 rules of that agency excluded from publication in the code, and
307 a statement as to where those rules may be inspected.
308 4. Forms shall not be published in the Florida
309 Administrative Code; but any form which an agency uses in its
310 dealings with the public, along with any accompanying
311 instructions, shall be filed with the committee before it is
312 used. Any form or instruction which meets the definition of
313 "rule" provided in s. 120.52 shall be incorporated by reference
314 into the appropriate rule. The reference shall specifically
315 state that the form is being incorporated by reference and shall
316 include the number, title, and effective date of the form and an
317 explanation of how the form may be obtained. Each form created
318 by an agency which is incorporated by reference in a rule notice
319 of which is given under s. 120.54(3)(a) after December 31, 2007,
320 must clearly display the number, title, and effective date of
321 the form and the number of the rule in which the form is
322 incorporated.
323 (b) Electronically publish on an Internet website managed
324 by the department a weekly publication entitled the "Florida
325 Administrative Weekly," which shall serve as the official
326 Internet website for such publication and must contain:

327 1. Notice of adoption of, and an index to, all rules filed
328 during the preceding week.
329 2. All notices required by s. 120.54(3)(a), showing the
330 text of all rules proposed for consideration ~~or a reference to~~
331 ~~the location in the Florida Administrative Weekly where the text~~
332 ~~of the proposed rules is published~~.
333 3. All notices of public meetings, hearings, and workshops
334 conducted in accordance with the provisions of s. 120.525,
335 including a statement of the manner in which a copy of the
336 agenda may be obtained.
337 4. A notice of each request for authorization to amend or
338 repeal an existing uniform rule or for the adoption of new
339 uniform rules.
340 5. Notice of petitions for declaratory statements or
341 administrative determinations.
342 6. A summary of each objection to any rule filed by the
343 Administrative Procedures Committee during the preceding week.
344 7. A cumulative list of all rules that have been proposed
345 but not filed for adoption.
346 8.~~7.~~ Any other material required or authorized by law or
347 deemed useful by the department.
348
349 The department shall publish a printed version of the Florida
350 Administrative Weekly and make copies available on an annual
351 subscription basis. The department may contract with a
352 publishing firm for printed publication of the Florida
353 Administrative Weekly.
354 (c) Review notices for compliance with format and
355 numbering requirements before publishing them on the Florida
356 Administrative Weekly Internet website.

357 (d) ~~(c)~~ Prescribe by rule the style and form required for
358 rules submitted for filing and establish the form for their
359 certification.
360 (e) ~~(d)~~ Correct grammatical, typographical, and like errors
361 not affecting the construction or meaning of the rules, after
362 having obtained the advice and consent of the appropriate
363 agency, and insert history notes.
364 ~~(e) Make copies of the Florida Administrative Weekly~~
365 ~~available on an annual subscription basis computed to cover a~~
366 ~~pro rata share of 50 percent of the costs related to the~~
367 ~~publication of the Florida Administrative Weekly.~~
368 (f) Charge each agency using the Florida Administrative
369 Weekly a space rate ~~computed~~ to cover ~~a pro rata share of 50~~
370 ~~percent of~~ the costs related to the Florida Administrative
371 Weekly and the Florida Administrative Code.
372 (g) Maintain a permanent record of all notices published
373 in the Florida Administrative Weekly.
374 (2) The Florida Administrative Weekly Internet website
375 must allow users to:
376 (a) Search for notices by type, publication date, rule
377 number, word, subject, and agency;
378 (b) Search a database that makes available all notices
379 published on the website for a period of at least 5 years;
380 (c) Subscribe to an automated e-mail notification of
381 selected notices;
382 (d) View agency forms incorporated by reference in
383 proposed rules; and
384 (e) Comment on proposed rules.
385 (3) Publication of material required by paragraph (1)(b)
386 on the Florida Administrative Weekly Internet website does not

387 preclude publication of such material on an agency's website or
388 by other means.
389 (4) ~~(2)~~ Each agency shall provide copies of its rules upon
390 request, with citations to the grant of rulemaking authority and
391 the specific law implemented for each rule ~~print or distribute~~
392 ~~copies of its rules, citing the specific rulemaking authority~~
393 ~~pursuant to which each rule was adopted~~.
394 (5) ~~(3)~~ Any publication of a proposed rule promulgated by
395 an agency, whether published in the Florida Administrative Code
396 or elsewhere, shall include, along with the rule, the name of
397 the person or persons originating such rule, the name of the
398 supervisor or person who approved the rule, and the date upon
399 which the rule was approved.
400 (6) Access to the Florida Administrative Weekly Internet
401 website and its contents, including the e-mail notification
402 service, shall be free for the public.
403 (7)(a) ~~(4)(a)~~ Each year the Department of State shall
404 furnish the Florida Administrative Weekly, without charge and
405 upon request, as follows:
406 1. One subscription to each federal and state court having
407 jurisdiction over the residents of the state; the Legislative
408 Library; each state university library; the State Library; each
409 depository library designated pursuant to s. 257.05; and each
410 standing committee of the Senate and House of Representatives
411 and each state legislator.
412 2. Two subscriptions to each state department.
413 3. Three subscriptions to the library of the Supreme Court
414 of Florida, the library of each state district court of appeal,
415 the division, the library of the Attorney General, each law
416 school library in Florida, the Secretary of the Senate, and the
417 Clerk of the House of Representatives.

418 4. Ten subscriptions to the committee.

419 (b) The Department of State shall furnish one copy of the
420 Florida Administrative Weekly, at no cost, to each clerk of the
421 circuit court and each state department, for posting for public
422 inspection.

423 (8)(a) ~~(5)(a)~~ All fees and moneys collected by the
424 Department of State under this chapter shall be deposited in the
425 Records Management Trust Fund for the purpose of paying for ~~the~~
426 ~~publication and distribution of the Florida Administrative Code~~
427 ~~and the Florida Administrative Weekly and for associated~~ costs
428 incurred by the department in carrying out this chapter.

429 (b) The unencumbered balance in the Records Management
430 Trust Fund for fees collected pursuant to this chapter may ~~shall~~
431 not exceed $300,000 at the beginning of each fiscal year, and
432 any excess shall be transferred to the General Revenue Fund.

433 ~~(c) It is the intent of the Legislature that the Florida~~
434 ~~Administrative Weekly be supported entirely from funds collected~~
435 ~~for subscriptions to and advertisements in the Florida~~
436 ~~Administrative Weekly.~~

437 Section 5. Subsection (3) of section 120.551, Florida
438 Statutes, is amended to read:

439 120.551 Internet publication.--

440 (3) This section is repealed effective December 31, 2007
441 ~~July 1, 2006, unless reviewed and reenacted by the Legislature~~
442 ~~before that date~~.

443 Section 6. Paragraph (b) of subsection (2) of section
444 120.56, Florida Statutes, is amended to read:

445 120.56 Challenges to rules.--

446 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.--

447 (b) The administrative law judge may declare the proposed
448 rule wholly or partly invalid. Unless the decision of the

449 administrative law judge is reversed on appeal, the proposed
450 rule or provision of a proposed rule declared invalid shall ~~be~~
451 ~~withdrawn by the adopting agency and shall~~ not be adopted. ~~No~~
452 ~~rule shall be filed for adoption until 28 days after the notice~~
453 ~~required by s. 120.54(3)(a), until 21 days after the notice~~
454 ~~required by s. 120.54(3)(d), until 14 days after the public~~
455 ~~hearing, until 21 days after preparation of a statement of~~
456 ~~estimated regulatory costs required pursuant to s. 120.541, or~~
457 ~~until the administrative law judge has rendered a decision,~~
458 ~~whichever applies.~~ However, the agency may proceed with all
459 other steps in the rulemaking process, including the holding of
460 a factfinding hearing. In the event part of a proposed rule is
461 declared invalid, the adopting agency may, in its sole
462 discretion, withdraw the proposed rule in its entirety. The
463 agency whose proposed rule has been declared invalid in whole or
464 part shall give notice of the decision in the first available
465 issue of the Florida Administrative Weekly.
466 Section 7. Paragraph (c) of subsection (2) of section
467 120.569, Florida Statutes, is amended to read:
468 120.569 Decisions which affect substantial interests.--
469 (2)
470 (c) Unless otherwise provided by law, a petition or
471 request for hearing shall include those items required by the
472 uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the
473 receipt of a petition or request for hearing, the agency shall
474 carefully review the petition to determine if it contains all of
475 the required information. A petition shall be dismissed if it
476 is not in substantial compliance with these requirements or it
477 has been untimely filed. Dismissal of a petition shall, at
478 least once, be without prejudice to petitioner's filing a timely
479 amended petition curing the defect, unless it conclusively

480 appears from the face of the petition that the defect cannot be
481 cured. The agency shall promptly give written notice to all
482 parties of the action taken on the petition, shall state with
483 particularity its reasons if the petition is not granted, and
484 shall state the deadline for filing an amended petition if
485 applicable. The time for filing a petition shall be extended for
486 an appropriate time if the petitioner demonstrates that the
487 petitioner has been misled or lulled into inaction by the agency
488 or has in some extraordinary way been prevented from asserting
489 his or her rights by the agency.
490 Section 8. Paragraphs (k) and (m) of subsection (1) and
491 paragraph (a) of subsection (3) of section 120.57, Florida
492 Statutes, are amended to read:
493 120.57 Additional procedures for particular cases.--
494 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING
495 DISPUTED ISSUES OF MATERIAL FACT.--
496 (k) The presiding officer shall complete and submit to the
497 agency and all parties a recommended order consisting of
498 findings of fact, conclusions of law, and recommended
499 disposition or penalty, if applicable, and any other information
500 required by law to be contained in the final order. All
501 proceedings conducted under ~~pursuant to~~ this subsection shall be
502 de novo. The agency shall allow each party 15 days in which to
503 submit written exceptions to the recommended order. The final
504 order shall include an explicit ruling on each exception, but an
505 agency need not rule on an exception that does not clearly
506 identify the disputed portion of the recommended order by page
507 number or paragraph, that does not identify the legal basis for
508 the exception, or that does not include appropriate and specific
509 citations to the record.

510 (m) If a recommended order is submitted to an agency, the
511 agency shall provide a copy of its final order and any
512 exceptions to the division within 15 days after the order is
513 filed with the agency clerk.
514 (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO
515 CONTRACT SOLICITATION OR AWARD.--Agencies subject to this
516 chapter shall use the uniform rules of procedure, which provide
517 procedures for the resolution of protests arising from the
518 contract solicitation or award process. Such rules shall at
519 least provide that:
520 (a) The agency shall provide notice of a decision or
521 intended decision concerning a solicitation, contract award, or
522 exceptional purchase by electronic posting. This notice shall
523 contain the following statement: "Failure to file a protest
524 within the time prescribed in section 120.57(3), Florida
525 Statutes, or failure to post the bond or other security required
526 by law within the time allowed for filing a bond shall
527 constitute a waiver of proceedings under chapter 120, Florida
528 Statutes."
529 Section 9. Paragraphs (c) and (d) are added to subsection
530 (10) of section 120.65, Florida Statutes, to read:
531 120.65 Administrative law judges.--
532 (10) Not later than February 1 of each year, the division
533 shall issue a written report to the Administrative Procedures
534 Committee and the Administration Commission, including at least
535 the following information:
536 (c) Recommendations as to those types of cases or disputes
537 which should be conducted under the summary hearing process
538 described in s. 120.574.
539 (d) A report regarding each agency's compliance with the
540 filing requirement in s. 120.57(1)(m).

541 Section 10. Subsection (2) of section 120.74, Florida
542 Statutes, is amended to read:
543 120.74 Agency review, revision, and report.--
544 (2) Beginning October 1, 1997, and by October 1 of every
545 other year thereafter, the head of each agency shall file a
546 report with the President of the Senate, ~~and~~ the Speaker of the
547 House of Representatives, and the committee, with a copy to each
548 appropriate standing committee of the Legislature, which
549 certifies that the agency has complied with the requirements of
550 this subsection. The report must specify any changes made to its
551 rules as a result of the review and, when appropriate, recommend
552 statutory changes that will promote efficiency, reduce
553 paperwork, or decrease costs to government and the private
554 sector. The report must identify the types of cases or disputes
555 in which the agency is involved which should be conducted under
556 the summary hearing process described in s. 120.574.
557 Section 11. The Department of State shall, before December
558 31, 2007, make available, to all agencies required on the
559 effective date of this act to publish materials in the Florida
560 Administrative Weekly, training courses for the purpose of
561 assisting the agencies with their transition to publishing on
562 the Florida Administrative Weekly Internet website. The training
563 courses may be provided in the form of workshops or software
564 packages that allow self-training by agency personnel.
565 Section 12. Except as otherwise expressly provided in this
566 act, this act shall take effect July 1, 2006.
567
568 ========== T I T L E A M E N D M E N T ==========
569 Remove the entire title and insert:
570 A bill to be entitled

571 An act relating to administrative procedures; amending s.
572 11.60, F.S.; revising duties of the Administrative
573 Procedures Committee with respect to its review of
574 statutes; amending s. 57.111, F.S.; redefining the term
575 "small business" to include certain specified individuals
576 whose net worth does not exceed a specified amount;
577 amending s. 120.54, F.S.; requiring an agency to file a
578 notice of change with the Administrative Procedures
579 Committee; revising times for filing rules for adoption;
580 providing an exception to the term "administrative
581 determination" for purposes of rule adoption; providing
582 for the form and provisions of bonds; revising
583 applicability of certain uniform rules; providing
584 additional content for uniform rules; amending s. 120.55,
585 F.S.; requiring that certain information be included in
586 forms incorporated by reference in rules; requiring
587 information to be published electronically on an Internet
588 website; providing that such publication does not preclude
589 other publications; providing additional duties of the
590 Department of State with respect to publications;
591 providing requirements for the Internet website; amending
592 s. 120.551, F.S.; postponing the repeal of this section,
593 relating to Internet publication; amending s. 120.56,
594 F.S.; revising provisions relating to withdrawal of
595 challenged rules; amending s. 120.569, F.S.; prescribing
596 circumstances under which the time for filing a petition
597 for hearing must be extended; amending s. 120.57, F.S.;
598 requiring a final order to include an explicit ruling on
599 each exception to the recommended order; requiring that
600 additional information be included in notices relating to
601 protests of contract solicitations or awards; amending s.

602 120.65, F.S.; requiring the Division of Administrative
603 Hearings to include certain recommendations and
604 information in its annual report to the Administrative
605 Procedures Committee; amending s. 120.74, F.S.; requiring
606 agency reports to be filed with the Administrative
607 Procedures Committee; requiring that the annual report
608 filed by an agency identify the types of cases or disputes
609 in which it is involved which should be conducted under
610 the summary hearing process; requiring the Department of
611 State to provide certain assistance to agencies in their
612 transition to publishing on the Florida Administrative
613 Weekly Internet website; providing effective dates.
614

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **PHCB GO 06-01**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Governmental Operations
2 Representative(s) Ausley offered the following:
3
4 **Amendment**
5 Remove line(s) 72-103 and insert:
6 1. Seventy-five ~~Fifty~~ dollars per diem; or
7 2. If actual expenses exceed $75 ~~$50~~, the amounts
8 permitted in paragraph (b) for subsistence ~~meals~~, plus actual
9 expenses for lodging at a single-occupancy rate to be
10 substantiated by paid bills therefor.
11
12 When lodging or meals are provided at a state institution, the
13 traveler shall be reimbursed only for the actual expenses of
14 such lodging or meals, not to exceed the maximum provided for in
15 this subsection.
16 (b) All travelers shall be allowed the following amounts
17 for subsistence while on Class C travel on official business as
18 provided in paragraph (5)(b):
19 1. Breakfast....$5 ~~$3~~
20 2. Lunch....$11 ~~$6~~
21 3. Dinner....$19 ~~$12~~

22 (c) No one, whether traveling out of state or in state,
23 shall be reimbursed for any meal or lodging included in a
24 convention or conference registration fee paid by the state.
25 ~~(d) For the 2005-2006 fiscal year only and Notwithstanding~~
26 ~~the other provisions of this subsection, for Class C travel, a~~
27 ~~state traveler shall not be reimbursed on a per diem basis nor~~
28 ~~shall a traveler receive subsistence allowance. This paragraph~~
29 ~~expires July 1, 2006.~~
30 (7) TRANSPORTATION.--
31 (d)1. The use of privately owned vehicles for official
32 travel in lieu of publicly owned vehicles or common carriers may
33 be authorized by the agency head or his or her designee.
34 Whenever travel is by privately owned vehicle:~~,~~
35 a. The traveler shall be entitled to a mileage allowance
36 at a fixed rate of 44.5 ~~25~~ cents per mile ~~for state fiscal year~~
37 ~~1994-1995 and 29 cents per mile thereafter~~; or